

Date of Hearing: April 23, 2019

ASSEMBLY COMMITTEE ON PRIVACY AND CONSUMER PROTECTION

Ed Chau, Chair

AB 1146 (Berman) – As Amended April 12, 2019

**SUBJECT:** California Consumer Privacy Act of 2018: exemptions: vehicle information

**SUMMARY:** This bill would establish an additional exemption from the California Consumer Privacy Act of 2018 (CCPA) for vehicle and ownership information shared pursuant to or in anticipation of a vehicle repair relating to warranty work or a recall conducted pursuant to federal law, except with respect to a consumer's right to access their personal information (PI), to know what PI has been collected or sold about them, and to bring a private right of action in the case of a data breach. Specifically, **this bill would:**

- 1) Exempt, except with respect to specified rights under the CCPA, vehicle information, including ownership information, shared between a new motor vehicle dealer and the vehicle's manufacturer, as defined, if the information is shared pursuant to, or in anticipation of, a vehicle repair relating to warranty work or a recall pursuant to specified federal law.
- 2) Define "vehicle information" to mean the vehicle information number, make, model, year, and odometer reading.
- 3) Define "ownership information" to mean the name or names of the registered owner or owners and the contact information for the owner or owners.

**EXISTING LAW:**

- 1) Requires generally, as a matter of federal law, upon final decision by the Secretary of Transportation that a motor vehicle or vehicle replacement equipment is subject to recall due to a safety defect or noncompliance with an applicable safety standard, that the manufacturer must both: (a) notify owners, purchasers, and dealers of the defect or noncompliance, as specified; and, (b) remedy the defect or noncompliance. (49 U.S.C. Sec. 30118.)
- 2) Provides for the content and the means of notification, where notification is required pursuant to the above section. (49 U.S.C. Sec. 30119.) Specifically, the notification is to be sent to:
  - to each person registered under state law as the owner and whose name and address are reasonably ascertainable by the manufacturer through state records or other available sources; or,
  - if a registered owner is not notified under the provision above, to the most recent purchaser known to the manufacturer. (49 U.S.C. Sec. 30119(d).)
- 3) Requires notification of the lessee by the lessor with respect to leased motor vehicles, as specified. Specifically, a lessor that receives a notification required pursuant to the law above about a leased motor vehicle must provide a copy of the notification to the lessee in the way the Secretary prescribes by regulation. (49 U.S.C. Sec. 30119(f).)

- 4) Requires the manufacturer of the defective or noncomplying motor vehicle or replacement equipment to remedy the defect or noncompliance without charge when the vehicle or equipment is presented for remedy, except as specified. Also provides for the fair reimbursement of a dealer proving remedy without charge pursuant to this provision, if, at the time of providing service for each of the manufacturer's motor vehicles it services, the dealer notifies the owner or the individual requesting the service of any open recall, as defined; and the notification requirement is specified in a franchise, operating, or other agreement between the dealer and the manufacturer. (49 U.S.C. Sec. 30120.)
- 5) Sets forth, as a matter of federal regulations:
  - The responsibilities of manufacturers of motor vehicles and motor vehicle equipment with respect to safety-related defects and noncompliances with Federal motor vehicle safety standards in motor vehicles and items of motor vehicle equipment. Further specifies requirements for:
    - manufacturers to maintain lists of owners, purchasers, dealers, and distributors notified of defective and noncomplying motor vehicles and motor vehicle original and replacement equipment;
    - reporting to the National Highway Traffic Safety Administration defects in motor vehicles and motor vehicle equipment and noncompliances with motor vehicle safety standards as otherwise prescribed under federal regulations; and,
    - providing quarterly reports on defect and noncompliance notification campaigns. (49 C.F.R. 573.1 et seq.)
  - The requirements for the retention by manufacturers of motor vehicles and of motor vehicle equipment, of claims, complaints, reports, and other records concerning alleged and proven motor vehicle or motor vehicle equipment defects and malfunctions that may be related to motor vehicle safety. (49 C.F.R. 576.1 et seq.)
  - The requirements for when manufacturers must notify vehicle owners, dealers, and distributors about a defect that relates to motor vehicle safety or noncompliance with a federal motor vehicle safety standard. (49 C.F.R. 577.1 et seq.)
- 6) Establishes, as a matter of state law, the CCPA to provide various rights to consumers. Subject to various general exemptions, the CCPA grants a consumer, among other things:
  - the right to know what PI a business collects about consumers, as specified, including the categories of third parties with whom the business shares PI, and the specific pieces of information collected about the consumer;
  - the right to know what PI a business sells about consumers, as specified, including the categories of PI that the business sold about the consumer and the categories of third parties to whom the PI was sold, by category or categories of PI for each third party to whom the PI was sold;

