

AMENDED IN SENATE MARCH 25, 2020

**SENATE BILL**

**No. 1010**

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**Introduced by Senator Jackson**

February 14, 2020

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~~An act to amend Section 1798.1 of the Civil Code, relating to privacy.~~  
*An act to add Title 1.81.8 (commencing with Section 1798.500) to Part 4 of Division 3 of, and to repeal Section 1798.510 of, the Civil Code, relating to privacy.*

LEGISLATIVE COUNSEL'S DIGEST

SB 1010, as amended, Jackson. ~~Privacy.~~ *Privacy: biometric surveillance systems.*

*Existing law, the Information Practices Act of 1977, declares that the right to privacy is a personal and fundamental right protected by the California Constitution and by the United States Constitution and that all individuals have a right of privacy in information pertaining to them. The act requires an agency, defined as every state office, officer, department, division, bureau, board, commission, or other state agency, except as provided, to maintain in its records only personal information that is relevant and necessary for a required or authorized purpose.*

*This bill would, until January 1, 2025, require a government entity, defined as a department or agency of the state or its political subdivision, or any person acting for or on behalf of, or at the request of, the state or its political subdivision, to submit to the Legislature a written report that includes specified information, including whether, in the past 3 years, the government entity has developed, acquired, possessed, accessed, used, or shared any facial recognition or other biometric surveillance system or commercial biometric database. The bill would also prohibit a government entity from sharing images,*

*recordings, or biometric information with any other person or entity for use in a facial recognition or other biometric surveillance system or commercial biometric database.*

*Existing law, until January 1, 2023, prohibits a law enforcement agency or law enforcement officer from installing, activating, or using any biometric surveillance system in connection with an officer camera or data collected by an officer camera. Under existing law, a person is authorized to bring an action for equitable or declaratory relief against a law enforcement agency or officer who violates that prohibition.*

*This bill would, until January 1, 2026, prohibit a law enforcement agency or law enforcement officer from developing, acquiring, possessing, accessing, using, or sharing any facial recognition or other biometric surveillance system. The bill would also prohibit a law enforcement agency or law enforcement officer from acquiring, accessing, or using any facial recognition or other biometric surveillance system that is developed from or makes use of biometric information that was collected without the express consent of each individual whose biometric information is contained therein to use their biometric information for biometric surveillance.*

*This bill would authorize an individual, upon a violation of the prohibitions described above, to bring a lawsuit in a court of competent jurisdiction and to obtain specified remedies, including recovery of damages in an amount not less than \$100 and not more than \$750 per individual per violation or actual damages, whichever is greater.*

*This bill would require the California Research Bureau to conduct a study examining the civil liberties and civil rights impacts of facial recognition and other biometric surveillance systems on Californians, as specified, and to submit the study to the Legislature on or before December 31, 2023.*

*This bill would define terms for its purposes.*

~~Existing law, the Information Practices Act of 1977, declares that the right to privacy is a personal and fundamental right protected by the California Constitution and by the United States Constitution and that all individuals have a right of privacy in information pertaining to them.~~

~~This bill would make a nonsubstantive change 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. Title 1.81.8 (commencing with Section 1798.500)  
2 *is added to Part 4 of Division 3 of the Civil Code, to read:*

3  
4     TITLE 1.81.8. SAFETY, ACCOUNTABILITY, FREEDOM, AND  
5     ECONOMIC OPPORTUNITY ACT (SAFE ACT)

6  
7     1798.500. *As used in this title, the following terms have the*  
8 *following meanings:*

9     (a) *“Biometric information” means a physiological, biological,*  
10 *or behavioral characteristic that can be used, singly or in*  
11 *combination with each other or with other information, to establish*  
12 *identity. Biometric information does not include a physical or*  
13 *digital photograph, unless used or stored for the purpose of facial*  
14 *recognition or other biometric surveillance.*

15     (b) *“Biometric surveillance system” means any computer*  
16 *software or application that performs facial recognition or other*  
17 *biometric surveillance.*

