

AMENDED IN ASSEMBLY APRIL 12, 2019

AMENDED IN ASSEMBLY MARCH 25, 2019

CALIFORNIA LEGISLATURE—2019–20 REGULAR SESSION

ASSEMBLY BILL

No. 846

Introduced by Assembly Members Burke, Low, and Mullin
(Coauthors: Assembly Members Aguiar-Curry, Bonta, Fong, and
Blanca Rubio)

(Coauthors: Senators Morrell and Portantino)

February 20, 2019

An act to amend Section 1798.125 of the Civil Code, relating to consumer privacy.

LEGISLATIVE COUNSEL'S DIGEST

AB 846, as amended, Burke. Customer loyalty programs.

Existing law, the California Consumer Privacy Act of 2018, beginning on January 1, 2020, grants a consumer various rights with regard to personal information relating to that consumer that is held by a business. Among these rights, the act allows a consumer to opt out of having the consumer's personal information sold to third parties by a business, and the act requires a business that sells a consumer's personal information to third parties to give that consumer notice, as specified. The act prohibits a business from discriminating against the consumer for exercising any of the consumer's rights under the act, except that a business may offer a different price, rate, level, or quality of goods or services to a consumer if the differential treatment is reasonably related to value provided to the consumer by the consumer's data.

The act authorizes a business to enter into a financial incentive program only if the consumer affirmatively consents, subject to

revocation at any time by the consumer, to the material terms of the incentive program, and the act requires a business that offers a financial incentive to a consumer to notify the consumer of the financial incentive, as specified.

The act further prohibits a business from using a financial incentive practice that is unjust, unreasonable, coercive, or usurious in nature.

This bill would, instead, prohibit a business from discriminating against the ~~consumer~~ *consumer, by charging higher prices or providing a lower level of goods or services*, for exercising any of the consumer’s rights under the act, except if the differential treatment is reasonably related to value provided to the business by the consumer’s ~~data~~ *data, is in connection with a consumer’s voluntary participation in a loyalty, rewards, premium features, discount, or club card program, as defined, or is in connection with a specific good or service whose functionality is reasonably related to the collection, use, or sale of the consumer’s data.*

~~The bill would prohibit a business from using an incentive practice that is coercive or usurious in nature and would specify that a consumer is authorized to enter into an incentive program only if the consumer gives prior consent, which the consumer may revoke at any time.~~

~~The bill would also strike an inconsistent cross-reference cross-reference as well as the consent and notification provisions related to a financial incentive program, as described above. The bill would also eliminate the prohibition against a business using a financial incentive practice that is unjust, unreasonable, coercive, or usurious in nature.~~

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 1798.125 of the Civil Code is amended
- 2 to read:
- 3 1798.125. (a) (1) A business shall not discriminate against a
- 4 consumer because the consumer exercised any of the consumer’s
- 5 rights under this title, including, but not limited to, by:
- 6 (A) Denying goods or services to the consumer.
- 7 (B) Charging ~~different~~ higher prices or rates for goods or
- 8 services, including through the use of discounts or other benefits
- 9 or imposing penalties.

1 (C) Providing a ~~different~~ *lower* level or quality of goods or
2 services to the consumer.

3 (D) Suggesting that the consumer will receive a different price
4 or rate for goods or services or a different level or quality of goods
5 or services.

6 (2) Nothing in this subdivision prohibits a business from
7 ~~charging a consumer offering a different price or rate, or from~~
8 ~~providing a different level price, rate, level, or quality of goods~~
9 ~~or services to the a consumer, including offering its goods or~~
10 ~~services for no fee, if that difference is reasonably related to the~~
11 ~~value provided to the consumer by the consumer's data. any of the~~
12 ~~following are true:~~

13 ~~(b) (1) A business may offer financial incentives, including~~
14 ~~payments to consumers as compensation, for the collection of~~
15 ~~personal information, the sale of personal information, or the~~
16 ~~deletion of personal information. A business may also offer a~~
17 ~~different price, rate, level, or quality of goods or services to the~~
18 ~~consumer if that price or difference is directly related to the value~~
19 ~~provided to the consumer by the consumer's data.~~

