

ASSEMBLY BILL

No. 2871

Introduced by Assembly Member Low

February 18, 2022

An act to amend Section 1798.145 of the Civil Code, relating to privacy.

LEGISLATIVE COUNSEL'S DIGEST

AB 2871, as introduced, Low. California Consumer Privacy Act of 2018: exemptions.

Existing law, the California Consumer Privacy Act of 2018 (CCPA), grants a consumer various rights with respect to personal information, as defined, that is collected or sold by a business, as defined, including the right to require the business to delete personal information about the consumer, as specified. Existing law provides that the obligations the CCPA imposes on businesses shall not restrict a business' ability to, among other things, comply with state law.

Existing law, the California Privacy Rights Act of 2020, approved by the voters as Proposition 24 at the November 3, 2020, statewide general election (Proposition 24), amended, added to, and reenacted the CCPA. The CCPA, as amended by Proposition 24, makes certain exemptions to obligations imposed on businesses by specified provisions of the CCPA expire on January 1, 2023.

Existing law, until January 1, 2023, exempts from certain provisions of the CCPA personal information reflecting a communication or a transaction between the business and a company, partnership, sole proprietorship, nonprofit, or government agency that occur solely within the context of the business conducting due diligence or providing or receiving a product or service. Existing law also exempts personal

information that is collected and used by a business solely within the context of having an emergency contact on file, administering specified benefits, or a 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.

This bill would extend those above-described exemptions indefinitely.

This bill would declare that its provisions further the purposes and intent of Proposition 24.

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

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

1 SECTION 1. Section 1798.145 of the Civil Code, as amended
2 by Chapter 700 of the Statutes of 2021, is amended to read:
3 1798.145. Exemptions
4 (a) The obligations imposed on businesses by this title shall not
5 restrict a business’ ability to:
6 (1) Comply with federal, state, or local laws or comply with a
7 court order or subpoena to provide information.
8 (2) Comply with a civil, criminal, or regulatory inquiry,
9 investigation, subpoena, or summons by federal, state, or local
10 authorities. Law enforcement agencies, including police and
11 sheriff’s departments, may direct a business pursuant to a law
12 enforcement agency-approved investigation with an active case
13 number not to delete a consumer’s personal information, and, upon
14 receipt of that direction, a business shall not delete the personal
15 information for 90 days in order to allow the law enforcement
16 agency to obtain a court-issued subpoena, order, or warrant to
17 obtain a consumer’s personal information. For good cause and
18 only to the extent necessary for investigatory purposes, a law
19 enforcement agency may direct a business not to delete the
20 consumer’s personal information for additional 90-day periods. A
21 business that has received direction from a law enforcement agency
22 not to delete the personal information of a consumer who has
23 requested deletion of the consumer’s personal information shall
24 not use the consumer’s personal information for any purpose other
25 than retaining it to produce to law enforcement in response to a
26 court-issued subpoena, order, or warrant unless the consumer’s

1 deletion request is subject to an exemption from deletion under
2 this title.

3 (3) Cooperate with law enforcement agencies concerning
4 conduct or activity that the business, service provider, or third
5 party reasonably and in good faith believes may violate federal,
6 state, or local law.

7 (4) Cooperate with a government agency request for emergency
8 access to a consumer's personal information if a natural person is
9 at risk or danger of death or serious physical injury provided that:

10 (A) The request is approved by a high-ranking agency officer
11 for emergency access to a consumer's personal information.

12 (B) The request is based on the agency's good faith
13 determination that it has a lawful basis to access the information
14 on a nonemergency basis.

15 (C) The agency agrees to petition a court for an appropriate
16 order within three days and to destroy the information if that order
17 is not granted.

18 (5) Exercise or defend legal claims.

19 (6) Collect, use, retain, sell, share, or disclose consumers'
20 personal information that is deidentified or aggregate consumer
21 information.

22 (7) Collect, sell, or share a consumer's personal information if
23 every aspect of that commercial conduct takes place wholly outside
24 of California. For purposes of this title, commercial conduct takes
25 place wholly outside of California if the business collected that
26 information while the consumer was outside of California, no part
27 of the sale of the consumer's personal information occurred in
28 California, and no personal information collected while the
29 consumer was in California is sold. This paragraph shall not
30 prohibit a business from storing, including on a device, personal
31 information about a consumer when the consumer is in California
32 and then collecting that personal information when the consumer
33 and stored personal information is outside of California.

