

August 31, 2017

VIA MESSENGER

Initiative Coordinator
Office of the Attorney General
1300 "I" Street, 17th Floor
Sacramento, CA 95814

RECEIVED**SEP 01 2017**

INITIATIVE COORDINATOR
ATTORNEY GENERAL'S OFFICE

Re: *The California Consumer Privacy Act of 2018*


Dear Initiative Coordinator:

In accordance with the requirements of Elections Code section 9001(a), I request that the Attorney General prepare a circulating title and summary of the chief purpose and points of the initiative measure entitled "The California Consumer Privacy Act of 2018." The text of the measure, a check for \$2,000.00, and the certifications required by Elections Code sections 9001 and 9608 are enclosed.

Please direct all correspondence and inquiries regarding this measure to:

James C. Harrison
Kristen M. Rogers
Remcho, Johansen & Purcell, LLP
1901 Harrison Street, Suite 1550
Oakland, CA 94612
Phone: (510) 346-6200
Fax: (510) 346-6201

Sincerely,



Mary Ross

Enclosures
(00317424)

THE CALIFORNIA CONSUMER PRIVACY ACT OF 2018

SEC. 1. Title.

This measure shall be known and may be cited as “The California Consumer Privacy Act of 2018.”

SEC. 2. Findings and Declarations.

The People of the State of California hereby find and declare all of the following:

A. In 1972, California voters amended the California Constitution to include the right of privacy among the “inalienable” rights of all people. Voters acted in response to the accelerating encroachment on personal freedom and security caused by increased data collection in contemporary society. The amendment established a legal and enforceable right of privacy for every Californian. Fundamental to this right of privacy is the ability of individuals to control the use of their personal information. As a Californian, you retain your reasonable expectation of privacy even when you share your personal information with a third party.

B. Since California voters approved the right of privacy, the California Legislature has adopted specific mechanisms to safeguard Californians’ privacy, including the Online Privacy Protection Act, the Privacy Rights for California Minors in the Digital World Act, and Shine the Light, a California law intended to give Californians the “who, what, where, and when” of how businesses handle consumers’ personal information. But technology has continued to advance exponentially and business practices have changed dramatically.

C. Many businesses collect personal information from California consumers using hundreds of tracking and collection devices. They not only know where you live and how many children you have, but also how fast you drive and your personality, sleep habits, biometric and health information, financial information, current location, and social networks, to name just a few categories. California law has not kept pace with these developments.

D. Businesses drive the market for consumers’ personal information, and they profit from buying and selling your personal information and using it for commercial purposes.

E. The proliferation of personal information over which consumers lack control has limited Californians’ ability to properly protect and safeguard their privacy. Businesses use this personal information for their own purposes, including selling it to, and sharing it with, other businesses for their commercial purposes without your knowledge, and using it to offer you a different price or service, target you with ads, or to track your location, habits, and preferences for future commercial use. Often, you may not even know that these records exist and cannot determine who has access to them or to whom they are being sold or with whom they are being shared.

F. At the same time, you are in a position of relative dependence on businesses that collect your information. It is easy for companies to monitor what you do as they collect ever-increasing amounts and categories of data about you. But it is difficult for you to monitor business operations or prevent companies from using your personal information for the companies’ financial benefit. Providing information to a company is not the same as making it

available to the public generally, and you have a reasonable expectation that businesses will respect your privacy.

G. You should have the right to know what personal information businesses collect about you and your children and what they do with it, including how businesses use that information and who they sell it to.

H. You should also be able to control the use of your, and your children's, personal information, and be able to stop businesses from selling your information or sharing it for commercial purposes. Your decision to tell a business to stop selling your personal information or sharing it for commercial purposes should not affect the price or quality of the goods or services you receive. It is possible for businesses both to provide a high level of service and to respect your privacy.

SEC. 3. Purpose and Intent.

In enacting this Act, it is the purpose and intent of the people of the State of California to further operationalize the constitutional right of privacy by giving consumers an effective way to control their personal information, thereby affording better protection of their own privacy and autonomy, by:

A. Giving California consumers the right to know what categories of personal information a business has collected about them and their children.

B. Giving California consumers the right to know what a business has done with that information, including what information it has sold, or shared for commercial purposes, and to whom it has been sold or shared.

C. Requiring a business to disclose to a California consumer if it sells or shares any of the consumer's personal information and allowing the consumer to tell the business to stop selling or sharing the consumer's personal information for the business or the buyer's commercial purposes.

D. Preventing a business from denying or changing a service or charging more if a California consumer refuses to allow the business to sell the consumer's personal information or share it for commercial purposes.

SEC. 4. The California Consumer Privacy Act shall be codified by adding Sections 1798.100 to 1798.114, inclusive, to the Civil Code.

SEC. 4.1. Section 1798.100 is added to the Civil Code, to read:

1798.100. Right to Know What Personal Information is Being Collected.

1798.100. (a) A consumer shall have the right to request that a business that has collected personal information about the consumer disclose to the consumer the categories of personal information it has collected about that consumer.

