

AMENDED IN ASSEMBLY APRIL 12, 2019

AMENDED IN ASSEMBLY MARCH 25, 2019

CALIFORNIA LEGISLATURE—2019–20 REGULAR SESSION

**ASSEMBLY BILL**

**No. 25**

---

---

**Introduced by Assembly Member Chau**  
(Coauthors: Senators Dodd and Hertzberg)

December 3, 2018

---

---

An act to amend Section 1798.140 of the Civil Code, relating to consumer privacy.

LEGISLATIVE COUNSEL'S DIGEST

AB 25, as amended, Chau. California Consumer Privacy Act of 2018.

Existing law, the California Consumer Privacy Act of 2018, beginning January 1, 2020, grants consumers various rights with regard to their personal information held by businesses, including the right to request a business to disclose specific pieces of personal information it has collected and to have information held by that business deleted, as specified. Existing law imposes certain responsibilities on the Attorney General in connection with the act, including the creation of regulations and providing guidance on how to comply with the act. Existing law defines “consumer” as a natural person who is a California resident, as defined in a specific regulation, however identified, including by any unique identifier.

This bill would exclude from the definition of “consumer” a natural person whose personal information has been collected by a business in the course of a person acting as a job applicant ~~to, or as an employee, contractor, or agent,~~ *an employee of, a contractor of, or an agent on behalf of* of, the business, to the extent ~~their~~ *the person's* personal

information is *collected and used solely* for purposes compatible with the context of that person’s ~~activities for the business role~~ as a job applicant, employee, contractor, or agent of the business. *The bill would also define “contractor” for purposes of that provision.*

This bill would state the intent of the Legislature to clarify how a business shall comply with a consumer’s request for specific pieces of information in a privacy protective manner.

Vote: majority. Appropriation: no. Fiscal committee: yes.  
 State-mandated local program: no.

*The people of the State of California do enact as follows:*

1 SECTION 1. Section 1798.140 of the Civil Code is amended  
 2 to read:  
 3 1798.140. For purposes of this title:  
 4 (a) “Aggregate consumer information” means information that  
 5 relates to a group or category of consumers, from which individual  
 6 consumer identities have been removed, that is not linked or  
 7 reasonably linkable to any consumer or household, including via  
 8 a device. “Aggregate consumer information” does not mean one  
 9 or more individual consumer records that have been deidentified.  
 10 (b) “Biometric information” means an individual’s  
 11 physiological, biological or behavioral characteristics, including  
 12 an individual’s deoxyribonucleic acid (DNA), that can be used,  
 13 singly or in combination with each other or with other identifying  
 14 data, to establish individual identity. Biometric information  
 15 includes, but is not limited to, imagery of the iris, retina,  
 16 fingerprint, face, hand, palm, vein patterns, and voice recordings,  
 17 from which an identifier template, such as a faceprint, a minutiae  
 18 template, or a voiceprint, can be extracted, and keystroke patterns  
 19 or rhythms, gait patterns or rhythms, and sleep, health, or exercise  
 20 data that contain identifying information.  
 21 (c) “Business” means:  
 22 (1) A sole proprietorship, partnership, limited liability company,  
 23 corporation, association, or other legal entity that is organized or  
 24 operated for the profit or financial benefit of its shareholders or  
 25 other owners, that collects consumers’ personal information, or  
 26 on the behalf of which such information is collected and that alone,  
 27 or jointly with others, determines the purposes and means of the  
 28 processing of consumers’ personal information, that does business

1 in the State of California, and that satisfies one or more of the  
2 following thresholds:

3 (A) Has annual gross revenues in excess of twenty-five million  
4 dollars (\$25,000,000), as adjusted pursuant to paragraph (5) of  
5 subdivision (a) of Section 1798.185.

6 (B) Alone or in combination, annually buys, receives for the  
7 business's commercial purposes, sells, or shares for commercial  
8 purposes, alone or in combination, the personal information of  
9 50,000 or more consumers, households, or devices.

10 (C) Derives 50 percent or more of its annual revenues from  
11 selling consumers' personal information.

