

THE CALIFORNIA PRIVACY RIGHTS AND ENFORCEMENT ACT OF 2020

SEC. 1. Title.

This measure shall be known and may be cited as “The California Privacy Rights and Enforcement Act of 2020.”

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 and usage in contemporary society. The amendment established a legal and enforceable constitutional right of privacy for every Californian. Fundamental to this right of privacy is the ability of individuals to control the use, including the sale, of their personal information.

B. Since California voters approved the constitutional 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, but consumers had no right to learn what personal information a business had collected about them and how they used it or to direct businesses not to sell the consumer’s personal information.

C. That changed in 2018, when more than 629,000 California voters signed petitions to qualify the California Consumer Privacy Act of 2018 for the ballot. In response to the measure’s qualification, the Legislature enacted the California Consumer Privacy Act of 2018 (CCPA) into law. The CCPA gives California consumers the right to learn what information a business has collected about them, to delete their personal information, to stop businesses from selling their personal information or use it for cross-context behavioral advertising, and to hold businesses accountable if they do not take reasonable steps to safeguard their personal information.

D. Even before the CCPA had gone into effect, however, businesses began to try to weaken the law. In the 2019-20 legislative session alone, members of the Legislature proposed more than a dozen bills to amend the CCPA, and it appears that business will continue to push for modifications that weaken the law. Unless California voters take action, the hard-fought rights consumers have won could be undermined by big business.

E. Rather than diluting consumer rights, California should strengthen them, including by imposing restrictions on businesses’ use of personal information and how long they can keep it, by allowing

consumers to opt-out of the use of their sensitive personal information for advertising and marketing, and by requiring businesses to correct inaccurate information about consumers.

F. Recent scandals involving data security breaches and the use of personal information for political purposes have also demonstrated that California law does not go far enough. If a business uses a consumer's personal information to influence the outcome of an election to advance the business's own political interests, the business should be required to disclose that information to the consumer and to disclose such use to the state.

G. Business should also be held accountable for data security breaches and notify consumers when their most sensitive information has been compromised.

H. An independent watchdog whose mission is to protect consumer privacy should ensure that businesses and consumers are well-informed about their rights and obligations and should vigorously enforce the law against businesses that violate consumers' privacy rights.

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 protect the constitutional right of privacy. The implementation of this Act shall be guided by the following principles:

A. Consumer Rights

1. Consumers should know who is collecting their personal information, how it is being used, and to whom it is disclosed.
2. Consumers should have meaningful control of their personal information, including their sensitive personal information, and meaningful options over how it is collected, used, and disclosed.
3. Consumers should have access to their personal information and should be able to correct it, delete it, and take it with them from one business to another.
4. Consumers and their authorized agents should be able to exercise these rights through easily accessible self-serve tools.
5. Consumers should be able to exercise these rights without being penalized for doing so.
6. Consumers should be able to hold businesses accountable for failing to take reasonable precautions to protect their most sensitive personal information from hackers and security breaches.

7. Consumers should benefit from businesses' use of their personal information.

B. The Responsibilities of Businesses

1. Businesses should specifically and clearly inform consumers about how they collect and use personal information and how they can exercise their rights and choices, and businesses should not collect the personal information of children without consent.

2. Businesses should only collect consumers' personal information for specific, explicit, and legitimate purposes, and should not further collect, use, or disclose consumers' personal information for reasons incompatible with those purposes.

3. Businesses should collect consumers' personal information only to the extent that it is relevant and limited to what is necessary in relation to the purposes for which it is being collected, used, and shared.

4. Businesses should provide consumers or their authorized agents with easily accessible self-serve tools that allow consumers to obtain their personal information, delete it, or correct it, and to opt-out of the sale of their personal information, including for cross-context behavioral advertising, and the use of their sensitive personal information for advertising and marketing.

5. Businesses should not penalize consumers for exercising these rights.

6. Businesses that use consumers' personal information to advance their own political purposes should disclose that fact.

7. Businesses should take appropriate precautions to protect consumers' personal information from a security breach.

8. Businesses should be held accountable when they violate consumers' privacy rights, and the penalties should be higher when the violation affects children.

C. Implementation of the Law

1. The rights of consumers and the responsibilities of businesses should be implemented with the goal of maximizing consumer privacy, while minimizing business regulations that do not advance that goal.

2. Businesses and consumers should be provided with clear guidance about their responsibilities and rights.

3. The law should respond to technological changes, help consumers exercise their rights, and assist businesses with compliance. New technologies, or new uses of old technologies, should be evaluated in light of their impact on consumer privacy, with the continuing goal of reasonably maximizing consumer privacy.

4. Businesses should be held accountable for violating the law through vigorous administrative and civil enforcement.

SEC. 4. Section 1798.100 of the Civil Code is amended to read:

1798.100. General Duties of Businesses that Collect Personal Information

1798.100. (a) ~~A consumer shall have the right to request that a business that collects a consumer's personal information disclose to that consumer the categories and specific pieces of personal information the business has collected.~~

Commented [CCP1]: Removed because it was duplicative and also appears in 110(a)(6)

(b) A business that **controls the collection of** collects a consumer's personal information shall, at or before the point of collection, inform consumers as to:

(1) the categories of personal information to be collected and the **specific** purposes for which the categories of personal information **are collected or used** ~~shall be used~~ **and whether such information is sold**. A business shall not collect additional categories of personal information or use personal information collected for additional purposes **that are incompatible with the disclosed purpose for which the personal information was collected, or other subsequently disclosed purposes**, without providing the consumer with notice consistent with this section.

Commented [CCP2]: "Purpose Limitation"

(2) **if the business collects sensitive personal information, the categories of sensitive personal information to be collected and the specific purposes for which the categories of sensitive personal information are collected or used and whether such information is sold. A business shall not collect additional categories of sensitive personal information or use sensitive personal information collected for additional purposes that are incompatible with the disclosed purpose for which the sensitive personal information was collected, or other disclosed purposes reasonably related to the original purpose for which the sensitive personal information was collected, without providing the consumer with notice consistent with this section.**

Commented [CCP3]: New category: "Sensitive Personal Information" with additional rights: opt-in before sale, and opt-out of its use for advertising altogether

(3) **the length of time the business intends to retain each category of personal information, including sensitive personal information, provided that a business shall not retain a consumer's personal information or sensitive personal information for each specific disclosed purpose for which the personal information was collected for longer than is reasonably necessary for that specific disclosed purpose.**

Commented [CCP4]: "Storage Limitation"

(b) A business that, acting as a third party, controls the collection of personal information about a consumer may satisfy its obligation under subdivision (a) by providing the required information prominently and conspicuously on the homepage of its internet website. In addition, if the business, acting as a third party, controls the collection of personal information about a consumer on its premises, including in a vehicle, then the business shall, at or before the point of collection, inform consumers as to the categories of personal information to be collected and the purposes for which the categories of personal information are used, and whether such personal information is sold, in a clear and conspicuous manner at such location.

Commented [CCP5]: Note applies only to businesses that do not have direct relationships with consumers. If a service provider, contractor or business with a direct relationship is collecting information, then they are covered by 100(a)

(c) A business's collection of a consumer's personal information shall be limited to personal information that is reasonably necessary to achieve the purposes for which it is collected.

Commented [CCP6]: "Data Minimization"

(d) A business that collects a consumer's personal information and that sells that personal information to a third party or that discloses it to a service provider or contractor for a business purpose shall enter into an agreement with such third party, service provider, or contractor, that: (1) specifies that the personal information is sold or disclosed only for limited and specified purposes; (2) obligates the third party, service provider, or contractor to provide at least the same level of privacy protection as is required by this title; (3) grants the business rights to take reasonable and appropriate steps to help to ensure that the third party, service provider, or contractor effectively uses the personal information transferred in a manner consistent with the business's obligations under this title; (4) requires the third party, service provider, or contractor to notify the business if it makes a determination that it can no longer meet its obligation to provide the same level of protection as is required by this title; (5) grants the business the right, upon notice, including under paragraph (4), to take reasonable and appropriate steps to stop and remediate unauthorized use of personal information.

Commented [CCP7]: Contractor is a newly defined term for entity previously covered by 140(w)(2), i.e., who was 'not a third party'

Essentially functions identically to "Service Provider," with the distinction that SP's process PI received "from or on behalf of a business," whereas contractors uses PI "disclosed by" a business

Commented [CCP8]: "Chain of Custody"

(e) A business that collects a consumer's personal information shall take reasonable steps in light of the nature of the personal information and the purposes of processing the personal information to ensure that it does not collect, retain, or share inaccurate personal information.

Commented [CCP9]: "Right to Accuracy"

(f) A business that collects a consumer's personal information shall implement reasonable security procedures and practices appropriate to the nature of the personal information to protect the personal information from unauthorized or illegal access.

(g) (1) A business shall not collect the personal information of consumers if the business has actual knowledge that the consumer is less than 16 years of age, unless the consumer, in the case of consumers at least 13 years of age and less than 16 years of age, or the consumer's parent or guardian, in the case of consumers who are less than 13 years of age, has affirmatively authorized the collection of the consumer's personal information. A business that willfully disregards the consumer's age, or that has actual knowledge, as that term is used in regulations implementing the Children's Online Privacy Protection Act, 15 U.S.C. section 6501, et. seq., of the consumer's age, shall be deemed to have had actual knowledge of the consumer's age.

Commented [CCP10]: New right: opt-in to collection of information from children, under 16 (consent) or under 13 (parental consent)

(2) If the consumer, or the consumer's parent or guardian, in the case of consumers who are less than 13 years of age, declines to affirmatively authorize the collection of the consumer's personal information pursuant to paragraph (1), the business shall refrain from collecting the consumer's personal information and shall wait for at least 12 months before requesting the consumer's consent again.

(h) Nothing in this section shall require a business to disclose trade secrets, as specified in regulations adopted pursuant to paragraph (3) of subdivision (a) of Section 1798.185.

~~(c) A business shall provide the information specified in subdivision (a) to a consumer only upon receipt of a verifiable consumer request.~~

~~(d) A business that receives a verifiable consumer request from a consumer to access personal information shall promptly take steps to disclose and deliver, free of charge to the consumer, the personal information required by this section. The information may be delivered by mail or electronically, and if provided electronically, the information shall be in a portable and, to the extent technically feasible, in a readily useable format that allows the consumer to transmit this information to another entity without hindrance. A business may provide personal information to a consumer at any time, but shall not be required to provide personal information to a consumer more than twice in a 12-month period.~~

~~(e) This section shall not require a business to retain any personal information collected for a single, one-time transaction, if such information is not sold or retained by the business or to reidentify or otherwise link information that is not maintained in a manner that would be considered personal information.~~

SEC. 5. Section 1798.105 of the Civil Code is amended to read:

1798.105. Right to Delete Personal Information

1798.105. (a) A consumer shall have the right to request that a business delete any personal information about the consumer which the business has collected from the consumer.

(b) A business that collects personal information about consumers shall disclose, pursuant to Section 1798.130, the consumer's rights to request the deletion of the consumer's personal information.

(c) **(1)** A business that receives a verifiable consumer request from a consumer to delete the consumer's personal information pursuant to subdivision (a) of this section shall delete the consumer's personal information from its records, ~~and~~ direct any service providers **or contractors** to delete the consumer's personal information from their records, **and direct all third parties who have accessed such personal information from or through the business to delete the consumer's personal information.**

(2) The business may maintain a confidential record of deletion requests solely for the purpose of preventing the personal information of a consumer who has submitted a deletion request from being sold, for compliance with laws, or for other purposes solely to the extent permissible under this title.

(3) A service provider or contractor shall cooperate with the business in responding to a verifiable consumer request, and at the direction of the business, shall delete personal information about the consumer collected, used, processed, or retained by the service provider or the contractor on behalf of the business, but shall not be required to comply with a deletion request submitted by the consumer directly to the service provider or contractor to the extent that the service provider or contractor has collected, used, processed, or retained the consumer's personal information in its role as a service provider or contractor. The service provider or contractor shall direct any service providers, contractors or third parties who may have accessed such personal information from or through the service provider or contractor to delete the consumer's personal information.

Commented [CCP11]: SP's and contractors not required to respond to deletion requests by consumers, but are required to assist businesses

(d) A business, or a service provider **or contractor, acting on behalf of a business**, shall not be required to comply with a consumer's request to delete the consumer's personal information if it is necessary for the business, ~~or~~ service provider, **or contractor** to maintain the consumer's personal information in order to:

(1) Complete the transaction for which the personal information was collected, **fulfill the terms of a written warranty or product recall conducted in accordance with federal law**, provide a good or service requested by the consumer, ~~or perform actions~~ reasonably anticipated **by the consumer** within the context of a business's ongoing business relationship with the consumer, or otherwise perform a contract between the business and the consumer.

Commented [CCP12]: Harmonize with Berman AB 1146, awaiting Governor's signature

(2) Detect security incidents, protect against malicious, deceptive, fraudulent, or illegal activity; ~~or prosecute those responsible for that activity.~~ **Help to ensure security and integrity to the extent the use of the consumer's personal information is reasonably necessary and proportionate for those purposes.**

Commented [CCP13]: Security & Integrity now a defined term although functionally same as previous law

(3) Debug to identify and repair errors that impair existing intended functionality.

