

AMENDED IN SENATE JUNE 25, 2020

AMENDED IN SENATE JULY 5, 2019

AMENDED IN SENATE JUNE 21, 2019

AMENDED IN ASSEMBLY APRIL 12, 2019

AMENDED IN ASSEMBLY APRIL 10, 2019

AMENDED IN ASSEMBLY APRIL 2, 2019

CALIFORNIA LEGISLATURE—2019–20 REGULAR SESSION

ASSEMBLY BILL

No. 1281

Introduced by Assembly Member Chau
(Coauthors: ~~Senators Nielsen and Wiczkowski~~)

February 21, 2019

An act to ~~add Title 1.81.7 (commencing with Section 1798.300) to Part 4 of Division 3 of the Civil Code, amend Section 1798.145 of the Civil Code,~~ relating to privacy.

LEGISLATIVE COUNSEL'S DIGEST

AB 1281, as amended, Chau. Privacy: ~~facial recognition technology: disclosure.~~ *California Consumer Privacy Act of 2018.*

Existing law, the California Consumer Privacy Act of 2018, grants, commencing on January 1, 2020, a consumer various rights with regard to personal information relating to that consumer that is held by a business. The ~~act~~ *act, among other things,* requires a business that collects personal information about a consumer to disclose the consumer's right to delete personal information in a form that is reasonably accessible to consumers and in accordance with a specified process. *The act, until January 1, 2021, exempts from its provisions*

certain information collected by a business about a natural person in the course of the natural person acting as a job applicant, employee, owner, director, officer, medical staff member, or contractor, as specified. The act also, until January 1, 2021, exempts from specified provisions personal information reflecting a written or verbal communication or a transaction between the business and the consumer, if the consumer is a natural person who is acting as an employee, owner, director, officer, or contractor of a company, partnership, sole proprietorship, nonprofit, or government agency and whose communications or transaction with the business occur solely within the context of the business conducting due diligence regarding, or providing or receiving a product or service to or from that company, partnership, sole proprietorship, nonprofit, or government agency.

~~This bill, commencing on July 1, 2020, would require a business in California that uses facial recognition technology to disclose that usage in a physical sign that is clear and conspicuous at the entrance of every location that uses facial recognition technology, as defined. The bill would require that sign to be displayed in a specified manner and to include information about where an individual can find more information about the purposes for which the business uses facial recognition technology. The bill, commencing on July 1, 2020, would make a business that violates these provisions liable for specified civil penalties. The bill would authorize the Attorney General, a district attorney, a county counsel, a city attorney, or a city prosecutor to bring a civil action to collect these penalties, and if the Attorney General brings the action, would require that $\frac{1}{2}$ of the penalties collected be paid to the treasurer of the county in which the judgment was entered, and $\frac{1}{2}$ to the General Fund, as provided.~~

This bill would extend both exemptions until January 1, 2022.

This bill would specify that the operation of this extension is contingent upon voters not approving a specified ballot proposition at the November 3, 2020, statewide general election.

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 is amended
2 to read:

1 1798.145. (a) The obligations imposed on businesses by this
2 title shall not restrict a business' ability to:

- 3 (1) Comply with federal, state, or local laws.
- 4 (2) Comply with a civil, criminal, or regulatory inquiry,
5 investigation, subpoena, or summons by federal, state, or local
6 authorities.
- 7 (3) Cooperate with law enforcement agencies concerning
8 conduct or activity that the business, service provider, or third
9 party reasonably and in good faith believes may violate federal,
10 state, or local law.
- 11 (4) Exercise or defend legal claims.
- 12 (5) Collect, use, retain, sell, or disclose consumer information
13 that is deidentified or in the aggregate consumer information.
- 14 (6) Collect or sell a consumer's personal information if every
15 aspect of that commercial conduct takes place wholly outside of
16 California. For purposes of this title, commercial conduct takes
17 place wholly outside of California if the business collected that
18 information while the consumer was outside of California, no part
19 of the sale of the consumer's personal information occurred in
20 California, and no personal information collected while the
21 consumer was in California is sold. This paragraph shall not permit
22 a business from storing, including on a device, personal information
23 about a consumer when the consumer is in California and then
24 collecting that personal information when the consumer and stored
25 personal information is outside of California.

