

AMENDED IN SENATE MARCH 18, 2024

SENATE BILL

No. 1223

Introduced by Senator Becker

February 15, 2024

An act to amend ~~Section 1429 of the Civil Code, relating to legal obligations.~~ *Sections 1798.99.90, 1798.130, 1798.140, and 1798.185 of the Civil Code, relating to privacy.*

LEGISLATIVE COUNSEL'S DIGEST

SB 1223, as amended, Becker. ~~Legal obligations.~~ *Consumer privacy: sensitive personal information: neural data.*

The California Consumer Privacy Act of 2018 (CCPA) grants to a consumer various rights with respect to personal information, as defined, that is collected by a business, as defined, including the right to direct a business that collects sensitive personal information about the consumer to limit its use of the consumer's sensitive personal information to that use which is necessary to perform the services or provide the goods reasonably expected by an average consumer who requests those goods or services, to perform certain other services, and as authorized by certain regulations. The CCPA defines "sensitive personal information" to mean, among other things, the processing of biometric information, as defined, for the purpose of uniquely identifying a consumer. The California Privacy Rights Act of 2020, approved by the voters as Proposition 24 at the November 3, 2020, statewide general election, amended, added to, and reenacted the CCPA.

This bill would define "sensitive personal information," for purposes of the CCPA, to additionally include a consumer's neural data, and would define "neural data" to mean information that is generated by the measurement of the activity of an individual's central or peripheral

nervous systems that can be processed by, or with the assistance of, neurotechnology, as defined, and would make conforming changes.

The California Privacy Rights Act of 2020 authorizes the Legislature to amend the act to further the purposes and intent of the act by a majority vote of both houses of the Legislature, as specified.

This bill would declare that its provisions further the purposes and intent of the California Privacy Rights Act of 2020.

~~Existing civil law establishes rules governing the interpretation of contracts, as prescribed, and provides that other obligations are interpreted by the same rules by which statutes of a similar nature are interpreted.~~

~~This bill would make nonsubstantive changes to that provision.~~

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

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

1 SECTION 1. Section 1798.99.90 of the Civil Code is amended
2 to read:

3 1798.99.90. (a) A person or business shall not collect, use,
4 disclose, or retain the personal information of a person who is
5 physically located at, or within a precise geolocation of, a family
6 planning center, except as specified in subdivision (c).

7 (b) For purposes of this section, the following definitions apply:

8 (1) “Business” means the same as defined in subdivision (c) of
9 Section 1798.140.

10 (2) “Collect” means the same as defined in subdivision (f) of
11 Section 1798.140.

12 (3) “Family planning center” means a business categorized as
13 a family planning center by the North American Industry
14 Classification System adopted by the United States Census Bureau,
15 including, but not limited to, a clinic or center that provides
16 reproductive health care services as defined in Section 1798.300
17 of the Civil Code.

18 (4) “Personal information” has the same definition as that term
19 is defined in subdivision ~~(v)~~ (x) of Section 1798.140, except as
20 applied to all persons and not limited to consumers and households,
21 as those terms are defined in subdivisions (i) and (q), respectively,
22 of that section.

(5) “Precise geolocation” means a geographic area that is equal to or less than the area of a circle with a radius of 1,850 feet as derived from a device that is used or intended to be used to locate a person.

(6) “Sell” means the same as defined in ~~subdivision (ad) of~~ Section 1798.140.

(7) “Share” means the same as defined in ~~subdivision (ah) of~~ Section 1798.140.

(c) A person or business shall not collect, use, disclose, or retain the personal information of a person who is physically located at, or within a precise geolocation of, a family planning center, except only as necessary to perform the services or provide the goods requested by the person. A person or business shall not sell or share this personal information.

(d) (1) An aggrieved person or entity, including a family planning center, may institute and prosecute a civil action against any person or business who violates this section for injunctive and monetary relief and attorney’s fees within three years of discovery of the violation.

(2) If the court finds for the petitioner in an action authorized by paragraph (1), recovery shall be in the amount of three times the amount of actual damages and any other expenses, costs, or reasonable attorney’s fees incurred in connection with the litigation.

(e) This section does not apply to a provider of health care, a health care service plan, or contractor, as those terms are defined in Section 56.05.

SEC. 2. Section 1798.130 of the Civil Code is amended to read:
1798.130. Notice, Disclosure, Correction, and Deletion Requirements

(a) In order to comply with Sections 1798.100, 1798.105, 1798.106, 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 1798.106, respectively, including, at a minimum, a toll-free telephone number. 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

1 address for submitting requests for information required to be
2 disclosed pursuant to Sections 1798.110 and 1798.115, or for
3 requests for deletion or correction pursuant to Sections 1798.105
4 and 1798.106, respectively.

5 (B) If the business maintains an internet website, make the
6 internet website available to consumers to submit requests for
7 information required to be disclosed pursuant to Sections 1798.110
8 and 1798.115, or requests for deletion or correction pursuant to
9 Sections 1798.105 and 1798.106, respectively.

10 (2) (A) Disclose and deliver the required information to a
11 consumer free of charge, correct inaccurate personal information,
12 or delete a consumer's personal information, based on the
13 consumer's request, within 45 days of receiving a verifiable
14 consumer request from the consumer. The business shall promptly
15 take steps to determine whether the request is a verifiable consumer
16 request, but this shall not extend the business's duty to disclose
17 and deliver the information, to correct inaccurate personal
18 information, or to delete personal information within 45 days of
19 receipt of the consumer's request. The time period to provide the
20 required information, to correct inaccurate personal information,
21 or to delete personal information may be extended once by an
22 additional 45 days when reasonably necessary, provided the
23 consumer is provided notice of the extension within the first 45-day
24 period. The disclosure of the required information shall be made
25 in writing and delivered through the consumer's account with the
26 business, if the consumer maintains an account with the business,
27 or by mail or electronically at the consumer's option if the
28 consumer does not maintain an account with the business, in a
29 readily useable format that allows the consumer to transmit this
30 information from one entity to another entity without hindrance.
31 The business may require authentication of the consumer that is
32 reasonable in light of the nature of the personal information
33 requested, but shall not require the consumer to create an account
34 with the business in order to make a verifiable consumer request
35 provided that if the consumer, has an account with the business,
36 the business may require the consumer to use that account to submit
37 a verifiable consumer request.