- the right to access the categories and specific pieces of information a business has collected about the consumer;
  - the right to delete information that a business has collected from the consumer;
  - the right to opt-out of the sale of the consumer's PI if over 16 years of age, and the right to opt-in, as specified, if the consumer is a minor; and,
  - the right to equal service and price, despite exercising any of these rights. (Civ. Code Sec. 1798.100 et seq.)
- 7) Generally requires under the CCPA that a business subject to the CCPA do all of the following, among other things: comply with the above requirements, provide various notices to those ends, and execute various requests upon receipt of a verifiable consumer request, as specified; and provide certain mechanisms for consumers to make their lawful requests, including a clear and conspicuous link titled "Do Not Sell My Personal Information" on the business's internet homepage to enable consumers, or a person authorized by the consumer, to opt-out of the sale of the consumer's PI. (Civ. Code Sec. 1798.100 et seq.)
- 8) Provides of particular relevance to this bill, that a consumer has the right to request that a business delete any PI about the consumer which the business has collected from the consumer. Requires a business to comply with such a request upon receipt of a verifiable consumer request and to direct any service providers to delete the consumer's PI from their records. Provides, however, that a business shall not be required to comply with the consumer's request to delete their PI, if it is necessary for the business or service provider to maintain the consumer's PI in order to, among other things:
- Complete the transaction for which the PI was collected, provide a good or service requested by the consumer, or reasonably anticipated within the context of a business's ongoing business relationship with the consumer, or otherwise perform a contract between the business and the consumer.
  - Debug to identify and repair errors that impair existing intended functionality.
  - To enable solely internal uses that are reasonably aligned with the expectations of the consumer based on the consumer's relationship with the business.
  - Comply with a legal obligation. (Civ. Code Sec. 1798.105.)
- 9) Specifies that the obligations imposed on businesses by the CCPA shall not restrict a business's ability to do the following, among other things:
- Comply with federal, state, or local laws.
  - Comply with a civil, criminal, or regulatory inquiry, investigation, subpoena, or summons by federal, state, or local authorities.
  - Exercise or defend legal claims.

10) Provides various express exemptions under the CCPA, including for, among other things: PI collected, processed, sold or disclosed pursuant to the federal Gramm-Leach-Bliley Act or the California Financial Information Privacy Act, as specified. This exemption does not apply to the data breach section of the CCPA. (Civ. Code Sec. 1798.145.)

11) Provides various definitions under the CCPA. Among other things, the CCPA defines the following terms:

- “Business” means a sole proprietorship, partnership, limited liability company, corporation, association, or other legal entity that is organized or operated for the profit or financial benefit of its shareholders or other owners, that collects consumers’ PI, or on the behalf of which such information is collected and that alone, or jointly with others, determines the purposes and means of the processing of consumers’ PI, that does business in California, and that satisfies one or more of the following thresholds:
  - Has annual gross revenues in excess of \$25,000,000, as adjusted as specified.
  - Alone or in combination, annually buys, receives for the business’s commercial purposes, sells, or shares for commercial purposes, alone or in combination, the PI of 50,000 or more consumers, households, or devices.
  - Derives 50% or more of its annual revenues from selling consumers’ PI. (Civ. Code Sec. 1798.140.)
- “PI”, in relevant part, means information that identifies, relates to, describes, is capable of being associated with, or could reasonably be linked, directly or indirectly, with a particular consumer or household. PI includes certain specific types of information, if that information identifies, relates to, describes, is capable of being associated with, or could be reasonably linked, directly or indirectly, with a particular consumer or household. These include, for example:
  - Identifiers such as a real name, alias, postal address, unique personal identifier, online identifier, Internet Protocol address, email address, account name, social security number, driver’s license number, passport number, or other similar identifiers.
  - Commercial information, including records of personal property, products or services purchased, obtained, or considered, or other purchasing or consuming histories or tendencies.
- “Sell,” “selling,” “sale,” or “sold,” means selling, renting, releasing, disclosing, disseminating, making available, transferring, or otherwise communicating orally, in writing, or by electronic or other means, a consumer’s PI by the business to another business or a third party for monetary or other valuable consideration. For purposes of the CCPA, a business does not “sell” PI when, among other things:
  - A consumer uses or directs the business to intentionally disclose, as specified, PI or uses the business to intentionally interact with a third party, provided the third party does not also sell the PI, unless that disclosure would be consistent with the act.

- The business uses or shares an identifier for a consumer who has opted-out of the sale of the consumer's PI for the purposes of alerting third parties that the consumer has opted-out of the sale of the consumer's PI.
- The business uses or shares with a service provider PI of a consumer that is necessary to perform a business purpose if both of the following conditions are met: (i) the business has provided notice that information being used or shared in its terms and conditions, as otherwise specified under the bill; and (ii) the service provider does not further collect, sell, or use the PI of the consumer except as necessary to perform the business purpose. (Civ. Code Sec. 1798.140.)

12) Defines various terms under California's Vehicle Code as follows:

- "Dealer" is a generally a person who:
  - For commission, money, or other thing of value, sells, exchanges, buys, or offers for sale, negotiates or attempts to negotiate, a sale or exchange of an interest in, a vehicle subject to registration, a motorcycle, snowmobile, or all-terrain vehicle subject to identification under the Vehicle Code, or a trailer subject to identification as otherwise specified, or induces or attempts to induce any person to buy or exchange an interest in a vehicle and, who receives or expects to receive a commission, money, brokerage fees, profit, or any other thing of value, from either the seller or purchaser of the vehicle.
  - Is engaged wholly or in part in the business of selling vehicles or buying or taking in trade, vehicles for the purpose of resale, selling, or offering for sale, or consigned to be sold, or otherwise dealing in vehicles, whether or not the vehicles are owned by the person. (Veh. Code Sec. 285.)
- "New motor vehicle dealer" is, in relevant part, a dealer, as defined above, who, in addition to the requirements of that section, either acquires for resale new and unregistered motor vehicles from manufacturers or distributors of those motor vehicles or acquires for resale new off-highway motorcycles, or all-terrain vehicles from manufacturers or distributors of the vehicles. (Veh. Code Sec. 426.)
- "Vehicle manufacturer" is any person who produces from raw materials or new basic components a vehicle of a type subject to registration under the Vehicle Code, off-highway motorcycles or all-terrain vehicles subject to identification under the Vehicle Code, or trailers subject to identification pursuant to specified law, or who permanently alters, for purposes of retail sales, new commercial vehicles by converting the vehicles into house cars that display a specified insignia of approval. (Veh. Code Sec. 642(a).)

**FISCAL EFFECT:** Unknown

**COMMENTS:**

- 1) **Purpose of this bill:** This bill seeks to effectively exempt from the CCPA's right of deletion and right to opt-out any vehicle information shared pursuant to or in anticipation of a vehicle

repair relating to warranty work or a recall. This bill is sponsored by the California New Car Dealers Association.

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

New vehicles sold in the U.S. are covered by a manufacturer warranty that ensures that a consumer can have repairs made to certain aspects of the vehicle at no cost. A manufacturer provides the warranty, but the repair work is done by dealers that have a franchise with the manufacturer. [...] Similar to warranty work, the manufacturer is responsible for the recall, but the recall-related repair work is done by dealers that have a franchise with the manufacturer.