12 (2) Any entity that controls or is controlled by a business, as  
13 defined in paragraph (1), and that shares common branding with  
14 the business. "Control" or "controlled" means ownership of, or  
15 the power to vote, more than 50 percent of the outstanding shares  
16 of any class of voting security of a business; control in any manner  
17 over the election of a majority of the directors, or of individuals  
18 exercising similar functions; or the power to exercise a controlling  
19 influence over the management of a company. "Common branding"  
20 means a shared name, servicemark, or trademark.

21 (d) "Business purpose" means the use of personal information  
22 for the business's or a service provider's operational purposes, or  
23 other notified purposes, provided that the use of personal  
24 information shall be reasonably necessary and proportionate to  
25 achieve the operational purpose for which the personal information  
26 was collected or processed or for another operational purpose that  
27 is compatible with the context in which the personal information  
28 was collected. Business purposes are:

29 (1) Auditing related to a current interaction with the consumer  
30 and concurrent transactions, including, but not limited to, counting  
31 ad impressions to unique visitors, verifying positioning and quality  
32 of ad impressions, and auditing compliance with this specification  
33 and other standards.

34 (2) Detecting security incidents, protecting against malicious,  
35 deceptive, fraudulent, or illegal activity, and prosecuting those  
36 responsible for that activity.

37 (3) Debugging to identify and repair errors that impair existing  
38 intended functionality.

39 (4) Short-term, transient use, provided the personal information  
40 that is not disclosed to another third party and is not used to build

1 a profile about a consumer or otherwise alter an individual  
2 consumer's experience outside the current interaction, including,  
3 but not limited to, the contextual customization of ads shown as  
4 part of the same interaction.

5 (5) Performing services on behalf of the business or service  
6 provider, including maintaining or servicing accounts, providing  
7 customer service, processing or fulfilling orders and transactions,  
8 verifying customer information, processing payments, providing  
9 financing, providing advertising or marketing services, providing  
10 analytic services, or providing similar services on behalf of the  
11 business or service provider.

12 (6) Undertaking internal research for technological development  
13 and demonstration.

14 (7) Undertaking activities to verify or maintain the quality or  
15 safety of a service or device that is owned, manufactured,  
16 manufactured for, or controlled by the business, and to improve,  
17 upgrade, or enhance the service or device that is owned,  
18 manufactured, manufactured for, or controlled by the business.

19 (e) "Collects," "collected," or "collection" means buying,  
20 renting, gathering, obtaining, receiving, or accessing any personal  
21 information pertaining to a consumer by any means. This includes  
22 receiving information from the consumer, either actively or  
23 passively, or by observing the consumer's behavior.

24 (f) "Commercial purposes" means to advance a person's  
25 commercial or economic interests, such as by inducing another  
26 person to buy, rent, lease, join, subscribe to, provide, or exchange  
27 products, goods, property, information, or services, or enabling or  
28 effecting, directly or indirectly, a commercial transaction.  
29 "Commercial purposes" do not include for the purpose of engaging  
30 in speech that state or federal courts have recognized as  
31 noncommercial speech, including political speech and journalism.

32 (g) (1) "Consumer" means a natural person who is a California  
33 resident, as defined in Section 17014 of Title 18 of the California  
34 Code of Regulations, as that section read on September 1, 2017,  
35 however identified, including by any unique identifier.

36 (2) "Consumer" does not include a natural person whose  
37 personal information has been collected by a business in the course  
38 of a person acting as a job applicant ~~to, or as an employee, an~~  
39 ~~employee of, contractor, a contractor of, or agent, an agent~~ on  
40 behalf ~~of~~ of, the business, to the extent ~~their~~ the person's personal

1 information is *collected and used solely for purposes compatible*  
2 *with within* the context of the person’s activities for the business  
3 *as a job applicant, employee, contractor, role as a job applicant*  
4 *to, an employee of, a contractor of, or an agent on behalf of of,*  
5 the business.

6 (3) *For purposes of this subdivision, “contractor” means a*  
7 *natural person who provides services to a business pursuant to a*  
8 *written contract.*

9 (h) “Deidentified” means information that cannot reasonably  
10 identify, relate to, describe, be capable of being associated with,  
11 or be linked, directly or indirectly, to a particular consumer,  
12 provided that a business that uses deidentified information:

13 (1) Has implemented technical safeguards that prohibit  
14 reidentification of the consumer to whom the information may  
15 pertain.

