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DRAFT

AUTOMATED DECISIONMAKING TECHNOLOGY REGULATIONS

DECEMBER 2023

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Statutory Provisions for Reference:

Delegation of rulemaking authority to the California Privacy Protection Agency as set forth in Civil Code section 1798.185, subdivision (a)(16):

Issuing regulations governing access and opt-out rights with respect to businesses’ use of automated decisionmaking technology, including profiling and requiring businesses’ response to access requests to include meaningful information about the logic involved in those decisionmaking processes, as well as a description of the likely outcome of the process with respect to the consumer.

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[ADDITIONS TO] § 7001. Definitions.

“Automated decisionmaking technology” means any system, software, or process—including one derived from machine-learning, statistics, or other data-processing or artificial intelligence—that processes personal information and uses computation as whole or part of a system to make or execute a decision or facilitate human decisionmaking. Automated decisionmaking technology includes profiling.

“Decision that produces legal or similarly significant effects concerning a consumer” means a decision that results in access to, or the provision or denial of, financial or lending services, housing, insurance, education enrollment or opportunity, criminal justice, employment or independent contracting opportunities or compensation, healthcare services, or essential goods or services.

“Profiling” means any form of automated processing of personal information to evaluate certain personal aspects relating to a natural person and in particular to analyze or predict aspects concerning that natural person’s performance at work, economic situation, health, personal preferences, interests, reliability, behavior, location, or movements.

“Publicly accessible place” means a place that is open to or serves the public. Examples of publicly accessible places include shopping malls, stores, restaurants, cafes, movie theaters, amusement parks, convention centers, stadiums, gymnasiums, hospitals, medical clinics or offices, transportation depots, transit, streets, or parks.

[ADDITION] § 7017. Notice of Rights to Opt-Out of, and Access Information About, the Business’s Use of Automated Decisionmaking Technology.

- (a) A business that uses automated decisionmaking technology as set forth in sections 7030, subsection (b), and 7031, subsection (b), shall provide consumers with the Notice of Rights to Opt-Out of, and Access Information About, the Business’s Use of Automated Decisionmaking Technology (“Pre-use Notice”). The Pre-use Notice shall inform consumers about the business’s use of automated decisionmaking technology and consumers’ rights to opt-out of, and to access information about, the business’s use of automated decisionmaking technology.
- (b) The Pre-use Notice shall:
 - (1) Comply with section 7003;
 - (2) Be made readily available where consumers will encounter it;

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(3) Be provided in the manner in which the business primarily interacts with the consumer, before the business processes the consumer’s personal information using the automated decisionmaking technology; and

(4) Include the following:

(A) A plain language explanation of the purpose for which the business proposes to use the automated decisionmaking technology. The purpose shall not be described in generic terms, such as “to improve our services,” because generic terms are insufficient for the consumer to understand the business’s proposed purpose for using the automated decisionmaking technology.

(B) A description of the consumer’s right to opt-out of the business’s use of the automated decisionmaking technology for the processing activities set forth in section 7030, subsection (b), and how the consumer can submit a request to opt-out of the business’s use of the automated decisionmaking technology. This description of the consumer’s right to opt-out shall clearly state the scope of their opt-out right.

(i) If the business is not required to provide a right to opt-out because it is relying upon an exception in section 7030, subsection (m), it shall inform the consumer of that fact and identify the specific exception it is relying upon.

(C) A description of the consumer’s right to access information about the business’s use of the automated decisionmaking technology with respect to the consumer for the processing activities set forth in section 7031, subsection (b), and how the consumer can submit their access request.

(D) A simple and easy-to-use method (e.g., a layered notice or hyperlink) by which the consumer can obtain additional information about the business’s use of the automated decisionmaking technology.

(i) This additional information shall include a plain language explanation of the following:

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1. The logic used in the automated decisionmaking technology, including the key parameters that affect the output of the automated decisionmaking technology. The business shall explain why these parameters are key;
 2. The intended output of the automated decisionmaking technology (e.g., a numerical score of compatibility);
 3. How the business plans to use the output to make a decision, including the role of any human involvement; and
 4. Whether the business’s use of the automated decisionmaking technology has been evaluated for validity, reliability, and fairness, and the outcome of any such evaluation.
- (ii) The business also may include in the Pre-use Notice a hyperlink that directs the consumer to its unabridged risk assessment for the business’s use of the automated decisionmaking technology.
- (c) If a business is using automated decisionmaking technology as set forth in section 7030, subsection (m), the business shall not be required to notify consumers about the right to opt-out of the processing in a Pre-use Notice for that use.
- (d) If a business is using automated decisionmaking technology as set forth in section 7030, subsections (m)(1)–(3), the business shall not be required to disclose information in a Pre-use Notice that would compromise its processing of personal information for those purposes.