There is a clear need to ensure that manufacturers communicate with vehicle owners regarding warranty and needed recall-related repairs. Appropriately, vehicle manufacturers are required to inform vehicle owners about a recall and to provide information about how the vehicle owner can repair their vehicle for free. Specifically, federal law requires manufacturers to send a recall notice to the registered owner whose name and address are reasonably ascertainable OR the most recent purchaser known to the manufacturer. If a vehicle has changed hands over time, the manufacturer may not have a record of the current owner or how to send notice. In order for the process to work, the manufacturer needs to be aware of who owns the vehicle covered by the warranty or subject to the recall.

Currently, when a consumer purchases a new vehicle, the new car dealer shares the consumer's vehicle registration information with the vehicle's manufacturer. By receiving this information, the manufacturer now knows who the consumer is and can send the consumer information about vehicle safety and recalls. Furthermore, when a consumer has their vehicle repaired under warranty or recall, the new car dealer verifies the vehicle's ownership with the manufacturer in order to demonstrate that the necessary repair is not fraudulent and is covered by the warranty. However, should a consumer request to have his or her personal information deleted during a new vehicle sale transaction or a vehicle repair under warranty, this could inhibit the ability of a manufacturer to send important recall notices or allow the vehicle repair under warranty.

While the CCPA gives broad authority to a consumer, these rights can create unintended consequences that the Legislature likely did not contemplate. Accordingly, AB 1146 would ensure that vehicle information, including ownership information, may be shared between a new motor vehicle dealer and the vehicle's manufacturer, if the information is shared for the purpose of enabling warranty work or a manufacturer's recall. By doing so, this will ensure that consumers receive important and timely vehicle safety information and retain the ability to have their vehicle repaired.

3) **Vehicle recall background:** The National Highway Traffic Safety Administration (NHTSA) has the authority under federal law to issue vehicle safety standards and to require manufacturers to recall vehicles that have safety defects or do not meet safety standards. If a safety defect is identified, manufacturers are required to notify NHTSA, owners, dealers and distributors, and, correct the defect at no charge (unless the vehicle is more than 15 years old). (*See* 49 U.S.C. Sec. 30118-30120.) Safety recalls are necessary when a motor vehicle or item of motor vehicle equipment does not comply with a Federal Motor Vehicle Safety

Standard, or, when there is a safety-related defect in the vehicle or equipment. (*Id.*, see also 49 C.F.R. 573.1 et seq.) NHTSA notes that “[g]enerally, a safety defect is defined as a problem that exists in a motor vehicle or item of motor vehicle equipment that: (1) poses a risk to motor vehicle safety; and, (2) may exist in a group of vehicles of the same design or manufacture, or items of equipment of the same type and manufacture.” (NHTSA, *Motor Vehicle Defects and Safety Recalls: What every vehicle owner should know*, U.S. Department of Transportation <<http://www-odi.nhtsa.dot.gov/recalls/recallprocess.cfm>> [as of Apr. 1, 2019].) Examples of safety-related defects, include, among other things:

- Steering components that break suddenly causing partial or complete loss of vehicle control.
- Problems with fuel system components, particularly in their susceptibility to crash damage, that result in leakage of fuel and possibly cause vehicle fires.
- Accelerator controls that may break or stick.
- Critical vehicle components that break, fall apart, or separate from the vehicle, causing potential loss of vehicle control or injury to persons inside or outside the vehicle.
- Wiring system problems that result in a fire or loss of lighting.
- Car ramps or jacks that may collapse and cause injury to someone working on a vehicle.
- Air bags that deploy under conditions for which they are not intended to deploy.
- Child safety seats that contain defective safety belts, buckles, or components that create a risk of injury, not only in a vehicle crash but also in non-operational safety of a motor vehicle. (*Id.*)

According to NHTSA, once a recall is ordered or initiated, manufacturers must notify consumers as follows:

Within a reasonable time after the determination of a safety defect or noncompliance, manufacturers must notify, by first-class mail, all registered owners and purchasers of the affected vehicles of the existence of the problem and given an evaluation of its risk to motor vehicle safety. The manufacturer must explain to consumers the potential safety hazards presented by the problem. Names of vehicle owners are obtained from State motor vehicle offices. The letter must also instruct consumers on how to get the problem corrected, remind them that corrections are to be made at no charge, inform them when the remedy will be available, how long the remedy will take to perform, and whom to contact if there is a problem in obtaining the free recall work. [...]

