

AMENDED IN ASSEMBLY APRIL 22, 2014

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

ASSEMBLY BILL

No. 2147

Introduced by Assembly Member Melendez

February 20, 2014

An act to ~~amend Section 1798.24 of the Civil~~ *add Section 8310.9 to the Government Code*, relating to ~~the right to privacy~~ *state information practices*.

LEGISLATIVE COUNSEL'S DIGEST

AB 2147, as amended, Melendez. ~~Privacy: personal information: agency disclosure.~~ *State government Web sites: information practices.*

Existing law ~~outlines~~ *prescribes* the procedures for *state* 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 require a state entity, as defined, that uses an Internet Web site to obtain information by means of an electronic form to include a specified disclosure notice clearly displayed in direct proximity above the button used to submit the form. The disclosure would acknowledge that the information is being collected and may be shared. The bill would also prohibit a state entity using an electronic form, as described above, to utilize or share any information provided until the person entering information into the form specifically acts to submit the form.

~~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 8310.9 is added to the Government Code,
2 to read:

3 8310.9. (a) For purposes of this section, “state entity” means
4 any agency, department, bureau, board, or commission of any
5 kind.

6 (b) A state entity that uses an Internet Web site to obtain
7 information by means of an electronic form shall include the
8 following disclosure notice clearly displayed in a minimum of
9 12-point boldface type, in direct proximity above the button used
10 to submit the form:

11
12 *By submitting this form, I acknowledge that this information is*
13 *being collected by the state and may be shared with another state*
14 *agency or a private party in accordance with Section 1798.24 of*
15 *the Civil Code and the Information Practices Act of 1977 generally.*
16

17 (c) A state entity that uses an Internet Web site to obtain
18 information by means of an electronic form shall not utilize or
19 share any information provided until the person entering
20 information into the form specifically acts to submit the form.
21 Information in partially completed forms that have not been
22 formally submitted shall not be utilized or otherwise shared.

23 SECTION 1. ~~Section 1798.24 of the Civil Code is amended~~
24 ~~to read:~~

25 ~~1798.24. No agency may disclose any personal information in~~
26 ~~a manner that would link the information disclosed to the individual~~
27 ~~to whom it pertains unless the information is disclosed, as follows:~~

- 28 ~~(a) To the individual to whom the information pertains.~~
- 29 ~~(b) With the prior written voluntary consent of the individual~~
30 ~~to whom the record pertains, but only if that consent has been~~
31 ~~obtained not more than 30 days before the disclosure, or in the~~
32 ~~time limit agreed to by the individual in the written consent.~~

1 ~~(e) To the duly appointed guardian or conservator of the~~
2 ~~individual or a person representing the individual if it can be proven~~
3 ~~with reasonable certainty through the possession of agency forms,~~
4 ~~documents or correspondence that this person is the authorized~~
5 ~~representative of the individual to whom the information pertains.~~

6 ~~(d) To those officers, employees, attorneys, agents, or volunteers~~
7 ~~of the agency that has custody of the information if the disclosure~~
8 ~~is relevant and necessary in the ordinary course of the performance~~
9 ~~of their official duties and is related to the purpose for which the~~
10 ~~information was acquired, except personal information may be~~
11 ~~disclosed to an independent contractor or other worker who is not~~
12 ~~an agency employee only with prior written voluntary consent of~~
13 ~~the individual pursuant to subdivision (b).~~

14 ~~(e) To a person, or to another agency where the transfer is~~
15 ~~necessary for the transferee agency to perform its constitutional~~
16 ~~or statutory duties, and the use is compatible with a purpose for~~
17 ~~which the information was collected and the use or transfer is~~
18 ~~accounted for in accordance with Section 1798.25. For information~~
19 ~~transferred pursuant to this subdivision the following shall apply:~~

20 ~~(1) With respect to information transferred from a law~~
21 ~~enforcement or regulatory agency, or information transferred to~~
22 ~~another law enforcement or regulatory agency, a use is compatible~~
23 ~~if the use of the information requested is needed in an investigation~~
24 ~~of unlawful activity under the jurisdiction of the requesting agency~~
25 ~~or for licensing, certification, or regulatory purposes by that agency.~~

26 ~~(2) With respect to information transferred to a natural person~~
27 ~~or a person that is a corporation, partnership, limited liability~~
28 ~~company, firm, association, or other nongovernment entity,~~
29 ~~personal information may be disclosed only with prior written~~
30 ~~voluntary consent of the individual pursuant to subdivision (b).~~

31 ~~(f) To a governmental entity when required by state or federal~~
32 ~~law.~~

33 ~~(g) Pursuant to the California Public Records Act (Chapter 3.5~~
34 ~~(commencing with Section 6250) of Division 7 of Title 1 of the~~
35 ~~Government Code).~~

36 ~~(h) To a person who has provided the agency with advance,~~
37 ~~adequate written assurance that the information will be used solely~~
38 ~~for statistical research or reporting purposes, but only if the~~
39 ~~information to be disclosed is in a form that will not identify any~~
40 ~~individual.~~

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

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

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

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

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

19 (n) For the sole purpose of verifying and paying government
20 health care service claims made pursuant to Division 9
21 (commencing with Section 10000) of the Welfare and Institutions
22 Code.