(b) A business that has collected personal information about a consumer shall disclose the information specified in subdivision (a) to the consumer upon receipt of a verifiable request from the consumer.

SEC. 4.2. Section 1798.101 is added to the Civil Code, to read:

1798.101. Right to Know How Personal Information is Used.

1798.101. (a) A consumer shall have the right to request that a business that sells the consumer's personal information, or shares it for commercial purposes, disclose to that consumer the categories of personal information collected about the consumer and the identity of the third parties to whom such personal information was sold, or shared for commercial purposes, by category or categories of personal information for each third party to whom such personal information was sold, or shared for commercial purposes, and any unique identifier or other method of identifying the personal information that was sold, or shared for commercial purposes.

(b) A business that sells personal information about a consumer, or shares it for commercial purposes, shall disclose the information specified in subdivision (a) to the consumer upon receipt of a verifiable request from the consumer.

SEC. 4.3. Section 1798.102 is added to the Civil Code, to read:

1798.102. Right to Say No to Sale of Personal Information.

1798.102. (a) A consumer shall have the right, at any time, to direct a business that sells personal information about the consumer, or shares it for commercial purposes, not to sell the consumer's personal information, or share it for commercial purposes.

(b) A business that sells consumers' personal information, or shares it for commercial purposes, shall provide notice to consumers that such information may be sold, or shared for commercial purposes, and that consumers have the right to opt out of the sale of their personal information, or the sharing of it for commercial purposes, including instructions regarding how consumers may opt out of the sale of their personal information, or the sharing of it for commercial purposes.

(c) A business that has received direction from a consumer not to sell the consumer's personal information, or share it for commercial purposes, shall be prohibited from selling the consumer's personal information, or sharing it for commercial purposes, after its receipt of the consumer's direction, unless the consumer subsequently provides express authorization for the sale of the consumer's personal information, or the sharing of it for commercial purposes.

SEC. 4.4. Section 1798.103 is added to the Civil Code, to read:

1798.103. Right to Equal Service and Price.

1798.103. A business that sells a consumer's personal information, or shares it for commercial purposes, shall be prohibited from discriminating against the consumer based on the consumer's request for information pursuant to sections 1798.100 or 1798.101, or based on the consumer's

decision to direct the business not to sell the consumer's personal information, or share it for commercial purposes, pursuant to section 1798.102, including but not limited to, by: (a) denying goods or services to the consumer; (b) charging different prices or rates, including through the use of discounts or other benefits or imposing penalties, for such goods or services; (c) providing a different level or quality of such goods or services; or (d) suggesting that the consumer will receive a different level or quality of such goods or services if the consumer exercises the consumer's rights under this Act.

SEC. 4.5. Section 1798.104 is added to the Civil Code, to read:

1798.104. Compliance with Disclosure Requirements.

1798.104. (a) In order to comply with sections 1798.100 and 1798.101, a business shall:

(1) Make two or more designated methods for submitting requests available to consumers, including, at a minimum, a toll-free telephone number and a website address, if the business maintains a website.

(2) Disclose the required information to a consumer free of charge within 30 days of receiving a verifiable request from the consumer. The disclosure shall cover the twelve-month period preceding the business's receipt of the verifiable request.

(3) For purposes of section 1798.100, identify all categories of personal information collected about a consumer by reference to the enumerated category or categories in subdivision (c) that most closely describe the personal information and any unique identifier or other method of identifying the personal information collected.

(4) For purposes of section 1798.101: (A) identify by category or categories the personal information of a consumer which the business sold, or shared for commercial purposes, by reference to the enumerated category or categories in subdivision (c) that most closely describe the personal information, and any unique identifier or other method of identifying the personal information that the business sold, or shared for commercial purposes, and (B) provide accurate names and contact information for the third parties to whom the consumer's personal information was sold, or shared for commercial purposes.

(5) Include a description of a consumer's rights pursuant to sections 1798.100 and 1798.101, and one or more designated methods for submitting requests in: (A) its online privacy policy or policies if the business has an online privacy policy or policies and (B) any California-specific description of consumers' privacy rights.

(6) Ensure that all individuals responsible for handling consumer inquiries about the business's privacy practices or the business's compliance with this Act are informed of all requirements in sections 1798.100, 1798.101, and this section, and how to direct consumers to exercise their rights under those sections.

(7) Use any personal information collected from the consumer in connection with the business's verification of the consumer's request solely for the purposes of verification.

(b) A business is not obligated to provide the information required by sections 1798.100 and 1798.101 to the same consumer more than once in a 12-month period, provided that the collection and use of that consumer's information has not changed since the last disclosure.

