

CALIFORNIA PRIVACY PROTECTION AGENCY

2101 Arena Blvd
Sacramento, CA 95834
www.cppa.ca.gov

**M e m o r a n d u m**

Date: June 30, 2023

To: California Privacy Protection Agency Board
(Meeting of July 14, 2023)

From: Maureen Mahoney, Deputy Director of Policy & Legislation

Subject: Analysis and Recommended Agency Position on AB 947, California Consumer Privacy Act of 2018: sensitive personal information (version 3/6/2023) (Gabriel)

Brief Summary of Bill and Status

AB 947 (version 3/6/2023), introduced by Assemblymember Jesse Gabriel, would define “sensitive personal information” for purposes of the California Consumer Privacy Act (CCPA) to include personal information that reveals a consumer’s citizenship or immigration status. The bill has been approved by the California Assembly and, as of June 30, 2023, is under consideration by the California Senate Appropriations Committee.¹

Analysis

The California Consumer Privacy Act provides key consumer privacy rights to Californians. The rights granted include the right to know what personal information businesses have collected and how that information is being used, sold, and shared; the right to delete personal information; the right to correct inaccurate personal information, the right to limit a business’s use and disclosure of sensitive personal information to certain business purposes, and the right to stop businesses’ sale and sharing of personal information, among other protections.

The CCPA covers personal information that identifies, relates to, or could reasonably be linked with a particular consumer or household, including sensitive personal information.² Sensitive personal information is currently defined as personal information that reveals a consumer’s social security, driver’s license, state identification card, or passport number; a consumer’s account log-in, financial account, debit card, or credit card number in combination with any required security or access code, password, or credentials allowing access to an account; a consumer’s precise geolocation; a consumer’s racial or ethnic origin, religious or philosophical beliefs, or union membership; the contents of a consumer’s mail, email and text messages, unless the business is the intended recipient of the communication; a consumer’s genetic data; and the processing of biometric information for the purpose of uniquely identifying a consumer; personal information collected and analyzed concerning a

¹ AB 947 (2023), https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=202320240AB947.

² Civ. Code § 1798.140(v).

consumer's health; or personal information collected and analyzed concerning a consumer's sex life or sexual orientation.³

Sensitive personal information is afforded additional privacy protections under California law. Consumers have the right to direct businesses to limit the use of their sensitive personal information to what is necessary to perform the services or provide the goods reasonably expected by an average consumer who requests such goods or services and other specified and limited purposes.⁴ Businesses that collect sensitive personal information are required to notify consumers of this right.⁵

This bill would add “citizenship or immigration status” to the CCPA’s definition of sensitive personal information, thus ensuring that consumers have the right to limit the use or disclosure of this information. It would bring the CCPA into closer alignment with the consumer privacy law in Colorado, for example, which includes “citizenship or citizenship status” in its definition of sensitive data, and those in Connecticut, Florida, Indiana, Iowa, Montana, Tennessee, Texas, Utah, and Virginia, which include “citizenship or immigration status” in their definitions of sensitive data.⁶ In staff’s view, the bill is consistent with the Agency’s goals of protecting Californians’ consumer privacy. For example, it will help prevent the unwanted disclosure of information about a consumer’s citizenship status, which could subject the consumer to discrimination, or even imprisonment and relocation.

Recommendation

Support

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³ Civ. Code § 1798.140(ae).

⁴ Civ. Code § 1798.121(a); 11 CCR § 7027(m).

⁵ Civ. Code § 1798.121(a).

⁶ Colo. Rev. Stat. § 6-1-1302(24)(a); Conn. Gen. Stat. § 42-515(27)(A); Fla. Stat. § 501.702(31)(a); Ind. Code 24-15 § 28(1); Iowa Code § 715(D).1(26)(a); MT SB 384 § 24(a); Tenn. Code Ann. § 47-18-3201(25)(A); Tex. Code Ann. § 541.001(29)(A); Utah Code Ann. § 13-61-101(32)(a)(i)(D); Va. Code Ann. § 59.1-575.