Commented [CCP14]: Exemption in 'Right to Delete' to permit business to retain certain PI to address fraud/security

(4) Exercise free speech, ensure the right of another consumer to exercise his or her right of free speech, or exercise another right provided for by law.

(5) Comply with the California Electronic Communications Privacy Act pursuant to Chapter 3.6 (commencing with Section 1546) of Title 12 of Part 2 of the Penal Code.

(6) Engage in public or peer-reviewed scientific, historical, or statistical research in the public interest that adheres to all other applicable ethics and privacy laws, when the businesses' deletion of the information is likely to render impossible or seriously impair the achievement of such research, if the consumer has provided informed consent.

(7) To enable solely internal uses that are reasonably aligned with the expectations of the consumer based on the consumer's relationship with the business.

(8) Comply with a legal obligation.

(9) Otherwise use the consumer's personal information, internally, in a lawful manner that is compatible with the context in which the consumer provided the information.

SEC. 6. Section 1798.105.5 is added to the Civil Code to read:

1798.105.5. Right to Correct Inaccurate Personal Information

1798.105.5 (a) A consumer shall have the right to require a business that maintains inaccurate personal information about the consumer correct such inaccurate personal information.

(b) A business that collects personal information about consumers shall disclose, pursuant to Section 1798.130, the consumer's right to request correction of inaccurate personal information.

(c) A business that receives a verifiable consumer request to correct inaccurate personal information shall use commercially reasonable efforts to correct the inaccurate personal information, as directed by the consumer, pursuant to Section 1798.130.

SEC. 7. Section 1798.110 of the Civil Code is amended to read:

1798.110. Right to Know What Personal Information is Being Collected. Right to Access Personal Information. Right to Know if Businesses Are Using Personal Information for their own Political Purpose

1798.110. (a) A consumer shall have the right to request that a business that collects personal information about the consumer disclose to the consumer the following:

(1) The categories of personal information it has collected about that consumer.

(2) The categories of sources from which the personal information is collected.

(3) The business or commercial purpose for collecting or selling personal information.

(4) The categories of third parties with whom the business shares personal information.

(5) ***If a business uses personal information it has collected about a consumer for political purposes, the name of the candidate or candidates, committee or committees, and/or the title or titles of the ballot measure or measures for which the consumer's personal information was used for political purposes, and whether the consumer's personal information was used to support or oppose the candidate, committee, or measure. For purposes of this section and section 1798.130, "political purposes" shall mean activity undertaken by the business, on its own behalf, with the actual knowledge, or at the***

Commented [CCP15]: New right of disclosure with respect to whether a business has used PI for the **business's own** political purposes ('political purposes' is a defined term in CA law)

Note this **only** applies to businesses that use PI for this purpose; and **only** if they are doing this on their own behalf. This section does not affect businesses that sell voter information, etc.

direction, of one or more of the officers of the business, for the purpose of influencing or attempting to influence the action of the voters for or against the nomination or election of a candidate or candidates, as defined in Section 82007 of the Government Code, or the qualification or passage of a ballot measure, as defined in Section 82043 of the Government Code, and "committee" shall have the meaning prescribed in Section 82013 of the Government Code. For the purpose of clarity, this paragraph shall not apply to the use of a consumer's personal information by the business in carrying out a commercial transaction on behalf of another person, including but not limited to, delivering an advertisement to the consumer on behalf of another person.

(6) The specific pieces of personal information it has collected about that consumer.

(b) A business that collects personal information about a consumer shall disclose to the consumer, pursuant to **subparagraph (B) of paragraph (3) of subdivision (a) of Section 1798.130**, the information specified in subdivision (a) upon receipt of a verifiable consumer request from the consumer, **provided that a business shall be deemed to be in compliance with paragraphs (1) through (5) of subdivision (a) to the extent that the information it would be required to disclose to the consumer pursuant to paragraphs (1) through (5) of subdivision (a) is not materially different than the information it has disclosed pursuant to paragraphs (1) through (5) of subdivision (c).**

Commented [CCP16]: If the business does not collect different information from different consumers, then this is a paperwork reduction issue

(c) A business that collects personal information about consumers shall disclose, pursuant to subparagraphs (B) **and (C)** of paragraph (5) of subdivision (a) of Section 1798.130:

(1) The categories of personal information it has collected about ~~that consumer~~ **consumers**.

(2) The categories of sources from which the personal information is collected.

(3) The business or commercial purpose for collecting or selling personal information.

(4) The categories of third parties with whom the business shares personal information.

(5) If the business uses personal information it has collected about consumers for political purposes on its own behalf, the name or names of the candidate or candidates, committee or committees, and/or the title or titles of the ballot measure or measures for which consumers' personal information was used for political purposes, and whether the consumers' personal information was used to support or oppose the candidate, committee, or measure. For any business that satisfies the definition in subparagraph (A) of paragraph (1) of subdivision (d) of Section 1798.140, and engages in activities covered by this paragraph, the business's chief executive officer, chief financial officer, chief operating officer, chief privacy officer, or the equivalent positions, if applicable, must annually disclose the information required by this paragraph to the California Privacy Protection Agency and certify, under penalty of perjury, that to their knowledge the business has correctly disclosed all activity pursuant to this paragraph. For the purpose of clarity, this paragraph shall not apply to the use of a consumer's

personal information by the business in carrying out a commercial transaction on behalf of another person, including but not limited to, delivering an advertisement to the consumer on behalf of another person.

*(6) Whether the business is **profiling** consumers and using their personal information for purposes of determining eligibility for financial or lending services, housing, insurance, education admission, employment, or health care services, together with meaningful information about the logic involved in using consumers' personal information for this purpose.*

Commented [CCP17]: Newly defined term: 'Profiling'

~~(5)~~ (7) *That a consumer has the right to request the* specific pieces of personal information the business has collected about that consumer.

~~(d)~~ This section does not require a business to do the following:

~~(1) Retain any personal information about a consumer collected for a single one-time transaction if, in the ordinary course of business, that information about the consumer is not retained.~~

~~(2) Reidentify or otherwise link any data that, in the ordinary course of business, is not maintained in a manner that would be considered personal information.~~

SEC. 8. Section 1798.115 of the Civil Code is amended to read:

1798.115. Right to Know What Personal Information is Sold and to Whom

1798.115. (a) A consumer shall have the right to request that a business that sells the consumer's personal information, or that discloses it for a business purpose, disclose to that consumer:

(1) The categories of personal information that the business collected about the consumer.

(2) The categories of personal information that the business sold about the consumer and the categories of third parties to whom the personal information was sold, by category or categories of personal information for each **category of third party parties** to whom the personal information was sold.

(3) The categories of personal information that the business disclosed about the consumer for a business purpose **and the categories of persons to whom it was disclosed for a business purpose.**

(b) A business that sells personal information about a consumer, or that discloses a consumer's personal information for a business purpose, shall disclose, pursuant to paragraph (4) of subdivision (a) of Section 1798.130, the information specified in subdivision (a) to the consumer upon receipt of a verifiable consumer request from the consumer.

(c) A business that sells consumers' personal information, or that discloses consumers' personal information for a business purpose, shall disclose, pursuant to subparagraph ~~(C)~~ **(D)** of paragraph (5) of subdivision (a) of Section 1798.130:

(1) The category or categories of consumers' personal information it has sold, or if the business has not sold consumers' personal information, it shall disclose that fact.

(2) The category or categories of consumers' personal information it has disclosed for a business purpose, or if the business has not disclosed ~~the~~ consumers' personal information for a business purpose, it shall disclose that fact.

(d) A third party shall not sell personal information about a consumer that has been sold to the third party by a business unless the consumer has received explicit notice and is provided an opportunity to exercise the right to opt-out pursuant to Section 1798.120.

SEC. 9. Section 1798.120 of the Civil Code is amended to read:

1798.120. Right to Opt-Out of Sale of Personal Information and Sensitive Data Profiling

1798.120. (a) A consumer shall have the right, at any time, to direct a business that sells personal information about the consumer to third parties not to sell the consumer's personal information. This right may be referred to as the right to opt-out.

(b) A business that sells consumers' personal information to third parties shall provide notice to consumers, pursuant to subdivision (a) of Section 1798.135, that this information may be sold and that consumers have the "right to opt-out" of the sale of their personal information.

(c) A consumer shall have the right, at any time, to direct a business that uses or discloses sensitive personal information about the consumer for advertising and marketing not to use the consumer's sensitive personal information or disclose it to a service provider or contractor, for advertising and marketing. A business that uses or discloses a consumer's sensitive personal information for advertising and marketing shall provide notice to consumers, pursuant to subdivision (a) of Section 1798.135, that this information may be used, or disclosed to a service provider or contractor, for advertising and marketing and that consumers have the "right to opt-out" of the use or disclosure of their sensitive personal information for advertising and marketing.

Commented [CCP18]: New right to opt out of use of sensitive PI for advertising and marketing

~~(d)~~ **(d)** Notwithstanding subdivision (a), a business shall not sell:

(1) the personal information of consumers if the business has actual knowledge that the consumer is less than 16 years of age, unless the consumer, in the case of consumers ~~between~~ **at least 13 years of age** and **less than** 16 years of age, or the consumer's parent or guardian, in the case of consumers who are less than 13 years of age, has affirmatively authorized the sale of the consumer's personal information. A business that willfully disregards the consumer's age, **or that has actual knowledge, as**

that term is used in regulations implementing the Children’s Online Privacy Protection Act, 15 U.S.C. section 6501, et. seq., of the consumer’s age, shall be deemed to have had actual knowledge of the consumer’s age. This right may be referred to as the “right to opt-in.”

(2) ~~the sensitive personal information of a consumer unless the consumer has affirmatively authorized the business to sell the consumer’s sensitive personal information.~~

Commented [CCP19]: New opt-in prior to sale of consumer’s sensitive PI

*(~~e~~) (e) A business that has received direction from a consumer not to sell the consumer’s personal information or, in the case of a minor consumer’s personal information has not received consent to sell the minor consumer’s personal information, shall be prohibited, pursuant to paragraphs (4) **and (5)** of subdivision (a) of Section 1798.135, from selling the consumer’s personal information after its receipt of the consumer’s direction, unless the consumer subsequently provides express authorization for the sale of the consumer’s personal information.*

(f) A business that has not received the affirmative consent of a consumer to sell the consumer’s sensitive personal information shall be prohibited, pursuant to paragraph (5) of subdivision (a) of Section 1798.135, from selling the consumer’s sensitive personal information unless the consumer subsequently provides express authorization for the sale of the consumer’s sensitive personal information. A consumer who has provided affirmative consent for the sale of the consumer’s sensitive personal information shall have the right, at any time, to opt-out of the sale of the consumer’s sensitive personal information.

(g) A business that has received direction from a consumer not to use or disclose the consumer’s sensitive personal information for advertising and marketing shall be prohibited, pursuant to paragraph (4) of subdivision (a) of Section 1798.135, from using or disclosing the consumer’s sensitive personal information for advertising and marketing after its receipt of the consumer’s direction, unless the consumer subsequently provides express authorization for the use or disclosure of the consumer’s sensitive personal information for advertising and marketing.

SEC. 10. Section 1798.125 of the Civil Code is amended to read:

1798.125. Right of No Retaliation Following Opt-Out or Exercise of Other Rights

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

- (A) Denying goods or services to the consumer.
- (B) Charging different prices or rates for goods or services, including through the use of discounts or other benefits or imposing penalties.
- (C) Providing a different level or quality of goods or services to the consumer.

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

(2) Nothing in this subdivision prohibits a business from charging a consumer a different price or rate, or from providing a different level or quality of goods or services to the consumer, if that difference is ~~reasonably~~ **directly** related to the value provided to the ~~consumer~~ **business** by the consumer's data.

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

(2) A business that offers any financial incentives pursuant to **this** subdivision ~~(a)~~, shall notify consumers of the financial incentives pursuant to Section ~~1798.135~~ **1798.130**.

(3) A business may enter a consumer into a financial incentive program only if the consumer gives the business prior opt-in consent pursuant to Section ~~1798.135~~ **1798.130** which clearly describes the material terms of the financial incentive program, and which may be revoked by the consumer at any time. ***If a consumer refuses to provide opt-in consent, then the business shall wait for at least 12 months before next requesting that the consumer provide opt-in consent.***

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

SEC. 11. Section 1798.130 of the Civil Code is amended to read:

1798.130. Notice, Disclosure, Correction, and Deletion Requirements

1798.130. (a) In order to comply with Sections 1798.100, 1798.105, **1798.105.5**, 1798.110, 1798.115, and 1798.125, a business shall, in a form that is reasonably accessible to consumers:

(1) ***(A) Make available to consumers two or more designated methods for submitting requests for information required to be disclosed pursuant to Sections 1798.110 and 1798.115, or requests for deletion or correction pursuant to Sections 1798.105 and 1798.105.5, respectively, including, at a minimum, a toll-free telephone number, and if the business maintains an Internet Web site, a Web site address. A business that operates exclusively online and has a direct relationship with a consumer from whom it collects personal information shall only be required to provide an email address for submitting requests for information required to be disclosed pursuant to Sections 1798.110 and 1798.115, or for requests for deletion or correction pursuant to Sections 1798.105 and 1798.105.5, respectively.***

(B) If the business maintains an internet website, make the internet website available to consumers to submit requests for information required to be disclosed pursuant to Sections 1798.110 and 1798.115, or requests for deletion or correction pursuant to Sections 1798.105 and 1798.105.5, respectively.

