

CONCURRENCE IN SENATE AMENDMENTS

AB 45 (Bauer-Kahan)

As Amended September 9, 2025

Majority vote

SUMMARY

This bill would prohibit geofencing near healthcare facilities and expand protections for personally identifiable data collected within them, covering both patients and visitors. Secondly, this bill would strengthen research privacy protections by preventing the release of personally identifiable information if the subpoena is issued under a law that conflicts with California's legal standards.

Senate Amendments

Clarifies that this bill does not alter any applicable law regarding a law enforcement agency's use of personal information, including geolocation information generated by an electronic monitoring device.

Clarifies that this bill does not prohibit geofencing activities conducted by a labor organization if the geofencing does not result in the labor union's collection of names or personal information without the expressed consent of the individual and is for activities concerning workplace conditions, worker or patient safety, labor disputes, or organizing.

Further clarifies that if a third party vendor, such as a social media platform, is contracted to collect personal information on behalf of a labor or employee organization is prohibited from selling, using, or sharing the collected personal information for any purpose other than the activities describe above.

COMMENTS

1) *Research Privacy*. Currently, research data is protected under Certificates of Confidentiality (CoCs) only if the research is federally funded. These certificates, issued by agencies such as the National Institutes of Health (NIH) or the Centers for Disease Control and Prevention (CDC), are designed to safeguard identifiable, sensitive information collected during research. Privately funded research, however, does not automatically receive the same protections. Although such projects can apply for a CoC, approval is at the discretion of the issuing agency, a process that may be especially difficult under the current federal administration that has taken a more critical stance toward certain areas of research. Even when a CoC is granted, disclosure of protected information can still be required under specific federal, state, or local laws. As a result, the current framework for protecting research records could allow for compliance with subpoenas issued by other states, even when those subpoenas are based on laws that contradict California's legal protections.

2) *Geofencing*. Geofencing is the practice of creating a virtual perimeter around a specific geographic area. These perimeters can range in size from entire states to a single business or building.¹ Geofencing works by tracking the IP addresses of devices that enter the defined

¹ Rahul Awati, "geofencing", *TechTarget* (December 2022), accessed at <https://www.techtarget.com/whatis/definition/geofencing>.

location. Data brokers can purchase this information and combine it with other consumer data to identify individuals and package the information for various uses. Some businesses use geofencing data to determine which consumers are near their locations, allowing them to send targeted coupons or advertisements to encourage in-store visits. On a more granular level, businesses can analyze movement patterns within a store to determine where customers spend the most time and tailor advertisements or store layouts accordingly.

In a healthcare setting, geofencing is often used to enhance patient safety. Some healthcare facilities use it to monitor who enters and exits, helping to prevent individuals with a history of violence from reentering the premises. Geofencing can also be employed to track patients with neurodegenerative conditions, such as Alzheimer's disease, to ensure they remain within the facility and receive appropriate care.² Additionally, hospitals may use geofencing to ensure that infants are transported only by authorized personnel, helping to prevent mismatches or abductions.³ While these applications offer clear benefits, they also raise concerns. The vast amount of data collected and the relative ease with which it can be accessed push this technology toward a more dystopian territory, especially when considering issues of privacy and surveillance.

Geofencing can become highly punitive when used to enforce laws like the Texas Heartbeat Act. For instance, an individual in Texas could geofence a healthcare facility in California that provides abortion services and track who enters and exits the premises. If they are able to identify a patient from Texas, this data could form the basis of a civil lawsuit under the law's private right of action provision. That suit could not only endanger the patient, but also the doctor and any individual who "aids or abets" the patient in obtaining abortion care. This kind of surveillance represents a serious threat to privacy and bodily autonomy and directly undermines California's constitutional protections to the right to privacy and the right to access abortion care.