(c) The categories of personal information required to be disclosed pursuant to sections 1798.100 and 1798.101 are all of the following:

- (1) All categories of personal information relating to characteristics of protected classifications under California or federal law, with specific reference to the category of information that has been collected, such as race, ethnicity, or gender;
- (2) All categories of personal information enumerated in the Shine the Light Act, California Civil Code sections 1798.83, *et. seq.*, including reference to the specific individual category or categories collected, such as age or date of birth, names of children, or number of children;
- (3) Unique identifiers;
- (4) Any other identifier intended or able to be associated with a particular individual or device, including, but not limited to, a social security number, driver's license number, identifier assigned by a business or third party, or passport number;
- (5) Commercial information, including records of property, products or services provided, obtained, or considered, or other purchasing or consuming histories or tendencies;
- (6) Biometric data;
- (7) Internet or other electronic network activity information including browsing history, search history, and information regarding a consumer's interaction with a website, application, or advertisement;
- (8) Geolocation data;
- (9) Photographs or images, including video images;
- (10) Psychometric information;
- (11) Professional or employment-related information;
- (12) Content, including text, photographs, audio or video recordings, or other material generated by or provided by the consumer;
- (13) Any of the categories of information set forth in this subdivision as they pertain to the minor children of the consumer, including reference to the specific category or categories;
- (14) Inferences drawn from any of the information identified above, including reference to the specific category or categories from which the inference was drawn; and
- (15) A category of personal information included within the scope of paragraph (15) of subdivision (l) of section 1798.106, including a description of the type of personal information.

SEC. 4.6. Section 1798.105 is added to the Civil Code, to read:

1798.105. Compliance with Opt-Out Requirements.

1798.105. (a) A business that is required to comply with sections 1798.102 and 1798.103 shall:

- (1) Provide a clear and conspicuous link on the business's homepage titled solely "Do Not Sell My Personal Information, Or Share It For Commercial Purposes." The link shall lead to a standalone screen, window, or webpage, which shall include only the following clear and

conspicuous text: *"We sell consumers' personal information, or share it for commercial purposes. California law allows you to tell us not to sell your personal information, or share it for commercial purposes, and we are required to offer the same goods or services at the same price, regardless of whether or not you permit us to sell your personal information, or share it for commercial purposes. If you check the box below, we will not sell your personal information, or share it for commercial purposes."* This text shall be followed by a box that a consumer may check that reads: *"Do not sell my personal information, or share it for commercial purposes"*, and that includes a text entry field for the consumer's full name and zip code. Other than the business's name, logo, and the information required in this paragraph, no other writing or information shall be allowed on the separate or standalone screen, window or webpage. A business shall not require a consumer to log into a website or application, or create an account, in order to direct the business not to sell the consumer's personal information.

(2) For in-person interactions, post a clear and conspicuous physical notice at the entrance to each location owned, leased, or operated by the business in California at which the business interacts with consumers that reads *"[Name of business] sells consumers' personal information, or shares it for commercial purposes. California law allows you to tell us not to sell your personal information, or share it for commercial purposes, and we are required to offer the same goods or services at the same price, regardless of whether or not you permit us to sell your personal information, or share it for commercial purposes. If you would like to tell us not to sell your personal information, or share it for commercial purposes, visit [URL] or call [toll-free number]."* The notice required by this paragraph shall be reasonably calculated, considering the alternative methods available under the circumstances, to make the notice available to the consumer during the non-electronic interaction. Upon receiving a request from the consumer, the business shall provide a separate paper form or link to a dedicated webpage with only the following clear and conspicuous text: *"We sell consumers' personal information, or share it for commercial purposes. California law allows you to tell us not to sell your personal information, or share it for commercial purposes, and we are required to offer the same goods or services at the same price, regardless of whether or not you permit us to sell your personal information, or share it for commercial purposes. If you check the box below, we will not sell your personal information, or share it for commercial purposes."* This text shall be followed by a box that a consumer may check that reads: *"Do not sell my personal information, or share it for commercial purposes"*, and that includes a text entry field for the consumer's full name and zip code. Other than the business's name, logo, and the information required in this paragraph, no other writing or information shall be allowed on the paper or webpage. A business shall not require a consumer to log into a website or application, or create an account, in order to direct the business not to sell the consumer's personal information.

(3) Include a description of a consumer's rights pursuant sections 1798.102 and 1798.103, along with a separate link to the "Do Not Sell My Personal Information Or Share It For Commercial Purposes" standalone screen, window, or webpage in: (A) its online privacy policy or policies if the business has an online privacy policy or policies and (B) any California-specific description of consumers' privacy rights.

(4) Ensure that all individuals responsible for handling consumer inquiries about the business's privacy practices or the business's compliance with this Act are informed of all requirements in sections 1798.102, 1798.103, and this section, and how to direct consumers to exercise their rights under those sections.

(5) For consumers who exercise their right to opt out of the sale of their personal information, or the sharing of it for commercial purposes, associate the name and zip code provided by the consumer, any unique identifiers associated with the consumer as part of the submission of the consumer's opt-out request, and any data or unique identifiers that the business would ordinarily, or could reasonably, have access to, or would typically collect, when interacting with the consumer, to any personal information previously collected by the business that the business reasonably believes or probabilistically identifies to be that of the same consumer. The business shall be prohibited from selling all such personal information of the consumer, or sharing it for commercial purposes.