Commented [CCP20]: Harmonize with Berman AB 1564, awaiting Governor's signature

(2) (A) Disclose and deliver the required information to a consumer free of charge, or correct inaccurate personal information, or delete a consumer's personal information, based on the consumer's request, within 45 days of receiving a verifiable consumer request from the consumer. The business shall promptly take steps to determine whether the request is a verifiable consumer request, but this shall not extend the business's duty to disclose and deliver the information, or correct inaccurate personal information or delete personal information, within 45 days of receipt of the consumer's request. The time period to provide the required information, or to correct inaccurate personal information or delete personal information, may be extended once by an additional 45 days when reasonably necessary, provided the consumer is provided notice of the extension within the first 45-day period. The disclosure of the required information shall cover the 12-month period preceding the business's receipt of the verifiable consumer request and shall be made in writing and delivered through the consumer's account with the business, if the consumer maintains an account with the business, or by mail or electronically at the consumer's option if the consumer does not maintain an account with the business, in a readily useable format that allows the consumer to transmit this information from one entity to another entity without hindrance. The business may require authentication of the consumer that is reasonable in light of the nature of the personal information requested, but shall not require the consumer to create an account with the business in order to make a verifiable consumer request, provided that if the consumer has an account with the business, the business may require the consumer to use that account to submit a verifiable consumer request.

Commented [CCP21]: Harmonize with Chau AB 1355, awaiting Governor's signature

(B) The disclosure of the required information shall cover the 12-month period preceding the business's receipt of the verifiable consumer request, provided that, upon the adoption of a regulation pursuant to paragraph (9) of subdivision (a) of Section 1798.185, a consumer may request that the business disclose the required information beyond the 12-month period and the business shall be required to provide such information unless doing so would involve a disproportionate amount of information or would be unduly burdensome. A consumer's right to request required information beyond the 12-month period, and a business's obligation to provide such information, shall only apply to personal information collected after the effective date of the Act adding this Section. Nothing in this subparagraph shall require a business to keep personal information for any length of time.

Commented [CCP22]: New right to obtain "all" consumer data since passage of the law, subject to certain exceptions

(3) (A) A business that receives a verifiable consumer request pursuant to sections 1798.110 or 1798.115 shall disclose any personal information it has collected about a consumer, directly or indirectly, including through or by a service provider or contractor, to the consumer. A service provider or contractor shall not be required to comply with a verifiable consumer request pursuant to sections 1798.105.5, 1798.110 or 1798.115 to the extent that the service provider or contractor has collected personal information about the consumer in its role as a service provider or contractor. A service provider or contractor shall provide assistance to a business with which it has a contractual

Commented [CCP23]: New provision to clarify security concerns:
SP and contractor not required to reply to verifiable consumer request, but are required to assist businesses in doing so

relationship with respect to the business's response to a verifiable consumer request, including but not limited to by providing to the business the consumer's personal information in the service provider or contractor's possession, which the service provider or contractor obtained as a result of providing services to the business, and by correcting inaccurate information. A service provider or contractor that collects personal information on behalf of a business shall be required to assist the business in complying with the requirements of Section 1798.100.

(B) For purposes of subdivision (b) of Section 1798.110:

(A) To identify the consumer, associate the information provided by the consumer in the verifiable consumer request to any personal information previously collected by the business about the consumer.

(B) (ii) Identify by category or categories the personal information collected about the consumer ~~in the preceding 12 months~~ **for the applicable period of time** by reference to the enumerated category or categories in subdivision (c) that most closely describes the personal information collected; **the categories of sources from which the consumer's personal information was collected; the business or commercial purpose for collecting or selling the consumer's personal information; and the categories of third parties with which the business shares the consumer's personal information.**

(iii) Provide the specific pieces of personal information to the consumer in a portable and, to the extent technically feasible, structured, commonly used, machine-readable format that is easily understandable to the average consumer and transmit this information to another entity at the consumer's request without hindrance. **"Specific pieces of information" do not include data generated to help ensure security and integrity or as prescribed by regulation.**

(iv) Identify the name or names of the candidate or candidates, committee or committees, and/or the title or titles of the ballot measure or measures for which the consumer's personal information was used for political purposes, and whether the consumer's personal information was used to support or oppose the candidate or measure.

(4) For purposes of subdivision (b) of Section 1798.115:

(A) Identify the consumer and associate the information provided by the consumer in the verifiable consumer request to any personal information previously collected by the business about the consumer.

(B) Identify by category or categories the personal information of the consumer that the business sold ~~in the preceding 12 months~~ **during the applicable period of time** by reference to the enumerated category in subdivision (c) that most closely describes the personal information, and provide the categories of third parties to whom the consumer's personal information was sold ~~in the preceding 12 months~~ **during the applicable period of time** by reference to the enumerated category or categories in subdivision (c) that most closely describes the personal information sold. The business shall disclose the information in a list that is separate from a list generated for the purposes of subparagraph (C).

Commented [CCP24]: "Security and integrity" is newly defined term

Commented [CCP25]: New provision to address security concerns of revealing this data to bad actors via access requests

(C) Identify by category or categories the personal information of the consumer that the business disclosed for a business purpose ~~in the preceding 12 months~~ **during the applicable period of time** by reference to the enumerated category or categories in subdivision (c) that most closely describes the personal information, and provide the categories of ~~third parties~~ **persons** to whom the consumer's personal information was disclosed for a business purpose ~~in the preceding 12 months~~ **during the applicable period of time** by reference to the enumerated category or categories in subdivision (c) that most closely describes the personal information disclosed. The business shall disclose the information in a list that is separate from a list generated for the purposes of subparagraph (B).

(5) Disclose the following information in its online privacy policy or policies if the business has an online privacy policy or policies and in any California-specific description of consumers' privacy rights, or if the business does not maintain those policies, on its ~~Internet Web site~~ **internet website**, and update that information at least once every 12 months:

(A) A description of a consumer's rights pursuant to Sections **1798.100, 1798.105, 1798.105.5, 1798.110, 1798.115, and 1798.125** and ~~one~~ **two** or more designated methods for submitting requests, **except as provided in subparagraph (A) of paragraph (1) of subdivision (a).**

(B) For purposes of subdivision (c) of Section 1798.110: **(i) a list of the categories of personal information it has collected about consumers in the preceding 12 months by reference to the enumerated category or categories in subdivision (c) of Section 1798.110 that most closely describe the personal information collected; (ii) the categories of sources from which consumers' personal information is collected; (iii) the business or commercial purpose for collecting or selling consumers' personal information; and (iv) the categories of third parties with whom the business shares consumers' personal information.**

(C) For purposes of paragraph (6) of subdivision (c) of Section 1798.110, disclose whether the business uses consumers' personal information for profiling, if such profiling had, or could have reasonably been expected to have, a significant, adverse effect on consumers with respect to: (i) financial lending and loans; (ii) insurance; (iii) health care services; (iv) housing; (v) education admissions; or (vi) denial of employment. If the decision had, or could have reasonably been expected to have, a significant, adverse effect on consumers, as specified above, provide meaningful information about the logic involved in using consumers' personal information for profiling. For the purposes of this subparagraph, "adverse" shall mean a denial, cancellation, increase in charge, reduction in benefit, or other adverse or unfavorable change in terms of coverage or benefit to, consumers.

Commented [CCP26]: Profiling: newly defined term in 140(z)

Commented [CCP27]: Profiling effects limited to certain very important areas

Commented [CCP28]: Largely taken from FTC definition

~~(C)~~ **(D)** For purposes of paragraphs (1) and (2) of subdivision (c) of Section 1798.115, two separate lists:

(i) A list of the categories of personal information it has sold about consumers in the preceding 12 months by reference to the enumerated category or categories in subdivision (c) that most closely describe the personal information sold, or if the business has not sold consumers' personal information in the preceding 12 months, the business shall disclose that fact.

(ii) A list of the categories of personal information it has disclosed about consumers for a business purpose in the preceding 12 months by reference to the enumerated category in subdivision (c) that most closely ~~describe~~ **describes** the personal information disclosed, or if the business has not disclosed consumers' personal information for a business purpose in the preceding 12 months, the business shall disclose that fact.

(6) Ensure that all individuals responsible for handling consumer inquiries about the business's privacy practices or the business's compliance with this title are informed of all requirements in Sections **1798.100, 1798.105, 1798.105.5**, 1798.110, 1798.115, 1798.125, 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, **and shall not further disclose the personal information or retain it longer than necessary for the purposes of verification.**

(b) A business is not obligated to provide the information required by Sections 1798.110 and 1798.115 to the same consumer more than twice in a 12-month period.

(c) The categories of personal information required to be disclosed pursuant to Sections **1798.100**, 1798.110 and 1798.115 shall follow the ~~definition~~ **definitions** of personal information **and sensitive personal information** in Section 1798.140.

(d) Nothing in this section shall require a business to disclose trade secrets, as prescribed by regulations adopted pursuant to paragraph (3) of subdivision (a) of Section 1798.185.

SEC. 12. Section 1798.135 of the Civil Code is amended to read:

1798.135. Sale of Personal Information and Use of Personal Information for Advertising and Marketing Requirements

1798.135. (a) A business that is required to comply with Section 1798.120 shall, in a form that is reasonably accessible to consumers:

(1) Provide a clear and conspicuous link on the business's ~~internet~~ **internet** homepage(s), titled "Do Not Sell My Personal Information," to an ~~internet web page~~ **internet webpage** that enables a consumer, or a person authorized by the consumer, to opt-out of the sale of the consumer's personal information, **and in addition, an easily accessible link that allows consumers to opt-out of the use or disclosure of the consumer's sensitive personal information for advertising and marketing, provided that a business may also utilize a single, clearly-labeled link on the business's internet homepage(s), if such link allows a consumer easily to opt-out of the sale of the consumer's personal information and to opt-out of the use or disclosure of the consumer's sensitive personal information for advertising and marketing.** A business shall not require a consumer to create an account in order to direct the business not to sell the

consumer's personal information **or not to use or disclose the consumer's sensitive personal information for advertising and marketing.**

(2) Include a description of a consumer's rights pursuant to Section 1798.120, along with a separate link to the "Do Not Sell My Personal Information" **and a link to an internet webpage that allows consumers to opt-out of the use or disclosure of their sensitive personal information for advertising and marketing, if applicable,** in:

(A) Its online privacy policy or policies if the business has an online privacy policy or policies.

(B) Any California-specific description of consumers' privacy rights.

(3) Ensure that all individuals responsible for handling consumer inquiries about the business's privacy practices or the business's compliance with this title are informed of all requirements in Section 1798.120 and this section and how to direct consumers to exercise their rights under those sections.

(4) For consumers who exercise their right to opt-out of the sale of their personal information **or the use or disclosure of their sensitive personal information for advertising and marketing,** refrain from selling **the consumer's** personal information **or using or disclosing the consumer's sensitive personal information for advertising and marketing** collected by the business about the consumer **and respect the consumer's decision to opt out wait for at least 12 months before requesting that the consumer authorize the sale of the consumer's personal information or the use and disclosure of the consumer's sensitive personal information for advertising and marketing.**

(5) For a consumer who has opted out of the sale of the consumer's personal information, respect the consumer's decision to opt out for at least 12 months before requesting that the consumer authorize the sale of the consumer's personal information **minor consumers who do not affirmatively consent to the sale of their personal information and for consumers who do not affirmatively consent to the sale of their sensitive personal information, refrain from selling the minor consumer's personal information or the consumer's sensitive personal information, respectively, and respect the consumer's decision to opt out wait for at least 12 months before requesting the consumer's consent again.**

(6) Use any personal information collected from the consumer in connection with the submission of the consumer's opt-out request solely for the purposes of complying with the opt-out request.

(b) Nothing in this title shall be construed to require a business to comply with the title by including the required links and text on the homepage that the business makes available to the public generally, if the business maintains a separate and additional homepage that is dedicated to California consumers and that includes the required links and text, and the business takes reasonable steps to ensure that California consumers are directed to the homepage for California consumers and not the homepage made available to the public generally.

(c) A consumer may authorize another person ~~solely~~ to opt-out of the sale of the consumer's personal information, **and to opt-out of the use of the consumer's sensitive personal information for advertising and marketing**, on the consumer's behalf, **including but not limited to through a technology indicating the consumer's intent to opt-out, such as a browser setting, browser extension, or global device setting**, and a business shall comply with an opt-out request received from a person authorized by the consumer to act on the consumer's behalf, pursuant to regulations adopted by the Attorney General.