18     (c) *“Commercial biometric database” means a collection of*  
19 *biometric information that an entity other than a government entity*  
20 *possesses, controls, or shares alone or as part of a biometric*  
21 *surveillance system.*

22     (d) *“Collects,” “collected,” or “collection” means buying,*  
23 *renting, gathering, obtaining, receiving, or accessing any personal*  
24 *information pertaining to an individual by any means.*

25     (e) (1) *“Facial recognition or other biometric surveillance”*  
26 *means either of the following, alone or in combination:*

27     (A) *An automated or semiautomated process that captures or*  
28 *analyzes biometric information of an individual to identify or assist*  
29 *in identifying an individual.*

30     (B) *An automated or semiautomated process that generates, or*  
31 *assists in generating, surveillance information about an individual*  
32 *based on biometric data.*

33     (2) *“Facial recognition or other biometric surveillance” does*  
34 *not include either of the following:*

35     (A) *The use of an automated or semiautomated process for the*  
36 *purpose of redacting a recording for release or disclosure outside*  
37 *the law enforcement agency to protect the privacy of a subject*  
38 *depicted in the recording, if the process does not generate or result*

1 *in the retention of any biometric information or surveillance*  
2 *information.*

3 *(B) The use of a mobile fingerprint scanning device during a*  
4 *lawful detention to identify a person who does not have proof of*  
5 *identification if this use is lawful and does not generate or result*  
6 *in the retention of any biometric information or surveillance*  
7 *information.*

8 *(f) "Government entity" means a department or agency of the*  
9 *state or its political subdivision, or any person acting for or on*  
10 *behalf of, or at the request of, the state or its political subdivision.*

11 *(g) "Law enforcement agency" means any police department,*  
12 *sheriff's department, district attorney, county probation*  
13 *department, transit agency police department, school district police*  
14 *department, highway patrol, the police department of any campus*  
15 *of the University of California, the California State University, or*  
16 *a community college, the Department of the California Highway*  
17 *Patrol, and the Department of Justice.*

18 *(h) "Law enforcement officer" means an officer, deputy,*  
19 *employee, or agent of a law enforcement agency or any person*  
20 *acting for or on behalf of, or at the request of, any law enforcement*  
21 *agency.*

22 *(i) "Share" means selling, renting, releasing, disclosing,*  
23 *disseminating, making available, transferring, or otherwise*  
24 *communicating orally, in writing, or by electronic or any other*  
25 *means.*

26 *(j) "Surveillance information" means either of the following,*  
27 *alone or in combination:*

28 *(1) Any information about a known or unknown individual,*  
29 *including, but not limited to, a person's name, date of birth, gender,*  
30 *or criminal background.*

31 *(2) Any information derived from biometric data, including, but*  
32 *not limited to, assessments about an individual's sentiment, state*  
33 *of mind, or level of dangerousness.*

34 *1798.505. (a) On or before March 31, 2021, a government*  
35 *entity shall submit to the Legislature a written report that includes*  
36 *all of the following:*

37 *(1) Whether, in the past three years, the government entity has*  
38 *developed, acquired, possessed, accessed, used, or shared any*  
39 *facial recognition or other biometric surveillance system or*  
40 *commercial biometric database.*

1 (2) *The purpose of the system or database.*

2 (3) *The source of the system or database.*

3 (4) *The date of acquisition of the system or database.*

4 (5) *The policies and procedures governing the system or*  
5 *database.*

6 (b) (1) *A report to be submitted pursuant to subdivision (a) shall*  
7 *be submitted in compliance with Section 9795 of the Government*  
8 *Code.*

9 (2) *Pursuant to Section 10231.5 of the Government Code, this*  
10 *section is repealed on January 1, 2025.*

11 1798.510. (a) *A law enforcement agency or law enforcement*  
12 *officer shall not develop, acquire, possess, access, use, or share*  
13 *any facial recognition or other biometric surveillance system.*

14 (b) *This section shall remain in effect only until January 1, 2026,*  
15 *and as of that date is repealed.*