38 (B) The disclosure of the required information shall cover the
39 12-month period preceding the business' receipt of the verifiable
40 consumer request provided that, upon the adoption of a regulation

1 pursuant to paragraph (9) of subdivision (a) of Section 1798.185,
2 a consumer may request that the business disclose the required
3 information beyond the 12-month period, and the business shall
4 be required to provide that information unless doing so proves
5 impossible or would involve a disproportionate effort. A
6 consumer's right to request required information beyond the
7 12-month period, and a business's obligation to provide that
8 information, shall only apply to personal information collected on
9 or after January 1, 2022. Nothing in this subparagraph shall require
10 a business to keep personal information for any length of time.

11 (3) (A) A business that receives a verifiable consumer request
12 pursuant to Section 1798.110 or 1798.115 shall disclose any
13 personal information it has collected about a consumer, directly
14 or indirectly, including through or by a service provider or
15 contractor, to the consumer. A service provider or contractor shall
16 not be required to comply with a verifiable consumer request
17 received directly from a consumer or a consumer's authorized
18 agent, pursuant to Section 1798.110 or 1798.115, to the extent that
19 the service provider or contractor has collected personal
20 information about the consumer in its role as a service provider or
21 contractor. A service provider or contractor shall provide assistance
22 to a business with which it has a contractual relationship with
23 respect to the business' response to a verifiable consumer request,
24 including, but not limited to, by providing to the business the
25 consumer's personal information in the service provider or
26 contractor's possession, which the service provider or contractor
27 obtained as a result of providing services to the business, and by
28 correcting inaccurate information or by enabling the business to
29 do the same. A service provider or contractor that collects personal
30 information pursuant to a written contract with a business shall be
31 required to assist the business through appropriate technical and
32 organizational measures in complying with the requirements of
33 subdivisions (d) to (f), inclusive, of Section 1798.100, taking into
34 account the nature of the processing.

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

36 (i) To identify the consumer, associate the information provided
37 by the consumer in the verifiable consumer request to any personal
38 information previously collected by the business about the
39 consumer.

(ii) Identify by category or categories the personal information collected about the consumer 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, selling, or sharing the consumer's personal information; and the categories of third parties to whom the business discloses the consumer's personal information.

(iii) Provide the specific pieces of personal information obtained from the consumer in a format that is easily understandable to the average consumer, and to the extent technically feasible, in a structured, commonly used, machine-readable format that may also be transmitted 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. Personal information is not considered to have been disclosed by a business when a consumer instructs a business to transfer the consumer's personal information from one business to another in the context of switching services.

(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 or shared 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 or shared 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 or shared. The business shall disclose the information in a list that is separate from a list generated for the purposes of subparagraph (C).

(C) Identify by category or categories the personal information of the consumer that the business disclosed for a business purpose during the applicable period of time by reference to the enumerated category or categories in subdivision (c) that most closely describes

1 the personal information, and provide the categories of persons to
2 whom the consumer's personal information was disclosed for a
3 business purpose during the applicable period of time by reference
4 to the enumerated category or categories in subdivision (c) that
5 most closely describes the personal information disclosed. The
6 business shall disclose the information in a list that is separate
7 from a list generated for the purposes of subparagraph (B).

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

14 (A) A description of a consumer's rights pursuant to Sections
15 1798.100, 1798.105, 1798.106, 1798.110, 1798.115, and 1798.125
16 and two or more designated methods for submitting requests,
17 except as provided in subparagraph (A) of paragraph (1) of
18 subdivision (a).

19 (B) For purposes of subdivision (c) of Section 1798.110:

20 (i) A list of the categories of personal information it has
21 collected about consumers in the preceding 12 months by reference
22 to the enumerated category or categories in subdivision (c) that
23 most closely describe the personal information collected.

24 (ii) The categories of sources from which consumers' personal
25 information is collected.

26 (iii) The business or commercial purpose for collecting, selling,
27 or sharing consumers' personal information.

28 (iv) The categories of third parties to whom the business
29 discloses consumers' personal information.

30 (C) For purposes of paragraphs (1) and (2) of subdivision (c)
31 of Section 1798.115, two separate lists:

32 (i) A list of the categories of personal information it has sold or
33 shared about consumers in the preceding 12 months by reference
34 to the enumerated category or categories in subdivision (c) that
35 most closely describe the personal information sold or shared, or
36 if the business has not sold or shared consumers' personal
37 information in the preceding 12 months, the business shall
38 prominently disclose that fact in its privacy policy.

39 (ii) A list of the categories of personal information it has
40 disclosed about consumers for a business purpose in the preceding

1 12 months by reference to the enumerated category in subdivision
2 (c) that most closely describes the personal information disclosed,
3 or if the business has not disclosed consumers' personal
4 information for a business purpose in the preceding 12 months,
5 the business shall disclose that fact.

6 (6) Ensure that all individuals responsible for handling consumer
7 inquiries about the business' privacy practices or the business'
8 compliance with this title are informed of all requirements in
9 Sections 1798.100, 1798.105, 1798.106, 1798.110, 1798.115,
10 1798.125, and this section, and how to direct consumers to exercise
11 their rights under those sections.

12 (7) Use any personal information collected from the consumer
13 in connection with the business' verification of the consumer's
14 request solely for the purposes of verification and shall not further
15 disclose the personal information, retain it longer than necessary
16 for purposes of verification, or use it for unrelated purposes.

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

20 (c) The categories of personal information required to be
21 disclosed pursuant to Sections 1798.100, 1798.110, and 1798.115
22 shall follow the definitions of personal information and sensitive
23 personal information in Section 1798.140 by describing the
24 categories of personal information using the specific terms set
25 forth in subparagraphs (A) to (K), inclusive, of paragraph (1) of
26 subdivision~~(v)~~ (x) of Section 1798.140 and by describing the
27 categories of sensitive personal information using the specific
28 terms set forth in paragraphs (1) to (9), inclusive, of subdivision
29 ~~(ae)~~ (ag) of Section 1798.140.

30 *SEC. 3. Section 1798.140 of the Civil Code is amended to read:*

31 1798.140. Definitions

32 For purposes of this title:

33 (a) "Advertising and marketing" means a communication by a
34 business or a person acting on the business' behalf in any medium
35 intended to induce a consumer to obtain goods, services, or
36 employment.