Commented [CCP29]: Restatement that multiple forms of 3rd party opt-outs, such as browser, operating system controls, or managed privacy services are permitted

(d) If a business communicates a consumer's opt-out request to any person authorized by the business to collect personal information, the person shall thereafter only use such consumer's personal information for a business purpose specified by the business, or as otherwise permitted by this title, and shall be prohibited from: (1) selling the personal information; and (2) retaining, using, or disclosing such consumer's personal information: (A) for any purpose other than for the specific purpose of performing the services offered to the business, (B) outside of the direct business relationship between the person and the business, and (C) for a commercial purpose other than providing the services to the business.

(e) A business that communicates a consumer's opt-out request to a person pursuant to subdivision (d) shall not be liable under this title if the person receiving the opt-out request violates the restrictions set forth in the title, provided that, at the time of communicating the opt-out request, the business does not have actual knowledge, or reason to believe, that the person intends to commit such a violation. Any provision of a contract or agreement of any kind that purports to waive or limit in any way this subdivision shall be void and unenforceable.

SEC. 13. Section 1798.140 of the Civil Code is amended to read:

1798.140. Definitions

1798.140. For purposes of this title:

(a) "Advertising and marketing" means a communication by a business or a person acting on the business's behalf in any medium intended to induce a consumer to buy, rent, lease, join, use, subscribe to, apply for, provide, or exchange products, goods, property, information, services, or employment.

~~(a)~~ *(b) "Aggregate consumer information" means information that relates to a group or category of consumers, from which individual consumer identities have been removed, that is not linked or reasonably linkable to any consumer or household, including via a device. "Aggregate consumer information" does not mean one or more individual consumer records that have been de-identified deidentified.*

~~(b)~~ *(c) "Biometric information" means an individual's physiological, biological or behavioral characteristics, including an individual's deoxyribonucleic acid (DNA), that can be used, singly or in combination with each other or with other identifying data, to establish individual identity. Biometric*

information includes, but is not limited to, imagery of the iris, retina, fingerprint, face, hand, palm, vein patterns, and voice recordings, from which an identifier template, such as a faceprint, a minutiae template, or a voiceprint, can be extracted, and keystroke patterns or rhythms, gait patterns or rhythms, and sleep, health, or exercise data that contain identifying information.

~~(e)~~ (d) "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, or on the behalf of which such information is collected and that alone, or jointly with others, determines the purposes and means of the processing of consumers' personal information, that does business in the State of California, and that satisfies one or more of the following thresholds:

(A) **As of January 1 of the calendar year, Has had** annual gross revenues in excess of twenty-five million dollars (\$25,000,000) **in the preceding calendar year**, as adjusted pursuant to paragraph (5) of subdivision (a) of Section 1798.185.

(B) Alone or in combination, annually ~~buys or, receives for the business's commercial purposes sells, or shares for commercial purposes~~ the personal information of ~~50,000~~ **100,000** or more consumers ~~or, households, or devices.~~

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

(2) Any entity that controls or is controlled by a business, as defined in paragraph (1), and that shares common branding with the business **and with whom the business shares consumers' personal information**. "Control" or "controlled" 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 a controlling influence over the management of a company. "Common branding" means a shared name, servicemark, or trademark, **such that the average consumer would understand that two or more entities are commonly owned**.

(3) A joint venture or partnership composed of businesses in which each business has at least a 40 percent interest. For purposes of this title, the joint venture or partnership and each business that composes the joint venture or partnership shall separately be considered a single business, except that personal information in the possession of each business and disclosed to the joint venture or partnership shall not be shared with the other business.

(4) A person that does business in California, that is not covered by paragraphs (1), (2), or (3) and that voluntarily certifies to the California Privacy Protection Agency that it is in compliance with, and agrees to be bound by, this title.

Commented [CCP30]: Return toward original 2018 CCPA initiative definition (which was 100,000 /sell only) to mitigate the concern around undue burden on small businesses

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

(1) Auditing related to a current interaction with the consumer and concurrent transactions, including, but not limited to, counting ad impressions to unique visitors, verifying positioning and quality of ad impressions, ~~and auditing compliance with this specification and other standards,~~ **providing analytic services, or providing similar services on behalf of the business, service provider, or contractor.**

(2) ~~Detecting security incidents, protecting against malicious, deceptive, fraudulent, or illegal activity, and prosecuting those responsible for that activity.~~ **Helping to ensure security and integrity to the extent the use of the consumer's personal information is reasonably necessary and proportionate for these purposes.**

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

(4) Short-term, transient use, **including but not limited to non-personalized advertising shown as part of the consumer's same interaction with the business,** provided that the personal information that is not disclosed to another third party and is not used to build a profile about a the consumer or otherwise alter an individual consumer's experience outside the current interaction, ~~including, but not limited to, the contextual customization of ads shown as part of the same interaction~~ **with the business.**

(5) Performing services on behalf of the business or service provider, including maintaining or servicing accounts, providing customer service, processing or fulfilling orders and transactions, verifying customer information, processing payments, providing financing, ~~or providing advertising or~~ **and marketing services, except for cross-context behavioral advertising,** ~~providing analytic services, or providing similar services on behalf of the business or service provider~~ **to the consumer, provided that for the purpose of advertising and marketing, a service provider or contractor shall not combine the personal information of opted-out consumers which the service provider or contractor receives from or on behalf of the business with personal information which the service provider or contractor receives from or on behalf of another person or persons, or collects from its own interaction, with consumers.**

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

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

(f) **"Cross-Context Behavioral advertising" means the targeting of advertising to a consumer based on a profile of the consumer including predictions derived from the consumer's personal information,**

Commented [CCP31]: Return to original 2018 CCPA initiative to focus on business's operational purposes

Commented [CCP32]: Amendment for clarity

Commented [CCP33]: Moved from (5) below

Commented [CCP34]: More expansive definition

Commented [CCP35]: Non-personalized advertising is a newly defined term to clarify that advertising which is not based on a profile or predictions based on a consumer's past behavior is always permitted as a business purpose

Commented [CCP36]: This allows service providers and contractors to assist the business in delivering non-personalized ads to consumer

Commented [CCP37]: Addressed in the insert in the first part of this paragraph

Commented [CCP38]: This is intended to clarify that the business may continue to provide 'first party' behaviorally targeted ads, including through SP or contractor, which are limited to the consumer's direct relationship with only that business. Further clarifies that SP's and contractors must silo data they learn about the consumer from assisting the business with advertising and marketing from other data they obtain about the consumer from other sources

Commented [CCP39]: Moved to (1)

Commented [CCP40]: Cross-Context Behavioral Advertising: newly defined term to describe ads targeted to consumers based on a profile or predictions about the consumer related to the consumer's activity over time and across multiple businesses or distinctly-branded services, websites, or applications. Consistent with existing law, when a consumer opts-out of sale of the consumer's PI, the PI can no longer be used to target the consumer with cross-context behavioral ads but permits 'first party' behavioral targeting by the business with which the consumer intends to interact

where such profile is related to the consumer's activity over time and across multiple businesses or across multiple, distinctly-branded websites, application, or services.

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

~~(f)~~ **(h)** "Commercial purposes" means to advance a person's commercial or economic interests, such as by inducing another 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 speech that state or federal courts have recognized as noncommercial speech, including political speech and journalism.

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

(j) (1) "Contractor" means a person to whom the business discloses a consumer's personal information for a business purpose pursuant to a written contract, provided that the contract:

(A) Prohibits the contractor from:

(i) Selling the personal information.

(ii) Retaining, using, or disclosing the personal information for any purpose other than for the specific purpose of performing the services specified in the contract, including retaining, using, or disclosing the personal information for a commercial purpose other than providing the services specified in the contract, or as otherwise permitted by this title.

(iii) Retaining, using, or disclosing the information outside of the direct business relationship between the contractor and the business.

(iv) Combining the personal information which the contractor receives from or on behalf of the business with personal information which it receives from or on behalf of another person or persons, or collects from its own interaction with the consumer, provided that the contractor may combine personal information to perform any business purpose, except as provided for in paragraph (5) of subdivision (e) of this Section and in regulations adopted by the California Privacy Protection Agency.

(B) Includes a certification made by contractor that the contractor understands the restrictions in subparagraph (A) and will comply with them.

Commented [CCP41]: Previously defined in 'Who is Not A Third Party'.

Differs from Service Provider, which receives PI "from or on behalf of" to address contractual arrangements that restrict selling/reuse but are not 'service provider' relationships

(2) If a contractor engages any other person to assist it in performing a business purpose on behalf of the business, it shall notify the business of such engagement and bind the other person by written contract to observe all the requirements set forth in subparagraphs (A) and (B).

(k) "Deidentified" means information that cannot reasonably be used to infer information about, or otherwise be linked to, an identifiable consumer, provided that the business that possesses the information:

Commented [CCP42]: Reverts towards FTC 2012 definition for clarity

(A) takes reasonable measures to ensure that the information cannot be associated with a consumer or household;

(B) publicly commits to maintain and use the information in deidentified form and not to attempt to reidentify the information, except as necessary to ensure compliance with this subdivision; and

(C) contractually obligates any recipients of the information to comply with all provisions of this subdivision. identify, relate to, describe, be capable of being associated with, or be linked, directly or indirectly, to a particular consumer, provided that a business that uses deidentified information:

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

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

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

(4) Makes no attempt to reidentify the information.

(l) "Designated methods for submitting requests" means a mailing address, email address, Internet Web page internet webpage, Internet Web internet web portal, toll-free telephone number, or other applicable contact information, whereby consumers may submit a request or direction under this title, and any new, consumer-friendly means of contacting a business, as approved by the Attorney General pursuant to Section 1798.185.

(m) "Device" means any physical object that is capable of connecting to the Internet, directly or indirectly, or to another device.

Commented [CCP43]: To exclude devices, such as walkie-talkies, that do not connect to the internet

(n) "Health insurance information" means a consumer's insurance policy number or subscriber identification number, any unique identifier used by a health insurer to identify the consumer, or any information in the consumer's application and claims history, including any appeals records, if the information is linked or reasonably linkable to a consumer or household, including via a device, by a business or service provider.

~~(h)~~ **(o)** "Homepage" means the introductory page of an ~~Internet Web site~~ **internet website** and any ~~Internet Web page~~ **internet 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 or download 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~~ **notices** required by ~~subdivision (a) of Section 1798.145~~ **this title**, including, but not limited to, before downloading the application.

(p) "**Household**" means a group, however identified, of consumers who cohabitate with one another at the same residential address and share access to common device(s) or service(s) provided by a business.

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

(r) "**Intentionally interacts**" means when the consumer intends to interact with a person via one or more deliberate interactions, such as visiting the person's website or purchasing a good or service from the person. Hovering over, muting, pausing, or closing a given piece of content does not constitute a consumer's intent to interact with a person.

(s) "**Large data processor**" means a business that in the preceding calendar year collected the personal information of five million or more consumers.

(t) "**Non-personalized advertising**" means advertising and marketing that is not based on a consumer's past behavior.

~~(h)~~ **(u)** "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.

~~(h)~~ **(v)** (1) "Personal information" means information that identifies, relates to, describes, is **reasonably** capable of being associated with, or could reasonably be linked, directly or indirectly, with a particular consumer or household. Personal information includes, but is not limited to, the following if it identifies, relates to, describes, is **reasonably** capable of being associated with, or could be reasonably linked, directly or indirectly, with a particular consumer or household:

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

(B) Any categories of personal information described in subdivision ~~(e)~~ **(e)** of Section 1798.80.

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

Commented [CCP44]: See exemption in 145(m) re access, deletion, and correction to prevent unintended privacy consequences from obtaining access or deletion rights to a shared device

Commented [CCP45]: Moved from "sell"

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

(E) Biometric information.

(F) Internet or other electronic network activity information, including, but not limited to, browsing history, search history, and information regarding a consumer's interaction with an ~~Internet Web site~~ **internet website**, application, or advertisement.

(G) Geolocation data.

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

(I) Professional or employment-related information.

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

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

(L) Sensitive personal information.

(2) "Personal information" does not include publicly available information. For these purposes, "publicly available" means information that is lawfully made available from federal, state, or local government records, ~~if any conditions associated with such information~~ **or information that a business has a reasonable basis to believe is lawfully made available to the general public from widely distributed media, or by the consumer, or by a person to whom the consumer has disclosed the information if the consumer has not restricted the information to a specific audience.** "Publicly available" does not mean biometric information collected by a business about a consumer without the consumer's knowledge. Information is not "publicly available" if that data is used for a purpose that is not compatible with the purpose for which the data is maintained and made available in the government records ~~or for which it is publicly maintained~~ **unless the information is a matter of public concern.** ~~"Publicly available Personal information"~~ **Personal information** does not include consumer information that is deidentified or aggregate consumer information.

(w) "Precise geolocation" means any data that locates a consumer within a geographic area that is equal to or less than the area of a circle with a radius of half of one mile, except as prescribed by regulations.

Commented [CCP46]: Pre-emptively address First Amendment questions that have been raised

~~(x)~~ **(x)** "Probabilistic identifier" means the identification of a consumer or a **consumer's** device to a degree of certainty of more probable than not based on any categories of personal information included in, or similar to, the categories enumerated in the definition of personal information.

~~(y)~~ **(y)** "Processing" means any operation or set of operations that are performed on personal ~~data~~ **information** or on sets of personal ~~data~~ **information**, whether or not by automated means.