(6) Provide a clear and conspicuous link on the business's homepage or a designated method of submitting requests available upon request to allow a consumer who has opted out of the sale of the consumer's personal information, or the sharing of it for commercial purposes, to authorize the business to sell the consumer's personal information, or share it for commercial purposes, titled solely, "Allow [business name] To Sell My Personal Information, Or Share It For Commercial Purposes." The link shall lead to a standalone screen, window, or webpage, or paper form in the case of a business that provides a designated address, that shall be titled "[Name of Business] may sell my personal information, or share it for commercial purposes," and that shall include only the following clear and conspicuous text: *"You have told us not to sell your personal information, or share it for commercial purposes. California law requires us to offer you the same goods or services at the same price, regardless of whether or not you allow us to sell your personal information, or share it for commercial purposes. If you would now like to permit us to sell your personal information, or share it for commercial purposes, please check the box below."* This text shall be followed by a box that a consumer may check that reads: *"[Name of Business] may sell my personal information, or share it for commercial purposes"*, and that includes a text entry field for the consumer's full name and zip code. Other than the business's name, logo, and the information required in this paragraph, no other writing or information shall be allowed on the standalone screen, window, webpage, or paper form. A business may not request or otherwise direct the consumer to submit a request for change in status, except as provided in this paragraph.

(b) A consumer, or a consumer on behalf of the consumer's minor child, may opt out of the sale of the consumer's personal information, or the sharing of it for commercial purposes, by providing the consumer's full name and zip code to the business through any means, and a consumer may authorize another person to opt out on the consumer's behalf, and a business shall comply with an opt-out request received, through any means, from a person authorized by the consumer to act on the consumer's behalf.

SEC. 4.7. Section 1798.106 is added to the Civil Code, to read:

1798.106. Definitions.

1798.106. For purposes of Sections 1798.100 to 1798.114, inclusive, the following definitions shall apply:

(a) "Biometric data" means an individual's physiological, biological, or behavioral characteristics, including but not limited to: retina or iris scan, fingerprint, hand scan, face scan,

keystroke patterns or rhythms, gait patterns or rhythms, voiceprint, sleep, health, or exercise data.

(b) “Business” means:

(1) a sole-proprietorship, partnership, limited-liability company, corporation, association, or other legal entity that is organized or operated for the profit or financial benefit of its shareholders or other owners, that collects consumers’ personal information, that does business in the State of California, and that has either one or more of the following: (a) 50 or more employees; (b) annual gross sales in excess of \$2,000,000; (c) assets in excess of \$3,000,000; (d) ownership of, or the right to use, records of personal information pertaining to 20,000 or more consumers; or (e) a primary business purpose of buying and selling consumers’ personal information.

(2) any entity that controls or is controlled by a business, as defined in paragraph (1) of this subdivision, and that shares common branding with the business. “Control” means ownership of, or the power to vote, more than 50 percent of the outstanding shares of any class of voting security of a business; control in any manner over the election of a majority of the directors, or of individuals exercising similar functions; or the power to exercise, directly or indirectly, a controlling influence over the management or policies of a company. “Common branding” means a shared name, servicemark, or trademark.

(c) “Clear and conspicuous” means (1) in a color that contrasts with the background color or is otherwise distinguishable; (2) written in larger type than the surrounding text that calls attention to the language; and (3) displayed so that a reasonable viewer would be able to notice, read, and understand it. In the case of an audio disclosure, “clear and conspicuous” means in a volume and cadence sufficient to be readily audible and understandable.

(d) “Commercial purposes” means to advance a person’s commercial interests, such as by inducing a person to buy, rent, lease, join, subscribe to, provide, or exchange products, goods, property, information, or services, or enabling or effecting, directly or indirectly, a commercial transaction. “Commercial purposes” do not include for the purpose of engaging in non-commercial speech.

(e) “Collected” or “collection” means gathering, obtaining, storing, using, monitoring, inferring, or accessing any personal information pertaining to a consumer by any means, regardless of the length of time the information is retained and whether or not the interaction with the consumer involved the exchange of consideration, including but not limited to: (1) requesting, prompting, or encouraging a consumer to submit personal information to the business; (2) tracking a consumer’s activity online; (3) tracking a consumer through any means of geolocation; (4) accessing or obtaining a consumer’s personal information from a person other than the consumer; or (5) obtaining a consumer’s personal information through a commercial transaction, advertising, marketing, or any other interaction with the consumer.

(f) “Consumer” means a natural person who is a California resident, as defined on September 1, 2017, in the California Code of Regulations, title 18, section 17014, however identified, including by any unique identifier, where such identifier is used to collect or categorize personal

information about the resident, or by a computer, device, or software program or application owned or primarily used by that resident or that is otherwise associated with that resident.

(g) "Designated methods for submitting requests" means a mailing address, e-mail address, Web page, Web portal, toll-free telephone number, or other applicable contact information, whereby consumers may submit a request or direction under this Act.