37 (b) "Aggregate consumer information" means information that
38 relates to a group or category of consumers, from which individual
39 consumer identities have been removed, that is not linked or
40 reasonably linkable to any consumer or household, including via

1 a device. “Aggregate consumer information” does not mean one
2 or more individual consumer records that have been deidentified.

3 (c) “Biometric information” means an individual’s physiological,
4 biological, or behavioral characteristics, including information
5 pertaining to an individual’s deoxyribonucleic acid (DNA), that
6 is used or is intended to be used singly or in combination with each
7 other or with other identifying data, to establish individual identity.
8 Biometric information includes, but is not limited to, imagery of
9 the iris, retina, fingerprint, face, hand, palm, vein patterns, and
10 voice recordings, from which an identifier template, such as a
11 faceprint, a minutiae template, or a voiceprint, can be extracted,
12 and keystroke patterns or rhythms, gait patterns or rhythms, and
13 sleep, health, or exercise data that contain identifying information.

14 (d) “Business” means:

15 (1) A sole proprietorship, partnership, limited liability company,
16 corporation, association, or other legal entity that is organized or
17 operated for the profit or financial benefit of its shareholders or
18 other owners, that collects consumers’ personal information, or
19 on the behalf of which such information is collected and that alone,
20 or jointly with others, determines the purposes and means of the
21 processing of consumers’ personal information, that does business
22 in the State of California, and that satisfies one or more of the
23 following thresholds:

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

28 (B) Alone or in combination, annually buys, sells, or shares the
29 personal information of 100,000 or more consumers or households.

30 (C) Derives 50 percent or more of its annual revenues from
31 selling or sharing consumers’ personal information.

32 (2) Any entity that controls or is controlled by a business, as
33 defined in paragraph (1), and that shares common branding with
34 the business and with whom the business shares consumers’
35 personal information. “Control” or “controlled” means ownership
36 of, or the power to vote, more than 50 percent of the outstanding
37 shares of any class of voting security of a business; control in any
38 manner over the election of a majority of the directors, or of
39 individuals exercising similar functions; or the power to exercise
40 a controlling influence over the management of a company.

1 “Common branding” means a shared name, servicemark, or
2 trademark that the average consumer would understand that two
3 or more entities are commonly owned.

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

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

15 (e) “Business purpose” means the use of personal information
16 for the business’ operational purposes, or other notified purposes,
17 or for the service provider or contractor’s operational purposes,
18 as defined by regulations adopted pursuant to paragraph (11) of
19 subdivision (a) of Section 1798.185, provided that the use of
20 personal information shall be reasonably necessary and
21 proportionate to achieve the purpose for which the personal
22 information was collected or processed or for another purpose that
23 is compatible with the context in which the personal information
24 was collected. Business purposes are:

25 (1) Auditing related to counting ad impressions to unique
26 visitors, verifying positioning and quality of ad impressions, and
27 auditing compliance with this specification and other standards.

28 (2) Helping to ensure security and integrity to the extent the use
29 of the consumer’s personal information is reasonably necessary
30 and proportionate for these purposes.

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

33 (4) Short-term, transient use, including, but not limited to,
34 nonpersonalized advertising shown as part of a consumer’s current
35 interaction with the business, provided that the consumer’s personal
36 information is not disclosed to another third party and is not used
37 to build a profile about the consumer or otherwise alter the
38 consumer’s experience outside the current interaction with the
39 business.

1 (5) Performing services on behalf of the business, including
2 maintaining or servicing accounts, providing customer service,
3 processing or fulfilling orders and transactions, verifying customer
4 information, processing payments, providing financing, providing
5 analytic services, providing storage, or providing similar services
6 on behalf of the business.

7 (6) Providing advertising and marketing services, except for
8 cross-context behavioral advertising, to the consumer provided
9 that, for the purpose of advertising and marketing, a service
10 provider or contractor shall not combine the personal information
11 of opted-out consumers that the service provider or contractor
12 receives from, or on behalf of, the business with personal
13 information that the service provider or contractor receives from,
14 or on behalf of, another person or persons or collects from its own
15 interaction with consumers.

16 (7) Undertaking internal research for technological development
17 and demonstration.

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

23 (f) “Collects,” “collected,” or “collection” means buying,
24 renting, gathering, obtaining, receiving, or accessing any personal
25 information pertaining to a consumer by any means. This includes
26 receiving information from the consumer, either actively or
27 passively, or by observing the consumer’s behavior.

28 (g) “Commercial purposes” means to advance a person’s
29 commercial or economic interests, such as by inducing another
30 person to buy, rent, lease, join, subscribe to, provide, or exchange
31 products, goods, property, information, or services, or enabling or
32 effecting, directly or indirectly, a commercial transaction.

33 (h) “Consent” means any freely given, specific, informed, and
34 unambiguous indication of the consumer’s wishes by which the
35 consumer, or the consumer’s legal guardian, a person who has
36 power of attorney, or a person acting as a conservator for the
37 consumer, including by a statement or by a clear affirmative action,
38 signifies agreement to the processing of personal information
39 relating to the consumer for a narrowly defined particular purpose.
40 Acceptance of a general or broad terms of use, or similar document,

1 that contains descriptions of personal information processing along
2 with other, unrelated information, does not constitute consent.
3 Hovering over, muting, pausing, or closing a given piece of content
4 does not constitute consent. Likewise, agreement obtained through
5 use of dark patterns does not constitute consent.

6 (i) “Consumer” means a natural person who is a California
7 resident, as defined in Section 17014 of Title 18 of the California
8 Code of Regulations, as that section read on September 1, 2017,
9 however identified, including by any unique identifier.

10 (j) (1) “Contractor” means a person to whom the business makes
11 available a consumer’s personal information for a business purpose,
12 pursuant to a written contract with the business, provided that the
13 contract:

14 (A) Prohibits the contractor from:

15 (i) Selling or sharing the personal information.

16 (ii) Retaining, using, or disclosing the personal information for
17 any purpose other than for the business purposes specified in the
18 contract, including retaining, using, or disclosing the personal
19 information for a commercial purpose other than the business
20 purposes specified in the contract, or as otherwise permitted by
21 this title.

