

Date of Hearing: April 23, 2024

ASSEMBLY COMMITTEE ON PRIVACY AND CONSUMER PROTECTION

Rebecca Bauer-Kahan, Chair

AB 3286 (Committee on Privacy and Consumer Protection) – As Introduced March 18, 2024

AS PROPOSED TO BE AMENDED

SUBJECT: California Consumer Privacy Act of 2018: monetary thresholds: grants

SUMMARY: Updates the California Consumer Privacy Act (CCPA) of 2018's monetary thresholds for grants, and makes various technical and clarifying changes. Specifically, **this bill:**

- 1) Establishes the methodology for calculating and publishing the Consumer Price Index (CPI) adjustments for the business thresholds and penalties included in the CCPA.
- 2) Clarifies that the California Privacy Protection Agency (Privacy Agency) shall use the money in the Consumer Privacy Fund (CPF) to carry out their duties under the CCPA.
- 3) Delays the CPF consumer privacy grant program until, after all other distributions have been made, the fund exceeds the \$300,000 needed for administrative costs for overseeing the grant program. If in a fiscal year the amount of funds is equal to or less than \$300,000, the funds shall remain in the CPF and be appropriated the following year.
- 4) Clarifies that CCPA's written notification requirement to a person who has filed a complaint must exclude information that is subject to law enforcement exemptions and privileges, including but not limited to, confidential information related to an investigation and information that is privileged under the Evidence Code and Government Code.

EXISTING LAW:

- 1) Establishes the California Consumer Privacy Act. (Civ. Code §§ 1798.100-1798.199.100.)
- 2) Limits a business' collection, use, retention, and sharing of a consumer's personal information to that which is reasonably necessary and proportionate to achieve the purposes for which the personal information was collected or processed, or for another disclosed purpose that is compatible with the context in which the personal information was collected, and not further processed in a manner that is incompatible with those purposes. (Civ. Code § 1798.100(c).)
- 3) Provides that consumers have the right, at any time, to direct a business that collects sensitive personal information about the consumer to restrict the use of that information to only that use which is necessary to perform the services or provide the goods reasonably expected by an average consumer who requests those goods or services. (Civ. Code § 1798.121(a).)
- 4) 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.)

- 5) Establishes the Consumer Privacy Fund which offsets costs incurred by state courts when bringing actions, and the Attorney General in carrying out the title's duties, of enforcing the CCPA. (Civ. Code § 1798.160.)
- 6) Requires the Privacy Agency to establish a grant program with the purpose of funding nonprofit organizations to promote and protect consumer privacy; educate children in the area of online privacy; and, fund efforts to combat fraudulent activities with respect to consumer data breaches. (Civ. Code § 1798.160 (b)(2)(B).)
- 7) Requires that the Privacy Agency promulgate regulations in order to adjust the monetary thresholds in the CCPA in January of every odd-numbered year to reflect any increase in the Consumer Price Index. (Civ. Code § 1798.185 (a)(5).)
- 8) Requires that the Privacy Agency notify in writing a person who has made a complaint of the action, if any, that the agency has taken or plans to take on the complaint, together with the reasons for nonaction. (Civ. Code § 1798.199.45 (b).)

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

COMMENTS:

1) **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.¹

The provisions contained in this bill clearly further the goals of the CPRA by increasing restrictions on the collection and use of young people's personal information.

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

2) **Purpose of the bill.** This bill constitutes the omnibus bill of the Assembly Privacy and Consumer Protection Committee (Committee). The purpose of the omnibus bill is to assist the California Privacy Protection Agency (Privacy Agency) by streamlining their operations and removing inconsistencies between the CCPA and other statutes. This Committee bill makes the following updates:

1. Delays the establishment of the Consumer Privacy Fund (CPF) grant program until the amount of grant funds available, after all other distributions have been made, exceeds \$300,000.
2. Resolves an inconsistency in the CCPA by updating Civil Code section 1798.160 to conform with Civil Code section 1798.155(b), which allows the Privacy Agency to access the CPF to offset costs incurred in connection with the CCPA.
3. Memorializes in statute the methodology for calculating and publishing the Consumer Price Index (CPI) adjustments for the business thresholds and penalties included in the CCPA.
4. Clarifies that when responding to complaints the written notification provided by the Privacy Agency must exclude information that is subject to law enforcement exemptions and privileges, including confidential information that is privileged under the Evidence Code and the Government Code.