16 (2) Has implemented business processes that specifically  
17 prohibit reidentification of the information.

18 (3) Has implemented business processes to prevent inadvertent  
19 release of deidentified information.

20 (4) Makes no attempt to reidentify the information.

21 (i) “Designated methods for submitting requests” means a  
22 mailing address, email address, Internet Web page, Internet Web  
23 portal, toll-free telephone number, or other applicable contact  
24 information, whereby consumers may submit a request or direction  
25 under this title, and any new, consumer-friendly means of  
26 contacting a business, as approved by the Attorney General  
27 pursuant to Section 1798.185.

28 (j) “Device” means any physical object that is capable of  
29 connecting to the Internet, directly or indirectly, or to another  
30 device.

31 (k) “Health insurance information” means a consumer’s  
32 insurance policy number or subscriber identification number, any  
33 unique identifier used by a health insurer to identify the consumer,  
34 or any information in the consumer’s application and claims  
35 history, including any appeals records, if the information is linked  
36 or reasonably linkable to a consumer or household, including via  
37 a device, by a business or service provider.

38 (l) “Homepage” means the introductory page of an internet  
39 website and any internet web page where personal information is  
40 collected. In the case of an online service, such as a mobile

1 application, homepage means the application’s platform page or  
2 download page, a link within the application, such as from the  
3 application configuration, “About,” “Information,” or settings  
4 page, and any other location that allows consumers to review the  
5 notice required by subdivision (a) of Section 1798.145, including,  
6 but not limited to, before downloading the application.

7 (m) “Infer” or “inference” means the derivation of information,  
8 data, assumptions, or conclusions from facts, evidence, or another  
9 source of information or data.

10 (n) “Person” means an individual, proprietorship, firm,  
11 partnership, joint venture, syndicate, business trust, company,  
12 corporation, limited liability company, association, committee,  
13 and any other organization or group of persons acting in concert.

14 (o) (1) “Personal information” means information that identifies,  
15 relates to, describes, is capable of being associated with, or could  
16 reasonably be linked, directly or indirectly, with a particular  
17 consumer or household. Personal information includes, but is not  
18 limited to, the following if it identifies, relates to, describes, is  
19 capable of being associated with, or could be reasonably linked,  
20 directly or indirectly, with a particular consumer or household:

21 (A) Identifiers such as a real name, alias, postal address, unique  
22 personal identifier, online identifier, Internet Protocol address,  
23 email address, account name, social security number, driver’s  
24 license number, passport number, or other similar identifiers.

25 (B) Any categories of personal information described in  
26 subdivision (e) of Section 1798.80.

27 (C) Characteristics of protected classifications under California  
28 or federal law.

29 (D) Commercial information, including records of personal  
30 property, products or services purchased, obtained, or considered,  
31 or other purchasing or consuming histories or tendencies.

32 (E) Biometric information.

33 (F) Internet or other electronic network activity information,  
34 including, but not limited to, browsing history, search history, and  
35 information regarding a consumer’s interaction with an internet  
36 website, application, or advertisement.

37 (G) Geolocation data.

38 (H) Audio, electronic, visual, thermal, olfactory, or similar  
39 information.

40 (I) Professional or employment-related information.

1 (J) Education information, defined as information that is not  
2 publicly available personally identifiable information as defined  
3 in the Family Educational Rights and Privacy Act (20 U.S.C. Sec.  
4 1232g; 34 C.F.R. Part 99).

5 (K) Inferences drawn from any of the information identified in  
6 this subdivision to create a profile about a consumer reflecting the  
7 consumer’s preferences, characteristics, psychological trends,  
8 predispositions, behavior, attitudes, intelligence, abilities, and  
9 aptitudes.

10 (2) “Personal information” does not include publicly available  
11 information. For these purposes, “publicly available” means  
12 information that is lawfully made available from federal, state, or  
13 local government records, if any conditions associated with such  
14 information. “Publicly available” does not mean biometric  
15 information collected by a business about a consumer without the  
16 consumer’s knowledge. Information is not “publicly available” if  
17 that data is used for a purpose that is not compatible with the  
18 purpose for which the data is maintained and made available in  
19 the government records or for which it is publicly maintained.  
20 “Publicly available” does not include consumer information that  
21 is deidentified or aggregate consumer information.