(z) "Profiling" means any form of automated processing of personal information, as further defined by regulations pursuant to paragraph (16) of subdivision (a) of Section 1798.185, to evaluate or predict certain personal aspects relating to a consumer, and in particular to analyze or predict aspects concerning that consumer's performance at work, economic situation, health, personal preferences, interests, reliability, behavior, location or movements.

~~(aa)~~ **(aa)** "Pseudonymize" or "Pseudonymization" means the processing of personal information in a manner that renders the personal information no longer attributable to a specific consumer without the use of additional information, provided that the additional information is kept separately and is subject to technical and organizational measures to ensure that the personal information is not attributed to an identified or identifiable consumer.

~~(ab)~~ **(ab)** "Research" means scientific, systematic study and observation, including basic research or applied research that is in the public interest and that adheres to all other applicable ethics and privacy laws or studies conducted in the public interest in the area of public health. Research with personal information that may have been collected from a consumer in the course of the consumer's interactions with a business's service or device for other purposes shall be:

- (1) Compatible with the business purpose for which the personal information was collected.
- (2) Subsequently pseudonymized and deidentified, or deidentified and in the aggregate, such that the information cannot reasonably identify, relate to, describe, be capable of being associated with, or be linked, directly or indirectly, to a particular consumer.
- (3) Made subject to technical safeguards that prohibit reidentification of the consumer to whom the information may pertain.
- (4) Subject to business processes that specifically prohibit reidentification of the information.
- (5) Made subject to business processes to prevent inadvertent release of deidentified information.
- (6) Protected from any reidentification attempts.
- (7) Used solely for research purposes that are compatible with the context in which the personal information was collected.
- (8) ~~Not be used for any commercial purpose.~~

Commented [CCP47]: Removed to address concern that all commercial research is done for a commercial purpose, as this would largely negate the business purpose exception in business purpose, paragraph (6)

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

(ac) **“Security and Integrity” means the ability of: (1) a network or an information system to function operationally as designed and to detect security incidents that compromise the availability, authenticity, integrity, and confidentiality of stored or transmitted personal information; and (2) a business to detect security incidents, resist malicious, deceptive, fraudulent, or illegal actions, and to help prosecute those responsible for such actions.**

(ad) (1) “Sell,” “selling,” “sale,” or “sold,” means selling, renting, releasing, disclosing, 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 another business or a third party for monetary or other valuable consideration, **or otherwise for a commercial purpose, including but not limited to cross-context behavioral advertising.**

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

(A) A consumer uses or directs the business to intentionally disclose personal information or uses the business to intentionally interact with **a one or more third party parties**, provided the third party **or parties do does** not also sell the personal information, unless that disclosure would be consistent with the provisions of this title; ~~An intentional interaction occurs when the consumer intends to interact with the third party, via one or more deliberate interactions. Hovering over, muting, pausing, or closing a given piece of content does not constitute a consumer’s intent to interact with a third party.~~

(B) The business uses or shares an identifier for a consumer who has opted out of the sale of the consumer’s personal information **or the use of the consumer’s sensitive personal information for advertising and marketing** for the purposes of alerting ~~third parties~~ **persons** that the consumer has opted out of the sale of the consumer’s personal information; **or**

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

(i) The business has provided notice that **personal** information **is** being used or shared **and the purpose for which it is being used or shared** in its terms and conditions consistent with ~~Section~~ **Sections 1798.130 and 1798.135.**

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

(D) The business transfers to a third party the personal information of a consumer as an asset that is part of a merger, acquisition, bankruptcy, or other transaction in which the third party assumes control of all or part of the business, provided that information is used or shared consistently with Sections

Commented [CCP48]: Allows for fraud prevention, etc., in physical world as well as online

Commented [CCP49]: Clarify that a sale includes the disclosure of a consumer’s PI for any commercial purpose, including, for example, cross-context behavioral advertising

Commented [CCP50]: Now a defined term: “Intentionally Interacts”

1798.100, 1798.110, and 1798.115. If a third party materially alters how it uses or shares the personal information of a consumer in a manner that is materially inconsistent with the promises made at the time of collection, it shall provide prior notice of the new or changed practice to the consumer. The notice shall be sufficiently prominent and robust to ensure that existing consumers can easily exercise their choices consistently with ~~Section 1798.120~~ **this title**. This subparagraph does not authorize a business to make material, retroactive privacy policy changes or make other changes in their privacy policy in a manner that would violate the Unfair and Deceptive Practices Act (Chapter 5 (commencing with Section 17200) of Part 2 of Division 7 of the Business and Professions Code).

(ae) "Sensitive personal information" means: a consumer's social security, driver's license, state identification card, or passport number; a consumer's account log-in, financial account, debit card, or credit card number in combination with any required security or access code, password, or credentials allowing access to an account; a consumer's precise geolocation; personal information revealing a consumer's racial or ethnic origin, religion, or union membership; the contents of a consumer's private communications, unless the business is the intended recipient of the communication; a consumer's biometric information; data concerning a consumer's health; data concerning a consumer's sexual orientation; or other data collected and analyzed for the purpose of identifying such information.

~~(af)~~ **(af)** "Service" or "services" means work, labor, and services, including services furnished in connection with the sale or repair of goods.

~~(ag)~~ **(ag) (1)** "Service provider" means 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; **person** that processes **personal** information on behalf of a business and to which **receives from or on behalf of** the business **discloses** a consumer's personal information for a business purpose pursuant to a written contract, provided that the contract prohibits the entity receiving the information **person** from: **(A) retaining, using, or disclosing the personal information for any purpose other than for the specific purpose of performing the services specified in the contract for the business, or as otherwise permitted by this title, including retaining, using, or disclosing the personal information for a commercial purpose other than providing the services specified in the contract with the business, or as otherwise permitted by this title; (B) retaining, using, or disclosing the information outside of the direct business relationship between the service provider and the business; and (C) combining the personal information which the service provider receives from or on behalf of the business, with personal information which it receives from or on behalf of another person or persons, or collects from its own interaction with the consumer, provided that the service provider may combine personal information to perform any business purpose, except as provided for in paragraph (5) of subdivision (e) of this Section and in regulations adopted by the California Privacy Protection Agency.**

(2) If a service provider engages any other person to assist it in performing a business purpose on behalf of the business, it shall notify the business of such engagement, and the engagement is

pursuant to a written contract binding the other person to observe all the requirements set forth in paragraph (1).

~~(w)~~ **(ah)** "Third party" means a person who is not any of the following:

(1) The business **with whom the consumer intentionally interacts and** that collects personal information from **the consumer as part of the consumer's current interaction with the business** ~~consumers~~ under this title;

(2) **A service provider to the business; or**

(3) A contractor.

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

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

~~(I) Selling the personal information.~~

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

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

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

~~(B) A person covered by this paragraph that violates any of the restrictions set forth in this title shall be liable for the violations. A business that discloses personal information to a person covered by this paragraph in compliance with this paragraph shall not be liable under this title if the person receiving the personal information uses it in violation of the restrictions set forth in this title, provided that, at the time of disclosing the personal information, the business does not have actual knowledge, or reason to believe, that the person intends to commit such a violation.~~

~~(x)~~ **(ai)** "Unique identifier" or "Unique personal identifier" means a persistent identifier that can be used to recognize a consumer, a family, or a device that is linked to a consumer or family, over time and across different services, including, but not limited to, a device identifier; an Internet Protocol address; cookies, beacons, pixel tags, mobile ad identifiers, or similar technology; customer number, unique pseudonym, or user alias; telephone numbers, or other forms of persistent or probabilistic identifiers that can be used to identify a particular consumer or device **that is linked to a consumer or family**. For

Commented [CCP51]: All this language moved to 'contractor' definition

purposes of this subdivision, “family” means a custodial parent or guardian and any minor children over which the parent or guardian has custody.

~~(j)~~ **(aj)** “Verifiable consumer request” means a request that is made by a consumer, by a consumer on behalf of the consumer’s minor child, or by a natural person or a person registered with the Secretary of State, authorized by the consumer to act on the consumer’s behalf, and that the business can ~~reasonably verify~~, **using commercially reasonable methods**, pursuant to regulations adopted by the Attorney General pursuant to paragraph (7) of subdivision (a) of Section 1798.185 to be the consumer about whom the business has collected personal information. A business is not obligated to provide information to the consumer pursuant to Sections 1798.110 and 1798.115, **to delete personal information pursuant to Section 1798.105, or to correct inaccurate personal information pursuant to Section 1798.105.5**, if the business cannot verify, pursuant this subdivision and regulations adopted by the Attorney General pursuant to paragraph (7) of subdivision (a) of Section 1798.185, that the consumer making the request is the consumer about whom the business has collected information or is a person authorized by the consumer to act on such consumer’s behalf.

SEC. 14. Section 1798.145 of the Civil Code is amended to read:

1798.145. Exemptions

1798.145. (a) The obligations imposed on businesses by this title shall not restrict a business’s ability to:

- (1) Comply with ~~federal, state, or local~~ **applicable** laws, **otherwise comply with valid legal process or provide information as otherwise required by law.**
- (2) Comply with a civil, criminal, or regulatory inquiry, investigation, subpoena, or summons by federal, state, or local authorities. **For the purpose of clarity, law enforcement agencies, including police and sheriff’s departments, may direct a business not to delete a consumer’s personal information, pending a court order or other legal process, and may obtain a consumer’s personal information pursuant to a court order or other legal process.**
- (3) Cooperate with law enforcement agencies concerning conduct or activity that the business, service provider, or third party reasonably and in good faith believes may violate federal, state, or local law.
- (4) Respond to requests by government agencies for personal information that is necessary to carry out child welfare, foster care, adoption, or parental support programs, provided that businesses shall, by written contract, prohibit the government agency from selling or further disclosing consumers’ personal information.**
- (5) Cooperate with government agencies if the business believes in good faith that the consumer is at risk or danger of death or serious physical injury and the situation requires disclosure of the consumer’s personal information without delay.**

Commented [CCP52]: To alleviate concerns raised in the debate over withdrawn AB 1416, where it was alleged that CCPA would prevent vital services like these from functioning

Note: the stipulation that the personal information not be further disclosed addresses the concern that this exception becomes a loophole for disclosing PI to governments for any purpose

Commented [CCP53]: Effectively “exigent circumstances” for public safety

~~(4)~~ **(6)** Exercise or defend legal claims.

~~(5)~~ **(7)** Collect, use, retain, sell, or disclose ~~consumer~~ **consumers' personal** information that is deidentified or ~~in the~~ aggregate consumer information.

~~(6)~~ **(8)** Collect or sell a consumer's personal information if every aspect of that commercial conduct takes place wholly outside of California. For purposes of this title, commercial conduct takes place wholly outside of California if the business collected that information while the consumer was outside of California, no part of the sale of the consumer's personal information occurred in California, and no personal information collected while the consumer was in California is sold. This paragraph shall not permit a business from storing, including on a device, personal information about a consumer when the consumer is in California and then collecting that personal information when the consumer and stored personal information is outside of California.

(b) The obligations imposed on businesses by Sections 1798.110, **1798.115, 1798.120, 1798.130, and to** 1798.135, inclusive, shall not apply where compliance by the business with the title would violate an evidentiary privilege under California law and shall not prevent a business from providing the personal information of a consumer to a person covered by an evidentiary privilege under California law as part of a privileged communication.

(c) (1) This title shall not apply to ~~any of the following,~~ **the use of information governed by, or subject to, the following laws, but only with respect to the categories or types of personal information which are governed by, or subject to, the applicable law or laws as those laws read on July 1, 2019:**

(A) (i) Medical information governed by the Confidentiality of Medical Information Act (Part 2.6 (commencing with Section 56) of Division 1) or protected health information that is collected by a covered entity or business associate governed by the privacy, security, and breach notification rules issued by the United States 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 Accountability Act of 1996 (Public Law 104-191) and the Health Information Technology for Economic and Clinical Health Act (Public Law 111-5).

~~(B)~~ **(ii)** A provider of health care governed by the Confidentiality of Medical Information Act (Part 2.6 (commencing with Section 56) of Division 1) or a covered entity governed by the privacy, security, and breach notification rules issued by the United States 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 Accountability Act of 1996 (Public Law 104-191), to the extent the provider or covered entity maintains patient information in the same manner as medical information or protected health information as described in subparagraph ~~(A)~~ **(i)** of this section.

(iii) For purposes of this subdivision, the definitions of "medical information" and "provider of health care" in Section 56.05 shall apply and the definitions of "business associate," "covered entity," and

“protected health information” in Section 160.103 of Title 45 of the Code of Federal Regulations shall apply.

~~(C)~~ ***(B) Personal*** Information collected as part of a clinical trial subject to the Federal Policy for the Protection of Human Subjects, also known as the Common Rule, pursuant to good clinical practice guidelines issued by the International Council for Harmonisation or pursuant to human subject protection requirements of the United States Food and Drug Administration.

~~(2)~~ For purposes of this subdivision, the definitions of “medical information” and “provider of health care” in Section 56.05 shall apply and the definitions of “business associate,” “covered entity,” and “protected health information” in Section 160.103 of Title 45 of the Code of Federal Regulations shall apply.