This can become even more worrisome if extrajudicial means are used to obtain geofenced location data. Specifically, location data brokers collect billions of location data points linked to unique persistent identifiers and timestamps that could give detailed insights into people's movements. This information is then repackaged and sold to their clients, who often use it to trace the movements of individuals to and from sensitive locations. These include medical facilities, places of religious worship, places used to infer an LGBTQ+ identification, domestic abuse shelters, substance use disorder treatment facilities, and homeless shelters. Further, data collected is not anonymized, it is possible to identify the exact identity of the mobile device owner.

Please see the policy committee analysis for a full analysis of this bill.

According to the Author

In our current political climate where reproductive freedoms are constantly under threat, personal data privacy has become a key mechanism for defending access to health care. We have all seen the unabashed threat posed by the federal administration regarding reproductive healthcare and the ever-evolving ways used to prosecute individuals accessing these basic

² Securitas Healthcare, "Location Tracking for Alzheimer's and Dementia Residents", (Feb. 17, 2022), accessed at <https://www.securitashealthcare.com/blog/location-tracking-alzheimers-and-dementia-residents>.

³ Claire Swedberg, "Hybrid RTLS Solution Tracks Infants in Hospitals", *RFID Journals* (Oct. 28, 2024), accessed at <https://www.rfidjournal.com/news/hybrid-rtls-solution-tracks-infants-in-hospitals/222010/>.

rights. In the last few months, it has also become clear the ways in which research projects and data are under threat and can be weaponized against researchers and participants. While federal regulations cover most health care data privacy issues, there are gaps in coverage when it comes to personal information collected through research and geolocation data. AB 45 closes these gaps and protects research records from disclosure in response to a subpoena or other law enforcement request based on other states' laws interfering with abortion rights and prohibits geofencing an entity that provides in-person health care services

Arguments in Support

University of California Office of the President writes in support:

Many UC researchers conduct survey- and interview-based research on people about their reproductive health experiences, including research specifically evaluating the effects of new state laws enacted since the *Dobbs v. Jackson Supreme Court* decision. This data can include information about contraception, abortion care and other individual care information. For example, the UCSF Advancing New Standards in Reproductive Health research program conducted a longitudinal study, known as the Turnaway Study, which examines the effects of unwanted pregnancies on women's lives. Research assistants interviewed participants by phone over a period of 5 years, and nearly 8,000 interviews were conducted over the course of the project. The main finding of the Turnaway Study is that receiving an abortion does not harm the health and wellbeing of women, but in fact, being denied an abortion results in worse financial, health, and family outcomes. UCSF has published over 50 scientific papers in peer-reviewed journals using data from the Turnaway Study.

Generally, both state and federal laws protect against the disclosure of any medical information relating to seeking or obtaining an abortion that is collected in a clinical setting. However, when an individual discloses this information while participating in research, the same protections against disclosure do not exist. It is critically important that additional protections be in place to ensure that information shared by study participants in the context of a research study be fully protected from subpoena by out-of-state actors seeking to criminalize them for care they might have obtained that is legal in California. Without these protections, the risk to participant confidentiality might be too great, and it might not be possible to continue this kind of research.

AB 45 provides critical privacy protections for researchers, study participants, and patients such as those involved with the Turnaway Study. The research occurring across UC campuses is vital for improving public health, supporting informed decision-making, addressing health disparities and understanding the impact of the *Dobbs* decision. As a top-tier research institution and a leading health care provider, UC is committed to ensuring that this critical research continues. Protecting sensitive reproductive information in research records is not anticipated to have any fiscal impact on the state. These protections may make it more appealing for funders to support this type of research in California.

While federal regulations cover most health care data privacy issues, there are gaps in coverage when it comes to personal information collected through research and geolocation data. AB 45 protects research records from disclosure in response to a subpoena or other law enforcement request based on another state's laws that interfere with a person's right to obtain an abortion and prohibits geofencing an entity that provides in-person health care services.

For these reasons, we urge your support on AB 45.