(h) "Homepage" means the introductory page of a website and any webpage where personal information is collected. In the case of an online service, such as a mobile application, homepage means the application's platform page, a link within the application, such as from the application configuration, "About," "Information," or settings page, and any other location that allows consumers to review the notice required by paragraph (1) of subdivision (a) of section 1798.105 before downloading the application.

(i) "Infer" or "inference" means the derivation of information, data, assumptions, or conclusions from facts, evidence, or another source of information or data.

(j) "In-person interaction" means a contact, transaction, sale, purchase, service, or communication that occurs or is conducted at a location owned, leased, or operated by the business in California at which the business interacts with the consumer. "In-person interaction" does not include any interaction conducted exclusively online.

(k) "Person" means an individual, proprietorship, firm, partnership, joint venture, syndicate, business trust, company, corporation, limited liability company, association, committee, and any other organization or group of persons acting in concert.

(l) "Personal information" means information or data possessed, used, made available to, or accessed by the business, that the business uses or could reasonably use, directly, indirectly, or probabilistically, including through the use of any algorithm, method, or series of steps involving different businesses, technologies, or formulas, to identify, relate to, or describe, alone or in combination with other information, a consumer. Personal information includes any information described in the following categories:

- (1) Characteristics of protected classifications under California or federal law;
- (2) All categories of personal information enumerated in the Shine the Light Act, California Civil Code sections 1798.83, *et. seq.*;
- (3) Unique identifiers;
- (4) Any other identifier intended or able to be associated with a particular individual or device, including, but not limited to, a social security number, driver's license number, identifier assigned by a business or third party, or passport number;
- (5) Commercial information, including records of property, products or services provided, obtained, or considered, or other purchasing or consuming histories or tendencies;
- (6) Biometric data;
- (7) Internet or other electronic network activity information including browsing history, search history, and information regarding a consumer's interaction with a website, application, or advertisement;
- (8) Geolocation data;
- (9) Photographs or images, including video images;

- (10) Psychometric information;
- (11) Professional or employment-related information;
- (12) Content, including text, photographs, audio or video recordings, or other material generated by or provided by the consumer;
- (13) Any of the categories of information set forth in this subdivision as they pertain to the minor children of the consumer;
- (14) Inferences drawn from any of the information identified above; and
- (15) Any other information or data not enumerated in paragraphs (1) through (14) that is used to identify, or is associated with, a consumer.

“Personal information” does not include information that is publicly available.

(m) “Probabilistic identifier,” or “probabilistically . . . identify,” “probabilistically identified,” or “identify . . . probabilistically,” means the identification of a consumer to a degree of certainty of more probable than not based on some or all of the categories enumerated in subdivision (l).

(n) “Psychometric information” means information derived or created from the use or application of psychometric theory or psychometrics, whereby through the use of any method, model, tool, or formula, observable phenomena, such as actions or events, are connected, measured, assessed, or related to a consumer’s attributes, including, but not limited to, psychological trends, preferences, predispositions, behavior, attitudes, intelligence, abilities, and aptitudes.

(o) “Publicly available” means information that is lawfully made available from federal, state, or local government records or information that the consumer has voluntarily made publicly available without any restriction on who can access such information. “Publicly available” does not mean biometric information collected by a business about a consumer without the consumer’s knowledge.

(p) “Sell,” “selling,” “sale,” or “sold,” means: (1) the selling, renting, release, disclosure, use, accessing, disseminating, making available, transferring, or otherwise communicating orally, in writing, or by electronic or other means, a consumer’s personal information by the business to a third party, for economic consideration or for other commercial purposes of the business; (2) permitting any third party, for economic consideration or for other commercial purposes of the business, to monitor, obtain, access, or use the activity or history of any consumer’s interactions with the business; and (3) permitting any third party, for economic consideration or for other commercial purposes of the business, to place any tracking or identifying device such as a cookie, beacon, pixel, or other technology that allows a consumer’s personal information to be monitored, obtained, accessed, or used.

(q) “Service” or “services” means work, labor, and services, including services furnished in connection with the sale or repair of goods.

(r) “Share,” “shares,” “shared,” or “sharing” means providing a consumer’s personal information, whether for consideration or not, to a third party.

(s) “Third party” means any person who is not:

- (1) The business that collects personal information from consumers under this Act; or

- (2) A person hired or otherwise engaged or used by the business pursuant to a written contract authorizing use of the personal information to perform services on behalf of the business, including maintaining or servicing accounts, providing customer service, processing or fulfilling orders and transactions, verifying customer information, processing payments, providing financing, or similar services, but only if: (A) the contract prohibits the person from using the personal information for any reason other than performing the specified service(s) on behalf of the business and from selling any such personal information; (B) the contract requires that the personal information be deleted or destroyed by the person as soon as the personal information is no longer necessary to fulfill the services specified in the contract or comply with other legal obligations; and (C) the business effectively enforces these prohibitions.