Manufacturers of motor vehicle equipment, particularly tires and child safety seats, maintain lists of owners who have registered their products with the manufacturer. When product or equipment recalls are initiated, the manufacturer uses these lists to directly notify owners. Product and equipment manufacturers may also be required to notify the public of recalls through a variety of additional methods (e.g., advertisements, point-of-purchase posters, etc.) to ensure that as many owners as possible are aware of the recalls. [...]" (*Id.*)

As a matter of state law, the CCPA provides consumers with various rights relating to the consumers' PI, including the rights to access their PI, know what PI is sold or collected about them, delete PI that the business obtains from the consumer, and opt-out to the sale of their PI. The CCPA also provides for a limited private right of action for PI subject to a data breach, as specified, to allow a consumer whose PI was impermissibly accessed to bring a cause of action against the business for that data breach. This bill seeks to generally exempt from the CCPA any vehicle or ownership information shared between a vehicle manufacturer and new car dealer in connection with a warranty or recall under federal law.

As stated by the sponsor, the California New Car Dealers Association, "AB 1146 provides a narrow exemption to the CCPA's provisions that will enable new car dealers and vehicle manufacturers to share vehicle and ownership information for warranties and recalls. We believe the Legislature intended to ensure that consumers would continue to receive important vehicle safety recalls and have their vehicles repaired under warranty and recall. Unfortunately, the specific exemptions provided for in CCPA do not apply to new car dealers. Without this clarification, a consumer who exercises their right to have their information deleted could unintentionally miss getting important safety and recall notices from the manufacturer or fail to repair their vehicle under warranty or recall. This failure to give notice or complete repair could jeopardize public safety on California's roads. Therefore, AB 1146's passage is critical to ensure the continuation of the current practice that consumers are informed about their vehicle safety recalls and that their vehicles are repaired under warranty or recall."

In support, the Alliance of Automobile Manufacturers and the Association of Global Automakers jointly write that "as recently reported by Politico, a letter from the U.S. Consumer Product Safety Commission to Attorney General Becerra warns that the current law, 'would make it difficult for companies to notify consumers when products are being recalled.' AB 1146 seeks to exempt the sharing of this information if it is shared pursuant to, or in anticipation of, a vehicle repair relating to warranty work or a recall. Vehicle manufacturers must be able to identify owners of vehicles included in the recall and send letters to consumers informing them how the recall campaign will be conducted. Sharing of information between new vehicle dealers and vehicle manufacturers is critical to this process."

- 4) **Recent amendments reflect exemptions that are consistent with how the CCPA would apply in the context of vehicle warranties and recalls:** As noted above, this bill seeks to exempt vehicle and consumer information that is shared by a new motor vehicle dealer with a vehicle manufacturer under California law, as long as the information is shared pursuant to or in anticipation of a vehicle repair relating to warranty work or a recall pursuant to federal law. As recently amended, the bill ensures that the consumer would nonetheless retain their right to access this information, know what is being collected or sold about them, and to bring action if the dealer or manufacturer experiences a data breach involving their information.

Staff notes that the CCPA already ensures that warranties and recall laws can be complied with through the operation of existing exemptions. Generally speaking, the CCPA provides for various exemptions from the act – some of which exempt certain information more broadly, and others which apply to the extent that the CCPA would conflict with certain necessary actions of a business. For example, the CCPA specifically states the obligations imposed by the act shall not restrict a business's ability to comply with federal, state, or local



laws, or to exercise or defend legal claims. It also separately provides for certain broader exemptions, such as for medical information governed under the Confidentiality of Medical Information Act (CMIA) or federal Health Insurance Portability and Accountability Act of 1996 (HIPAA), or for information covered under Gramm-Leach-Bliley Act (GLBA) or the California Financial Information Privacy Act.