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From: Maureen Mahoney, Deputy Director of Policy & Legislation

Subject: Analysis and Recommended Agency Position on AB 1194 (version 2/16/23),
California Privacy Rights Act of 2020: exemptions: abortion services (Carillo)

Brief Summary of Bill and Status

AB 1194 (version 2/16/23), introduced by Assemblymember Wendy Carillo, would amend the California Consumer Privacy Act (CCPA) to provide that certain exemptions do not apply if the consumer's personal information contains information related to accessing, procuring, or searching for services regarding contraception, pregnancy care, and perinatal care, including abortion services. The bill further provides that a consumer accessing, procuring, or searching for those services shall not constitute a natural person being at risk or danger of death or serious physical injury for purposes of CCPA exemptions. The bill has been approved by the California Assembly and, as of June 30, 2023, is under consideration by the California Senate Appropriations Committee.⁷

Analysis

Reproductive privacy has become particularly salient following the United States Supreme Court's *Dobbs v. Jackson Women's Health Organization* decision in June 2022.⁸ As of June 2023, fourteen states have adopted nearly full bans on abortion.⁹ Information that businesses routinely collect from consumers, including messages, location data, search terms and browser history, as well as information collected through period-tracking apps, can provide insight into whether someone is seeking an abortion. That data is vulnerable to access by officials in certain states seeking to prosecute people for seeking abortions.

Since the *Dobbs* decision, California has worked to strengthen reproductive privacy protections. In November 2022, reproductive rights were added to the California state constitution by ballot initiative.¹⁰ Also in 2022, California adopted AB 1242, which, among other provisions, prevents out-of-state law enforcement entities from obtaining information from California businesses about an abortion that

⁷ AB 1194 (2023), https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=202320240AB1194.

⁸ *Dobbs v. Jackson Women's Health Org.*, 142 S. Ct. 2228 (2022).

⁹ *Tracking the States Where Abortion is Now Banned*, N.Y. TIMES (updated June 26, 2023), <https://www.nytimes.com/interactive/2022/us/abortion-laws-roe-v-wade.html>.

¹⁰ Press release, Office of Governor Gavin Newsom, *Historic California Constitutional Amendment Reinforcing Protections for Reproductive Freedom Goes into Effect* (Dec. 21, 2022) <https://www.gov.ca.gov/2022/12/21/historic-california-constitutional-amendment-reinforcing-protections-for-reproductive-freedom-goes-into-effect>.

would be legal in California.¹¹ That same year, California also adopted AB 2091, which protects health care providers from being forced to disclose such information.¹²

This bill seeks to further support those rights by clarifying that certain CCPA exemptions do not apply if the consumer's personal information contains information related to accessing, procuring, or searching for services regarding contraception, pregnancy care, and perinatal care, including abortion services. For example, CCPA exemptions that would be eliminated with respect to reproductive health include:

- To comply with federal, state, or local laws or comply with a court order or subpoena to provide information;
- To comply with a civil, criminal, or regulatory inquiry, investigation, subpoena, or summons by federal, state, or local authorities; or
- To cooperate with law enforcement agencies concerning conduct or activity that the business, service provider, or third party reasonably and in good faith believes may violate federal, state, or local law.

Thus, this bill would clarify that a consumer could still access, delete, and stop the sale/sharing of information maintained by a business that is subject to a federal, state, or local court order or subpoena. It would also clarify that reproductive health information would not be subject to a government agency request for access to a consumer's personal information on the grounds that a natural person is at risk or danger of death or serious physical injury. In staff's view, this bill is consistent with the Agency's goals of protecting Californians' consumer privacy because it will strengthen protections with respect to this sensitive data.

Recommendation

Support

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¹¹ 2022 Cal. Stats. Ch. 627 (AB 1242).

¹² 2022 Cal. Stats. Ch. 628 (AB 2091).