34 (b) The obligations imposed on businesses by Sections 1798.110,
35 1798.115, 1798.120, 1798.121, 1798.130, and 1798.135 shall not
36 apply where compliance by the business with the title would violate
37 an evidentiary privilege under California law and shall not prevent
38 a business from providing the personal information of a consumer
39 to a person covered by an evidentiary privilege under California
40 law as part of a privileged communication.

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

2 (A) Medical information governed by the Confidentiality of
3 Medical Information Act (Part 2.6 (commencing with Section 56)
4 of Division 1) or protected health information that is collected by
5 a covered entity or business associate governed by the privacy,
6 security, and breach notification rules issued by the United States
7 Department of Health and Human Services, Parts 160 and 164 of
8 Title 45 of the Code of Federal Regulations, established pursuant
9 to the Health Insurance Portability and Accountability Act of 1996
10 (Public Law 104-191) and the Health Information Technology for
11 Economic and Clinical Health Act (Public Law 111-5).

12 (B) A provider of health care governed by the Confidentiality
13 of Medical Information Act (Part 2.6 (commencing with Section
14 56) of Division 1) or a covered entity governed by the privacy,
15 security, and breach notification rules issued by the United States
16 Department of Health and Human Services, Parts 160 and 164 of
17 Title 45 of the Code of Federal Regulations, established pursuant
18 to the Health Insurance Portability and Accountability Act of 1996
19 (Public Law 104-191), to the extent the provider or covered entity
20 maintains patient information in the same manner as medical
21 information or protected health information as described in
22 subparagraph (A) of this section.

23 (C) Personal information collected as part of a clinical trial or
24 other biomedical research study subject to, or conducted in
25 accordance with, the Federal Policy for the Protection of Human
26 Subjects, also known as the Common Rule, pursuant to good
27 clinical practice guidelines issued by the International Council for
28 Harmonisation or pursuant to human subject protection
29 requirements of the United States Food and Drug Administration,
30 provided that the information is not sold or shared in a manner not
31 permitted by this subparagraph, and, if it is inconsistent, that
32 participants be informed of that use and provide consent.

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

38 (d) (1) This title shall not apply to an activity involving the
39 collection, maintenance, disclosure, sale, communication, or use
40 of any personal information bearing on a consumer’s

1 creditworthiness, credit standing, credit capacity, character, general
2 reputation, personal characteristics, or mode of living by a
3 consumer reporting agency, as defined in subdivision (f) of Section
4 1681a of Title 15 of the United States Code, by a furnisher of
5 information, as set forth in Section 1681s-2 of Title 15 of the
6 United States Code, who provides information for use in a
7 consumer report, as defined in subdivision (d) of Section 1681a
8 of Title 15 of the United States Code, and by a user of a consumer
9 report as set forth in Section 1681b of Title 15 of the United States
10 Code.

11 (2) Paragraph (1) shall apply only to the extent that such activity
12 involving the collection, maintenance, disclosure, sale,
13 communication, or use of such information by that agency,
14 furnisher, or user is subject to regulation under the Fair Credit
15 Reporting Act, Section 1681 et seq., Title 15 of the United States
16 Code and the information is not collected, maintained, used,
17 communicated, disclosed, or sold except as authorized by the Fair
18 Credit Reporting Act.

19 (3) This subdivision shall not apply to Section 1798.150.

20 (e) This title shall not apply to personal information collected,
21 processed, sold, or disclosed subject to the federal
22 Gramm-Leach-Bliley Act (Public Law 106-102), and implementing
23 regulations, or the California Financial Information Privacy Act
24 (Division 1.4 (commencing with Section 4050) of the Financial
25 Code), or the federal Farm Credit Act of 1971 (as amended in 12
26 U.S.C. 2001-2279cc and implementing regulations, 12 C.F.R. 600,
27 et seq.). This subdivision shall not apply to Section 1798.150.