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

25 (iv) Combining the personal information that the contractor
26 receives pursuant to a written contract with the business with
27 personal information that it receives from or on behalf of another
28 person or persons, or collects from its own interaction with the
29 consumer, provided that the contractor may combine personal
30 information to perform any business purpose as defined in
31 regulations adopted pursuant to paragraph (10) of subdivision (a)
32 of Section 1798.185, except as provided for in paragraph (6) of
33 subdivision (e) and in regulations adopted by the California Privacy
34 Protection Agency.

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

38 (C) Permits, subject to agreement with the contractor, the
39 business to monitor the contractor’s compliance with the contract
40 through measures, including, but not limited to, ongoing manual

1 reviews and automated scans and regular assessments, audits, or
2 other technical and operational testing at least once every 12
3 months.

4 (2) If a contractor engages any other person to assist it in
5 processing personal information for a business purpose on behalf
6 of the business, or if any other person engaged by the contractor
7 engages another person to assist in processing personal information
8 for that business purpose, it shall notify the business of that
9 engagement, and the engagement shall be pursuant to a written
10 contract binding the other person to observe all the requirements
11 set forth in paragraph (1).

12 (k) “Cross-context behavioral advertising” means the targeting
13 of advertising to a consumer based on the consumer’s personal
14 information obtained from the consumer’s activity across
15 businesses, distinctly-branded websites, applications, or services,
16 other than the business, distinctly-branded website, application,
17 or service with which the consumer intentionally interacts.

18 (l) “Dark pattern” means a user interface designed or
19 manipulated with the substantial effect of subverting or impairing
20 user autonomy, decisionmaking, or choice, as further defined by
21 regulation.

22 (m) “Deidentified” means information that cannot reasonably
23 be used to infer information about, or otherwise be linked to, a
24 particular consumer provided that the business that possesses the
25 information:

26 (1) Takes reasonable measures to ensure that the information
27 cannot be associated with a consumer or household.

28 (2) Publicly commits to maintain and use the information in
29 deidentified form and not to attempt to reidentify the information,
30 except that the business may attempt to reidentify the information
31 solely for the purpose of determining whether its deidentification
32 processes satisfy the requirements of this subdivision.

33 (3) Contractually obligates any recipients of the information to
34 comply with all provisions of this subdivision.

35 (n) “Designated methods for submitting requests” means a
36 mailing address, email address, internet web page, internet web
37 portal, toll-free telephone number, or other applicable contact
38 information, whereby consumers may submit a request or direction
39 under this title, and any new, consumer-friendly means of

1 contacting a business, as approved by the Attorney General
2 pursuant to Section 1798.185.

3 (o) “Device” means any physical object that is capable of
4 connecting to the Internet, directly or indirectly, or to another
5 device.

6 (p) “Homepage” means the introductory page of an internet
7 website and any internet web page where personal information is
8 collected. In the case of an online service, such as a mobile
9 application, homepage means the application’s platform page or
10 download page, a link within the application, such as from the
11 application configuration, “About,” “Information,” or settings
12 page, and any other location that allows consumers to review the
13 notices required by this title, including, but not limited to, before
14 downloading the application.

15 (q) “Household” means a group, however identified, of
16 consumers who cohabitate with one another at the same residential
17 address and share use of common devices or services.

18 (r) “Infer” or “inference” means the derivation of information,
19 data, assumptions, or conclusions from facts, evidence, or another
20 source of information or data.

21 (s) “Intentionally interacts” means when the consumer intends
22 to interact with a person, or disclose personal information to a
23 person, via one or more deliberate interactions, including visiting
24 the person’s website or purchasing a good or service from the
25 person. Hovering over, muting, pausing, or closing a given piece
26 of content does not constitute a consumer’s intent to interact with
27 a person.

28 (t) “*Neural data*” means information that is generated by the
29 measurement of the activity of an individual’s central or peripheral
30 nervous systems that can be processed by, or with the assistance
31 of, neurotechnology.

32 (u) “*Neurotechnology*” means a device, instrument, or a set of
33 devices or instruments, that allows a connection with a person’s
34 central or peripheral nervous system for various purposes,
35 including, but not limited to, reading, recording, or modifying a
36 person’s brain activity or the information obtained from a person’s
37 brain activity.

38 (t)

39 (v) “Nonpersonalized advertising” means advertising and
40 marketing that is based solely on a consumer’s personal

1 information derived from the consumer’s current interaction with
2 the business with the exception of the consumer’s precise
3 geolocation.

4 ~~(t)~~

5 (w) “Person” means an individual, proprietorship, firm,
6 partnership, joint venture, syndicate, business trust, company,
7 corporation, limited liability company, association, committee,
8 and any other organization or group of persons acting in concert.

9 ~~(v)~~

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

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

22 (B) Any personal information described in subdivision (e) of
23 Section 1798.80.

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

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

29 (E) Biometric information.

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

34 (G) Geolocation data.

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

37 (I) Professional or employment-related information.

38 (J) Education information, defined as information that is not
39 publicly available personally identifiable information as defined

1 in the Family Educational Rights and Privacy Act (20 U.S.C. Sec.
2 1232g; 34 C.F.R. Part 99).

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

8 (L) Sensitive personal information.

9 (2) "Personal information" does not include publicly available
10 information or lawfully obtained, truthful information that is a
11 matter of public concern. For purposes of this paragraph, "publicly
12 available" means: information that is lawfully made available from
13 federal, state, or local government records, or information that a
14 business has a reasonable basis to believe is lawfully made
15 available to the general public by the consumer or from widely
16 distributed media; or information made available by a person to
17 whom the consumer has disclosed the information if the consumer
18 has not restricted the information to a specific audience. "Publicly
19 available" does not mean biometric information collected by a
20 business about a consumer without the consumer's knowledge.

21 (3) "Personal information" does not include consumer
22 information that is deidentified or aggregate consumer information.

23 ~~(w)~~

24 (y) "Precise geolocation" means any data that is derived from
25 a device and that is used or intended to be used to locate a
26 consumer within a geographic area that is equal to or less than the
27 area of a circle with a radius of 1,850 feet, except as prescribed
28 by regulations.

29 ~~(x)~~

30 (z) "Probabilistic identifier" means the identification of a
31 consumer or a consumer's device to a degree of certainty of more
32 probable than not based on any categories of personal information
33 included in, or similar to, the categories enumerated in the
34 definition of personal information.

35 ~~(y)~~

36 (aa) "Processing" means any operation or set of operations that
37 are performed on personal information or on sets of personal
38 information, whether or not by automated means.