(t) "Unique identifiers" means a device or browser identifier; Internet Protocol address/es; computer or phone operating system information; phone network information; device hardware or software information; cookies, beacons, pixel tags, mobile ad identifiers, or similar technology; customer number, unique pseudonym, or user alias; application information; telephone information including telephone numbers, forwarding numbers, time, date, type and duration of phone calls; SMS information; device event information such as crashes, system activity, hardware settings, browser type, browser language; date, time and nature of search requests and referral URL or HTTP referrer; or similar identification methods; or some combination thereof, or other forms of persistent identifiers that can be used to identify a device or consumer either directly, indirectly, or probabilistically.

(u) "Verifiable request" means a request that: (1) is made by a consumer, by a consumer on behalf of the consumer's minor child, or by a person authorized by the consumer to act on the consumer's behalf; and (2) the business, taking into consideration available technology and using reasonable efforts, has probabilistically identified to be the consumer about whom the business has collected personal information.

SEC. 4.8. Section 1798.107 is added to the Civil Code, to read:

1798.107. Exemptions.

1798.107. (a) The obligations imposed on businesses by sections 1798.100 through 1798.105 shall not restrict a business's ability to:

- (1) comply with federal laws;
- (2) comply with a civil, criminal, or regulatory investigation or subpoena or summons by federal, state, or local authorities; or
- (3) cooperate with law enforcement agencies concerning conduct or activity that the business reasonably believes may violate federal, state, or local law.

(b) The obligations imposed on businesses by sections 1798.100 through 1798.105 shall not apply where compliance by the business with the Act would violate an evidentiary privilege under California law or where the business provides the personal information to a person covered by an evidentiary privilege under California law.

(c) This Act shall not apply to protected health information that is collected by a covered entity governed by the medical privacy and security rules issued by the Federal Department of Health and Human Services, Parts 160 and 164 of Title 45 of the Code of Federal Regulations, established pursuant to the Health Insurance Portability and Availability Act of 1996 (HIPAA). For purposes of this subdivision, the definitions of "protected health information" and "covered entity" from the privacy rule shall apply.

(d) This Act shall not apply to the sale of personal information to or from a consumer reporting agency if that information is to be reported in, or used to generate, a consumer report as defined by subdivision (d) of Section 1681(a) of Title 15 of the United States Code, and use of that information is limited by the federal Fair Credit Reporting Act, 15 U.S.C. § 1681, *et. seq.*

SEC. 4.9. Section 1798.108 is added to the Civil Code, to read:

1798.108. Enforcement By Consumers Who Have Suffered An Injury In Fact.

1798.108. (a) A consumer who has suffered a violation of this Act may bring an action for statutory damages. For purposes of Business and Professions Code section 17204 and any other applicable law, a violation of this Act shall be deemed to constitute an injury in fact to the consumer who has suffered the violation, and the consumer need not suffer a loss of money or property as a result of the violation in order to bring an action for a violation of this Act.

(b)(1) Any consumer who suffers an injury in fact, as described in subdivision (a) of this section, shall recover statutory damages in the amount of one thousand dollars (\$1,000) or actual damages, whichever is greater, for each violation from the business or person responsible for the violation, except that in the case of a knowing and willful violation by a business or person, an individual shall recover statutory damages of not less than one thousand dollars (\$1,000) and not more than three thousand dollars (\$3,000), or actual damages, whichever is greater, for each violation from the business or person responsible for the violation.

(2) In assessing the amount of statutory damages, the court shall consider any one or more of the relevant circumstances presented by any of the parties to the case, including, but not limited to, the following: the nature and seriousness of the misconduct, the number of violations, the persistence of the misconduct, the length of time over which the misconduct occurred, the willfulness of the defendant's misconduct, and the defendant's assets, liabilities, and net worth.

(c) The remedies provided by this section are cumulative to each other and to the remedies or penalties available under all other laws of this State.

SEC. 4.10. Section 1798.109 is added to the Civil Code, to read:

1798.109. Enforcement by Public Entities.

1798.109. (a) Any business or person that violates this Act shall be liable for a civil penalty as provided in section 17206 of the Business and Professions Code in a civil action brought in the name of the people of the State of California by the Attorney General, by any district attorney, by any county counsel authorized by agreement with the district attorney in actions involving violation of a county ordinance, by any city attorney of a city having a population in excess

of 750,000, by any city attorney of any city and county, or, with the consent of the district attorney, by a city prosecutor in any city having a full-time city prosecutor, in any court of competent jurisdiction.

(b) Notwithstanding section 17206 of the Business and Professions Code, any person business that intentionally violates this Act may be liable for a civil penalty of up to \$7,500 for each violation.

(c) Notwithstanding section 17206 of the Business and Professions Code, any civil penalty assessed pursuant to section 17206 for a violation of this Act shall be awarded as follows:

(1) 20 percent to the Consumer Privacy Fund, created within the General Fund pursuant to subdivision (a) of section 1798.110, with the intent to fully offset any costs incurred by the state courts and the Attorney General in connection with this Act.