22 (p) “Probabilistic identifier” means the identification of a  
23 consumer or a device to a degree of certainty of more probable  
24 than not based on any categories of personal information included  
25 in, or similar to, the categories enumerated in the definition of  
26 personal information.

27 (q) “Processing” means any operation or set of operations that  
28 are performed on personal data or on sets of personal data, whether  
29 or not by automated means.

30 (r) “Pseudonymize” or “Pseudonymization” means the  
31 processing of personal information in a manner that renders the  
32 personal information no longer attributable to a specific consumer  
33 without the use of additional information, provided that the  
34 additional information is kept separately and is subject to technical  
35 and organizational measures to ensure that the personal information  
36 is not attributed to an identified or identifiable consumer.

37 (s) “Research” means scientific, systematic study and  
38 observation, including basic research or applied research that is in  
39 the public interest and that adheres to all other applicable ethics  
40 and privacy laws or studies conducted in the public interest in the

1 area of public health. Research with personal information that may  
2 have been collected from a consumer in the course of the  
3 consumer's interactions with a business's service or device for  
4 other purposes shall be:

5 (1) Compatible with the business purpose for which the personal  
6 information was collected.

7 (2) Subsequently pseudonymized and deidentified, or  
8 deidentified and in the aggregate, such that the information cannot  
9 reasonably identify, relate to, describe, be capable of being  
10 associated with, or be linked, directly or indirectly, to a particular  
11 consumer.

12 (3) Made subject to technical safeguards that prohibit  
13 reidentification of the consumer to whom the information may  
14 pertain.

15 (4) Subject to business processes that specifically prohibit  
16 reidentification of the information.

17 (5) Made subject to business processes to prevent inadvertent  
18 release of deidentified information.

19 (6) Protected from any reidentification attempts.

20 (7) Used solely for research purposes that are compatible with  
21 the context in which the personal information was collected.

22 (8) Not be used for any commercial purpose.

23 (9) Subjected by the business conducting the research to  
24 additional security controls limit access to the research data to only  
25 those individuals in a business as are necessary to carry out the  
26 research purpose.

27 (t) (1) "Sell," "selling," "sale," or "sold," means selling, renting,  
28 releasing, disclosing, disseminating, making available, transferring,  
29 or otherwise communicating orally, in writing, or by electronic or  
30 other means, a consumer's personal information by the business  
31 to another business or a third party for monetary or other valuable  
32 consideration.

33 (2) For purposes of this title, a business does not sell personal  
34 information when:

35 (A) A consumer uses or directs the business to intentionally  
36 disclose personal information or uses the business to intentionally  
37 interact with a third party, provided the third party does not also  
38 sell the personal information, unless that disclosure would be  
39 consistent with the provisions of this title. An intentional interaction  
40 occurs when the consumer intends to interact with the third party,



1 via one or more deliberate interactions. Hovering over, muting,  
2 pausing, or closing a given piece of content does not constitute a  
3 consumer’s intent to interact with a third party.

4 (B) The business uses or shares an identifier for a consumer  
5 who has opted out of the sale of the consumer’s personal  
6 information for the purposes of alerting third parties that the  
7 consumer has opted out of the sale of the consumer’s personal  
8 information.

9 (C) The business uses or shares with a service provider personal  
10 information of a consumer that is necessary to perform a business  
11 purpose if both of the following conditions are met:

12 (i) The business has provided notice that information being used  
13 or shared in its terms and conditions consistent with Section  
14 1798.135.

15 (ii) The service provider does not further collect, sell, or use the  
16 personal information of the consumer except as necessary to  
17 perform the business purpose.

18 (D) The business transfers to a third party the personal  
19 information of a consumer as an asset that is part of a merger,  
20 acquisition, bankruptcy, or other transaction in which the third  
21 party assumes control of all or part of the business, provided that  
22 information is used or shared consistently with Sections 1798.110  
23 and 1798.115. If a third party materially alters how it uses or shares  
24 the personal information of a consumer in a manner that is  
25 materially inconsistent with the promises made at the time of  
26 collection, it shall provide prior notice of the new or changed  
27 practice to the consumer. The notice shall be sufficiently prominent  
28 and robust to ensure that existing consumers can easily exercise  
29 their choices consistently with Section 1798.120. This  
30 subparagraph does not authorize a business to make material,  
31 retroactive privacy policy changes or make other changes in their  
32 privacy policy in a manner that would violate the Unfair and  
33 Deceptive Practices Act (Chapter 5 (commencing with Section  
34 17200) of Part 2 of Division 7 of the Business and Professions  
35 Code).