[ADDITION] § 7030. Requests to Opt-Out of the Business’s Use of Automated Decisionmaking Technology.

- (a) Consumers have a right to opt-out of businesses’ use of automated decisionmaking technology as set forth in this section.

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- (b) A business shall provide consumers with the ability to opt-out of the following uses of automated decisionmaking technology:
 - (1) For a decision that produces legal or similarly significant effects concerning a consumer;
 - (2) Profiling a consumer who is acting in their capacity as an employee, independent contractor, job applicant, or student. For example, this includes profiling an employee using keystroke loggers, productivity or attention monitors, video or audio recording or live-streaming, facial- or speech-recognition or -detection, automated emotion assessment, location trackers, speed trackers, and web-browsing, mobile-application, or social-media monitoring tools;
 - (3) Profiling a consumer while they are in a publicly accessible place. For example, this includes profiling a consumer while they are in a publicly accessible place using wi-fi or Bluetooth tracking, radio frequency identification, drones, video or audio recording or live-streaming, facial- or speech- recognition or -detection, automated emotion assessment, geofencing, location trackers, or license-plate recognition;
 - (4) **SUBCOMMITTEE OPTION FOR BOARD DISCUSSION:** Profiling a consumer for behavioral advertising;
 - (A) A business that profiles a consumer that the business has actual knowledge is under the age of 16 for behavioral advertising shall comply with the requirements set forth in sections 7070 and 7071;

ADDITIONAL OPTIONS FOR BOARD DISCUSSION

- (5) Profiling a consumer that the business has actual knowledge is under the age of 16; or
 - (6) Processing the personal information of consumers to train automated decisionmaking technology.
- (c) A business that uses automated decisionmaking technology as set forth in subsection (b) shall provide two or more designated methods for submitting requests to opt-out of the business’s use of the automated decisionmaking

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technology. A business shall consider the methods by which it interacts with consumers, the manner in which the business uses the automated decisionmaking technology, and the ease of use by the consumer when determining which methods consumers may use to submit requests to opt-out of the business’s use of the automated decisionmaking technology. At least one method offered shall reflect the manner in which the business primarily interacts with the consumer. Illustrative examples and requirements follow.

- (1) A business that interacts with consumers online shall, at a minimum, allow consumers to submit requests to opt-out through an interactive form accessible via an opt-out link that is provided in the Pre-use Notice. The link shall be titled [*Note: Agency staff recommends receiving public comment on what the link(s) should be titled for consumers to understand the scope of the opt-out right*].
- (2) A business that interacts with consumers in person and online may provide an in-person method for submitting requests to opt-out in addition to the online form.
- (3) Other methods for submitting requests to opt-out include, but are not limited to, a toll-free phone number, a designated email address, a form submitted in person, and a form submitted through the mail.
- (4) A notification or tool regarding cookies, such as a cookie banner or cookie controls, is not by itself an acceptable method for submitting requests to opt-out of the business’s use of automated decisionmaking technology because cookies concern the collection of personal information and not necessarily the use of automated decisionmaking technology. An acceptable method for submitting requests to opt-out must be specific to the right to opt-out of the business’s use of the automated decisionmaking technology.
- (d) A business’s methods for submitting requests to opt-out of the business’s use of the automated decisionmaking technology shall be easy for consumers to execute, shall require minimal steps, and shall comply with section 7004.
- (e) A business shall not require a consumer submitting a request to opt-out of the business’s use of the automated decisionmaking technology to create an account or provide additional information beyond what is necessary to direct the business to opt-out the consumer.