These broader CCPA exemptions have largely been granted in recognition that there are already comprehensive state or federal laws providing privacy protections for that specific information, such as in the case of CMIA, HIPAA or GLBA. The concern, in those situations, was that great confusion could arise as businesses attempt to determine which law takes precedent under certain circumstances. This bill now seeks an exemption for vehicle information (including ownership information) needed in order for a new car dealer or manufacturer to comply with federal laws on recalls and warranties.

Arguably, this is an issue that the CCPA addresses adequately, already. Specifically, no new motor vehicle dealer or manufacturer is required by the CCPA to delete a consumer's PI where doing so would impede their ability to comply with federal laws or regulations on warranties or auto-recalls. Similarly, the CCPA in no way precludes new motor vehicle dealers and manufacturers from sharing the information with one another where doing so would result in a violation of federal laws or regulations on warranties or auto-recalls. In the former instance, the right of deletion in the CCPA expressly provides that a business does not have to comply with a consumer's deletion request if retaining the information is necessary for the business to "comply with a legal obligation." (*See* Civ. Code Sec. 1798.105(d)(8).) In the latter instance, allowing the consumer to opt-out of the sharing of their information between the dealer and manufacturer in connection with a warranty or recall would "restrict a business's ability to comply with federal, state, or local" law, which the CCPA, again, explicitly exempts. (*See* Civ. Code Sec. 1798.145(a).)

At the same time, even though the dealer or manufacturer could share this information with one another and refuse to delete the information upon receipt of a deletion request from the consumer in those circumstances under the existing CCPA, they would still have to provide consumers the right to access their PI, know what PI is sold or collected about them, and, if the consumer opts-out, the manufacturer or car dealer could not sell or disclose the consumer's PI with third parties who do not need the information for purposes of warranties or recalls. Notably, the consumer would also retain the right to bring a cause of action against a negligent dealer or manufacturer if the consumer's PI is breached.

As recently amended, this bill seeks to lead to the same results, but in a more explicit manner. First, this bill's specific exemption is narrowly drafted to only apply to information shared between the dealer and vehicle manufacturer "*if the vehicle information is shared pursuant to, or in anticipation of, a vehicle repair relating to warranty work or a recall conducted*" pursuant to federal law. (Emphasis added.) Stated another way, they could not share this or any other consumer PI with one another for any other purpose unrelated to vehicle warranties and recalls. Furthermore, if the consumer opts-out of the sale of their information, the dealers and manufacturers could not share this information with any other parties.

Moreover, recent amendments reflected in the April 12, 2019, version of this bill, narrowed this exemption further to exclude the data breach section of the CCPA and the CCPA

sections authorizing consumers to access and know what PI has been collected or sold about them. Accordingly, with those exemptions and an additional amendment accepted by the author further below, AB 1146 now achieves the same result as the current CCPA in terms of allowing warranties and recalls to be conducted in compliance with federal laws and regulations. In both scenarios, all of the following can be said:

- A new car dealer and manufacturer would not have to delete necessary PI, nor would it have to stop sharing certain PI with one another if shared pursuant to, or in anticipation of, a vehicle repair related to warranty work or a recall under federal law. But they cannot share the information with other individuals for unrelated purposes.
- A consumer would still have the right to access their PI and to know what information has been collected or shared between the dealer and vehicle manufacturer.
- A consumer would retain remedies in the event that the information shared between the dealer and manufacturer was compromised in a data breach.

In support, the Civil Justice Association of California writes that “AB 1146 adds a clarification which is consistent with the spirit of CCPA but is perhaps not precisely spelled out in current law: the CCPA should not operate to prevent businesses from complying with other statutory obligations. Since manufacturers are required by federal law to address safety recalls, and since they learn of consumer contact location primarily through dealers, we believe that AB 1146 merely clarifies the intent of last year’s AB 375 and SB 1121. AB 1146 also will prevent needless arguments about the applicability of CCPA to warranty and recall repairs of vehicles.”