~~(d)~~ ***(C) (i)*** This title 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 1681a 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. Sec. 1681 et seq.). ***Activity involving the collection, maintenance, disclosure, sale, communication, or use of any personal information bearing on a consumer’s credit worthiness, credit standing, credit capacity, character, general reputation, personal characteristics, or mode of living by a consumer reporting agency, as defined in subdivision (f) of Section 1681a of Title 15 of the United States Code, by a furnisher of information, as set forth in Section 1681s-2 of Title 15 of the United States Code, who provides information for use in a consumer report, as defined in subdivision (d) of Section 1681a of Title 15 of the United States Code, and by a user of a consumer report as set forth in Section 1681b of Title 15 of the United States Code.***

(ii) Subparagraph (i) shall apply only to the extent that such activity involving the collection, maintenance, disclosure, sale, communication or use of such information by that agency, furnisher, or user is subject to regulation under the Fair Credit Reporting Act, section 1681 et seq., Title 15 of the United States Code and the information is not collected, maintained, used, communicated, disclosed or sold except as authorized by the Fair Credit Reporting Act.

(iii) This subparagraph shall not apply to Section 1798.150.

~~(e)~~ ***(D)*** This title shall not apply to personal ***Personal*** information collected, processed, sold, or disclosed pursuant ***subject*** to the federal Gramm-Leach-Bliley Act (Public Law 106-102), and implementing regulations, or the California Financial Information Privacy Act (Division 1.4 (commencing with Section 4050) of the Financial Code). This ~~subdivision~~ ***subparagraph*** shall not apply to Section 1798.150.

~~(f)~~ ***(E)*** This title shall not apply to personal ***Personal*** information collected, processed, sold, or disclosed pursuant to the Driver’s Privacy Protection Act of 1994 (18 U.S.C. Sec. 2721 et seq.) This ~~subdivision~~ ***subparagraph*** shall not apply to Section 1798.150.

Commented [CCP54]: Harmonize with Chau AB 1355, awaiting Governor’s signature

(d) (1) Section 1798.120 shall not apply to vehicle information or ownership information retained or shared between a new motor vehicle dealer, as defined in Section 426 of the Vehicle Code, and the vehicle's manufacturer, as defined in Section 672 of the Vehicle Code, if the vehicle or ownership information is shared for the purpose of effectuating, or in anticipation of effectuating, a vehicle repair covered by a vehicle warranty or a recall conducted pursuant to Sections 30118 to 30120, inclusive, of Title 49 of the United States Code, provided that the new motor vehicle dealer or vehicle manufacturer with which that vehicle information or ownership information is shared does not sell, share, or use that information for any other purpose.

Commented [CCP55]: Harmonize with Berman AB 1146, awaiting Governor's signature

(2) For purposes of this subdivision:

(A) "Vehicle information" means the vehicle information number, make, model, year, and odometer reading.

(B) "Ownership information" means the name or names of the registered owner or owners and the contact information for the owner or owners.

~~(e)~~ **(e)** Notwithstanding a business's obligations to respond to and honor consumer rights requests pursuant to this title:

(1) A time period for a business to respond to any verified consumer request may be extended by up to **a total of 90 additional** days where necessary, taking into account the complexity and number of the requests. The business shall inform the consumer of any such extension within 45 days of receipt of the request, together with the reasons for the delay.

(2) If the business does not take action on the request of the consumer, the business shall inform the consumer, without delay and at the latest within the time period permitted of response by this section, of the reasons for not taking action and any rights the consumer may have to appeal the decision to the business.

(3) If requests from a consumer are manifestly unfounded or excessive, in particular because of their repetitive character, a business may either charge a reasonable fee, taking into account the administrative costs of providing the information or communication or taking the action requested, or refuse to act on the request and notify the consumer of the reason for refusing the request. The business shall bear the burden of demonstrating that any verified consumer request is manifestly unfounded or excessive.

~~(h)~~ **(f) (1)** A business that discloses personal information to a service provider **in compliance with this title** shall not be liable under this title if the service provider **or contractor** receiving the personal information uses it in violation of the restrictions set forth in the title, provided that, at the time of disclosing the personal information, the business does not have actual knowledge, or reason to believe, that the service provider **or contractor** intends to commit such a violation. A service provider **or**

contractor shall likewise not be liable under this title for the obligations of a business for which it provides services as set forth in this title, **provided that the service provider or contractor shall be liable for its own violations of this title.**

(2) A business that discloses personal information of a consumer, with the exception of consumers who have exercised their right to opt-out of the sale of their personal information, consumers who have not opted-in to the sale of their sensitive personal information, and minor consumers who have not opted-in to the collection or sale of their personal information, to a third party pursuant to a written contract that requires the third party to provide the same level of protection of the consumer's rights under this title as provided by the business shall not be liable under this title if the third party receiving the personal information uses it in violation of the restrictions set forth in the title, provided that, at the time of disclosing the personal information, the business does not have actual knowledge, or reason to believe, that the third party intends to commit such a violation.

(g) This title shall not be construed to require a business to: **(1) reidentify or otherwise link information that, in the ordinary course of business, is not maintained in a manner that would be considered personal information; (2) retain any personal information about a consumer if, in the ordinary course of business, that information about the consumer would not be retained; or (3) maintain information in identifiable, linkable or associable form, or collect, obtain, retain, or access any data or technology, in order to be capable of linking or associating a verified customer request with personal information.**

Commented [CCP56]: Added to clarify that a business is not required to link a consumer to raw video footage that may include images of the consumer

(h) The rights afforded to consumers and the obligations imposed on the business in this title shall not adversely affect the rights and freedoms of other consumers ~~consumers~~ **natural persons. A verifiable consumer request for specific pieces of personal information pursuant to Section 1798.110, to delete a consumer's personal information pursuant to Section 1798.105, or to correct inaccurate personal information pursuant to Section 1798.105.5, shall not extend to personal information about the consumer that belongs to another natural person.**

Commented [CCP57]: To clarify that "Verified Consumer Requests" shouldn't include data businesses maintain that belonging to other accountholders, etc.

(i) The rights afforded to consumers and the obligations imposed on any business under this title shall not apply to the extent that they infringe on the noncommercial activities of a person or entity described in subdivision (b) of Section 2 of Article I of the California Constitution.

(j) (1) This title shall not apply to any of the following:

(A) Personal information that is collected by a business about a natural person in the course of the natural person acting as a job applicant to, an employee of, owner of, director of, officer of, medical staff member of, or independent contractor of that business to the extent that the natural person's personal information is collected and used by the business solely within the context of the natural person's role or former role as a job applicant to, an employee of, owner of, director of, officer of, medical staff member of, or an independent contractor of that business.

Commented [CCP58]: Harmonize with Chau, AB 25, awaiting Governor's signature

(B) Personal information that is collected by a business that is emergency contact information of the natural person acting as a job applicant to, an employee of, owner of, director of, officer of, medical staff member of, or independent contractor of that business to the extent that the personal information is collected and used solely within the context of having an emergency contact on file.

(C) Personal information that is necessary for the business to retain to administer benefits for another natural person relating to the natural person acting as a job applicant to, an employee of, owner of, director of, officer of, medical staff member of, or independent contractor of that business to the extent that the personal information is collected and used solely within the context of administering those benefits.

(2) For purposes of this subdivision and subdivision (k):

(A) "Director" means a natural person designated in the articles as such or elected by the incorporators and natural persons designated, elected or appointed by any other name or title to act as directors, and their successors.

(B) "Independent contractor" means a natural person who provides any service to a business pursuant to a written contract with the business.

(C) "Medical staff member" means a licensed physician, dentist, podiatrist or clinical psychologist who is authorized to treat patients at a hospital, pursuant to Division 2, of the Business and Professions Code.

(D) "Officer" means a natural person elected or appointed by the board of directors to manage the daily operations of a corporation, such as a chief executive officer, president, chief operating officer, secretary, or treasurer.

(E) "Owner" means a natural person that meets one of the following:

(i) Has ownership of, or the power to vote, more than 50 percent of the outstanding shares or equity of a business.

(ii) Has control in any manner over the election of a majority of the directors, or of individuals exercising similar functions.

(iii) Has the power to exercise a controlling influence over the management of a company.

(3) This subdivision shall not apply to: (A) paragraphs (1) through (6) of subdivision (a) of Section 1798.110, subdivision (c) of Section 1798.110, subdivision (c) of Section 1798.115, or Section 1798.150; (B) requests for deletion after any applicable statutory retention obligation has passed; and (C) the disclosure required by paragraph (6) of subdivision (c) of Section 1798.110 and subparagraph (C) of paragraph (5) of subdivision (a) of Section 1798.130.

(k) The obligations imposed on businesses by Sections 1798.100, 1798.105, 1798.105.5, 1798.110, 1798.115, 1798.120, 1798.130, and 1798.135 shall not apply to personal information reflecting written or verbal communications or transactions between the business and the consumer where the consumer is a natural person who is acting as a present or former employee of, owner of, director of, officer of, medical staff member of, or independent contractor of a company, partnership, sole proprietorship, non-profit, or government agency and whose communications or transactions with the business occur or occurred solely within the context of the business conducting due diligence regarding, or providing, or receiving a product or service to or from such company, partnership, sole proprietorship, non-profit or government agency.

(l) (1) Sections 1798.105 and 1798.120 shall not apply to a commercial credit reporting agency's collection, processing, sale, or disclosure of business controller information to the extent the commercial credit reporting agency uses the business controller information solely to identify the relationship of a consumer to a business which the consumer owns, or to contact the consumer as the owner, director, officer, or management employee of the business.

(2) For the purposes of this subdivision:

(A) "Business controller information" means the name or names of the owner or owners, director, officer, or management employee of a business, and the contact information, including a business title, for the owner or owners, director, officer, or management employee.

(B) "Commercial credit reporting agency" has the meaning set forth subdivision (b) of section 1785.42, as that definition read as of July 1, 2019.

(B) "Owner or owners" means a natural person that meets one of the following:

(i) Has ownership of, or the power to vote, more than 50 percent of the outstanding shares of any class of voting security of a business.

(ii) Has control in any manner over the election of a majority of the directors, or of individuals exercising similar functions.

(iii) Has the power to exercise a controlling influence over the management of a company.

(C) "Director" means a natural person designated in the articles of incorporation of a business as such or elected by the incorporators and natural persons designated, elected or appointed by any other name or title to act as directors, and their successors.

(D) "Officer" means a natural person elected or appointed by the board of directors of a business to manage the daily operations of a corporation, such as a chief executive officer, president, secretary, or treasurer.

Commented [CCP59]: Harmonize with Chau AB 25, awaiting Governor's signature

(E) "Management employee" means a natural person whose name and contact information is reported to or collected by a commercial credit reporting agency as the primary manager of a business and used solely within the context of the natural person's role as the primary manager of the business.

(m) The obligations imposed on businesses in Sections 1798.105, 1798.105.5, and 1798.110, inclusive, shall not apply to household data.

(n) (1) This title does not require a business to comply with a verifiable consumer request to delete a consumer's personal information under Section 1798.105 to the extent the verifiable consumer request applies to a student's grades, educational scores, or educational test results that the business holds on behalf of a local educational agency, as defined in subdivision (d) of Section 49073.1 of the Education Code, at which the student is currently enrolled. If a business does not comply with a request pursuant to this section, it shall notify the consumer that it is acting pursuant to this exception.

(2) This title does not require, in response to a request pursuant to Section 1798.110, that a business disclose an educational standardized assessment or educational assessment or a consumer's specific responses to the educational standardized assessment or educational assessment where consumer access, possession or control would jeopardize the validity and reliability of that educational standardized assessment or educational assessment. If a business does not comply with a request pursuant to this section, it shall notify the consumer that it is acting pursuant to this exception.

(3) For purposes of this subdivision:

(A) "Educational standardized assessment or educational assessment" means a standardized or non-standardized quiz, test, or other assessment used to evaluate students in or for entry to K-12 schools, post-secondary institutions, vocational programs, and postgraduate programs which are accredited by an accrediting agency or organization recognized by the state of California or the United States Department of Education.

(B) "Jeopardize the validity and reliability of that educational standardized assessment or educational assessment" means releasing information that would provide an advantage to the consumer who has submitted a verified consumer request.

(n) Sections 1798.105 and 1798.120 shall not apply to a business's use, disclosure, or sale of a consumer's personal information if the consumer has affirmatively consented to the business's use, disclosure, or sale of the consumer's personal information and the business has incurred significant expense in reliance on the consumer's affirmative consent, including but not limited to, by producing a physical item such as a school yearbook containing the consumer's photograph, and compliance with the consumer's request to opt-out of the sale of the consumer's personal information or to delete the consumer's personal information would not be commercially reasonable, provided that business complies with the consumer's request as soon as it is commercially reasonable to do so.

Commented [CCP60]: To prevent one member of a household from obtaining access to another's data

SEC. 15. Section 1798.150 of the Civil Code is amended to read:

1798.150. Data Security Breaches

1798.150. (a) (1) Any consumer whose nonencrypted or nonredacted personal information, as defined in subparagraph (A) of paragraph (1) of subdivision (d) of Section 1798.81.5, is subject to an unauthorized access and exfiltration, theft, or disclosure as a result of the business's violation of the duty to implement and maintain reasonable security procedures and practices appropriate to the nature of the information to protect the personal information may institute a civil action for any of the following:

(A) To recover damages in an amount not less than one hundred dollars (\$100) and not greater than seven hundred and fifty (\$750) per consumer per incident or actual damages, whichever is greater.

