

Date of Hearing: April 2, 2024

ASSEMBLY COMMITTEE ON PRIVACY AND CONSUMER PROTECTION

Rebecca Bauer-Kahan, Chair

AB 1824 (Valencia) – As Amended March 19, 2024

PROPOSED CONSENT

**SUBJECT:** California Consumer Privacy Act of 2018: opt-out right: mergers

**SYNOPSIS**

*The California Consumer Privacy Act (CCPA) grants residents of the state the right to direct a business to not sell or share their personal information at any time. However, businesses often change through mergers, bankruptcy, or acquisition. In the event of one of those changes, a business may be absorbed into another business entirely or it may start operating under a merged or combined entity. Though, theoretically, the opt-out preferences of the customers of a company being acquired should transfer to the new business, that may not always be the case.*

*The CCPA ensures that at any time consumers can direct a business to not sell or share their personal information. However, the CCPA is silent on consumers' rights when there is a merger or acquisition that takes place, potentially leaving consumers' personal data vulnerable to businesses who they may be unfamiliar with or may not want to share their data and personal information with. The purpose of this bill is to remove any ambiguity about what happens to consumers' opt-out preferences when businesses combine.*

*This bill is author sponsored and supported by Oakland Privacy.*

**SUMMARY:** Requires, under the California Consumer Privacy Act, that businesses acquiring the personal data of consumers through the acquisition of another business, honor the previous decisions of consumers who have not given permission for the business to sell or share their personal information. Specifically, **this bill**, states that a business that receives personal information of a consumer due to a merger, acquisition, bankruptcy, or other transaction must comply with a consumer's direction to the original business in terms of the handling of their personal information.

**EXISTING LAW:**

- 1) Provides, pursuant to the California Constitution, that all people are by nature free and independent and have inalienable rights. Among these the fundamental right to privacy. (Cal. Const. art. I, § 1.)
- 2) States that the "right to privacy is a personal and fundamental right protected by Section 1 of Article I of the Constitution of California and by the United States Constitution and that all individuals have a right of privacy in information pertaining to them." Further states these findings of the Legislature:
  - a) The right to privacy is being threatened by the indiscriminate collection, maintenance, and dissemination of personal information and the lack of effective laws and legal remedies.

- b) The increasing use of computers and other sophisticated information technology has greatly magnified the potential risk to individual privacy that can occur from the maintenance of personal information.
  - c) In order to protect the privacy of individuals, it is necessary that the maintenance and dissemination of personal information be subject to strict limits. (Civ. Code § 1798.1.)
- 3) Establishes the CCPA. (Civ. Code §§ 1798.100-1798.199.100.)
- 4) Provides a consumer, subject to certain exemptions and qualifications, various rights, including the following:
- a) The right to know the business or commercial purpose for collecting, selling, or sharing personal information and the categories of persons to whom the business discloses personal information. (Civ. Code § 1798.110.)
  - b) The right to request that a business disclose the specific pieces of information the business has collected about the consumer, and the categories of third parties to whom the personal information was disclosed. (Civ. Code § 1798.110.)
  - c) The right to request deletion of personal information that a business has collected from the consumer. (Civ. Code § 1798.105.)
  - d) The right to opt-out of the sale of the consumer's personal information if the consumer is over 16 years of age. (Sale of the personal information of a consumer below the age of 16 is barred unless the minor opts in to its sale.) (Civ. Code § 1798.120.)
  - e) The right to direct a business that collects sensitive personal information about the consumer to limit its use of that information to specified necessary uses. (Civ. Code § 1798.121.)
- 5) Defines the following terms under the CCPA:
- a) "Business" means a for-profit entity that collects consumers' personal information, does business in California, and meets one or more of the following criteria:
    - i) It had gross annual revenue of over \$25 million in the previous calendar year.
    - ii) It buys, receives, or sells the personal information of 100,000 or more California residents, households, or devices annually.
    - iii) It derives 50% or more of its annual revenue from selling California residents' personal information. (Civ. Code § 1798.140(d).)
  - b) "Personal information" means information that identifies, relates to, describes, is reasonably capable of being associated with, or could reasonably be linked, directly or indirectly, with a particular consumer or household. Personal information includes such information as:

- i) Name, alias, postal address, unique personal identifier, online identifier, IP address, email address, account name, social security number, driver's license number, passport number, or other identifier.
  - ii) Commercial information, including records of personal property, products or services purchased, obtained, or considered, or other purchasing or consuming histories or tendencies.
  - iii) Biometric information.
  - iv) Internet activity information, including browsing history and search history.
  - v) Geolocation data.
  - vi) Professional or employment-related information. (Civ. Code § 1798.140(v).)
- 6) Establishes the California Privacy Protection Agency (Privacy Agency), vested with full administrative power, authority, and jurisdiction to implement and enforce the CCPA. The Privacy Agency is governed by a five-member board, with the chairperson and one member appointed by the Governor, and the three remaining members are appointed by the Attorney General, the Senate Rules Committee, and the Speaker of the Assembly. (Civ. Code § 1798.199.10.)