39 ~~(z)~~

1 ~~(ab)~~ “Profiling” means any form of automated processing of
2 personal information, as further defined by regulations pursuant
3 to paragraph (16) of subdivision (a) of Section 1798.185, to
4 evaluate certain personal aspects relating to a natural person and
5 in particular to analyze or predict aspects concerning that natural
6 person’s performance at work, economic situation, health, personal
7 preferences, interests, reliability, behavior, location, or movements.

8 ~~(aa)~~

9 ~~(ac)~~ “Pseudonymize” or “Pseudonymization” means the
10 processing of personal information in a manner that renders the
11 personal information no longer attributable to a specific consumer
12 without the use of additional information, provided that the
13 additional information is kept separately and is subject to technical
14 and organizational measures to ensure that the personal information
15 is not attributed to an identified or identifiable consumer.

16 ~~(ab)~~

17 ~~(ad)~~ “Research” means scientific analysis, systematic study,
18 and observation, including basic research or applied research that
19 is designed to develop or contribute to public or scientific
20 knowledge and that adheres or otherwise conforms to all other
21 applicable ethics and privacy laws, including, but not limited to,
22 studies conducted in the public interest in the area of public health.
23 Research with personal information that may have been collected
24 from a consumer in the course of the consumer’s interactions with
25 a business’ service or device for other purposes shall be:

26 (1) Compatible with the business purpose for which the personal
27 information was collected.

28 (2) Subsequently pseudonymized and deidentified, or
29 deidentified and in the aggregate, such that the information cannot
30 reasonably identify, relate to, describe, be capable of being
31 associated with, or be linked, directly or indirectly, to a particular
32 consumer, by a business.

33 (3) Made subject to technical safeguards that prohibit
34 reidentification of the consumer to whom the information may
35 pertain, other than as needed to support the research.

36 (4) Subject to business processes that specifically prohibit
37 reidentification of the information, other than as needed to support
38 the research.

39 (5) Made subject to business processes to prevent inadvertent
40 release of deidentified information.

1 (6) Protected from any reidentification attempts.

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

4 (8) Subjected by the business conducting the research to
5 additional security controls that limit access to the research data
6 to only those individuals as are necessary to carry out the research
7 purpose.

8 ~~(ae)~~

9 (ae) “Security and integrity” means the ability of:

10 (1) Networks or information systems to detect security incidents
11 that compromise the availability, authenticity, integrity, and
12 confidentiality of stored or transmitted personal information.

13 (2) Businesses to detect security incidents, resist malicious,
14 deceptive, fraudulent, or illegal actions and to help prosecute those
15 responsible for those actions.

16 (3) Businesses to ensure the physical safety of natural persons.

17 ~~(ad)~~

18 (af) (1) “Sell,” “selling,” “sale,” or “sold,” means selling,
19 renting, releasing, disclosing, disseminating, making available,
20 transferring, or otherwise communicating orally, in writing, or by
21 electronic or other means, a consumer’s personal information by
22 the business to a third party for monetary or other valuable
23 consideration.

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

26 (A) A consumer uses or directs the business to intentionally:

27 (i) Disclose personal information.

28 (ii) Interact with one or more third parties.

29 (B) The business uses or shares an identifier for a consumer
30 who has opted out of the sale of the consumer’s personal
31 information or limited the use of the consumer’s sensitive personal
32 information for the purposes of alerting persons that the consumer
33 has opted out of the sale of the consumer’s personal information
34 or limited the use of the consumer’s sensitive personal information.

35 (C) The business transfers to a third party the personal
36 information of a consumer as an asset that is part of a merger,
37 acquisition, bankruptcy, or other transaction in which the third
38 party assumes control of all or part of the business, provided that
39 information is used or shared consistently with this title. If a third
40 party materially alters how it uses or shares the personal

1 information of a consumer in a manner that is materially
2 inconsistent with the promises made at the time of collection, it
3 shall provide prior notice of the new or changed practice to the
4 consumer. The notice shall be sufficiently prominent and robust
5 to ensure that existing consumers can easily exercise their choices
6 consistently with this title. This subparagraph does not authorize
7 a business to make material, retroactive privacy policy changes or
8 make other changes in their privacy policy in a manner that would
9 violate the Unfair and Deceptive Practices Act (Chapter 5
10 (commencing with Section 17200) of Part 2 of Division 7 of the
11 Business and Professions Code).

12 ~~(ae)~~

13 *(ag)* “Sensitive personal information” means:

14 (1) Personal information that reveals:

15 (A) A consumer’s social security, driver’s license, state
16 identification card, or passport number.

17 (B) A consumer’s account log-in, financial account, debit card,
18 or credit card number in combination with any required security
19 or access code, password, or credentials allowing access to an
20 account.

21 (C) A consumer’s precise geolocation.

22 (D) A consumer’s racial or ethnic origin, citizenship or
23 immigration status, religious or philosophical beliefs, or union
24 membership.

25 (E) The contents of a consumer’s mail, email, and text messages
26 unless the business is the intended recipient of the communication.

27 (F) A consumer’s genetic data.

28 *(G) A consumer’s neural data.*

29 (2) (A) The processing of biometric information for the purpose
30 of uniquely identifying a consumer.

31 (B) Personal information collected and analyzed concerning a
32 consumer’s health.

33 (C) Personal information collected and analyzed concerning a
34 consumer’s sex life or sexual orientation.

35 (3) Sensitive personal information that is “publicly available”
36 pursuant to paragraph (2) of subdivision (v) shall not be considered
37 sensitive personal information or personal information.

38 ~~(af)~~

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

4 ~~(ag)~~

5 (ai) (1) “Service provider” means a person that processes
6 personal information on behalf of a business and that receives from
7 or on behalf of the business consumer’s personal information for
8 a business purpose pursuant to a written contract, provided that
9 the contract prohibits the person from:

10 (A) Selling or sharing the personal information.

11 (B) Retaining, using, or disclosing the personal information for
12 any purpose other than for the business purposes specified in the
13 contract for the business, including retaining, using, or disclosing
14 the personal information for a commercial purpose other than the
15 business purposes specified in the contract with the business, or
16 as otherwise permitted by this title.

17 (C) Retaining, using, or disclosing the information outside of
18 the direct business relationship between the service provider and
19 the business.