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

39 (v) “Service provider” means a sole proprietorship, partnership,  
40 limited liability company, corporation, association, or other legal

1 entity that is organized or operated for the profit or financial benefit  
2 of its shareholders or other owners, that processes information on  
3 behalf of a business and to which the business discloses a  
4 consumer's personal information for a business purpose pursuant  
5 to a written contract, provided that the contract prohibits the entity  
6 receiving the information from retaining, using, or disclosing the  
7 personal information for any purpose other than for the specific  
8 purpose of performing the services specified in the contract for  
9 the business, or as otherwise permitted by this title, including  
10 retaining, using, or disclosing the personal information for a  
11 commercial purpose other than providing the services specified in  
12 the contract with the business.

13 (w) "Third party" means a person who is not any of the  
14 following:

15 (1) The business that collects personal information from  
16 consumers under this title.

17 (2) (A) A person to whom the business discloses a consumer's  
18 personal information for a business purpose pursuant to a written  
19 contract, provided that the contract:

20 (i) Prohibits the person receiving the personal information from:

21 (I) Selling the personal information.

22 (II) Retaining, using, or disclosing the personal information for  
23 any purpose other than for the specific purpose of performing the  
24 services specified in the contract, including retaining, using, or  
25 disclosing the personal information for a commercial purpose other  
26 than providing the services specified in the contract.

27 (III) Retaining, using, or disclosing the information outside of  
28 the direct business relationship between the person and the  
29 business.

30 (ii) Includes a certification made by the person receiving the  
31 personal information that the person understands the restrictions  
32 in subparagraph (A) and will comply with them.

33 (B) A person covered by this paragraph that violates any of the  
34 restrictions set forth in this title shall be liable for the violations.  
35 A business that discloses personal information to a person covered  
36 by this paragraph in compliance with this paragraph shall not be  
37 liable under this title if the person receiving the personal  
38 information uses it in violation of the restrictions set forth in this  
39 title, provided that, at the time of disclosing the personal  
40 information, the business does not have actual knowledge, or

1 reason to believe, that the person intends to commit such a  
2 violation.

3 (x) “Unique identifier” or “Unique personal identifier” means  
4 a persistent identifier that can be used to recognize a consumer, a  
5 family, or a device that is linked to a consumer or family, over  
6 time and across different services, including, but not limited to, a  
7 device identifier; an Internet Protocol address; cookies, beacons,  
8 pixel tags, mobile ad identifiers, or similar technology; customer  
9 number, unique pseudonym, or user alias; telephone numbers, or  
10 other forms of persistent or probabilistic identifiers that can be  
11 used to identify a particular consumer or device. For purposes of  
12 this subdivision, “family” means a custodial parent or guardian  
13 and any minor children over which the parent or guardian has  
14 custody.

15 (y) “Verifiable consumer request” means a request that is made  
16 by a consumer, by a consumer on behalf of the consumer’s minor  
17 child, or by a natural person or a person registered with the  
18 Secretary of State, authorized by the consumer to act on the  
19 consumer’s behalf, and that the business can reasonably verify,  
20 pursuant to regulations adopted by the Attorney General pursuant  
21 to paragraph (7) of subdivision (a) of Section 1798.185 to be the  
22 consumer about whom the business has collected personal  
23 information. A business is not obligated to provide information to  
24 the consumer pursuant to Sections 1798.110 and 1798.115 if the  
25 business cannot verify, pursuant this subdivision and regulations  
26 adopted by the Attorney General pursuant to paragraph (7) of  
27 subdivision (a) of Section 1798.185, that the consumer making  
28 the request is the consumer about whom the business has collected  
29 information or is a person authorized by the consumer to act on  
30 such consumer’s behalf.

31 SEC. 2. It is the intent of the Legislature to clarify how a  
32 business shall comply with a consumer’s request for specific pieces  
33 of information in a privacy protective manner.

O