(2) 80 percent to the jurisdiction on whose behalf the action leading to the civil penalty was brought.

(d) The Legislature shall adjust the percentages specified in subdivision (c) of this section and in subdivision (b) of section 1798.111, as necessary to ensure that any civil penalties assessed for a violation of this Act fully offset any costs incurred by the state courts and the Attorney General in connection with this Act, including a sufficient amount to cover any deficit from a prior fiscal year. The Legislature shall not direct a greater percentage of assessed civil penalties to the Consumer Privacy Fund than reasonably necessary to fully offset any costs incurred by the state courts and the Attorney General in connection with this Act.

SEC. 4.11. Section 1798.110 is added to the Civil Code, to read:

1798.110. Consumer Right To Privacy Fund.

1798.110. (a) A special account to be known as the "Consumer Privacy Fund" is hereby created within the General Fund in the State Treasury, and, notwithstanding Government Code section 13340, is continuously appropriated without regard for fiscal year to offset any costs incurred by the state courts in connection with actions brought to enforce this Act and any costs incurred by the Attorney General in carrying out the Attorney General's duties under this Act.

(b) Funds transferred to the Consumer Privacy Fund shall be used exclusively to offset any costs incurred by the state courts and the Attorney General in connection with this Act. Such funds shall not be subject to appropriation or transfer by the Legislature for any other purpose, unless the Director of Finance determines that the funds are in excess of the funding needed to fully offset the costs incurred by the state courts and the Attorney General in connection with this Act, in which case the Legislature may appropriate excess funds for other purposes.

SEC. 4.12. Section 1798.111 is added to the Civil Code, to read:

1798.111. Enforcement by Interested Person on Behalf of Public.

(a) Any person may file a civil action for civil penalties pursuant to section 1798.109, if prior to filing such action, the person files with the Attorney General a written request for the Attorney General to commence the action. The request shall include a statement of the grounds for believing a cause of action exists.

(1) If the Attorney General files suit within 90 days from receipt of the written request to commence the action, no other action may be brought unless the action brought by the Attorney General is dismissed without prejudice.

(2) If the Attorney General does not file suit within 90 days from receipt of the written request to commence the action, the person requesting the action may proceed to file a civil action.

(3) The time period within which a civil action shall be commenced shall be tolled from the date of receipt by the Attorney General of the written request to either the date that the civil action is dismissed without prejudice, or for 150 days, whichever is later, but only for a civil action brought by the person who requested the Attorney General to commence the action.

(b) Notwithstanding subdivision (c) of section 1798.109, if a judgment is entered against the defendant or defendants in an action brought by a person pursuant to this section, that person shall receive seventy percent of the amount recovered and thirty percent shall be deposited in the Consumer Privacy Fund within the General Fund.

SEC. 4.13. Section 1798.112 is added to the Civil Code, to read:

1798.112. Construction.

1798.112. This Act is intended to operationalize the constitutional right of privacy and to supplement existing laws relating to consumers' personal information, including but not limited to the California Internet Privacy Act (chapter 22 of Division 8 of the Business and Professions Code, commencing with section 22575) and the California Shine the Light Act (Title 1.81 of Part 4 of Division 3 of the Civil Code, commencing with section 1798.80). The provisions of this Act are not limited to information collected electronically or over the Internet, but apply to the collection and sale, or sharing for commercial purposes, of all personal information collected by a business from consumers. Wherever possible, existing law relating to consumers' personal information should be construed to harmonize with the provisions of this Act, but in the event of a conflict between existing law and the provisions of this Act, the provisions of the law that afford the greatest protection for the right of privacy shall control.

SEC. 4.14. Section 1798.113 is added to the Civil Code, to read:

1798.113. Imposition of Additional Privacy Safeguards.

1798.113. Nothing in this Act shall prevent a city, county, city and county, municipality, or local agency from safeguarding the constitutional right of privacy by imposing additional

requirements regarding the collection and sale, or sharing for commercial purposes, of consumers' personal information by businesses provided that the requirement does not prevent a person from complying with this Act.

SEC. 4.15. Section 1798.114 is added to the Civil Code, to read:

1798.114. Regulations.

1798.114. (a) The Attorney General shall adopt regulations to further the purposes of this Act, including but not limited to:

(1) Adding additional categories to those enumerated in subdivision (l) of section 1798.106 and subdivision (c) of section 1798.104. Upon receipt of a request made by a California city attorney or district attorney to add a new category or categories, the Attorney General shall promulgate a regulation to add such category or categories unless the Attorney General concludes, based on factual or legal findings, that there is a compelling reason not to add the category or categories. The Attorney General may also add additional categories to those enumerated in subdivision (l) of section 1798.106 and subdivision (c) of section 1798.104 in response to a petition filed pursuant to section 11340.6 of the Government Code;

(2) Adding additional items to the definition of "unique identifiers" to address changes in technology;

(3) Establishing any exceptions necessary to comply with state and federal law;

(4) Establishing rules and procedures pursuant to which a business complies with the requirements in subdivision (b) of section 1798.105 and the notice requirement in paragraph (2) of subdivision (a) of section 1798.105;

(5) Adjusting the monetary thresholds in subparagraphs (b) and (c) of paragraph (1) of subdivision (b) of section 1798.106 in January of every odd-numbered year to reflect any increase in the Consumer Price Index; and

(6) Establishing rules, procedures, and any exceptions necessary to ensure that the notices and information that businesses are required to provide pursuant to this Act are accessible to consumers with disabilities, and are available in the language primarily used to interact with the consumer.