20 (D) Combining the personal information that the service provider
21 receives from, or on behalf of, the business with personal
22 information that it receives from, or on behalf of, another person
23 or persons, or collects from its own interaction with the consumer,
24 provided that the service provider may combine personal
25 information to perform any business purpose as defined in
26 regulations adopted pursuant to paragraph (10) of subdivision (a)
27 of Section 1798.185, except as provided for in paragraph (6) of
28 subdivision (e) of this section and in regulations adopted by the
29 California Privacy Protection Agency. The contract may, subject
30 to agreement with the service provider, permit the business to
31 monitor the service provider’s compliance with the contract through
32 measures, including, but not limited to, ongoing manual reviews
33 and automated scans and regular assessments, audits, or other
34 technical and operational testing at least once every 12 months.

35 (2) If a service provider engages any other person to assist it in
36 processing personal information for a business purpose on behalf
37 of the business, or if any other person engaged by the service
38 provider engages another person to assist in processing personal
39 information for that business purpose, it shall notify the business
40 of that engagement, and the engagement shall be pursuant to a

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

3 ~~(ah)~~

4 (aj) (1) “Share,” “shared,” or “sharing” means sharing, renting,
5 releasing, disclosing, disseminating, making available, transferring,
6 or otherwise communicating orally, in writing, or by electronic or
7 other means, a consumer’s personal information by the business
8 to a third party for cross-context behavioral advertising, whether
9 or not for monetary or other valuable consideration, including
10 transactions between a business and a third party for cross-context
11 behavioral advertising for the benefit of a business in which no
12 money is exchanged.

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

15 (A) A consumer uses or directs the business to intentionally
16 disclose personal information or intentionally interact with one or
17 more third parties.

18 (B) The business uses or shares an identifier for a consumer
19 who has opted out of the sharing of the consumer’s personal
20 information or limited the use of the consumer’s sensitive personal
21 information for the purposes of alerting persons that the consumer
22 has opted out of the sharing of the consumer’s personal information
23 or limited the use of the consumer’s sensitive personal information.

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

1 ~~(ai)~~
2 ~~(ak)~~ “Third party” means a person who is not any of the
3 following:

4 (1) The business with whom the consumer intentionally interacts
5 and that collects personal information from the consumer as part
6 of the consumer’s current interaction with the business under this
7 title.

8 (2) A service provider to the business.

9 (3) A contractor.

10 ~~(aj)~~
11 ~~(al)~~ “Unique identifier” or “unique personal identifier” means
12 a persistent identifier that can be used to recognize a consumer, a
13 family, or a device that is linked to a consumer or family, over
14 time and across different services, including, but not limited to, a
15 device identifier; an Internet Protocol address; cookies, beacons,
16 pixel tags, mobile ad identifiers, or similar technology; customer
17 number, unique pseudonym, or user alias; telephone numbers, or
18 other forms of persistent or probabilistic identifiers that can be
19 used to identify a particular consumer or device that is linked to a
20 consumer or family. For purposes of this subdivision, “family”
21 means a custodial parent or guardian and any children under 18
22 years of age over which the parent or guardian has custody.

23 ~~(ak)~~
24 ~~(am)~~ “Verifiable consumer request” means a request that is
25 made by a consumer, by a consumer on behalf of the consumer’s
26 minor child, by a natural person or a person registered with the
27 Secretary of State, authorized by the consumer to act on the
28 consumer’s behalf, or by a person who has power of attorney or
29 is acting as a conservator for the consumer, and that the business
30 can verify, using commercially reasonable methods, pursuant to
31 regulations adopted by the Attorney General pursuant to paragraph
32 (7) of subdivision (a) of Section 1798.185 to be the consumer about
33 whom the business has collected personal information. A business
34 is not obligated to provide information to the consumer pursuant
35 to Sections 1798.110 and 1798.115, to delete personal information
36 pursuant to Section 1798.105, or to correct inaccurate personal
37 information pursuant to Section 1798.106, if the business cannot
38 verify, pursuant to this subdivision and regulations adopted by the
39 Attorney General pursuant to paragraph (7) of subdivision (a) of
40 Section 1798.185, that the consumer making the request is the

1 consumer about whom the business has collected information or
2 is a person authorized by the consumer to act on such consumer's
3 behalf.

4 *SEC. 4. Section 1798.185 of the Civil Code is amended to read:*
5 1798.185. Regulations

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

10 (1) Updating or adding categories of personal information to
11 those enumerated in subdivision (c) of Section 1798.130 and
12 subdivision-~~(v)~~ (x) of Section 1798.140, and updating or adding
13 categories of sensitive personal information to those enumerated
14 in subdivision-~~(ae)~~ (ag) of Section 1798.140 in order to address
15 changes in technology, data collection practices, obstacles to
16 implementation, and privacy concerns.

17 (2) Updating as needed the definitions of “deidentified” and
18 “unique identifier” to address changes in technology, data
19 collection, obstacles to implementation, and privacy concerns, and
20 adding, modifying, or deleting categories to the definition of
21 designated methods for submitting requests to facilitate a
22 consumer's ability to obtain information from a business pursuant
23 to Section 1798.130. The authority to update the definition of
24 “deidentified” shall not apply to deidentification standards set forth
25 in Section 164.514 of Title 45 of the Code of Federal Regulations,
26 where such information previously was “protected health
27 information” as defined in Section 160.103 of Title 45 of the Code
28 of Federal Regulations.

29 (3) Establishing any exceptions necessary to comply with state
30 or federal law, including, but not limited to, those relating to trade
31 secrets and intellectual property rights, within one year of passage
32 of this title and as needed thereafter, with the intention that trade
33 secrets should not be disclosed in response to a verifiable consumer
34 request.

35 (4) Establishing rules and procedures for the following:

36 (A) To facilitate and govern the submission of a request by a
37 consumer to opt out of the sale or sharing of personal information
38 pursuant to Section 1798.120 and to limit the use of a consumer's
39 sensitive personal information pursuant to Section 1798.121 to
40 ensure that consumers have the ability to exercise their choices

1 without undue burden and to prevent business from engaging in
2 deceptive or harassing conduct, including in retaliation against
3 consumers for exercising their rights, while allowing businesses
4 to inform consumers of the consequences of their decision to opt
5 out of the sale or sharing of their personal information or to limit
6 the use of their sensitive personal information.