Californians for Consumer Privacy writes in an “oppose unless amended” letter that the recent amendments significantly narrow the scope of the exemption provided to vehicle manufacturers and new motor vehicle dealers, but that the bill should be further amended to only “allow for a deletion request for limited information that is necessary for a recall and warranty program to operate.” To this end, the author has accepted the following amendment to narrow the bill’s impact on consumers’ deletion requests involving their vehicle or ownership information, consistent with how the bill treats opt-out requests for that information needed for warranties and recalls. Specifically, a new car dealer or vehicle manufacturer could retain vehicle or ownership information *if* it is done pursuant to, or in anticipation of, a vehicle repair related to warranties or recalls pursuant to federal law.

Author’s amendment:

On page 4, line 9, before “shared” insert “*retained or*”

- 5) **Opposition arguments:** Consumer Reports writes in opposition that “the proposed exemption is not necessary to facilitate information sharing and retention for recall and warranty purposes. The wide exemptions under the CCPA’s right to delete—for example, to comply with a legal obligation and for purposes “reasonably anticipated within the context of a business’s ongoing business relationship with a consumer”—fully accommodate a manufacturer’s obligation to maintain the appropriate information to allow warranty work and recalls and for information-sharing for these purposes between dealers and manufacturers.

Nor would the right to opt-out of sale interfere with the sharing of information between new car dealers and manufacturers for warranty and recall purposes, which would fall comfortably within the business purposes exemption of the definition of sale. And, because this existing business purpose exemption still puts important limits on companies with whom the data is shared, specifically that they may not: “further collect, sell, or use the personal information of the consumer except as necessary to perform the business purpose[.]” it is appropriate and beneficial for consumers to maintain the CCPA’s protections over this information.

This bill is not necessary and would weaken consumers’ privacy protections—for example, by potentially removing controls over the further sale of the consumer’s information, including the make, model, and year of their automobile, and their contact details, for marketing purposes.” (Footnotes omitted.)

With respect to this latter argument, Staff notes that sharing the consumer’s information for marketing purposes would not fall within the limited scope of the bill, which expressly states that the information can only be shared: (1) between the car dealer and manufacturer; and (2) pursuant to, or in anticipation of, a vehicle repair relating to warranty work or a recall conducted” pursuant to federal law.

- 6) **Related legislation:** AB 25 (Chau) seeks to clarify the CCPA’s definition of consumer and how businesses may comply with a consumer’s request for specific pieces of information in a privacy protective manner under the CCPA. This bill is pending hearing in this Committee.

AB 288 (Cunningham) seeks to establish laws governing “social media privacy” separate and apart from the CCPA’s existing requirements for such companies that meet the “business” definition thresholds identified in the CCPA. Specifically, the bill would require a social networking service, as defined, to provide users that close their accounts the option to have the user’s “personally identifiable information” permanently removed from the company’s database and records and to prohibit the service from selling that information to, or exchanging that information with, a third party in the future, subject to specified exceptions. The bill would require a social networking service to honor such a request within a commercially reasonable time. The bill would authorize consumers to bring private right of action for a violation of these provisions, as specified. This bill has been referred to this Committee.

AB 523 (Irwin) seeks to address the sale of geolocation information by certain businesses, separate and apart from the CCPA’s existing requirements and restrictions governing companies that meet the “business” definition thresholds identified in the CCPA and seek to sell their consumers’ PI (which the CCPA defines to include geolocation information). This bill is pending hearing in the Assembly Communications and Conveyance Committee.

AB 846 (Burke) seeks to replace “financial incentive programs” provisions in the non-discrimination statute of the CCPA with an authorization for offerings that include, among other things, gift cards or certificates, discounts, payments to consumers, or other benefits associated with a loyalty or rewards program, as specified. This bill is pending hearing in this Committee.

AB 873 (Irwin) seeks to narrow the CCPA's definitions of "PI" and "deidentified" and to revise the CCPA's existing provision that prohibits the act from being construed to require a business to reidentify or otherwise link information that is not maintained in a manner that would be considered PI. This bill is pending hearing in this Committee.