28 (f) This title shall not apply to personal information collected,
29 processed, sold, or disclosed pursuant to the Driver's Privacy
30 Protection Act of 1994 (18 U.S.C. Sec. 2721 et seq.). This
31 subdivision shall not apply to Section 1798.150.

32 (g) (1) Section 1798.120 shall not apply to vehicle information
33 or ownership information retained or shared between a new motor
34 vehicle dealer, as defined in Section 426 of the Vehicle Code, and
35 the vehicle's manufacturer, as defined in Section 672 of the Vehicle
36 Code, if the vehicle information or ownership information is shared
37 for the purpose of effectuating, or in anticipation of effectuating,
38 a vehicle repair covered by a vehicle warranty or a recall conducted
39 pursuant to Sections 30118 to 30120, inclusive, of Title 49 of the
40 United States Code, provided that the new motor vehicle dealer

1 or vehicle manufacturer with which that vehicle information or
2 ownership information is shared does not sell, share, or use that
3 information for any other purpose.

4 (2) Section 1798.120 shall not apply to vessel information or
5 ownership information retained or shared between a vessel dealer
6 and the vessel’s manufacturer, as defined in Section 651 of the
7 Harbors and Navigation Code, if the vessel information or
8 ownership information is shared for the purpose of effectuating,
9 or in anticipation of effectuating, a vessel repair covered by a vessel
10 warranty or a recall conducted pursuant to Section 4310 of Title
11 46 of the United States Code, provided that the vessel dealer or
12 vessel manufacturer with which that vessel information or
13 ownership information is shared does not sell, share, or use that
14 information for any other purpose.

15 (3) For purposes of this subdivision:

16 (A) “Ownership information” means the name or names of the
17 registered owner or owners and the contact information for the
18 owner or owners.

19 (B) “Vehicle information” means the vehicle information
20 number, make, model, year, and odometer reading.

21 (C) “Vessel dealer” means a person who is engaged, wholly or
22 in part, in the business of selling or offering for sale, buying or
23 taking in trade for the purpose of resale, or exchanging, any vessel
24 or vessels, as defined in Section 651 of the Harbors and Navigation
25 Code, and receives or expects to receive money, profit, or any
26 other thing of value.

27 (D) “Vessel information” means the hull identification number,
28 model, year, month and year of production, and information
29 describing any of the following equipment as shipped, transferred,
30 or sold from the place of manufacture, including all attached parts
31 and accessories:

32 (i) An inboard engine.

33 (ii) An outboard engine.

34 (iii) A stern drive unit.

35 (iv) An inflatable personal floatation device approved under
36 Section 160.076 of Title 46 of the Code of Federal Regulations.

37 (h) Notwithstanding a business’ obligations to respond to and
38 honor consumer rights requests pursuant to this title:

39 (1) A time period for a business to respond to a consumer for
40 any verifiable consumer request may be extended by up to a total

1 of 90 days where necessary, taking into account the complexity
2 and number of the requests. The business shall inform the consumer
3 of any such extension within 45 days of receipt of the request,
4 together with the reasons for the delay.

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

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

19 (i) (1) A business that discloses personal information to a
20 service provider or contractor in compliance with this title shall
21 not be liable under this title if the service provider or contractor
22 receiving the personal information uses it in violation of the
23 restrictions set forth in the title, provided that, at the time of
24 disclosing the personal information, the business does not have
25 actual knowledge, or reason to believe, that the service provider
26 or contractor intends to commit such a violation. A service provider
27 or contractor shall likewise not be liable under this title for the
28 obligations of a business for which it provides services as set forth
29 in this title provided that the service provider or contractor shall
30 be liable for its own violations of this title.

31 (2) A business that discloses personal information of a consumer,
32 with the exception of consumers who have exercised their right to
33 opt out of the sale or sharing of their personal information,
34 consumers who have limited the use or disclosure of their sensitive
35 personal information, and minor consumers who have not opted
36 in to the collection or sale of their personal information, to a third
37 party pursuant to a written contract that requires the third party to
38 provide the same level of protection of the consumer's rights under
39 this title as provided by the business shall not be liable under this
40 title if the third party receiving the personal information uses it in

1 violation of the restrictions set forth in this title provided that, at
2 the time of disclosing the personal information, the business does
3 not have actual knowledge, or reason to believe, that the third party
4 intends to commit such a violation.