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

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

13 (5) Adjusting the monetary thresholds, in January of every
14 odd-numbered year to reflect any increase in the Consumer Price
15 Index, in: subparagraph (A) of paragraph (1) of subdivision (d) of
16 Section 1798.140; subparagraph (A) of paragraph (1) of subdivision
17 (a) of Section 1798.150; subdivision (a) of Section 1798.155;
18 Section 1798.199.25; and subdivision (a) of Section 1798.199.90.

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

27 (7) Establishing rules and procedures to further the purposes of
28 Sections 1798.105, 1798.106, 1798.110, and 1798.115 and to
29 facilitate a consumer's or the consumer's authorized agent's ability
30 to delete personal information, correct inaccurate personal
31 information pursuant to Section 1798.106, or obtain information
32 pursuant to Section 1798.130, with the goal of minimizing the
33 administrative burden on consumers, taking into account available
34 technology, security concerns, and the burden on the business, to
35 govern a business's determination that a request for information
36 received from a consumer is a verifiable consumer request,
37 including treating a request submitted through a password-protected
38 account maintained by the consumer with the business while the
39 consumer is logged into the account as a verifiable consumer
40 request and providing a mechanism for a consumer who does not

1 maintain an account with the business to request information
2 through the business's authentication of the consumer's identity,
3 within one year of passage of this title and as needed thereafter.

4 (8) Establishing how often, and under what circumstances, a
5 consumer may request a correction pursuant to Section 1798.106,
6 including standards governing the following:

7 (A) How a business responds to a request for correction,
8 including exceptions for requests to which a response is impossible
9 or would involve disproportionate effort, and requests for
10 correction of accurate information.

11 (B) How concerns regarding the accuracy of the information
12 may be resolved.

13 (C) The steps a business may take to prevent fraud.

14 (D) If a business rejects a request to correct personal information
15 collected and analyzed concerning a consumer's health, the right
16 of a consumer to provide a written addendum to the business with
17 respect to any item or statement regarding any such personal
18 information that the consumer believes to be incomplete or
19 incorrect. The addendum shall be limited to 250 words per alleged
20 incomplete or incorrect item and shall clearly indicate in writing
21 that the consumer requests the addendum to be made a part of the
22 consumer's record.

23 (9) Establishing the standard to govern a business's
24 determination, pursuant to subparagraph (B) of paragraph (2) of
25 subdivision (a) of Section 1798.130, that providing information
26 beyond the 12-month period in a response to a verifiable consumer
27 request is impossible or would involve a disproportionate effort.

28 (10) Issuing regulations further defining and adding to the
29 business purposes, including other notified purposes, for which
30 businesses, service providers, and contractors may use consumers'
31 personal information consistent with consumers' expectations, and
32 further defining the business purposes for which service providers
33 and contractors may combine consumers' personal information
34 obtained from different sources, except as provided for in paragraph
35 (6) of subdivision (e) of Section 1798.140.

36 (11) Issuing regulations identifying those business purposes,
37 including other notified purposes, for which service providers and
38 contractors may use consumers' personal information received
39 pursuant to a written contract with a business, for the service

1 provider or contractor's own business purposes, with the goal of
2 maximizing consumer privacy.

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

5 (13) Issuing regulations to further define "precise geolocation,"
6 including if the size defined is not sufficient to protect consumer
7 privacy in sparsely populated areas or when the personal
8 information is used for normal operational purposes, including
9 billing.

10 (14) Issuing regulations to define the term "specific pieces of
11 information obtained from the consumer" with the goal of
12 maximizing a consumer's right to access relevant personal
13 information while minimizing the delivery of information to a
14 consumer that would not be useful to the consumer, including
15 system log information and other technical data. For delivery of
16 the most sensitive personal information, the regulations may require
17 a higher standard of authentication provided that the agency shall
18 monitor the impact of the higher standard on the right of consumers
19 to obtain their personal information to ensure that the requirements
20 of verification do not result in the unreasonable denial of verifiable
21 consumer requests.

22 (15) Issuing regulations requiring businesses whose processing
23 of consumers' personal information presents significant risk to
24 consumers' privacy or security, to:

25 (A) Perform a cybersecurity audit on an annual basis, including
26 defining the scope of the audit and establishing a process to ensure
27 that audits are thorough and independent. The factors to be
28 considered in determining when processing may result in
29 significant risk to the security of personal information shall include
30 the size and complexity of the business and the nature and scope
31 of processing activities.

32 (B) Submit to the California Privacy Protection Agency on a
33 regular basis a risk assessment with respect to their processing of
34 personal information, including whether the processing involves
35 sensitive personal information, and identifying and weighing the
36 benefits resulting from the processing to the business, the
37 consumer, other stakeholders, and the public, against the potential
38 risks to the rights of the consumer associated with that processing,
39 with the goal of restricting or prohibiting the processing if the risks
40 to privacy of the consumer outweigh the benefits resulting from

1 processing to the consumer, the business, other stakeholders, and
2 the public. Nothing in this section shall require a business to
3 divulge trade secrets.

4 (16) Issuing regulations governing access and opt-out rights
5 with respect to businesses' use of automated decisionmaking
6 technology, including profiling and requiring businesses' response
7 to access requests to include meaningful information about the
8 logic involved in those decisionmaking processes, as well as a
9 description of the likely outcome of the process with respect to
10 the consumer.

11 (17) Issuing regulations to further define a "law enforcement
12 agency-approved investigation" for purposes of the exception in
13 subparagraph (B) of paragraph (1) of subdivision (a) of Section
14 1798.145.

15 (18) Issuing regulations to define the scope and process for the
16 exercise of the agency's audit authority, to establish criteria for
17 selection of persons to audit, and to protect consumers' personal
18 information from disclosure to an auditor in the absence of a court
19 order, warrant, or subpoena.

20 (19) (A) Issuing regulations to define the requirements and
21 technical specifications for an opt-out preference signal sent by a
22 platform, technology, or mechanism, to indicate a consumer's
23 intent to opt out of the sale or sharing of the consumer's personal
24 information and to limit the use or disclosure of the consumer's
25 sensitive personal information. The requirements and specifications
26 for the opt-out preference signal should be updated from time to
27 time to reflect the means by which consumers interact with
28 businesses, and should:

29 (i) Ensure that the manufacturer of a platform or browser or
30 device that sends the opt-out preference signal cannot unfairly
31 disadvantage another business.