AB 874 (Irwin) seeks to broaden the definition of "publicly available" for purposes of the PI definition, which excludes "publicly available" information. The bill would also correct a drafting error in the definition of "PI" to clarify that PI does not include deidentified or aggregate consumer information. This bill is pending hearing in this Committee.

AB 981 (Daly) would add numerous privacy protections to the Insurance Information and Privacy Protection Act (IIPPA), to reflect the CCPA. The bill would exempt entities subject to the IIPPA, as specified, from the CCPA, with the exception of the CCPA's data breach section. This bill is pending hearing in this Committee.

AB 1035 (Mayes) seeks to require, under the Data Breach Notification Law, a person or business, as defined, that owns or licenses computerized data that includes PI to disclose any breach of the security of the system within 72 hours following discovery or notification of the breach, subject to the legitimate needs of law enforcement, as provided. This bill is pending hearing in this Committee.

AB 1138 (Gallagher) seeks to prohibit a person or business that conducts business in California, and that operates a social media website or application, from allowing a person under 16 years of age to create an account with the website or application unless the website or application obtains the consent of the person's parent or guardian before creating the account. This bill is pending hearing in this Committee.

AB 1355 (Chau) seeks to address a drafting error in the definition of PI to clarify that it does not include deidentified or aggregate consumer information. This bill is pending hearing in this Committee.

AB 1395 (Cunningham) seeks to prohibit a smart speaker device, as defined, or a specified manufacturer of that device, from saving or storing recordings of verbal commands or requests given to the device, or verbal conversations heard by the device, regardless of whether the device was triggered using a key term or phrase. This bill is pending hearing in this Committee.

AB 1416 (Cooley) seeks to expand the CCPA exemptions to specify that the act does not restrict a business's ability to comply with any rules or regulations. The bill would also expand the CCPA existing exemptions, which already include that the act does not restrict a business's ability to exercise or defend legal claims, to instead specify that the act does not restrict a business's ability to collect, use, retain, sell, authenticate, or disclose PI: (1) in order to exercise, defend, or protect against legal claims; (2) in order to protect against or prevent fraud or unauthorized transactions; (3) in order to protect against or prevent security incidents or other malicious, deceptive, or illegal activity; (4) in order to investigate, report, or prosecute those responsible for protecting against fraud, unauthorized transactions, and preventing security incidents or other specified activities; or, (5) for the purpose of assisting another person or government agency to conduct the aforementioned activities. This bill is pending hearing in this Committee.

AB 1564 (Berman) would revise a requirement in the CCPA for businesses to make available to consumers “two or more designated methods” for submitting requests for information to be disclosed pursuant to specified provisions of the CCPA, including, at a minimum, a toll free telephone number and, if the business maintains an internet website, a website address. This bill is pending hearing in this Committee.

AB 1760 (Wicks) would restate the CCPA rights using similar terminology, expand those existing CCPA rights to include new rights, and replace the “opt-out” rights of consumers 16 years and older with an “opt-in” right, among other things. This bill is pending hearing in this Committee.

- 7) **Prior legislation:** AB 375 (Chau, Ch. 55, Stats. 2018) established the CCPA to grant consumers certain rights regarding their PI, including: (1) the right to know what PI that is collected and sold about them; (2) the right to request the categories and specific pieces of PI the business collects about them; and (3) the right to opt-out of the sale of their PI, or opt-in in the case of minors under 16 years of age.

SB 1121 (Dodd, Ch. 735, Stats. 2018) ensured that a private right of action under the CCPA applies only to the CCPA’s data breach section on and not to any other section of the CCPA, as specified, corrected numerous drafting errors, made non-controversial clarifying amendments, and addressed several policy suggestions made by the AG in a preliminary clean-up bill to AB 375.

## **REGISTERED SUPPORT / OPPOSITION:**

### **Support**

California New Car Dealers Association (sponsor)  
Alliance of Automobile Manufacturers, Inc.  
Association of Global Automakers, Inc.  
California Chamber of Commerce  
Civil Justice Association of California

### **Opposition**

Californians for Consumer Privacy (unless amended)  
Consumer Reports

**Analysis Prepared by:** Ronak Daylami / P. & C.P. / (916) 319-2200