

Date of Hearing: April 23, 2019

ASSEMBLY COMMITTEE ON PRIVACY AND CONSUMER PROTECTION

Ed Chau, Chair

AB 1355 (Chau) – As Amended April 12, 2019

**SUBJECT:** Personal information

**SUMMARY:** This bill would address various drafting errors and make other clarifying changes in the California Consumer Privacy Act of 2018 (CCPA). Specifically, **this bill would:**

- 1) Correct a drafting error in the CCPA’s definitions to specify that “personal information” (as opposed to “publicly available”) does not include consumer information that has been deidentified or aggregate consumer information.
- 2) Address duplicative language in the CCPA relating to a consumer’s right to know what personal information (PI) has been collected about them.
- 3) Clarify that consumers who are at least 13 years of age and less than 16 years of age (as opposed to “between 13 and 16 years of age”) have the right to opt-in to the sale of their PI.
- 4) Align various requirements throughout the CCPA, such as with respect to the information that must be disclosed about the categories of third parties to which a business has sold PI, as specified.
- 5) Correct various cross-references and include missing cross-references to appropriate CCPA provisions.
- 6) Correct various drafting errors and make other clarifying or technical, non-substantive changes.

**EXISTING LAW:**

- 1) Establishes the CCPA and provides various rights to consumers pursuant to the act. Subject to various general exemptions, a consumer has, 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 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.)
- 2) 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.)
- 3) Prohibits a business from discriminating against a consumer because the consumer exercised any of the consumer’s rights under this CCPA, as specified. (Civ. Code Sec. 1798.125(a)(1).)
- 4) Provides various definitions under the CCPA. The CCPA, of particular relevance for this bill defines “PI” to mean 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.
  - Characteristics of protected classifications under California or federal law.
  - Commercial information, including records of personal property, products or services purchased, obtained, or considered, or other purchasing or consuming histories or tendencies.
  - Geolocation data.
  - Inferences drawn from any of the information identified in the definition of PI to create a profile about a consumer reflecting the consumer’s preferences, characteristics, psychological trends, predispositions, behavior, attitudes, intelligence, abilities, and aptitudes. (Civ. Code Sec. 1798.140.)
- 5) Specifies under the CCPA’s definition of “PI” that PI does not include “publicly available” information, as specified. The CCPA further specifies, in relevant part, that for these purposes, “publicly available” means information that is lawfully made available from federal, state, or local government records, if any conditions associated with such information [are followed]. Information is not “publicly available” if that data is used for a purpose that is not compatible with the purpose for which the data is maintained and made available in the government records or for which it is publicly maintained. “Publicly

available” does not include consumer information that is deidentified or aggregate consumer information. (Civ. Code Sec. 1798.140(o)(2).)

**FISCAL EFFECT:** Unknown

**COMMENTS:**

- 1) **Purpose of this bill:** This bill seeks to continue technical clean-up to the CCPA to address drafting errors and make other technical and clarifying changes that were not addressed in SB 1121 (Dodd, Ch. 735, Stats. 2018) after the passage of AB 375 (Chau, Ch. 55, Stats. 2018) last year. This is an author-sponsored bill.

- 2) **Author’s statement:** According to the author:

Since the passage of the CCPA, there have been numerous requests for further clarification on the rights, protections, and obligations established by the CCPA. Additionally, numerous stakeholders have also requested technical corrections to the law that are consistent with the original intent and would provide additional clarity. Some of the proposed technical amendments in AB 1355 address self-explanatory typographical errors or omissions and errant cross-references.

The bill seeks to address various drafting errors and makes other clarifying changes in the CCPA, such as a drafting error in the definitions to specify that “personal information” (as opposed to “publicly available”) does not include consumer information that has been deidentified or aggregate consumer information. It also addresses duplicative language in the CCPA relating to a consumer’s right to know what personal information (PI) has been collected about them, and clarif[ies] that consumers who are at least 13 years of age and less than 16 years of age (as opposed to “between 13 and 16 years of age”) have the right to opt-in to the sale of their PI. Finally, it corrects various cross-references and other drafting errors and makes other clarifying or technical, non-substantive changes.

- 3) **Follow up to prior CCPA clean-up legislation:** Last year, the Legislature enacted the CCPA (AB 375, Chau, Ch. 55, Stats. 2018), which gives 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. The final version of the CCPA adopted by the Legislature was the byproduct of compromises made between business interest on the one side, and consumer and privacy interests on the other, to provide a legislative alternative to a ballot initiative on the same subject. Given the abbreviated deadline to finalize the heavily negotiated CCPA language and to insert them into the formal bill vehicle, numerous drafting errors were contained in the legislation as initially adopted. Many of those errors (but not all) were addressed in a preliminary clean-up bill at the end of the 2017-2018 legislative session, in SB 1121 (Dodd, Ch. 735, Stats. 2018).