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From: Maureen Mahoney, Deputy Director of Policy & Legislation

Subject: Analysis and Recommended Agency Position on AB 1546: California Consumer Privacy Act of 2018: statute of limitations (version 2/17/23) (Gabriel)

Brief Summary of Bill and Status

AB 1546 (version 2/17/23), introduced by Assemblymember Jesse Gabriel, would require a civil action by the Attorney General (AG) to enforce the California Consumer Privacy Act (CCPA) to begin within five years of the violation, consistent with the California Privacy Protection Agency's statute of limitations for administrative actions. Current law requires the AG to initiate an action within one year of the violation. The bill is sponsored by the Office of the Attorney General. It has been approved by the California Assembly and, as of June 30, 2023, is under consideration by the California Senate Appropriations Committee.¹³

Analysis

The California Consumer Privacy Act provides key consumer privacy rights to Californians.¹⁴ The California Department of Justice (DOJ) has been enforcing the CCPA since July 2020.¹⁵ In November 2020, California voters ratified Proposition 24, the California Privacy Rights Act, which amended and expanded the CCPA, including by creating the first authority with full administrative powers focused on privacy and data protection in the United States, the California Privacy Protection Agency (CPPA). Along with the Attorney General, the Agency is vested with the authority to undertake enforcement to protect Californians' privacy.¹⁶

The Agency enforces the CCPA through administrative actions while the Attorney General enforces the CCPA through civil enforcement actions. The Agency has five years within which to bring an administrative enforcement action but the Attorney General is subject to a one-year timeline.¹⁷ While the CCPA does not specify the statute of limitations for civil enforcement of the statute, existing law

¹³ AB 1546 (2023), https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=202320240AB1546

¹⁴ Civ. Code § 1798.100 et seq.

¹⁵ State of California Department of Justice, CCPA Enforcement Case Examples (updated Aug. 24, 2022), <https://oag.ca.gov/privacy/ccpa/enforcement>.

¹⁶ Civ. Code § 1798.199.10.

¹⁷ Civ. Code §§ 1798.199.70, 1798.199.90(a).

generally requires an action upon a statute for a forfeiture or penalty to the people of the state to begin within one year of the violation of the statute.¹⁸

Other provisions in the CCPA indicate that the statute anticipates a five-year statute of limitations for civil enforcement actions initiated by the AG, for example, a provision that states that the AG can intervene in a CPPA action after it is initiated.¹⁹

This bill will bring the AG's statute of limitations under the CCPA into alignment with that of the California Privacy Protection Agency. In staff's view, it is consistent with the Agency's mission to protect Californians' consumer privacy and will support more effective enforcement of the California Consumer Privacy Act.

Recommendation

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¹⁸ Civ. Proc. Code § 340.

¹⁹ Civ. Code § 1798.199.90(c).

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From: Maureen Mahoney, Deputy Director of Policy & Legislation

Subject: Analysis and Recommended Agency Position on SB 362, Data brokers: privacy
(version 6/29/23) (Becker)

Brief Summary of Bill and Status

SB 362 (version 6/29/23), introduced by Senator Josh Becker, would amend California's Data Broker Registry Law to transfer administration and rulemaking authority over the data broker registry from the Department of Justice to the California Privacy Protection Agency. This bill would also direct the Agency to establish an accessible deletion mechanism to allow a consumer to, in a single request, ask that all data brokers delete their personal information. The bill is co-sponsored by Privacy Rights Clearinghouse and Californians for Consumer Privacy. The bill has been approved by the California Senate and, as of June 30, 2023, is under consideration by the California Assembly Judiciary Committee.²⁰

Analysis

Existing law requires data brokers, defined as a business that knowingly collects and sells to third parties the personal information of a consumer with whom the business does not have a direct relationship, to register with the Attorney General each year, and provide a registration fee. The Attorney General is required to create and maintain a public website that includes certain information provided by the data brokers.