5 (j) This title shall not be construed to require a business, service
6 provider, or contractor to:

7 (1) Reidentify or otherwise link information that, in the ordinary
8 course of business, is not maintained in a manner that would be
9 considered personal information.

10 (2) Retain any personal information about a consumer if, in the
11 ordinary course of business, that information about the consumer
12 would not be retained.

13 (3) Maintain information in identifiable, linkable, or associable
14 form, or collect, obtain, retain, or access any data or technology,
15 in order to be capable of linking or associating a verifiable
16 consumer request with personal information.

17 (k) The rights afforded to consumers and the obligations
18 imposed on the business in this title shall not adversely affect the
19 rights and freedoms of other natural persons. A verifiable consumer
20 request for specific pieces of personal information pursuant to
21 Section 1798.110, to delete a consumer's personal information
22 pursuant to Section 1798.105, or to correct inaccurate personal
23 information pursuant to Section 1798.106, shall not extend to
24 personal information about the consumer that belongs to, or the
25 business maintains on behalf of, another natural person. A business
26 may rely on representations made in a verifiable consumer request
27 as to rights with respect to personal information and is under no
28 legal requirement to seek out other persons that may have or claim
29 to have rights to personal information, and a business is under no
30 legal obligation under this title or any other provision of law to
31 take any action under this title in the event of a dispute between
32 or among persons claiming rights to personal information in the
33 business' possession.

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

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

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

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

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

24 (2) For purposes of this subdivision:

25 (A) "Independent contractor" means a natural person who
26 provides any service to a business pursuant to a written contract.

27 (B) "Director" means a natural person designated in the articles
28 of incorporation as director, or elected by the incorporators and
29 natural persons designated, elected, or appointed by any other
30 name or title to act as directors, and their successors.

31 (C) "Medical staff member" means a licensed physician and
32 surgeon, dentist, or podiatrist, licensed pursuant to Division 2
33 (commencing with Section 500) of the Business and Professions
34 Code and a clinical psychologist as defined in Section 1316.5 of
35 the Health and Safety Code.

36 (D) "Officer" means a natural person elected or appointed by
37 the board of directors to manage the daily operations of a
38 corporation, including a chief executive officer, president,
39 secretary, or treasurer.

1 (E) “Owner” means a natural person who meets one of the
 2 following criteria:
 3 (i) Has ownership of, or the power to vote, more than 50 percent
 4 of the outstanding shares of any class of voting security of a
 5 business.
 6 (ii) Has control in any manner over the election of a majority
 7 of the directors or of individuals exercising similar functions.
 8 (iii) Has the power to exercise a controlling influence over the
 9 management of a company.
 10 (3) This subdivision shall not apply to subdivision (a) of Section
 11 1798.100 or Section 1798.150.
 12 ~~(4) This subdivision shall become inoperative on January 1,~~
 13 ~~2023.~~
 14 (n) (1) The obligations imposed on businesses by Sections
 15 1798.100, 1798.105, 1798.106, 1798.110, 1798.115, 1798.121,
 16 1798.130, and 1798.135 shall not apply to personal information
 17 reflecting a written or verbal communication or a transaction
 18 between the business and the consumer, where the consumer is a
 19 natural person who acted or is acting as an employee, owner,
 20 director, officer, or independent contractor of a company,
 21 partnership, sole proprietorship, nonprofit, or government agency
 22 and whose communications or transaction with the business occur
 23 solely within the context of the business conducting due diligence
 24 regarding, or providing or receiving a product or service to or from
 25 such company, partnership, sole proprietorship, nonprofit, or
 26 government agency.
 27 (2) For purposes of this subdivision:
 28 (A) “Independent contractor” means a natural person who
 29 provides any service to a business pursuant to a written contract.
 30 (B) “Director” means a natural person designated in the articles
 31 of incorporation as such or elected by the incorporators and natural
 32 persons designated, elected, or appointed by any other name or
 33 title to act as directors, and their successors.
 34 (C) “Officer” means a natural person elected or appointed by
 35 the board of directors to manage the daily operations of a
 36 corporation, such as a chief executive officer, president, secretary,
 37 or treasurer.
 38 (D) “Owner” means a natural person who meets one of the
 39 following:

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

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

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

8 ~~(3) This subdivision shall become inoperative on January 1,~~
9 ~~2023.~~

10 (o) (1) Sections 1798.105 and 1798.120 shall not apply to a
11 commercial credit reporting agency's collection, processing, sale,
12 or disclosure of business controller information to the extent the
13 commercial credit reporting agency uses the business controller
14 information solely to identify the relationship of a consumer to a
15 business that the consumer owns or contact the consumer only in
16 the consumer's role as the owner, director, officer, or management
17 employee of the business.