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- (f) Except as set forth in subsection (f)(1), a business may require a verified consumer request if it has determined and documented that consumers are more likely than not to be negatively impacted if the business were to honor a fraudulent request to opt-out consumers of the business’s use of the automated decisionmaking technology. Negative impacts are those set forth in section 7152, subsection (a)(8). If a business determines that verification is necessary, it shall comply with the requirements for verification in Article 5.
 - (1) A business shall not require a verifiable consumer request for a request to opt-out of profiling for behavioral advertising. A business may ask the consumer for information necessary to complete the request, such as information necessary to identify the consumer whose information is subject to the business’s profiling for behavioral advertising. However, to the extent that the business can comply with a request to opt-out without additional information, it shall do so.
- (g) If a business has a good-faith, reasonable, and documented belief that a request to opt-out of the business’s use of automated decisionmaking technology is fraudulent, the business may deny the request. The business shall inform the requestor that it will not comply with the request and shall provide to the requestor an explanation why it believes the request is fraudulent.
- (h) If the consumer submits a request to opt-out of the business’s use of automated decisionmaking technology as set forth in subsection (b), before the business has initiated that processing, the business shall not initiate processing of the consumer’s personal information using that automated decisionmaking technology. If the consumer did not opt-out in response to the Pre-use Notice, and submitted a request to opt-out after the business initiated the processing, the business shall comply with the consumer’s opt-out request by:
 - (A) Ceasing to process the consumer’s personal information using that automated decisionmaking technology as soon as feasibly possible, but no later than 15 business days from the date the business receives the request. For personal information previously processed by that automated decisionmaking technology, the business shall neither use nor retain that information; and
 - (B) Notifying all the business’s service providers, contractors, or other persons to whom the business has disclosed or made personal

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information available to process the consumer’s personal information using that automated decisionmaking technology, that the consumer has made a request to opt-out, and instructing them to comply with the consumer’s request to opt-out of the business’s use of that automated decisionmaking technology within the same time frame.

- (i) A business shall provide a means by which the consumer can confirm that the business has processed their request to opt-out of the business’s use of the automated decisionmaking technology.
- (j) In responding to a request to opt-out of the business’s use of automated decisionmaking technology, a business may present the consumer with the choice to allow specific uses of automated decisionmaking technology as long as a single option to opt-out of all of the business’s uses of automated decisionmaking technology set forth in subsection (b) is also offered.
- (k) A consumer may use an authorized agent to submit a request to opt-out of the business’s use of the automated decisionmaking technology on the consumer’s behalf if the consumer provides the authorized agent written permission signed by the consumer. A business may deny a request from an authorized agent if the agent does not provide to the business the consumer’s signed permission demonstrating that they have been authorized by the consumer to act on the consumer’s behalf.
- (l) Except as allowed by these regulations, a business shall wait at least 12 months from the date the business receives the consumer’s request to opt-out of the business’s use of the automated decisionmaking technology before asking a consumer who has exercised their right to opt-out, to consent to the business’s use of the automated decisionmaking technology for which the consumer previously opted out.
- (m) A business is not required to provide consumers with the ability to opt-out of the use of automated decisionmaking technology if the business’s use of that automated decisionmaking technology is compliant with section 7002, and the business’s use of that automated decisionmaking technology is necessary to achieve, and is used solely for, the following purposes:

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- (1) To prevent, detect, and investigate security incidents that compromise the availability, authenticity, integrity, or confidentiality of stored or transmitted personal information;
- (2) To resist malicious, deceptive, fraudulent, or illegal actions directed at the business and to prosecute those responsible for those actions;
- (3) To protect the life and physical safety of consumers; or
- (4) To provide the good or perform the service specifically requested by the consumer.
 - (A) If a business’s use of the automated decisionmaking technology is to provide a good or opportunity or perform a service as set forth in subsection (m)(4), the business also must have no reasonable alternative method of processing as set forth below.
 - (B) There is a rebuttable presumption that the business has a reasonable alternative method of processing if there is an alternative method of processing that is or has been used in the business’s industry or similar industries to provide a similar good or perform a similar service.
 - (C) The business may rebut this presumption by demonstrating one or more of the following factors:
 - (i) It would be futile for the business to develop or use alternative methods of processing. For example, if a business provides resume-screening and job-matching services and must screen thousands of resumes to recommend job-matches for a same-day job opportunity, the business could demonstrate the futility of developing or using a non-automated decisionmaking process because it would be futile to use a non-automated decisionmaking process to screen thousands of resumes within a few hours;
 - (ii) Developing and using an alternative method of processing would result in a good or service that is not as valid, reliable, and fair. For example, if the business offers a resume-screening and job-matching service, and an alternative method of processing for identifying qualified job applicants is more likely than the automated decisionmaking technology to have a disparate

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impact on protected classes, then using that alternative method of processing would result in a service that is not as fair; or

(iii) Developing an alternative method of processing would impose extreme hardship upon the business, considering the business’s overall financial resources and the nature and structure of its operation, including the business’s technical capabilities. For example, for a business with \$25 million in annual gross revenue and 20 employees, if the only available alternative method of processing would impose a multi-million-dollar expense or require the business to hire 50 new employees with specific technical expertise, the business could demonstrate that developing this alternative method of processing would impose extreme hardship upon the business.