Arguments in Opposition

The Association of National Advertisers writes:

On behalf of the advertising industry, we respectfully oppose AB 45, and we offer this letter to express our concerns about this legislation. We and the companies we represent, many of whom do substantial business in California, strongly believe consumers deserve meaningful privacy protections supported by reasonable laws and industry policies. However, as drafted, AB 45 would have an overbroad effect by impeding legitimate advertising to Californians if they are merely near a family planning center. The bill also raises First Amendment concerns by blocking advertising to medical professionals and others inside of entities that provide in-person health care services. Moreover, the bill would permit a private right of action for certain violations, creating the possibility of extensive monetary penalties for well-meaning companies who inadvertently violate the bill's terms.

FISCAL COMMENTS

According to the Senate Appropriations Committee:

- 1) Unknown, potentially significant costs to the state funded trial court system (Trial Court Trust Fund, General Fund) to adjudicate civil actions. By creating a new cause of action and authorizing a new civil penalty with statutory damages, this bill may lead to additional case filings that otherwise would not have been commenced and could lead to lengthier and more complex court proceedings with attendant workload and resource costs to the court. The fiscal impact of this bill to the courts will depend on many unknowns, including the number of cases filed and the factors unique to each case. An eight-hour court day costs approximately \$10,500 in staff in workload. This is a conservative estimate, based on the hourly rate of court personnel including at minimum the judge, clerk, bailiff, court reporter, jury administrator, administrative staff, and jury per-diems. If court days exceed 10, costs to the trial courts could reach hundreds of thousands of dollars. While the courts are not funded on a workload basis, an increase in workload could result in delayed court services and would put pressure on the General Fund to fund additional staff and resources and to increase the amount appropriated to backfill for trial court operations.
- 2) The Department of Justice (DOJ) reports that while the impact of AB 45 would not pose a significant impact to the DOJ, as numerous bills this session may result in no significant impact to the DOJ, should an aggregate of these bills chapter, the DOJ would submit a workload BCP for additional resources to process the increase to the DOJ workload.

VOTES:

ASM PRIVACY AND CONSUMER PROTECTION: 10-2-3

YES: Bauer-Kahan, Bryan, Irwin, Lowenthal, McKinnor, Ortega, Pellerin, Petrie-Norris, Ward, Wicks

NO: DeMaio, Macedo

ABS, ABST OR NV: Dixon, Patterson, Wilson

ASM JUDICIARY: 9-2-1

YES: Kalra, Bauer-Kahan, Bryan, Connolly, Harabedian, Pacheco, Papan, Stefani, Zbur

NO: Macedo, Sanchez

ABS, ABST OR NV: Dixon

ASM APPROPRIATIONS: 11-2-2

YES: Wicks, Arambula, Calderon, Caloza, Elhawary, Fong, Mark González, Hart, Pacheco, Pellerin, Solache

NO: Ta, Tangipa

ABS, ABST OR NV: Sanchez, Dixon

ASSEMBLY FLOOR: 63-11-5

YES: Addis, Aguiar-Curry, Ahrens, Alanis, Alvarez, Arambula, Ávila Farías, Bains, Bauer-Kahan, Bennett, Berman, Boerner, Bonta, Bryan, Calderon, Caloza, Carrillo, Connolly, Davies, Elhawary, Fong, Gabriel, Garcia, Gipson, Mark González, Haney, Harabedian, Hart, Irwin, Jackson, Kalra, Krell, Lee, Lowenthal, McKinnor, Muratsuchi, Nguyen, Ortega, Pacheco, Papan, Patel, Pellerin, Petrie-Norris, Quirk-Silva, Ramos, Ransom, Celeste Rodriguez, Michelle Rodriguez, Rogers, Blanca Rubio, Schiavo, Schultz, Sharp-Collins, Solache, Soria, Stefani, Valencia, Wallis, Ward, Wicks, Wilson, Zbur, Rivas

NO: Castillo, DeMaio, Ellis, Flora, Gallagher, Hadwick, Lackey, Macedo, Sanchez, Ta, Tangipa

ABS, ABST OR NV: Chen, Dixon, Jeff Gonzalez, Hoover, Patterson

UPDATED

VERSION: September 9, 2025

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FN: 0002109