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

- 33 (c) (1) This title shall not apply to any of the following:
 - 34 (A) Medical information governed by the Confidentiality of
35 Medical Information Act (Part 2.6 (commencing with Section 56)
36 of Division 1) or protected health information that is collected by
37 a covered entity or business associate governed by the privacy,
38 security, and breach notification rules issued by the United States
39 Department of Health and Human Services, Parts 160 and 164 of
40 Title 45 of the Code of Federal Regulations, established pursuant

1 to the Health Insurance Portability and Accountability Act of 1996
2 (Public Law 104-191) and the Health Information Technology for
3 Economic and Clinical Health Act (Public Law 111-5).

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

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

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

26 (d) (1) This title shall not apply to an activity involving the
27 collection, maintenance, disclosure, sale, communication, or use
28 of any personal information bearing on a consumer’s credit
29 worthiness, credit standing, credit capacity, character, general
30 reputation, personal characteristics, or mode of living by a
31 consumer reporting agency, as defined in subdivision (f) of Section
32 1681a of Title 15 of the United States Code, by a furnisher of
33 information, as set forth in Section 1681s-2 of Title 15 of the
34 United States Code, who provides information for use in a
35 consumer report, as defined in subdivision (d) of Section 1681a
36 of Title 15 of the United States Code, and by a user of a consumer
37 report as set forth in Section 1681b of Title 15 of the United States
38 Code.

39 (2) Paragraph (1) shall apply only to the extent that such activity
40 involving the collection, maintenance, disclosure, sale,

1 communication, or use of such information by that agency,
2 furnisher, or user is subject to regulation under the Fair Credit
3 Reporting Act, section 1681 et seq., Title 15 of the United States
4 Code and the information is not used, communicated, disclosed,
5 or sold except as authorized by the Fair Credit Reporting Act.

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

7 (e) This title shall not apply to personal information collected,
8 processed, sold, or disclosed pursuant to the federal
9 Gramm-Leach-Bliley Act (Public Law 106-102), and implementing
10 regulations, or the California Financial Information Privacy Act
11 (Division 1.4 (commencing with Section 4050) of the Financial
12 Code). This subdivision shall not apply to Section 1798.150.

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

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

29 (2) For purposes of this subdivision:

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

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

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

36 (A) Personal information that is collected by a business about
37 a natural person in the course of the natural person acting as a job
38 applicant to, an employee of, owner of, director of, officer of,
39 medical staff member of, or contractor of that business to the extent
40 that the natural person's personal information is collected and used

1 by the business solely within the context of the natural person's
2 role or former role as a job applicant to, an employee of, owner
3 of, director of, officer of, medical staff member of, or a contractor
4 of that business.

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

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

18 (2) For purposes of this subdivision:

19 (A) "Contractor" means a natural person who provides any
20 service to a business pursuant to a written contract.

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

25 (C) "Medical staff member" means a licensed physician and
26 surgeon, dentist, or podiatrist, licensed pursuant to Division 2
27 (commencing with Section 500) of the Business and Professions
28 Code and a clinical psychologist as defined in Section 1316.5 of
29 the Health and Safety Code.

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

34 (E) "Owner" means a natural person who meets one of the
35 following:

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

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

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

3 (3) This subdivision shall not apply to subdivision (b) of Section
4 1798.100 or Section 1798.150.

5 (4) This subdivision shall become inoperative on January 1,
6 ~~2021~~ 2022.

7 (i) Notwithstanding a business' obligations to respond to and
8 honor consumer rights requests pursuant to this title:

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

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

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

29 (j) A business that discloses personal information to a service
30 provider shall not be liable under this title if the service provider
31 receiving the personal information uses it in violation of the
32 restrictions set forth in the title, provided that, at the time of
33 disclosing the personal information, the business does not have
34 actual knowledge, or reason to believe, that the service provider
35 intends to commit such a violation. A service provider shall
36 likewise not be liable under this title for the obligations of a
37 business for which it provides services as set forth in this title.

38 (k) This title shall not be construed to require a business to
39 collect personal information that it would not otherwise collect in
40 the ordinary course of its business, retain personal information for

1 longer than it would otherwise retain such information in the
2 ordinary course of its business, or reidentify or otherwise link
3 information that is not maintained in a manner that would be
4 considered personal information.

5 (l) The rights afforded to consumers and the obligations imposed
6 on the business in this title shall not adversely affect the rights and
7 freedoms of other consumers.