32 (ii) Ensure that the opt-out preference signal is
33 consumer-friendly, clearly described, and easy to use by an average
34 consumer and does not require that the consumer provide additional
35 information beyond what is necessary.

36 (iii) Clearly represent a consumer's intent and be free of defaults
37 constraining or presupposing that intent.

38 (iv) Ensure that the opt-out preference signal does not conflict
39 with other commonly used privacy settings or tools that consumers
40 may employ.

1 (v) Provide a mechanism for the consumer to selectively consent
2 to a business's sale of the consumer's personal information, or the
3 use or disclosure of the consumer's sensitive personal information,
4 without affecting the consumer's preferences with respect to other
5 businesses or disabling the opt-out preference signal globally.

6 (vi) State that in the case of a page or setting view that the
7 consumer accesses to set the opt-out preference signal, the
8 consumer should see up to three choices, including:

9 (I) Global opt out from sale and sharing of personal information,
10 including a direction to limit the use of sensitive personal
11 information.

12 (II) Choice to "Limit the Use of My Sensitive Personal
13 Information."

14 (III) Choice titled "Do Not Sell/Do Not Share My Personal
15 Information for Cross-Context Behavioral Advertising."

16 (B) Issuing regulations to establish technical specifications for
17 an opt-out preference signal that allows the consumer, or the
18 consumer's parent or guardian, to specify that the consumer is less
19 than 13 years of age or at least 13 years of age and less than 16
20 years of age.

21 (C) Issuing regulations, with the goal of strengthening consumer
22 privacy while considering the legitimate operational interests of
23 businesses, to govern the use or disclosure of a consumer's
24 sensitive personal information, notwithstanding the consumer's
25 direction to limit the use or disclosure of the consumer's sensitive
26 personal information, including:

27 (i) Determining any additional purposes for which a business
28 may use or disclose a consumer's sensitive personal information.

29 (ii) Determining the scope of activities permitted under
30 paragraph (8) of subdivision (e) of Section 1798.140, as authorized
31 by subdivision (a) of Section 1798.121, to ensure that the activities
32 do not involve health-related research.

33 (iii) Ensuring the functionality of the business's operations.

34 (iv) Ensuring that the exemption in subdivision (d) of Section
35 1798.121 for sensitive personal information applies to information
36 that is collected or processed incidentally, or without the purpose
37 of inferring characteristics about a consumer, while ensuring that
38 businesses do not use the exemption for the purpose of evading
39 consumers' rights to limit the use and disclosure of their sensitive
40 personal information under Section 1798.121.

(20) Issuing regulations to govern how a business that has elected to comply with subdivision (b) of Section 1798.135 responds to the opt-out preference signal and provides consumers with the opportunity subsequently to consent to the sale or sharing of their personal information or the use and disclosure of their sensitive personal information for purposes in addition to those authorized by subdivision (a) of Section 1798.121. The regulations should:

(A) Strive to promote competition and consumer choice and be technology neutral.

(B) Ensure that the business does not respond to an opt-out preference signal by:

(i) Intentionally degrading the functionality of the consumer experience.

(ii) Charging the consumer a fee in response to the consumer's opt-out preferences.

(iii) Making any products or services not function properly or fully for the consumer, as compared to consumers who do not use the opt-out preference signal.

(iv) Attempting to coerce the consumer to opt in to the sale or sharing of the consumer's personal information, or the use or disclosure of the consumer's sensitive personal information, by stating or implying that the use of the opt-out preference signal will adversely affect the consumer as compared to consumers who do not use the opt-out preference signal, including stating or implying that the consumer will not be able to use the business's products or services or that those products or services may not function properly or fully.

(v) Displaying any notification or pop-up in response to the consumer's opt-out preference signal.

(C) Ensure that any link to a web page or its supporting content that allows the consumer to consent to opt in:

(i) Is not part of a popup, notice, banner, or other intrusive design that obscures any part of the web page the consumer intended to visit from full view or that interferes with or impedes in any way the consumer's experience visiting or browsing the web page or website the consumer intended to visit.

(ii) Does not require or imply that the consumer must click the link to receive full functionality of any products or services, including the website.

1 (iii) Does not make use of any dark patterns.

2 (iv) Applies only to the business with which the consumer
3 intends to interact.

4 (D) Strive to curb coercive or deceptive practices in response
5 to an opt-out preference signal but should not unduly restrict
6 businesses that are trying in good faith to comply with Section
7 1798.135.

8 (21) Review existing Insurance Code provisions and regulations
9 relating to consumer privacy, except those relating to insurance
10 rates or pricing, to determine whether any provisions of the
11 Insurance Code provide greater protection to consumers than the
12 provisions of this title. Upon completing its review, the agency
13 shall adopt a regulation that applies only the more protective
14 provisions of this title to insurance companies. For the purpose of
15 clarity, the Insurance Commissioner shall have jurisdiction over
16 insurance rates and pricing.

17 (22) Harmonizing the regulations governing opt-out
18 mechanisms, notices to consumers, and other operational
19 mechanisms in this title to promote clarity and the functionality
20 of this title for consumers.

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

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

27 (d) Notwithstanding subdivision (a), the timeline for adopting
28 final regulations required by the act adding this subdivision shall
29 be July 1, 2022. Beginning the later of July 1, 2021, or six months
30 after the agency provides notice to the Attorney General that it is
31 prepared to begin rulemaking under this title, the authority assigned
32 to the Attorney General to adopt regulations under this section
33 shall be exercised by the California Privacy Protection Agency.
34 Notwithstanding any other law, civil and administrative
35 enforcement of the provisions of law added or amended by this
36 act shall not commence until July 1, 2023, and shall only apply to
37 violations occurring on or after that date. Enforcement of provisions
38 of law contained in the California Consumer Privacy Act of 2018
39 amended by this act shall remain in effect and shall be enforceable
40 until the same provisions of this act become enforceable.

1 *SEC. 5. The Legislature finds and declares that this act furthers*
2 *the purposes and intent of the California Privacy Rights Act of*
3 *2020.*

4 ~~SECTION 1. Section 1429 of the Civil Code is amended to~~
5 ~~read:~~

6 ~~1429. The rules that govern the interpretation of contracts are~~
7 ~~prescribed by Part 2 of this division. Other obligations are~~
8 ~~interpreted by the same rules by which statutes of a similar nature~~
9 ~~are interpreted.~~

O