(b) The Attorney General shall be precluded from adopting regulations that limit or reduce the number or scope of categories of personal information enumerated in subdivision (c) of section 1798.104 and subdivision (l) of section 1798.106, or that limit or reduce the number or scope of categories added pursuant to paragraph (1) of subdivision (a), except as necessary to comply with paragraph (3) of subdivision (a). The Attorney General shall also be precluded from reducing the scope of the definition of "unique identifiers."

(c) The Attorney General shall adopt any regulations the Attorney General deems necessary to implement this measure within six months of the date of the election at which it is adopted. Notwithstanding the California Administrative Procedure Act (APA), and in order to facilitate

the implementation of this Act, the Attorney General may adopt interim regulations without compliance with the procedures set forth in the APA. The interim regulations shall remain in effect for 270 days unless earlier superseded by regulations adopted pursuant to the APA.

SEC. 5. Amendment.

This Act shall be broadly construed to accomplish its purposes. The provisions of this Act may not be amended before the measure is approved by the voters. The provisions of this Act may be amended so long as such amendments are consistent with and further the intent of this Act to protect the right of Californians to control the use of their personal information by a statute that is passed by a two-thirds vote of the members of each house of the Legislature and signed by the Governor. In addition, the Legislature may amend subdivision (c) of section 1798.109 and subdivision (b) of section 1798.111, as specified in subdivision (d) of section 1798.109, by a majority vote of the members of each house of the Legislature and signed by the Governor.

SEC. 6. Severability.

If any provision of this measure, or part of this measure, or the application of any provision or part to any person or circumstances, is for any reason held to be invalid, the remaining provisions, or applications of provisions, shall not be affected, but shall remain in full force and effect, and to this end the provisions of this measure are severable. If a court were to find in a final, unreviewable judgment that the exclusion of one or more entities or activities from the applicability of the Act renders the Act unconstitutional, those exceptions should be severed and the Act should be made applicable to the entities or activities formerly exempt from the Act. It is the intent of the voters that this chapter would have been enacted regardless of whether an invalid provision had been included or an invalid application had been made.

SEC. 7. Conflicting Initiatives.

(a) In the event that this measure and another measure addressing the privacy of personal information shall appear on the same statewide ballot, the provisions of the other measure or measures shall be deemed to be in conflict with this measure. In the event that this measure receives a greater number of affirmative votes than a measure deemed to be in conflict with it, the provisions of this measure shall prevail in their entirety, and the other measure or measures shall be null and void.

(b) If this measure is approved by the voters but superseded by law by any other conflicting measure approved by voters at the same election, and the conflicting ballot measure is later held invalid, this measure shall be self-executing and given full force and effect.

SEC. 8. Standing.

Notwithstanding any other provision of law, if the State, government agency, or any of its officials fail to defend the constitutionality of this Act, following its approval by the voters, any other government agency, the proponent, or in his or her absence, any citizen of this State shall have the authority to intervene in any court action challenging the constitutionality of this Act for the purpose of defending its constitutionality, whether such action is in trial court, on appeal, or on discretionary review by the Supreme Court of California and/or the Supreme Court of the

United States. The reasonable fees and costs of defending the action shall be a charge on funds appropriated to the California Department of Justice, which shall be satisfied promptly.

SEC. 9. Anti-Avoidance Provision.

If a series of steps or transactions were component parts of a single transaction intended from the beginning to be taken for purposes of avoiding the reach of this Act, a court may disregard the intermediate steps or transactions for purposes of effectuating the purposes of this Act.

SEC. 10. Non-Waiver.

Any provision of a contract or agreement of any kind that purports to waive or limit in any way a consumer's rights under this Act shall be deemed contrary to public policy and shall be void and unenforceable. This section shall not prevent a consumer from: declining to request information from a business; declining to opt out of a business's sale of the consumer's personal information, or its sharing of that information for commercial purposes; or authorizing a business to sell the consumer's personal information, or sharing it for commercial purposes, after previously opting out.

SEC. 11. Liberal Construction.

This Act shall be liberally construed to effectuate its purposes.

SEC. 12. Savings Clause.

This Act is intended to supplement federal law, where permissible, but shall not apply where such application is preempted by, or in conflict with, federal law, or the California Constitution.

SEC. 13. Effective Date.

This Act shall only apply to personal information collected or sold by a business on or after 6 months from the effective date.