

Date of Hearing: April 23, 2019

ASSEMBLY COMMITTEE ON PRIVACY AND CONSUMER PROTECTION

Ed Chau, Chair

AB 1564 (Berman) – As Introduced February 22, 2019

SUBJECT: Consumer privacy: consumer request for disclosure methods

SUMMARY: This bill would revise a requirement in the California Consumer Privacy Act of 2018 (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. Instead, this bill would require that businesses: (1) make available to consumers either a toll-free telephone number or an email address; and, (2) if the business maintains an internet website, make an internet website available to consumers to submit requests for information required to be disclosed pursuant to specified provisions of the CCPA. This bill would make other 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) Provides, specifically, that consumers have the right to request that a business that *collects* PI about the consumer disclose to the consumer the following (and requires that the business disclose, as specified below, such information upon receipt of a verifiable consumer request):
 - 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. (Civ. Code Sec. 1798.110; “the right to know what PI a business collects about the consumer.”)
- 4) Provides, specifically, that consumers have the right to request that a business that *sells* the consumer’s PI, or that discloses it for a business purpose, disclose to that consumer the following (and requires that the business disclose, as specified below, such information upon receipt of a verifiable consumer request):
 - The categories of PI that the business collected about the consumer.
 - 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 categories of PI that the business disclosed about the consumer for a business purpose. (Civ. Code Sec. 1798.115; “the right to know what PI a business sells about the consumer.”)
- 5) Provides that, in order to comply with the various consumer rights provisions under the CCPA, a business subject to the CCPA must, in a form that is reasonably accessible to consumers do the following, among other things:
 - Make available to consumers two or more designated methods for submitting requests for information required to be disclosed including, at a minimum, a toll-free telephone number, and if the business maintains an internet website, a website address.
 - Disclose and deliver the required information to a consumer free of charge within 45 days of receiving a verifiable consumer request from the consumer, as specified.
 - Disclose certain information in its online privacy policy or policies if the business has an online privacy policy or policies and in any California-specific description of consumers’ privacy rights, or if the business does not maintain those policies, on its internet website, and update that information at least once every 12 months.
 - Ensure that all individuals responsible for handling consumer inquiries about the business’s privacy practices or the business’s compliance with this title are informed of all requirements in various provisions of the CCPA enumerating consumer rights, and

this section, and how to direct consumers to exercise their rights under those provisions. (Civ. Code Sec. 1978.130.)

- 6) Provides various definitions under the CCPA. The CCPA, of particular relevance for this bill, defines “business” to mean 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.)

FISCAL EFFECT: Unknown

COMMENTS:

- 1) **Purpose of this bill:** This bill seeks to repeal a requirement that all businesses subject to the CCPA must make available a toll-free telephone number and instead provide businesses the option of making available either a toll-free telephone number or an email address. This bill is sponsored by the Internet Association.
- 2) **Author’s statement:** According to the author:
- The California Consumer Privacy Act (CCPA) granted consumers important rights related to their personal information, particularly the right to know what personal information a business collects, the right to opt-out of having personal information sold to a third party, and the right to have personal information deleted. In order for consumers to exercise these new rights, the CCPA requires a covered business to provide a toll-free phone number for consumers to make access and deletion requests. AB 1564 would instead give businesses the option to provide either a toll-free number or an email address. This flexibility will allow businesses to provide an option that fits the context of the consumer business relationship (i.e. how the consumer engages with the business generally) and work within best practices to verify and respond to requests.
- 3) **This bill does not recognize that not all Californians have access to the internet:** 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.

Notably, for purposes of this bill, the CCPA, applies to both online and brick-and-mortar businesses in California that meet a certain threshold under the CCPA, in terms of: (1) their gross revenue; (2) the number of consumers, households, or devices from which they buy, sell, or share PI for commercial purposes; or, (3) the percentage of their annual revenues that they derive from the sale of consumers' PI. To that end, the CCPA envisioned requiring two or more methods by which a consumer could contact a business to effectuate their rights, one of which was *not* internet-based. Specifically, the CCPA required that a business provide both a toll-free telephone number and an internet website address if one is available.

Recognizing that not all businesses have toll-free telephone numbers available, this bill seeks to provide businesses additional flexibility by, instead, requiring businesses to make available to consumers: (1) either a toll-free telephone number or an email address; and, (2) if the business maintains an internet website, an internet website for consumers to submit requests for information for the consumers' requests pursuant to the CCPA's "right to know" provisions. According to the author, this also recognizes that "[t]he ability of businesses to verify the legitimacy of access requests is related to the method of the request. Many businesses may have difficulty verifying consumer requests over the phone. Reliance on a phone interface is also complicated by the rise toll-free robo calls and phone scams. Further, given the potential legal liability for improper disclosures of personal information, businesses will also want to maintain proper documentation of the request, the verification process, and the information provided in response. Written or electronic requests will facilitate the recordkeeping process."

That being said, under this bill, by removing the CCPA's mandate for a toll free phone number, a business could very well provide a consumer two internet-based methods to get into contact and submit their requests. While it is safe to assume that a consumer has internet access when they interact with online businesses, not all consumers have such access and may, in fact, only interact with brick and mortar based businesses. Again, those consumers still have rights under the CCPA. Moreover, for those consumers, it is important that the only avenues to interacting with businesses are not all internet-based. Otherwise, as a practical matter, those consumers would effectively be barred from submitting requests to know what PI businesses collect or sell about them under the CCPA.

The author has accepted the following amendment to strike a better balance between the need for flexibility on the business side, and need to ensure that consumers have the ability to exercise their CCPA rights as a practical matter. This amendment would also recognize the author's intent to encourage written documentation of requests. Specifically, this amendment will require businesses to provide either both an email address and physical (mailing) address in lieu of a toll-free telephone number, unless they operate exclusively online. Arguably, traditional mail may slow down communication exchanges between the consumer and the business (as opposed to phone calls, emails, or internet-enabled "chats"), but it provides a non-internet based option where one currently lacking and thereby reduces the unintended harm to consumers who lack the technology or internet access necessary for communicating by way of those other mechanisms.

Author's amendment:

On page 2, line 7, after "or an email address" and insert "*and physical address*"

On page 2, line 11, after “1798.115.” insert “*A business that operates exclusively online shall only be required to provide an email address for submitting requests for information required to be disclosed pursuant to Sections 1798.110 and 1798.115.*”

- 4) **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 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 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 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.

5) **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

Internet Association (sponsor)
California Asian Pacific Chamber of Commerce
California Black Chamber of Commerce
California Hispanic Chambers of Commerce
California Restaurant Association
California Small Business Association
Coalition of Small & Disabled Veteran Businesses
Connected Commerce Council
Engine
Latin Business Association
National Federation of Independent Businesses, CA
Small Business California
Valley Industry & Commerce Association

Opposition

None on file

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