(B) Injunctive or declaratory relief.

(C) Any other relief the court deems proper.

(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 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.

(b) Actions pursuant to this section may be brought by a consumer if, prior to initiating any action against a business for statutory damages on an individual or class-wide basis, a consumer provides a business 30 days' written notice identifying the specific provisions of this title the consumer alleges have been or are being violated. In the event a cure is possible, if within the 30 days the business actually cures the noticed violation and provides the consumer an express written statement that the violations have been cured and that no further violations shall occur, no action for individual statutory damages or class-wide statutory damages may be initiated against the business. ***The implementation and maintenance of reasonable security procedures and practices following a breach does not constitute a cure.*** No notice shall be required prior to an individual consumer initiating an action solely for actual pecuniary damages suffered as a result of the alleged violations of this title. If a business continues to violate this title in breach of the express written statement provided to the consumer under this section, the consumer may initiate an action against the business to enforce the written statement and may pursue statutory damages for each breach of the express written statement, as well as any other violation of the title that postdates the written statement.

(c) The cause of action established by this section shall apply only to violations as defined in subdivision (a) and shall not be based on violations of any other section of this title. Nothing in this title shall be interpreted to serve as the basis for a private right of action under any other law. This shall not be

Commented [CCP61]: This provision includes email in combination with password in list of personal information subject to data breach

Commented [CCP62]: This clarifies that a business cannot cure a data breach by implementing reasonable security procedures after the fact

construed to relieve any party from any duties or obligations imposed under other law or the United States or California Constitution.

SEC. 16. Section 1798.155 of the Civil Code is amended to read:

1798.155. Administrative Enforcement

1798.155. (a) ~~Any business or third party may seek the opinion of the Attorney General for guidance on how to comply with the provisions of this title.~~

~~(b) A business shall be in violation of this title if it fails to cure any alleged violation within 30 days after being notified of alleged noncompliance. Any business, service provider, **contractor** or other person that violates this title shall be subject to an injunction and liable for **an administrative fine of not more than two thousand five hundred dollars (\$2,500) for each violation, or seven thousand five hundred dollars (\$7,500) for each intentional violation or violations involving the personal information of minor consumers, as adjusted pursuant to paragraph (5) of subdivision (a) of Section 1798.185, in an administrative enforcement action brought by the California Privacy Protection Agency** a civil penalty of not more than two thousand five hundred dollars (\$2,500) for each violation or seven thousand five hundred dollars (\$7,500) for each intentional violation, which shall be assessed and recovered in a civil action brought in the name of the people of the State of California by the Attorney General. The civil penalties provided for in this section shall be exclusively assessed and recovered in a civil action brought in the name of the people of the State of California by the Attorney General.~~

~~(c) Any civil penalty **administrative fine** assessed for a violation of this title, and the proceeds of any settlement of an action brought pursuant to subdivision (b), shall be deposited in the Consumer Privacy Fund, created within the General Fund pursuant to subdivision (a) of Section 1798.160 with the intent to fully offset any costs incurred by the state courts, and the Attorney General **and the California Privacy Protection Agency** in connection with this title.~~

SEC. 17. Section 1798.160 of the Civil Code is amended to read:

1798.160. Consumer Privacy Fund

1798.160. (a) A special fund to be known as the "Consumer Privacy Fund" is hereby created within the General Fund in the State Treasury, and is available upon appropriation by the Legislature **first** to offset any costs incurred by the state courts in connection with actions brought to enforce this title, ~~and any the~~ costs incurred by the Attorney General in carrying out the Attorney General's duties under this title, **and to provide for a sufficient budget for the California Privacy Protection Agency to carry out its duties under this title, and then for the purposes of establishing an investment fund in the State Treasury, with interest from the fund to be deposited in the General Fund, and making grants to promote and protect consumer privacy, educate children in the area of online privacy, and fund cooperative programs with**

international law enforcement organizations to combat fraudulent activities with respect to consumer data breaches.

(b) Funds transferred to the Consumer Privacy Fund shall be used exclusively **as follows:**

(1) to offset any costs incurred by the state courts and the Attorney General in connection with this title and to provide for a sufficient budget of the California Privacy Protection Agency to carry out its responsibilities under this title, including repaying any loans to the Agency made pursuant to Section 1798.199.95.

(2) after satisfying the obligations under paragraph (1), the remaining funds shall be allocated each fiscal year as follows: (A) ninety-one percent (91%) shall be invested by the Treasurer and any interest thereon shall be deposited in the General Fund; (B) three percent (3%) shall be made available to the California Privacy Protection Agency for the purpose of making grants to non-profit organizations in California to promote and protect consumer privacy; (C) three percent (3%) shall be made available to the Privacy Protection Agency for the purpose of making grants to non-profit organizations to educate children in the area of online privacy; and (D) three percent (3%) shall be made available to the California Privacy Protection Agency for the purpose of making grants to state and local law enforcement agencies to fund cooperative programs with international law enforcement organizations to combat fraudulent activities with respect to consumer data breaches.

(c) These funds Funds in the Consumer Privacy Fund 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 title, in which case the Legislature may appropriate excess funds for other purposes.

SEC. 18. Section 1798.175 of the Civil Code is amended to read:

1798.175. Conflicting Provisions

1798.175. This title is intended to further the constitutional right of privacy and to supplement existing laws relating to consumers' personal information, including, but not limited to, Chapter 22 (commencing with Section 22575) of Division 8 of the Business and Professions Code and Title 1.81 (commencing with Section 1798.80). The provisions of this title are not limited to information collected electronically or over the Internet, but apply to the collection and sale of all personal information collected by a business from consumers. Wherever possible, law relating to consumers' personal information should be construed to harmonize with the provisions of this title, but in the event of a conflict between other laws and the provisions of this title, the provisions of the law that afford the greatest protection for the right of privacy for consumers shall control.

SEC. 19. Section 1798.180 of the Civil Code is amended to read:

1798.180. Preemption

1798.180. This title is a matter of statewide concern and supersedes and preempts all rules, regulations, codes, ordinances, and other laws adopted by a city, county, city and county, municipality, or local agency regarding the collection and sale of consumers' personal information by a business.

SEC. 20. Section 1798.185 of the Civil Code is amended to read:

1798.185. Regulations

1798.185. (a) On or before July 1, 2020, the Attorney General shall solicit broad public participation and adopt regulations to further the purposes of this title, including, but not limited to, the following areas:

(1) Updating as needed additional categories of personal information to those enumerated in subdivision (c) of Section 1798.130 and subdivision ~~(e)~~ **(v)** of Section 1798.140, **and additional categories of sensitive personal information to those enumerated in subdivision (ae) of Section 1798.140**, in order to address changes in technology, data collection practices, obstacles to implementation, and privacy concerns.

(2) Updating as needed the ~~definition~~ **definitions** of **"deidentified" and unique identifiers "unique identifier"** to address changes in technology, data collection, obstacles to implementation, and privacy concerns, and additional categories to the definition of designated methods for submitting requests to facilitate a consumer's ability to obtain information from a business pursuant to Section 1798.130.

(3) Establishing any exceptions necessary to comply with state or federal law, including, but not limited to, those relating to trade secrets and intellectual property rights, within one year of passage of this title and as needed thereafter.

(4) Establishing rules and procedures for the following:

(A) To facilitate and govern the submission of a request by a consumer to opt-out of the sale of personal information **and to opt-out of the use of a consumer's sensitive personal information for advertising and marketing** pursuant to ~~paragraph (1) of subdivision (a) of Section 1798.145~~ **1798.120, and to govern a business's request that a consumer opt-in pursuant to Sections 1798.120 and 1798.125 to ensure that consumers have the ability to exercise their choices without undue burden and to prevent business from engaging in deceptive or harassing conduct.**

(B) To govern business compliance with a consumer's opt-out request.

(C) For the development and use of a recognizable and uniform opt-out logo or button by all businesses to promote consumer awareness of the opportunity to opt-out of the sale of personal information.

(5) Adjusting the monetary ~~threshold~~ **thresholds, in January of every odd-numbered year to reflect any increase in the Consumer Price Index**, in: subparagraph (A) of paragraph (1) of subdivision ~~(e)~~ **(d)** of

Section 1798.140; **subparagraph (A) of paragraph (1) of subdivision (a) of Section 1798.150; subdivision (a) of Section 1798.155; and subdivision (a) of Section 1798.199.90.** ~~in January of every odd-numbered year to reflect any increase in the Consumer Price Index.~~

(6) Establishing rules, procedures, and any exceptions necessary to ensure that the notices and information that businesses are required to provide pursuant to this title are provided in a manner that may be easily understood by the average consumer, are accessible to consumers with disabilities, and are available in the language primarily used to interact with the consumer, including establishing rules and guidelines regarding financial incentive offerings, within one year of passage of this title and as needed thereafter.

(7) Establishing rules and procedures to further the purposes of Sections **1798.105, 1798.105.5, 1798.110 and 1798.115** and to facilitate a consumer's or the consumer's authorized agent's ability to **delete personal information, correct inaccurate personal information pursuant to Section 1798.105.5, or** obtain information pursuant to Section 1798.130, with the goal of minimizing the administrative burden on consumers, taking into account available technology, security concerns, and the burden on the business, to govern a business's determination that a request for information received ~~by~~ **from** a consumer is a verifiable consumer request, including treating a request submitted through a password-protected account maintained by the consumer with the business while the consumer is logged into the account as a verifiable consumer request and providing a mechanism for a consumer who does not maintain an account with the business to request information through the business's authentication of the consumer's identity, within one year of passage of this title and as needed thereafter.

(8) Establishing how often, and under what circumstances, a consumer may request a correction pursuant to Section 1798.105.5.

(9) Establishing the standard to govern a business's determination, pursuant to subparagraph (B) of paragraph (2) of subdivision (a) of Section 1798.130, that providing information beyond the 12-month period in a response to a verifiable consumer request would produce a disproportionate amount of information or would be unduly burdensome.

(10) Issuing regulations governing the business purposes for which service providers and contractors may combine consumers' personal information obtained from different sources, with the goal of maximizing consumer privacy.

(11) Issuing regulations to further define "intentionally interacts," with the goal of maximizing consumer privacy.

(12) Issuing regulations to further define "precise geolocation," where the size of a circle with a radius of one half of a mile is not sufficient to protect consumer privacy in sparsely populated areas.

(13) Issuing regulations to define the term “specific pieces of information” with the goal of maximizing a consumer’s right to access relevant personal information while minimizing the delivery of information to a consumer that would not be useful to the consumer, such as system log information and other technical data.

Commented [CCP63]: Goal is to reduce ‘junk data’ in order to provide consumers with more relevant data in their access requests

(14) Issuing regulations requiring large data processors to perform a cybersecurity audit on an annual basis, including defining the scope of the audit and maintaining a list of approved audit firms.

(15) Issuing regulations requiring large data processors to publish annual risk assessments with respect to their processing of personal information, including whether the processing involves sensitive personal information, and identifying and weighing the benefits resulting from the processing to the business, the consumer, other stakeholders, and the public, against the potential risks to the rights of the consumer associated with such processing, with the goal of restricting or prohibiting such processing if the risks to privacy of the consumer outweigh the benefits resulting from processing to the consumer, the business, other stakeholders, and the public.

(16) Issuing regulations to further define “profiling,” to reflect that it is intended to cover the process of making a decision without any human involvement, but to prohibit any deliberate insertion of, or reliance on, a minor step involving a natural person, as a reason for not identifying the process as automated. Additionally, the creation of a process by a natural person or persons, or the entry of data by a natural person, shall not render the process exempt from the definition of “profiling.”

(b) The Attorney General may adopt additional regulations as necessary to further the purposes of this title.

(c) The Attorney General shall not bring an enforcement action under this title until six months after the publication of the final regulations issued pursuant to this section or July 1, 2020, whichever is sooner.

(d) Notwithstanding subdivision (a), the timeline for adopting final regulations required by the Act adding this subdivision shall be January 1, 2022. Beginning the earlier of July 1, 2021, or six months after the Agency provides notice to the Attorney General that it is prepared to begin rulemaking under this title, the authority assigned to the Attorney General to adopt regulations under this section shall be exercised by the California Privacy Protection Agency.

SEC. 21. Section 1798.190 of the Civil Code is amended to read:

1798.190. Anti-Avoidance

1798.190. If a series of steps or transactions were component parts of a single transaction intended from the beginning to be taken with the intention of avoiding the reach of this title, including the disclosure of information by a business to a third party in order to avoid the definition of sell, a court shall disregard the intermediate steps or transactions for purposes of effectuating the purposes of this title.

SEC. 22. Section 1798.192 of the Civil Code is amended to read:

1798.192. Waiver

1798.192. Any provision of a contract or agreement of any kind, **including an arbitration agreement**, that purports to waive or limit in any way a consumer's rights under this title, including, but not limited to, any right to a remedy or means of enforcement, 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 authorizing a business to sell the consumer's personal information after previously ~~opting out~~ **opting-out**.