This bill would instead require data brokers to register with the California Privacy Protection Agency, which would assume responsibility for maintaining the data broker registry website. It would require the Agency to establish an accessible deletion mechanism that allows a consumer, through a single request, to request that every data broker delete any personal information related to that consumer held by the data broker or associated service provider or contractor. It would require data brokers, by August 1, 2026, to access this mechanism at least once every 31 days and honor the deletion requests. The bill would authorize the Agency to charge a fee to data brokers for accessing the mechanism. Beginning July 1, 2026, data brokers would be prohibited from selling or sharing new personal information of the consumer who has previously requested deletion, unless the consumer requests otherwise.

²⁰ SB 362 (2023), https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=202320240SB362.

Beginning January 1, 2028, and every 3 years, data brokers would be required to undergo an audit by an independent third party to determine compliance with the measure and to submit an audit report to the Agency upon the Agency's request.

The Agency would enforce the measure. Civil penalties, administrative fines, fees, and costs recovered under the measure would be deposited in the Data Brokers' Registry Fund. The Agency would have access to the fund to help pay for its responsibilities under the measure.

In staff's view, this bill is consistent with the Agency's mission to protect Californians' consumer privacy. Similar to the CCPA's existing requirement for businesses to process opt-out preference signals as a valid request to opt out of the sale and sharing of consumer personal information, it seeks to make it easier for consumers to operationalize their privacy rights. Since there are hundreds of data brokers on the data broker registry, it is difficult, if not impossible, for consumers to delete their data with each business one-by-one. This bill will help address that problem by enabling consumers to exercise their deletion rights with respect to these businesses in a single step.

Given the Agency's unique privacy expertise, it is well suited to create an accessible deletion mechanism in a privacy-protective manner, and a natural fit for the task of maintaining the data broker registry and deletion system. Finally, several provisions in the bill, including the requirement that businesses pay to access the deletion mechanism, will help enable the Agency to create a state-of-the-art deletion mechanism despite its limited resources.

Recommendation

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From: Maureen Mahoney, Deputy Director of Policy & Legislation

Subject: Analysis and Recommended Agency Position on SB 544, Bagley-Keene Open Meeting Act: teleconferencing (version 4/27/23) (Laird)

Brief Summary of Bill and Status

SB 544 (version 4/27/23), introduced by Senator John Laird, would amend the Bagley-Keene Open Meeting Act (Bagley-Keene) to allow state bodies to conduct public meetings exclusively via teleconference. The bill is sponsored by the California Commission on Aging. The bill has been approved by the California Senate and, as of June 30, 2023, is under consideration by the California Assembly Committee on Governmental Organization.²¹

Overview

The Bagley-Keene Open Meeting Act (Bagley-Keene) includes a number of requirements relating to public meetings of state bodies such as the California Privacy Protection Agency (CPPA or Agency) Board. Under Bagley-Keene, public meetings may be held through teleconference, but Bagley-Keene requires that members of the public be able to address the Board at each teleconference location, and at least one member of the Board be physically present at the location specified in the meeting notice.

In response to the COVID-19 emergency, on March 17, 2020, Governor Newsom signed an Executive Order that permitted state bodies to hold meetings exclusively by teleconference,²² which was temporarily codified in Bagley-Keene,²³ and extended in January 2022.²⁴ In June 2022, the Governor signed SB 189, which included a temporary exemption to Bagley-Keene allowing public meetings to be held by teleconference.²⁵ The exemption is in effect until July 1, 2023.

This bill would amend existing law to require, for each public meeting, that the Board provide 1) a teleconference telephone number, 2) an internet website or online platform, and 3) a physical address of

²¹ SB 544 (2023), https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=202320240SB544.

²² State of California Executive Order N-29-20 (March 17, 2020), <https://www.gov.ca.gov/wp-content/uploads/2020/03/3.17.20-N-29-20-EO.pdf>.

²³ 2021 Cal. Stats. Ch. 165 (AB 361).