While many other bills have been introduced this year to “clean-up” or clarify various provisions of the CCPA, arguably most are largely substantive in nature, even where the intent may be consistent with the original intent of the CCPA. This bill continues the clean-up effort begun by SB 1121 last year, to address drafting errors and other issues of a technical nature. As noted above, due to the extensive negotiations around the CCPA, by the

time the compromise language was submitted to legislative counsel for drafting, time restraints understandably resulted in various errors. For example, the CCPA was always intended (and the language submitted to counsel reflected) that PI was not to include any consumer information that is deidentified or aggregate consumer information. When drafted, however, the language in the CCPA reflected that such information was not “publicly available” information, as opposed to “PI.” This bill would correct that drafting error.

This bill would also make other changes of a clarifying, but technical nature. For example, the CCPA currently reflects that, notwithstanding the provision that states businesses must provide an opt-out right to consumers when they sell consumers’ information to third parties, business may not sell the information of consumers who are “less than 16 years of age” except where the consumer, or his or her parent has affirmatively authorized the sale, as specified. (*See* Civ. Code Sec. 1798.120(c).) It then continues to state that consumers who are between 13 and 16 years of age have the right to opt-in to the sale of their PI, whereas the parent or guardian of any consumer under 13 must opt-in on the minor’s behalf. To provide absolute clarity regarding the relevant age ranges, this bill would specify that consumers who are “at least” 13 years of age, and “less than” 16 years of age, have the right to opt-in on their own accord. Consistent with the intent of the CCPA which differentiates between consumers who are “less than 16 years of age” and other consumers, this would remove any ambiguity and ensure that 16 year olds have the same “opt-out” right as adults, as opposed to the “opt-in” right for most minors.

- 4) **Clarifying the CCPA’s provision governing consumers’ right to know what information has been collected about them:** In a separate provision of the CCPA, there appears to be redundant language regarding the consumers’ right to know what PI is collected about them. Specifically, that section (Civ. Code Sec. 1798.110) has duplicative lists in two of its subdivisions that have raised some confusion. As currently drafted, subdivision (a) of that section states that a consumer has the right to request that a business that collects PI about the consumer disclose to the consumer the following:

- The categories of PI it has collected about that consumer.
- The categories of sources from which the PI is collected.
- The business or commercial purpose for collecting or selling PI.
- The categories of third parties with whom the business shares PI.
- The specific pieces of PI it has collected about that consumer.

Subdivision (b) requires the business to comply and disclose the above information upon receipt of a verifiable consumer request, as specified.

Subdivision (c) then, in a potentially confusing manner, restates that a business that collects PI about consumers shall disclose the following, as specified in the section of the CCPA that governs how businesses must provide disclosures:

- The categories of PI it has collected about that consumer.

- The categories of sources from which the PI is collected.
- The business or commercial purpose for collecting or selling PI.
- The categories of third parties with whom the business shares PI.
- The specific pieces of PI the business has collected about that consumer.

This information is, verbatim, the same as what the business must already disclose under subdivisions (a) and (b).

Functionally speaking, subdivision (c) should actually capture the pre-disclosures that a business must make to all consumers regarding their rights to this information – it should not be specific to a particular consumer. In contrast, subdivisions (a) and (b) relate to a specific consumer’s request under the rights granted to them by this “right to know” section of the CCPA. Accordingly, AB 1355 would revise subdivision (c) to reflect that a business that collects PI about consumers, must disclose the following, consistent with the section governing how businesses are to provide disclosures under the CCPA (key changes *emphasized*):

- The categories of PI it has collected about *consumers*.
- The categories of sources from which the PI is collected.
- The business or commercial purpose for collecting or selling PI.
- The categories of third parties with whom the business shares PI.
- *That a consumer has the right to request the specific pieces of PI the business has collected about that consumer.*

Without this type of disclosure, as proposed in subdivision (c), the average consumer might not recognize that they have the right to know such information, including the right to request the specific pieces of PI that a business has collected about them.

- 5) **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 1146 (Berman) seeks to expand the CCPA exemptions to expressly exclude from the CCPA vehicle information shared between a new motor vehicle dealer and the vehicle's manufacturer, if the information is shared pursuant to, or in anticipation of, a vehicle repair relating to warranty work or a recall, as specified. 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 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.

6) **Prior legislation:** AB 375 (Chau, Ch. 55, Stats. 2018) *See* Comment 3.

SB 1121 (Dodd, Ch. 735, Stats. 2018) *See* Comment 3. This bill 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**

Californians for Consumer Privacy

**Opposition**

None on file

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