SEC. 23. Section 1798.199.10 et seq. are added to the Civil Code to read as follows:

California Privacy Protection Agency

1798.199.10. (a) There is hereby established in state government the California Privacy Protection Agency, which is vested with full administrative power, authority, and jurisdiction to implement and enforce the California Consumer Privacy Act. The Agency shall have five members, including the Chair. The Chair and one member of the Agency shall be appointed by the Governor. The Attorney General, Senate President Pro Tem, and Speaker of the Assembly shall each appoint one member. These appointments should be made from among Californians with expertise in the areas of privacy, technology, and consumer rights.

(b) The initial appointments to the Agency shall be made within 90 days of the effective date of the Act adding this section.

1798.199.15. Members of the Agency shall:

(a) have qualifications, experience and skills, in particular in the areas of privacy and technology, required to perform the duties of the Agency and exercise its powers;

(b) maintain the confidentiality of information which has come to their knowledge in the course of the performance of their tasks or exercise of their powers, except to the extent that disclosure is required by the Public Records Act;

(c) remain free from external influence, whether direct or indirect, and shall neither seek nor take instructions from another;

(d) refrain from any action incompatible with their duties and engaging in any incompatible occupation, whether gainful or not, during their term;

(e) have the right of access to all information made available by the Agency to the Chair;

Commented [CCP64]: Establishes new agency to implement and enforce the law through administrative action while leaving civil enforcement in AG's hands

(f) be precluded, for a period of one year after leaving office, from accepting employment with a business that was subject to an enforcement action or civil action under this Title during the member's tenure or during the five-year period preceding the member's appointment; and

(g) be precluded for a period of two years after leaving office, from acting, for compensation, as an agent or attorney for, or otherwise representing any other person in a matter pending before the Agency if the purpose is to influence an action of the Agency.

1798.199.20. Members of the Agency, including the Chair, shall serve at the pleasure of their appointing authority but shall serve for no longer than eight consecutive years.

1798.199.25. For each day on which they engage in official duties, members of the Agency shall be compensated at the rate of one hundred dollars (\$100), adjusted biennially to reflect changes in the cost of living, and shall be reimbursed for expenses incurred in performance of their official duties.

1798.199.30. The Agency shall appoint an executive director who shall act in accordance with Agency policies and regulations and with applicable law. The Agency shall appoint and discharge officers, counsel, and employees, consistent with applicable civil service laws, and shall fix the compensation of employees and prescribe their duties. The Agency may contract for services that cannot be provided by its employees and may retain outside counsel, notwithstanding Section 11042 of the Government Code.

1798.199.35. The Agency may delegate authority to the Chair or the executive director to act in the name of the Agency between meetings of the Agency.

1798.199.40. The Agency shall perform the following functions:

(a) Administer, implement, and enforce through administrative actions, Title 1.81.5 (commencing with Section 1798.100) to Part 4 of Division 3 of the Civil Code.

(b) On and after the earlier of July 1, 2021, or within six months of the Agency providing the Attorney General with notice that it is prepared to assume rulemaking responsibilities under this title, adopt, amend, and rescind regulations pursuant to Section 1798.185 to carry out the purposes and provisions of the California Consumer Privacy Act, including regulations specifying record keeping requirements for businesses to ensure compliance with this title.

(c) Through the implementation of this title, protect the fundamental privacy rights of natural persons with respect to the use of their personal information.

(d) Promote public awareness and understanding of the risks, rules, responsibilities, safeguards, and rights in relation to the collection, use, sale and disclosure of personal information, including the rights of minors with respect to their own information.

(e) Provide guidance to consumers regarding their rights under this title.

(f) Provide guidance to businesses regarding their duties and responsibilities under this title and appoint a Chief Privacy Auditor to conduct audits of businesses to ensure compliance with this title.

(g) Provide technical assistance and advice to the Legislature, upon request, with respect to privacy-related legislation.

(h) Monitor relevant developments relating to the protection of personal information, and in particular, the development of information and communication technologies and commercial practices.

(i) Cooperate with other agencies with jurisdiction over privacy laws and with data processing authorities in California, other states, territories, and countries to ensure consistent application of privacy protections.

(j) Establish a mechanism pursuant to which persons doing business in California that do not meet the definition of business set forth in paragraphs (1), (2), or (3) of subdivision (d) of section 1798.140 may voluntarily certify that they are in compliance with this title, as set forth in paragraph (4) of subdivision (d) of Section 1798.140, and make a list of such entities available to the public.

(k) Solicit, review, and approve applications for grants to the extent funds are available pursuant to paragraph (2) of subdivision (b) of Section 1798.160.

(l) Perform all other acts necessary or appropriate in the exercise of its power, authority, and jurisdiction.

1798.199.45. Upon the sworn complaint of any person or on its own initiative, the Agency shall investigate possible violations of this title relating to any business, service provider, or person. The Agency shall notify in writing the person who made the complaint of the action, if any, the Agency has taken or plans to take on the complaint, together with the reasons for such action or non-action.

1798.199.50. No finding of probable cause to believe this title has been violated shall be made by the Agency unless, at least 21 days prior to the Agency's consideration of the alleged violation, the business, service provider, or person alleged to have violated this title is notified of the violation by service of process or registered mail with return receipt requested, provided with a summary of the evidence, and informed of their right to be present in person and represented by counsel at any proceeding of the Agency held for the purpose of considering whether probable cause exists for believing the person violated this title. Notice to the alleged violator shall be deemed made on the date of service, the date the registered mail receipt is signed, or if the registered mail receipt is not signed, the date returned by the post office. A proceeding held for the purpose of considering probable cause shall be private unless the alleged violator files with the Agency a written request that the proceeding be public.

1798.199.55. (a) When the Agency determines there is probable cause for believing this title has been violated, it shall hold a hearing to determine if a violation has or violations have occurred. Notice shall be given and the hearing conducted in accordance with the Administrative Procedure Act (Chapter 5 (commencing with Section 11500), Part 1, Division 3, Title 2, Government Code). The Agency shall have all the powers granted by that chapter. When the Agency determines on the basis of the hearing that a violation or violations have occurred, it shall issue an order that may require the violator to do all or any of the following:

(1) Cease and desist violation of this title.

(2) Pay an administrative fine of up to two thousand five hundred dollars (\$2,500) for each violation, or up to seven thousand five hundred dollars (\$7,500) for each intentional violation and each violation involving the personal information of minor consumers to the Consumer Privacy Fund within the General Fund of the state. When the Agency determines that no violation has occurred, it shall publish a declaration so stating.

(b) If two or more persons are responsible for any violation or violations, they shall be jointly and severally liable.

1798.199.60. Whenever the Agency rejects the decision of an administrative law judge made pursuant to Section 11517 of the Government Code, the Agency shall state the reasons in writing for rejecting the decision.

1798.199.65. The Agency may subpoena witnesses, compel their attendance and testimony, administer oaths and affirmations, take evidence and require by subpoena the production of any books, papers, records or other items material to the performance of the Agency's duties or exercise of its powers, including but not limited to its power to audit a business's compliance with this title.

1798.199.70. No administrative action brought pursuant to this title alleging a violation of any of the provisions of this title shall be commenced more than five years after the date on which the violation occurred.

(a) The service of the probable cause hearing notice, as required by Section 1798.199.50, upon the person alleged to have violated this title shall constitute the commencement of the administrative action.

(b) If the person alleged to have violated this title engages in the fraudulent concealment of his or her acts or identity, the five-year period shall be tolled for the period of the concealment. For purposes of this subdivision, "fraudulent concealment" means the person knows of material facts related to their duties under this title and knowingly conceals them in performing or omitting to perform those duties, for the purpose of defrauding the public of information to which it is entitled under this title.

(c) If, upon being ordered by a superior court to produce any documents sought by a subpoena in any administrative proceeding under this title, the person alleged to have violated this title fails to produce documents in response to the order by the date ordered to comply therewith, the five-year period shall be tolled for the period of the delay from the date of filing of the motion to compel until the date the documents are produced.

1798.199.75. (a) In addition to any other available remedies, the Agency may bring a civil action and obtain a judgment in superior court for the purpose of collecting any unpaid administrative fines imposed pursuant to this title. The action may be filed as a small claims, limited civil, or unlimited civil case, depending on the jurisdictional amount. The venue for this action shall be in the county where the administrative fines were imposed by the Agency. In order to obtain a judgment in a proceeding under this section, the Agency shall show, following the procedures and rules of evidence as applied in ordinary civil actions, all of the following:

(1) That the administrative fines were imposed following the procedures set forth in this title and implementing regulations.

(2) That the defendant or defendants in the action were notified, by actual or constructive notice, of the imposition of the monetary penalties.

(3) That a demand for payment has been made by the Agency and full payment has not been received.

(b) A civil action brought pursuant to subdivision (a) shall be commenced within four years after the date on which the administrative fines were imposed.

1798.199.80. (a) If the time for judicial review of a final Agency order or decision has lapsed, or if all means of judicial review of the order or decision have been exhausted, the Agency may apply to the clerk of the court for a judgment to collect the monetary penalties imposed by the order or decision, or the order as modified in accordance with a decision on judicial review.

(b) The application, which shall include a certified copy of the order or decision, or the order as modified in accordance with a decision on judicial review, and proof of service of the order or decision, constitutes a sufficient showing to warrant issuance of the judgment to collect the monetary penalties. The clerk of the court shall enter the judgment immediately in conformity with the application.

(c) An application made pursuant to this section shall be made to the clerk of the superior court in the county where the monetary penalties were imposed by the Agency.

(d) A judgment entered in accordance with this section has the same force and effect as, and is subject to all the provisions of law relating to, a judgment in a civil action and may be enforced in the same manner as any other judgment of the court in which it is entered.

(e) The Agency may bring an application pursuant to this section only within four years after the date on which the monetary penalty, fee, or civil penalty was imposed.

(f) The remedy available under this section is in addition to those available under any other law.

1798.199.85. Any action of the Agency shall be subject to judicial review in an action brought by an interested party.

1798.199.90. (a) Any business, service provider, or other person that violates this title shall be subject to an injunction and liable for a civil penalty of not more than two thousand five hundred dollars (\$2,500) for each violation or seven thousand five hundred dollars (\$7,500) for each intentional violation and each violation involving the personal information of minor consumers, as adjusted pursuant to paragraph (5) of subdivision (a) of Section 1798.185, which shall be assessed and recovered in a civil action brought in the name of the people of the State of California by the Attorney General.

(b) Any civil penalty recovered by an action brought by the Attorney General for a violation of this title, and the proceeds of any settlement of any said action, shall be deposited in the Consumer Privacy Fund.

(c) The Agency shall, upon request by the Attorney General, stay an administrative action or investigation under this title to permit the Attorney General to proceed with an investigation or civil action. The Agency may not limit the authority of the Attorney General to enforce this title.

(d) No civil action may be filed under this Section for any violation of this title after the Agency has issued an order pursuant to Section 1798.199.55 against that person for the same violation.

1798.199.95. (a) The amount of five million dollars (\$5,000,000) shall be appropriated from the General Fund on an annual basis as a loan to pay for the operations of the Agency until such time as there are sufficient funds available in the Consumer Privacy Fund to repay the amount loaned from the General Fund and to support the ongoing operations of the Agency.

(b) The Attorney General shall provide staff support to the Agency until such time as the Agency has hired its own staff. The Attorney General shall be reimbursed by the Agency for these services.

SEC. 24. Amendment.

(a) The provisions of this Act may be amended after its approval by the voters by a statute that is passed by a vote of a majority of the members of each house of the Legislature and signed by the Governor, provided that such amendments are consistent with and further the purpose and intent of this Act as set forth in Section 3, including amending the exemptions in subdivision (c) of Section 1798.145 if the laws upon which the exemptions are based are amended to enhance privacy.

(b) Notwithstanding Section 1798.199.25, the Legislature may authorize additional compensation for members of the California Consumer Privacy Agency, if it determines that it is necessary to carry out the Agency's functions, by a statute that is passed by a vote of a majority of the members of each house of the Legislature and signed by the Governor.

(c) This section applies to all statutes amended or reenacted as part of this Act, and all provisions of such statutes, regardless of whether this Act makes any substantive change thereto.

(d) The provisions of this Act shall prevail over any conflicting legislation enacted after January 1, 2020. Any amendments to this Act or any legislation that conflicts with any provision of this Act shall be null and void upon passage of this Act by the voters, regardless of the code in which it appears.

SEC. 25. 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 Act would have been enacted regardless of whether any invalid provision had been included or any invalid application had been made.

SEC. 26. Conflicting Initiatives.

(a) In the event that this measure and another measure addressing consumer privacy 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. 27. Standing.

Notwithstanding any other provision of law, if the State or any of its officials fail to defend the constitutionality of this Act, following its approval by the voters, any other government agency 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 state or federal 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. 28. Liberal Construction.

This Act shall be liberally construed to effectuate its purposes.

SEC. 29. Savings Clause.

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

SEC. 30. Operative Date.

This Act shall become operative on January 1, 2021 and shall only apply to personal information collected by a business on or after January 1, 2020.

(00391006)