16 1798.515. (a) *A law enforcement agency or law enforcement*  
17 *officer shall not acquire, access, or use any facial recognition or*  
18 *other biometric surveillance system that is developed from or*  
19 *makes use of biometric information that was collected without the*  
20 *express consent of each individual whose biometric information*  
21 *is contained therein to use their biometric information for biometric*  
22 *surveillance.*

23 (b) *A government entity shall not share images, recordings, or*  
24 *biometric information with any other person or entity for use in a*  
25 *facial recognition or other biometric surveillance system or*  
26 *commercial biometric database.*

27 1798.520. (a) *The California Research Bureau shall conduct*  
28 *a study examining the civil liberties and civil rights impacts of*  
29 *facial recognition and other biometric surveillance systems on*  
30 *Californians. As part of the study, the bureau shall contact, and*  
31 *incorporate the experiences of, women, those with disabilities,*  
32 *Black people, Latinos, people of Asian American and Asian Pacific*  
33 *Island descent, immigrants, LGBTQI people, youth, indigenous*  
34 *people, residents of rural and urban communities, religious*  
35 *minorities, people from varied socioeconomic classes, and other*  
36 *Californians from diverse communities across the state.*

37 (b) *Any information collected pursuant to this section shall not*  
38 *be used for any purpose other than conducting the study required*  
39 *by this section.*

1 (c) On or before December 31, 2023, the California Research  
2 Bureau shall submit the study described in subdivision (a) to the  
3 Legislature.

4 (d) (1) A report to be submitted pursuant to subdivision (a)  
5 shall be submitted in compliance with Section 9795 of the  
6 Government Code.

7 (2) Pursuant to Section 10231.5 of the Government Code, this  
8 section is repealed on January 1, 2025.

9 1798.525. A city, county, city and county, municipality, or local  
10 agency may adopt any rules, regulations, codes, or ordinances  
11 that impose additional limits on the development, acquisition,  
12 possession, access, or use of facial recognition or other biometric  
13 surveillance by any person or government entity.

14 1798.530. (a) A violation of Section 1798.510 or 1798.515  
15 constitutes an injury in fact, and an individual may bring a lawsuit  
16 in a court of competent jurisdiction.

17 (b) An individual who prevails in a lawsuit shall obtain any or  
18 all of the following remedies:

19 (1) Recovery of damages in an amount not less than one hundred  
20 dollars (\$100) and not more than seven hundred fifty dollars (\$750)  
21 per individual per violation or actual damages, whichever is  
22 greater.

23 (2) Reasonable attorney fees and costs.

24 (3) Injunctive and declaratory relief, as appropriate.

25 (4) Any other relief the court deems appropriate.

26 (c) In assessing the amount of statutory damages, the court shall  
27 consider any one or more of the relevant circumstances presented  
28 by any of the parties to the case, including, but not limited to, the  
29 nature and seriousness of the misconduct, the number of violations,  
30 the persistence of the misconduct, the length of time over which  
31 the misconduct occurred, the willfulness of the defendant's  
32 misconduct, and the defendant's assets, liabilities, and net worth.

33 ~~SECTION 1. Section 1798.1 of the Civil Code is amended to~~  
34 ~~read:~~

35 ~~1798.1. The Legislature declares that the right to privacy is a~~  
36 ~~personal and fundamental right protected by Section 1 of Article~~  
37 ~~I of the California Constitution and by the United States~~  
38 ~~Constitution and that all individuals have a right of privacy in~~  
39 ~~information pertaining to them. The Legislature further makes the~~  
40 ~~following findings:~~

- 1     ~~(a) The right to privacy is being threatened by the indiscriminate~~  
2     ~~collection, maintenance, and dissemination of personal information~~  
3     ~~and the lack of effective laws and legal remedies.~~  
4     ~~(b) The increasing use of computers and other sophisticated~~  
5     ~~information technology has greatly magnified the potential risk to~~  
6     ~~individual privacy that can occur from the maintenance of personal~~  
7     ~~information.~~  
8     ~~(c) In order to protect the privacy of individuals, it is necessary~~  
9     ~~that the maintenance and dissemination of personal information~~  
10    ~~be subject to strict limits.~~