²⁴ State of California Executive Order N-1-22 (Jan. 5, 2022), <https://www.gov.ca.gov/wp-content/uploads/2022/01/1.5.22-Bagley-Keene-waiver-EO.pdf>.

²⁵ 2022 Cal. Stats. Ch. 48 (SB 189).

at least one site where the public may go to participate. The bill states that at least one staff member must be present at the physical location. Under the bill, if the teleconference line or other means of remote participation fails during the meeting, the Board must end or adjourn the meeting and provide information about reconvening.

For state bodies conducting meetings remotely, the bill requires that they implement a procedure for resolving requests for reasonable modification or accommodation for individuals with disabilities, consistent with the Americans with Disabilities Act²⁶ and advertise that procedure in every meeting notice. The bill would require that any Board member joining the meeting from a remote location disclose whether anyone 18 or over is present in the room and disclose the nature of their relationship.

Analysis

The Agency Board was established in November 2020 and meets regularly pursuant to the Bagley-Keene Open Meetings Act. Since its inception, the Board has met via online video conference, pursuant to Governor Newsom's Executive Order and the subsequent temporary codification and extension. After the expiration of the extension in spring 2022, the Board held in-person meetings. The Board resumed online meetings after SB 189 went into effect July 1, 2022.

The Agency is committed to fostering robust public engagement in its meetings. In staff's view, this legislation is the best way to ensure meaningful participation, based on the high public participation in our online public meetings. Especially since COVID-19 has continued to make it difficult to meet in person, particularly for people who are at higher medical risk, it is appropriate that state agencies have the discretion to hold virtual public meetings.

Last year, the Agency Board has held two days of online pre-rulemaking Informational Sessions, and the Agency welcomed pre-rulemaking comments from the public over three days of online Stakeholder Sessions. All of these meetings were well-attended by remote videoconference participants—with at least one hundred, and often hundreds of attendees at every meeting—and allowed input from stakeholders from all over the state. In contrast, few members of the public have attended any of the in-person meetings or hearings the Agency has held.

When the Board is required to meet in person, it is more difficult to foster meaningful participation. For example, at the May 26, 2022 CPPA Board meeting, held in a state building in Oakland, three members of the public showed up in person while nearly 200 people attended online via videoconference. It is not surprising that many more members of the public chose to attend online, because it is much easier for those juggling work, family, and other responsibilities to attend remotely. Further, it allows Californians who live in other parts of the state to join.

The in-person meeting requirement also makes it difficult for the Agency to proceed with its work on behalf of the public. In addition to the logistical and staffing challenges this creates for our brand-new Agency with limited resources, in person-meeting requirements also compromise Board diversity. Board service becomes challenging for those with higher medical risks, childcare needs, or transportation difficulties. In addition, if a Board member tests positive for the COVID-19 virus, then the Board may

²⁶ 42 U.S.C. § 12101 et seq.

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have to cancel the meeting, and be unable to move forward with important matters affecting the public. In-person meeting requirements create significant risk for the public, the Agency staff, and Board.

The state can still rely on commercial platforms like Zoom and Webex for public meetings without compromising user privacy. The Agency allows members of the public to join meetings held via online video conference pseudonymously without identifying themselves by name or log in. In addition, Agency staff use a modified, more privacy-preserving method of embedding video content for video streaming platforms such as YouTube on the CPPA website.²⁷ This privacy-preserving implementation was created in the 2000s and allows government agencies to take advantage of the platform while reducing the privacy exposure of its viewers. Additionally, under the California Consumer Privacy Act (CCPA), members of the public can request that commercial meeting platforms like Zoom and Webex stop the sale or delete information associated with their attendance using these platforms.

Recommendation

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²⁷ YouTube Help, Turn on privacy enhanced mode, (last visited June 16, 2022), <https://support.google.com/youtube/answer/171780?hl=en-GB#zippy=%2Cturn-on-privacy-enhanced-mode>.