**FISCAL EFFECT:** As currently in print, this bill is keyed fiscal.

**COMMENTS:**

1) **Purpose of this bill.** The CCPA grants residents of the state the right to direct a business not to sell or share their personal information at any time (Civ. Code § 1798.120). However, businesses often change through mergers, bankruptcy, or acquisition. In the event of one of those changes, a business may be absorbed into another business entirely or it may start operating under a merged or combined entity. Theoretically, the opt-out preferences of the customers of a company being acquired should transfer to the new business; however, that may not always be the case.

While the CCPA ensures that at any time consumers can direct a business to not sell or share their data. However, the CCPA is silent on consumers' rights when there is a merger or acquisition that takes place, potentially leaving consumers' personal data vulnerable to disclosure. The purpose of this bill is to remove any ambiguity about what happens to consumers' opt-out preferences when businesses combine, by requiring the business that acquires personal consumer information from the original business to honor the preferences of those consumers.

2) **Author's statement.** According to the author:

Companies increasingly want to collect raw personal data, some companies have even built entire business models around the collection and sale of consumer data. Data is desirable because it provides granular information about its users and allows companies to deploy targeted advertising, understand product desirability, and grow profits, to name a few reasons. Therefore, there is a need to ensure consumers understand how the collection of

their personal information is being used. The CCPA is silent on consumers' rights when there is a merger or acquisition that takes place, leaving consumers' personal data vulnerable to businesses who they may be unfamiliar with or may not want to share their data and personal information with.

3) **The California Consumer Privacy Act and the California Privacy Rights Act (CPRA).** In 2018, the Legislature enacted the CCPA (AB 375 (Chau, Chap. 55, Stats. 2018)), which gives consumers certain rights regarding their personal information, such as the right to: (1) know what personal information about them is collected and sold; (2) request the categories and specific pieces of personal information the business collects about them; and (3) opt out of the sale of their personal information, or opt in, in the case of minors under 16 years of age.

Subsequently, in 2020, California voters passed Proposition 24, the California Privacy Rights Act (CPRA), which established additional privacy rights for Californians. With the passage of the CCPA and the CPRA, California now has the most comprehensive laws in the country when it comes to protecting consumers' rights to privacy.

In addition, Proposition 24 created the California Privacy Protection Agency (Privacy Agency) in California, vested with full administrative power, authority, and jurisdiction to implement and enforce the CCPA and the CPRA. The Agency's responsibilities include updating existing regulations, and adopting new regulations.

To protect Californians from any future legislative efforts to weaken statutory protections in the CPRA, Proposition 24 provided that the CPRA's contents may be amended by a majority vote of the Legislature only if the amendments are consistent with and further the purpose and intent of the CPRA, which is to further protect consumers' rights, including the constitutional right of privacy.<sup>1</sup>

4) **Analysis.** Consumers likely already assume that once they opt-out of having their personal information shared that they would not need to monitor the business' use of that information going forward. Requiring consumers to monitor any mergers or acquisitions and exercise their rights all over again every time there is a change in ownership puts an enormous burden on consumers that is contrary to the goals of the CPRA. This bill appears to be a reasonable approach to rectifying an ambiguity in the CCPA as it relates to businesses merging or being acquired by clearly stating that the business acquiring personal consumer information honor the existing preferences expressed by those consumers to the original company. This clarification is consistent both with the requirement that any legislation amending the CCPA further the goals of the CPRA and with the goals of this Committee.

5) **Related legislation.** Over the last 5 years, numerous bills have attempted to modify the CCPA and many have been successful in furthering its goals. In this hearing alone, three bills, including this one, propose modifications to the CCPA. Specifically:

AB 1949 (Wicks) proposes amending the CCPA to prohibit a business from collecting the personal information of a consumer under 18 years of age unless the consumer, or the consumer's parent or guardian if under 13, affirmatively authorizes the collection.

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<sup>1</sup> Ballot Pamphlet. Primary Elec. (Nov. 3, 2020) text of Prop. 24, p. 74

AB 3048 (Lowenthal) proposes prohibiting a business from developing or maintaining an internet browser through which a consumer interacts with a business that does not include a setting that enables the consumer to send an opt-out preference signal to that business.

***ARGUMENTS IN SUPPORT:***

In support of the bill, Oakland Privacy states:

Mergers and acquisitions can be a time of enhanced privacy risks, especially when the merging companies are large, national or even multi-national in scope. The transfer of large databases can raise security risks of a breach or a hack, and the integration of differing privacy policies can result in reduced protections for users/consumers in the merged entity. The International Association of Privacy Professionals (IAPP) outlines the demands that large mergers can place on in-house privacy counsels. By requiring a second look at existing customer opt-out requests during merger implementation, AB 1824 protect user/consumers and their privacy rights during these complex transactions.

**REGISTERED SUPPORT / OPPOSITION:**

**Support**

Oakland Privacy

**Opposition**

None

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