

ASSEMBLY BILL

No. 2147

Introduced by Assembly Member Melendez

February 20, 2014

An act to amend Section 1798.24 of the Civil Code, relating to the right to privacy.

LEGISLATIVE COUNSEL'S DIGEST

AB 2147, as introduced, Melendez. Privacy: personal information: agency disclosure.

Existing law outlines the procedures for agencies to follow in the collection, maintenance, and dissemination of personal information, as defined, in order to protect the privacy of individuals. Existing law prohibits an agency from disclosing any personal information in a manner that would link the information disclosed to the individual to whom it pertains, with specified exceptions.

This bill would, with regard to specified disclosures of personal information, require agencies to obtain prior written voluntary consent of the individual before releasing the personal information to an independent contractor or other worker who is not an agency employee or to a natural person or corporation, partnership, limited liability company, firm, association, or other nongovernment entity.

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 1798.24 of the Civil Code is amended
- 2 to read:

1 1798.24. No agency may disclose any personal information in
 2 a manner that would link the information disclosed to the individual
 3 to whom it pertains unless the information is disclosed, as follows:

- 4 (a) To the individual to whom the information pertains.
- 5 (b) With the prior written voluntary consent of the individual
 6 to whom the record pertains, but only if that consent has been
 7 obtained not more than 30 days before the disclosure, or in the
 8 time limit agreed to by the individual in the written consent.
- 9 (c) To the duly appointed guardian or conservator of the
 10 individual or a person representing the individual if it can be proven
 11 with reasonable certainty through the possession of agency forms,
 12 documents or correspondence that this person is the authorized
 13 representative of the individual to whom the information pertains.
- 14 (d) To those officers, employees, attorneys, agents, or volunteers
 15 of the agency that has custody of the information if the disclosure
 16 is relevant and necessary in the ordinary course of the performance
 17 of their official duties and is related to the purpose for which the
 18 information was acquired, *except personal information may be*
 19 *disclosed to an independent contractor or other worker who is not*
 20 *an agency employee only with prior written voluntary consent of*
 21 *the individual pursuant to subdivision (b).*
- 22 (e) To a person, or to another agency where the transfer is
 23 necessary for the transferee agency to perform its constitutional
 24 or statutory duties, and the use is compatible with a purpose for
 25 which the information was collected and the use or transfer is
 26 accounted for in accordance with Section 1798.25. ~~With~~ *For*
 27 *information transferred pursuant to this subdivision the following*
 28 *shall apply:*
 - 29 (1) *With* respect to information transferred from a law
 30 enforcement or regulatory agency, or information transferred to
 31 another law enforcement or regulatory agency, a use is compatible
 32 if the use of the information requested is needed in an investigation
 33 of unlawful activity under the jurisdiction of the requesting agency
 34 or for licensing, certification, or regulatory purposes by that agency.
 - 35 (2) *With respect to information transferred to a natural person*
 36 *or a person that is a corporation, partnership, limited liability*
 37 *company, firm, association, or other nongovernment entity,*
 38 *personal information may be disclosed only with prior written*
 39 *voluntary consent of the individual pursuant to subdivision (b).*

1 (f) To a governmental entity when required by state or federal
2 law.

3 (g) Pursuant to the California Public Records Act (Chapter 3.5
4 (commencing with Section 6250) of Division 7 of Title 1 of the
5 Government Code).

6 (h) To a person who has provided the agency with advance,
7 adequate written assurance that the information will be used solely
8 for statistical research or reporting purposes, but only if the
9 information to be disclosed is in a form that will not identify any
10 individual.

11 (i) Pursuant to a determination by the agency that maintains
12 information that compelling circumstances exist that affect the
13 health or safety of an individual, if upon the disclosure notification
14 is transmitted to the individual to whom the information pertains
15 at his or her last known address. Disclosure shall not be made if
16 it is in conflict with other state or federal laws.

17 (j) To the State Archives as a record that has sufficient historical
18 or other value to warrant its continued preservation by the
19 California state government, or for evaluation by the Director of
20 General Services or his or her designee to determine whether the
21 record has further administrative, legal, or fiscal value.

22 (k) To any person pursuant to a subpoena, court order, or other
23 compulsory legal process if, before the disclosure, the agency
24 reasonably attempts to notify the individual to whom the record
25 pertains, and if the notification is not prohibited by law.

26 (l) To any person pursuant to a search warrant.

27 (m) Pursuant to Article 3 (commencing with Section 1800) of
28 Chapter 1 of Division 2 of the Vehicle Code.

29 (n) For the sole purpose of verifying and paying government
30 health care service claims made pursuant to Division 9
31 (commencing with Section 10000) of the Welfare and Institutions
32 Code.