3) Consumer Privacy Fund grants. The CCPA established the Consumer Privacy Fund (CPF) as the depository for the administrative fines collected from implementation and enforcement of the CCPA and any proceeds of a settlement of an action brought by the Privacy Agency against a business in violation of the Act. Upon the appropriation by the Legislature, the fund will offset implementation and enforcement obligations including: 1) costs incurred by state courts in connection with actions brought to enforce the Act; 2) costs incurred by the CCPA in carrying out the Privacy Agency's duties; and 3) the Attorney General's costs incurred in carrying out the duties under this title.

Any remaining funds left in the CPF must be allocated each fiscal year as follows:

1. 91% of the funds are to be invested by the Treasurer in financial assets.
2. 9% is require to be allocated by the Protection Agency in grants:
 - a. 3% to nonprofit organizations to promote and protect consumer privacy.
 - b. 3% to nonprofit organizations and public agencies to educate children in the area of online privacy.
 - c. 3% to state and local law enforcement agencies to fund cooperative programs with international law enforcement organizations to combat consumer data breaches. (Civ. Code §1798.160.)

4) Consumer Price Index (CPI). Under the current version of the law, the Attorney General supplies support staff to the Protection Agency in order to calculate and publish the Consumer Price Index adjustments for the business thresholds and penalties included in the CCPA in

January of every odd-numbered year. The current language requires that the CCPA promulgate regulations each time the thresholds and penalties need to be adjusted. The five thresholds and penalties contained in Civil Code Section 1798.185(a)(5) are:

1. The monetary thresholds for businesses covered by CCPA.
2. Damages pursuant to a civil action in the event of a negligent data breach.
3. Administrative enforcement fines.
4. Civil penalties.
5. Privacy Agency Board member per diem.

5) **Sworn complaints exemption.** When a sworn complaint is received by the Privacy Agency for a violation of the CCPA, the Privacy Agency may investigation the alleged violations in the complaint, or may decide not to investigate if it finds that there was a lack of intent to violate the law or if voluntary efforts have been undertaken by the business, service provider, contractor or person to cure the alleged violation prior to being notified of the complaint. Whether or not the Agency takes action to investigate, the person making the complaint must be notified in writing as to the Agency's decision. In order to further the purposes and intent of the CPRA, this bill will add clarification that the Privacy Agency shall exclude information that is the subject to law enforcement exemptions and privileges, including but not limited to, confidential information relating to an investigation and any information that falls under the protection of California law.

6) **Proposed committee amendments.** The suggested Committee correct a previous drafting error.

Section 14 of Civil Code § 1798.199.95(d)(4) is amended to read:

Notwithstanding any other law, ~~rules and regulations adopted to implement adjustments to monetary thresholds and their publication on the agency's internet website pursuant to this subdivision are not subject to the rulemaking provisions of the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code).~~

7) **Related legislation.** Over the last 5 years numerous bills have attempted to modify the CCPA and many have been successful in furthering its goals. This year alone, other than this Committee bill, this Committee has heard five bills that propose modifications to the CCPA. Specifically:

AB 1824 (Valencia, 2024) requires, under the CCPA, that businesses that are 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. That bill is currently pending in the Appropriations Committee.

AB 1949 (Wicks, 2024) amends 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. That bill is currently pending in the Appropriations Committee.

AB 2877 (Bauer-Kahan, 2024) prohibits a developer, as defined, from collecting and using the personal information of consumers under 16 years of age to train an artificial intelligence system. That bill is currently pending before this Committee.

AB 3048 (Lowenthal, 2024) 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. That bill is currently pending in the Appropriations Committee.

AB 3204 (Bauer-Kahan, 2024) requires data digesters to register with the Privacy Agency. In addition, defines a “data digester” as an organization or enterprise, including, but not limited to, a proprietorship, partnership, firm, business trust, joint venture, syndicate, corporation, association, or nonprofit that designs, codes, or produces an artificial intelligence system or service, or that substantially modifies an existing artificial intelligence system or service, by training the system or service on the personal data of 1,000 or more individuals or households. That bill is currently pending before this Committee.

REGISTERED SUPPORT / OPPOSITION:**Support**

None on file.

Opposition

None on file.

Analysis Prepared by: Mimi Holtkamp / P. & C.P. / (916) 319-2200