(D) If there is no alternative method of processing that is or has been used in the business’s industry or similar industries to provide a similar good or perform a similar service, and the business can demonstrate any of the factors set forth in subsections (C)(i)–(iii), the business has no reasonable alternative method of processing.

(E) Any business relying on this exception to not provide a consumer with the ability to opt-out of its use of the automated decisionmaking technology shall document its explanation of how it meets the requirements in subsection (m)(4)(A)–(D), and shall provide such explanation to the Agency within five (5) business days of the Agency’s request.

(n) If a business is profiling a consumer for behavioral advertising, the business cannot rely on the exceptions set forth in subsection (m) and shall be required to provide consumers with the ability to opt-out of that use of automated decisionmaking technology.

(o) If a business is using automated decisionmaking technology as set forth in subsection (b), the business shall provide consumers with a method to submit a complaint about the business’s use of the automated decisionmaking technology to the business, and shall explain how consumers can submit a complaint.

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[ADDITION] § 7031. Requests to Access Information About the Business’s Use of Automated Decisionmaking Technology.

- (a) Consumers have a right to access information about the business’s use of automated decisionmaking technology as set forth in this section.
- (b) If the business uses automated decisionmaking technology for any processing set forth in section 7030, subsection (b), then the business shall provide consumers with access to information about the business’s use of that automated decisionmaking technology (“right to access” or “access right”).
- (c) A business’s methods for consumers to submit requests to exercise their access right shall comply with section 7020.
- (d) If a business has made a decision that results in the denial of goods or services as set forth in section 7030, subsection (b)(1), with respect to the consumer (e.g., denied the consumer an employment opportunity or lowered their compensation), the business shall notify the consumer of the following, via the method by which the business primarily interacts with the consumer:
 - (1) That the business made a decision with respect to the consumer;
 - (2) That the consumer has a right to access information about the business’s use of that automated decisionmaking technology;
 - (3) How the consumer can exercise their access right; and
 - (4) That the consumer can file a complaint with the Agency and the Attorney General. The business also shall provide links to the complaint forms on their respective websites. For example, the business can include the following language in its response to the consumer: “If you believe your privacy rights have been violated, you can submit a complaint to the California Privacy Protection Agency at [link to complaint form] or to the California Attorney General at [link to complaint form].”
- (e) For requests to exercise the right to access, if a business cannot verify the identity of the person making the request pursuant to the regulations set forth in Article 5, the business shall not disclose the information identified in subsections (i)(2)–(5) and shall inform the requestor that it cannot verify their identity.

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- (f) If a business denies a consumer’s verified request to exercise their right to access, in whole or in part, because of a conflict with federal or state law, or an exception to the CCPA, the business shall inform the requestor and explain the basis for the denial, unless prohibited from doing so by law. If the request is denied only in part, the business shall disclose the other information sought by the consumer.
- (g) A business shall use reasonable security measures when transmitting the requested information to the consumer.
- (h) If a business maintains a password-protected account with the consumer, it may comply with a request to exercise the right to access by using a secure self-service portal for consumers to access, view, and receive a portable copy of their requested information if the portal fully discloses the requested information that the consumer is entitled to under the CCPA and these regulations, uses reasonable data security controls, and complies with the verification requirements set forth in Article 5.
- (i) In responding to a consumer’s request to exercise their access right, a business shall provide plain language explanations of the following information to the consumer:
 - (1) The purpose for which the business used automated decisionmaking technology. The purpose shall not be described in generic terms, as set forth in section 7017, subsection (b)(4)(A).
 - (2) The output of the automated decisionmaking technology with respect to the consumer.
 - (A) If the business has multiple outputs with respect to the consumer, the business shall provide a simple and easy-to-use method by which the consumer can access all of the outputs.
 - (3) How the business used the output to make a decision with respect to the consumer. This explanation shall include:
 - (A) The decision (including, for example, the placement of a consumer into a category or segment as a result of profiling) that was made, executed, or facilitated by the business’s use of the automated decisionmaking technology with respect to the consumer;