33 (o) To a law enforcement or regulatory agency when required
34 for an investigation of unlawful activity or for licensing,
35 certification, or regulatory purposes, unless the disclosure is
36 otherwise prohibited by law.

37 (p) To another person or governmental organization to the extent
38 necessary to obtain information from the person or governmental
39 organization as necessary for an investigation by the agency of a

1 failure to comply with a specific state law that the agency is
2 responsible for enforcing.

3 (q) To an adopted person and is limited to general background
4 information pertaining to the adopted person's natural parents,
5 provided that the information does not include or reveal the identity
6 of the natural parents.

7 (r) To a child or a grandchild of an adopted person and
8 disclosure is limited to medically necessary information pertaining
9 to the adopted person's natural parents. However, the information,
10 or the process for obtaining the information, shall not include or
11 reveal the identity of the natural parents. The State Department of
12 Social Services shall adopt regulations governing the release of
13 information pursuant to this subdivision by July 1, 1985. The
14 regulations shall require licensed adoption agencies to provide the
15 same services provided by the department as established by this
16 subdivision.

17 (s) To a committee of the Legislature or to a Member of the
18 Legislature, or his or her staff when authorized in writing by the
19 member, where the member has permission to obtain the
20 information from the individual to whom it pertains or where the
21 member provides reasonable assurance that he or she is acting on
22 behalf of the individual.

23 (t) (1) To the University of California, a nonprofit educational
24 institution, or, in the case of education-related data, another
25 nonprofit entity, conducting scientific research, provided the
26 request for information is approved by the Committee for the
27 Protection of Human Subjects (CPHS) for the California Health
28 and Human Services Agency (CHHSA) or an institutional review
29 board, as authorized in paragraphs (4) and (5). The approval
30 required under this subdivision shall include a review and
31 determination that all the following criteria have been satisfied:

32 (A) The researcher has provided a plan sufficient to protect
33 personal information from improper use and disclosures, including
34 sufficient administrative, physical, and technical safeguards to
35 protect personal information from reasonable anticipated threats
36 to the security or confidentiality of the information.

37 (B) The researcher has provided a sufficient plan to destroy or
38 return all personal information as soon as it is no longer needed
39 for the research project, unless the researcher has demonstrated
40 an ongoing need for the personal information for the research

1 project and has provided a long-term plan sufficient to protect the
2 confidentiality of that information.

3 (C) The researcher has provided sufficient written assurances
4 that the personal information will not be reused or disclosed to
5 any other person or entity, or used in any manner, not approved
6 in the research protocol, except as required by law or for authorized
7 oversight of the research project.

8 (2) The CPHS or institutional review board shall, at a minimum,
9 accomplish all of the following as part of its review and approval
10 of the research project for the purpose of protecting personal
11 information held in agency databases:

12 (A) Determine whether the requested personal information is
13 needed to conduct the research.

14 (B) Permit access to personal information only if it is needed
15 for the research project.

16 (C) Permit access only to the minimum necessary personal
17 information needed for the research project.

18 (D) Require the assignment of unique subject codes that are not
19 derived from personal information in lieu of social security
20 numbers if the research can still be conducted without social
21 security numbers.

22 (E) If feasible, and if cost, time, and technical expertise permit,
23 require the agency to conduct a portion of the data processing for
24 the researcher to minimize the release of personal information.

25 (3) Reasonable costs to the agency associated with the agency's
26 process of protecting personal information under the conditions
27 of CPHS approval may be billed to the researcher, including, but
28 not limited to, the agency's costs for conducting a portion of the
29 data processing for the researcher, removing personal information,
30 encrypting or otherwise securing personal information, or assigning
31 subject codes.

32 (4) The CPHS may enter into written agreements to enable other
33 institutional review boards to provide the data security approvals
34 required by this subdivision, provided the data security
35 requirements set forth in this subdivision are satisfied.

36 (5) Pursuant to paragraph (4), the CPHS shall enter into a written
37 agreement with the institutional review board established pursuant
38 to Section 49079.5 of the Education Code. The agreement shall
39 authorize, commencing July 1, 2010, or the date upon which the
40 written agreement is executed, whichever is later, that board to

1 provide the data security approvals required by this subdivision,
2 provided the data security requirements set forth in this subdivision
3 and the act specified in paragraph (1) of subdivision (a) of Section
4 49079.5 are satisfied.

5 (u) To an insurer if authorized by Chapter 5 (commencing with
6 Section 10900) of Division 4 of the Vehicle Code.

7 (v) Pursuant to Section 280, 282, 8009, or 18396 of the Financial
8 Code.

9 This article shall not be construed to require the disclosure of
10 personal information to the individual to whom the information
11 pertains when that information may otherwise be withheld as set
12 forth in Section 1798.40.

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