18 (2) For the purposes of this subdivision:

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

24 (B) "Commercial credit reporting agency" has the meaning set
25 forth in subdivision (b) of Section 1785.42.

26 (C) "Owner" means a natural person that meets one of the
27 following:

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

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

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

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

39 (E) "Officer" means a natural person elected or appointed by
40 the board of directors of a business to manage the daily operations

1 of a corporation, including a chief executive officer, president,
2 secretary, or treasurer.

3 (F) “Management employee” means a natural person whose
4 name and contact information is reported to or collected by a
5 commercial credit reporting agency as the primary manager of a
6 business and used solely within the context of the natural person’s
7 role as the primary manager of the business.

8 (p) The obligations imposed on businesses in Sections 1798.105,
9 1798.106, 1798.110, and 1798.115 shall not apply to household
10 data.

11 (q) (1) This title does not require a business to comply with a
12 verifiable consumer request to delete a consumer’s personal
13 information under Section 1798.105 to the extent the verifiable
14 consumer request applies to a student’s grades, educational scores,
15 or educational test results that the business holds on behalf of a
16 local educational agency, as defined in subdivision (d) of Section
17 49073.1 of the Education Code, at which the student is currently
18 enrolled. If a business does not comply with a request pursuant to
19 this section, it shall notify the consumer that it is acting pursuant
20 to this exception.

21 (2) This title does not require, in response to a request pursuant
22 to Section 1798.110, that a business disclose on educational
23 standardized assessment or educational assessment or a consumer’s
24 specific responses to the educational standardized assessment or
25 educational assessment if consumer access, possession, or control
26 would jeopardize the validity and reliability of that educational
27 standardized assessment or educational assessment. If a business
28 does not comply with a request pursuant to this section, it shall
29 notify the consumer that it is acting pursuant to this exception.

30 (3) For purposes of this subdivision:

31 (A) “Educational standardized assessment or educational
32 assessment” means a standardized or nonstandardized quiz, test,
33 or other assessment used to evaluate students in or for entry to
34 kindergarten and grades 1 to 12, inclusive, schools, postsecondary
35 institutions, vocational programs, and postgraduate programs that
36 are accredited by an accrediting agency or organization recognized
37 by the State of California or the United States Department of
38 Education, as well as certification and licensure examinations used
39 to determine competency and eligibility to receive certification or

1 licensure from a government agency or government certification
2 body.

3 (B) “Jeopardize the validity and reliability of that educational
4 standardized assessment or educational assessment” means
5 releasing information that would provide an advantage to the
6 consumer who has submitted a verifiable consumer request or to
7 another natural person.

8 (r) Sections 1798.105 and 1798.120 shall not apply to a business’
9 use, disclosure, or sale of particular pieces of a consumer’s personal
10 information if the consumer has consented to the business’ use,
11 disclosure, or sale of that information to produce a physical item,
12 including a school yearbook containing the consumer’s photograph
13 if:

14 (1) The business has incurred significant expense in reliance on
15 the consumer’s consent.

16 (2) Compliance with the consumer’s request to opt out of the
17 sale of the consumer’s personal information or to delete the
18 consumer’s personal information would not be commercially
19 reasonable.

20 (3) The business complies with the consumer’s request as soon
21 as it is commercially reasonable to do so.

22 SEC. 2. The Legislature finds and declares that the amendments
23 to Section 1798.145 of the Civil Code made by this act further the
24 purpose and intent of the California Privacy Rights Act of 2020,
25 enacted by Proposition 24 at the November 3, 2020, statewide
26 election, within the meaning of Section 25 of Proposition 24.