20 ~~(2) A business that offers any financial incentives pursuant to~~
21 ~~subdivision (a), shall notify consumers of the financial incentives~~
22 ~~pursuant to Section 1798.135.~~

23 ~~(3) A business may enter a consumer into a financial incentive~~
24 ~~program only if the consumer gives the business prior opt-in~~
25 ~~consent pursuant to Section 1798.135 which clearly describes the~~
26 ~~material terms of the financial incentive program, and which may~~
27 ~~be revoked by the consumer at any time.~~

28 ~~(4) A business shall not use financial incentive practices that~~
29 ~~are unjust, unreasonable, coercive, or usurious in nature.~~

30 ~~(A) The offering is in connection with a consumer's voluntary~~
31 ~~participation in a loyalty, rewards, premium features, discount,~~
32 ~~or club card program.~~

33 ~~(B) That difference is reasonably related to the value provided~~
34 ~~by the consumer's data.~~

35 ~~(C) The offering is for a specific good or service whose~~
36 ~~functionality is reasonably related to the collection, use, or sale~~
37 ~~of the consumer's data.~~

38 ~~(b) As used in this section, "loyalty, rewards, premium features,~~
39 ~~discount, or club card program" includes an offering to one or~~
40 ~~more consumers of lower prices or rates for goods or services or~~

1 *a higher level or quality of goods or services, including through*
2 *the use of discounts or other benefits, or a program through which*
3 *consumers earn points, rewards, credits, incentives, gift cards, or*
4 *certificates, coupons, or access to sales or discounts on a priority*
5 *or exclusive basis.*

6 ~~SECTION 1. Section 1798.125 of the Civil Code is amended~~
7 ~~to read:~~

8 ~~1798.125. (a) (1) A business shall not discriminate against a~~
9 ~~consumer because the consumer exercised any of the consumer's~~
10 ~~rights under this title, including, but not limited to, by:~~

11 ~~(A) Denying goods or services to the consumer.~~

12 ~~(B) Charging different prices or rates for goods or services,~~
13 ~~including through the use of discounts or other benefits or imposing~~
14 ~~penalties.~~

15 ~~(C) Providing a different level or quality of goods or services~~
16 ~~to the consumer.~~

17 ~~(D) Suggesting that the consumer will receive a different price~~
18 ~~or rate for goods or services or a different level or quality of goods~~
19 ~~or services.~~

20 ~~(2) Nothing in this subdivision prohibits a business from either~~
21 ~~of the following:~~

22 ~~(A) Offering a different price, rate, level, or quality of goods or~~
23 ~~services to the consumer, including offering goods or services for~~
24 ~~no fee, if that difference is reasonably related to the value provided~~
25 ~~to the business by the consumer's data.~~

26 ~~(B) Offering a specific good or service the functionality of which~~
27 ~~is reasonably related to the collection, use, or sale of the~~
28 ~~consumer's data.~~

29 ~~(b) (1) Notwithstanding subdivision (a), a business may offer~~
30 ~~incentives, including, but not limited to, gift cards or certificates,~~
31 ~~discounts, payments to consumers, or other benefits associated~~
32 ~~with a loyalty or rewards program, as compensation for the~~
33 ~~collection, the sale, or the retention of personal information.~~

34 ~~(2) A consumer may enter into an incentive program only if the~~
35 ~~consumer gives the business prior opt-in consent. The business~~
36 ~~shall provide notice that clearly describes the material terms of the~~
37 ~~incentive program. The consumer may revoke the consumer's~~
38 ~~consent at any time.~~

39 ~~(3) A business may enter a consumer into an incentive program~~
40 ~~only if the consumer gives the business prior opt-in consent that~~

- 1 clearly describes the material terms of the financial incentive
- 2 program and that may be revoked by the consumer at any time.
- 3 (4) A business shall not use incentive practices that are coercive
- 4 or usurious in nature.