23 (o) To a law enforcement or regulatory agency when required
24 for an investigation of unlawful activity or for licensing,
25 certification, or regulatory purposes, unless the disclosure is
26 otherwise prohibited by law.

27 (p) To another person or governmental organization to the extent
28 necessary to obtain information from the person or governmental
29 organization as necessary for an investigation by the agency of a
30 failure to comply with a specific state law that the agency is
31 responsible for enforcing.

32 (q) To an adopted person and is limited to general background
33 information pertaining to the adopted person's natural parents,
34 provided that the information does not include or reveal the identity
35 of the natural parents.

36 (r) To a child or a grandchild of an adopted person and
37 disclosure is limited to medically necessary information pertaining
38 to the adopted person's natural parents. However, the information,
39 or the process for obtaining the information, shall not include or
40 reveal the identity of the natural parents. The State Department of

1 ~~Social Services shall adopt regulations governing the release of~~
2 ~~information pursuant to this subdivision by July 1, 1985. The~~
3 ~~regulations shall require licensed adoption agencies to provide the~~
4 ~~same services provided by the department as established by this~~
5 ~~subdivision.~~

6 ~~(s) To a committee of the Legislature or to a Member of the~~
7 ~~Legislature, or his or her staff when authorized in writing by the~~
8 ~~member, where the member has permission to obtain the~~
9 ~~information from the individual to whom it pertains or where the~~
10 ~~member provides reasonable assurance that he or she is acting on~~
11 ~~behalf of the individual.~~

12 ~~(t) (1) To the University of California, a nonprofit educational~~
13 ~~institution, or, in the case of education-related data, another~~
14 ~~nonprofit entity, conducting scientific research, provided the~~
15 ~~request for information is approved by the Committee for the~~
16 ~~Protection of Human Subjects (CPHS) for the California Health~~
17 ~~and Human Services Agency (CHHSA) or an institutional review~~
18 ~~board, as authorized in paragraphs (4) and (5). The approval~~
19 ~~required under this subdivision shall include a review and~~
20 ~~determination that all the following criteria have been satisfied:~~

21 ~~(A) The researcher has provided a plan sufficient to protect~~
22 ~~personal information from improper use and disclosures, including~~
23 ~~sufficient administrative, physical, and technical safeguards to~~
24 ~~protect personal information from reasonable anticipated threats~~
25 ~~to the security or confidentiality of the information.~~

26 ~~(B) The researcher has provided a sufficient plan to destroy or~~
27 ~~return all personal information as soon as it is no longer needed~~
28 ~~for the research project, unless the researcher has demonstrated~~
29 ~~an ongoing need for the personal information for the research~~
30 ~~project and has provided a long-term plan sufficient to protect the~~
31 ~~confidentiality of that information.~~

32 ~~(C) The researcher has provided sufficient written assurances~~
33 ~~that the personal information will not be reused or disclosed to~~
34 ~~any other person or entity, or used in any manner, not approved~~
35 ~~in the research protocol, except as required by law or for authorized~~
36 ~~oversight of the research project.~~

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

1 ~~(A) Determine whether the requested personal information is~~
2 ~~needed to conduct the research.~~

3 ~~(B) Permit access to personal information only if it is needed~~
4 ~~for the research project.~~

5 ~~(C) Permit access only to the minimum necessary personal~~
6 ~~information needed for the research project.~~

7 ~~(D) Require the assignment of unique subject codes that are not~~
8 ~~derived from personal information in lieu of social security~~
9 ~~numbers if the research can still be conducted without social~~
10 ~~security numbers.~~

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

14 ~~(3) Reasonable costs to the agency associated with the agency's~~
15 ~~process of protecting personal information under the conditions~~
16 ~~of CPHS approval may be billed to the researcher, including, but~~
17 ~~not limited to, the agency's costs for conducting a portion of the~~
18 ~~data processing for the researcher, removing personal information,~~
19 ~~encrypting or otherwise securing personal information, or assigning~~
20 ~~subject codes.~~

21 ~~(4) The CPHS may enter into written agreements to enable other~~
22 ~~institutional review boards to provide the data security approvals~~
23 ~~required by this subdivision, provided the data security~~
24 ~~requirements set forth in this subdivision are satisfied.~~

25 ~~(5) Pursuant to paragraph (4), the CPHS shall enter into a written~~
26 ~~agreement with the institutional review board established pursuant~~
27 ~~to Section 49079.5 of the Education Code. The agreement shall~~
28 ~~authorize, commencing July 1, 2010, or the date upon which the~~
29 ~~written agreement is executed, whichever is later, that board to~~
30 ~~provide the data security approvals required by this subdivision,~~
31 ~~provided the data security requirements set forth in this subdivision~~
32 ~~and the act specified in paragraph (1) of subdivision (a) of Section~~
33 ~~49079.5 are satisfied.~~

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

36 ~~(v) Pursuant to Section 280, 282, 8009, or 18396 of the Financial~~
37 ~~Code.~~

38 ~~This article shall not be construed to require the disclosure of~~
39 ~~personal information to the individual to whom the information~~

1 ~~pertains when that information may otherwise be withheld as set~~
2 ~~forth in Section 1798.40.~~

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