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

13 (n) (1) The obligations imposed on businesses by Sections
14 1798.100, 1798.105, 1798.110, 1798.115, 1798.130, and 1798.135
15 shall not apply to personal information reflecting a written or verbal
16 communication or a transaction between the business and the
17 consumer, where the consumer is a natural person who is acting
18 as an employee, owner, director, officer, or contractor of a
19 company, partnership, sole proprietorship, ~~non-profit~~, *nonprofit*,
20 or government agency and whose communications or transaction
21 with the business occur solely within the context of the business
22 conducting due diligence regarding, or providing or receiving a
23 product or service to or from such company, partnership, sole
24 proprietorship, ~~non-profit~~, *nonprofit*, or government agency.

25 (2) For purposes of this subdivision:

26 (A) “Contractor” means a natural person who provides any
27 service to a business pursuant to a written contract.

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

32 (C) “Officer” means a natural person elected or appointed by
33 the board of directors to manage the daily operations of a
34 corporation, such as a chief executive officer, president, secretary,
35 or treasurer.

36 (D) “Owner” means a natural person who meets one of the
37 following:

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

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

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

5 (3) This subdivision shall become inoperative on January 1,
6 ~~2021.~~ 2022.

7 *SEC. 2. This act shall become operative only if the voters do*
8 *not approve any ballot proposition that amends Section 1798.145*
9 *of the Civil Code at the November 3, 2020, statewide general*
10 *election.*

11 ~~SECTION 1. Title 1.81.7 (commencing with Section 1798.300)~~
12 ~~is added to Part 4 of Division 3 of the Civil Code, to read:~~

13
14 ~~TITLE 1.81.7. FACIAL RECOGNITION TECHNOLOGY~~
15 ~~DISCLOSURE~~

16
17 ~~1798.300. (a) For the purposes of this title:~~

18 ~~(1) "Clear and conspicuous" means in larger type than the~~
19 ~~surrounding text, or in contrasting type, font, or color to the~~
20 ~~surrounding text of the same size, or set off from the surrounding~~
21 ~~text of the same size by symbols and other marks that call attention~~
22 ~~to the language.~~

23 ~~(2) "Facial recognition technology" means a software application~~
24 ~~that analyzes facial features from a digital image or video for the~~
25 ~~purpose of automatically identifying a specific individual.~~

26 ~~(b) A business in California that uses facial recognition~~
27 ~~technology shall disclose the usage of facial recognition technology~~
28 ~~in a physical sign at the entrance of every location that uses facial~~
29 ~~recognition technology. This sign shall be clear and conspicuous.~~

30 ~~(1) The sign shall be displayed in a manner that ensures that an~~
31 ~~individual can read the sign before the business captures a digital~~
32 ~~image or video of the individual that can be analyzed using facial~~
33 ~~recognition technology.~~

34 ~~(2) The sign shall include information about where an individual~~
35 ~~can find more information about the purposes for which the~~
36 ~~business uses facial recognition technology.~~

37 ~~(c) (1) A business that fails to comply with subdivision (b) shall~~
38 ~~be liable for a civil penalty of up to seventy-five dollars (\$75) for~~
39 ~~each violation, not to exceed seven thousand five hundred dollars~~
40 ~~(\$7,500) annually. That penalty shall be assessed and recovered~~

1 in a civil action brought in the name of the people of the State of
2 California by the Attorney General, by a district attorney, county
3 counsel, or city attorney, or by a city prosecutor in a city having
4 a full-time city prosecutor, in a court of competent jurisdiction.

5 (2) Notwithstanding the annual maximum penalty established
6 in paragraph (1), an additional penalty of up to five thousand
7 dollars (\$5,000) per location annually may be assessed for knowing
8 and willful violations.

9 (3) If the action is brought by the Attorney General, one-half
10 of the penalty collected shall be paid to the treasurer of the county
11 in which the judgment was entered, and one-half to the General
12 Fund. If the action is brought by a district attorney or county
13 counsel, the penalty collected shall be paid to the treasurer of the
14 county in which the judgment was entered. If the action is brought
15 by a city attorney or city prosecutor, one-half of the penalty
16 collected shall be paid to the treasurer of the city in which the
17 judgment was entered, and one-half to the treasurer of the county
18 in which the judgment was entered.

19 1798.301. This title shall become operative on July 1, 2020.