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- (B) Any factors other than the output that the business used to make the decision;
 - (C) The role of any human involvement in the business’s use of the automated decisionmaking technology; and
 - (D) Whether the business’s use of the automated decisionmaking technology has been evaluated for validity, reliability, and fairness, and the outcome of any such evaluation.
- (4) If the business plans to use the output to make a decision with respect to the consumer, the business’s explanation shall include:
 - (A) How the business plans to use the output to make a decision with respect to the consumer;
 - (B) Any factors other than the output that the business plans to use to make the decision;
 - (C) The role of any human involvement in the business’s use of the automated decisionmaking technology; and
 - (D) Whether the business’s use of the automated decisionmaking technology has been evaluated for validity, reliability, and fairness, and the outcome of any such evaluation.
- (5) How the automated decisionmaking technology worked with respect to the consumer. At a minimum, this explanation shall include:
 - (A) How the logic, including its assumptions and limitations, was applied to the consumer; and
 - (B) The key parameters that affected the output of the automated decisionmaking technology. The business shall explain why the parameters were key, and how those parameters applied to the consumer.
- (6) A simple and easy-to-use method by which the consumer can obtain the range of possible outputs, which may include aggregate output statistics (for example, the five most common outputs of the automated decisionmaking technology, on average, across all consumers during the preceding

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calendar year, and the percentage of consumers that received each output during the preceding calendar year).

- (7) Instructions for how the consumer can exercise their other CCPA rights. These instructions shall include any links to an online request form or portal for making such a request, if offered by the business.
 - (A) The business may comply with this requirement by providing a link that takes the consumer directly to the specific section of the business’s privacy policy that contains these instructions. Directing the consumer to the beginning of the privacy policy, or to another section of the privacy policy that does not contain these instructions, so that the consumer is required to scroll through other information in order to find the instructions, does not satisfy this standard.
- (8) In accordance with the requirement in section 7030, subsection (o), the business shall provide instructions regarding the method by which the consumer can submit a complaint to the business about the business’s use of the automated decisionmaking technology, including a complaint about a specific decision and how the decision was or will be made with respect to the consumer. The business also shall:
 - (A) Explain that the consumer can file a complaint with the Agency and the Attorney General and provide links to the complaint forms on their respective websites. For example, the business can include the following language in its response to the consumer: “If you believe your privacy rights have been violated, you can submit a complaint to the California Privacy Protection Agency at [link to complaint form] or to the California Attorney General at [link to complaint form].”
- (j) If a business’s use of the automated decisionmaking technology is solely as set forth in section 7030, subsection (m), the business shall not be required to provide the ability to opt-out or an opt-out link or include information about this right in its response to a request to access.
- (k) If a business’s use of the automated decisionmaking technology is solely as set forth in section 7030, subsections (m)(1)–(3), the business shall not be required

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to disclose information in its response to a request to access that would compromise its processing of personal information for those purposes.

- (l) A service provider or contractor shall provide assistance to the business in responding to a verifiable consumer request to access, including by providing the business with the consumer’s personal information it has in its possession that it collected pursuant to their written contract with the business, or by enabling the business to access that personal information.

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**For Consideration in Conjunction with Section 7030, Subsection (b)(4)(A)
 (“Profiling for Behavioral Advertising”)**

[ADDITIONS TO] ARTICLE 6. SPECIAL RULES REGARDING CONSUMERS UNDER 16 YEARS OF AGE

§ 7070. Consumers Less Than 13 Years of Age.

- (c) Process for Opting-In to Profiling for Behavioral Advertising
 - (1) A business that has actual knowledge that it profiles a consumer less than the age of 13 for behavioral advertising shall establish, document, and comply with a reasonable method for a parent or guardian of that child to opt-in to the use of profiling for behavioral advertising, and for determining that the person consenting to the profiling is the parent or guardian of that child. This consent to the profiling is in addition to any verifiable parental consent required under COPPA.
 - (2) Methods that are reasonably calculated to ensure that the person providing consent is the child’s parent or guardian include those set forth in subsection (a)(2).
- (d) When a business receives consent to profiling for behavioral advertising pursuant to subsection (c), the business shall inform the parent or guardian of the right to opt-out of profiling for behavioral advertising and of the process for doing so on behalf of their child pursuant to section 7030.

§ 7071. Consumers at Least 13 Years of Age and Less Than 16 Years of Age.

- (c) A business that has actual knowledge that it profiles a consumer at least 13 years of age and less than 16 years of age for behavioral advertising shall establish, document, and comply with a reasonable process for allowing such consumers to opt-in to the use of profiling for behavioral advertising.
- (d) When a business receives a request to opt-in to the profiling of a consumer at least 13 years of age and less than 16 years of age for behavioral advertising, the business shall inform the consumer of their ongoing right to opt-out of the use of profiling for behavioral advertising at any point in the future and of the process for doing so pursuant to section 7030.