

Date of Hearing: April 25, 2023

ASSEMBLY COMMITTEE ON PRIVACY AND CONSUMER PROTECTION

Jesse Gabriel, Chair

AB 947 (Gabriel) – As Amended March 6, 2023

PROPOSED CONSENT

SUBJECT: California Consumer Privacy Act of 2018: sensitive personal information

SYNOPSIS

California’s recent history has been one of inclusion and respect for our immigrant neighbors. While Congress has failed to pass comprehensive immigration reform, California has exercised its state power to protect immigrants who are caught in limbo due to Washington’s inaction. The Legislature year after year continues to act by passing significant legislation to both protect people from harm who have immigrated to California and to provide them with many of the supports and services provided to all California residents. This author sponsored bill, in keeping with that tradition, endeavors to insure the protection of Californians’ data that might disclose their citizenship and immigration status by clarifying that this data falls within the definition of “sensitive personal information” under the California Consumer Protection Act (CCPA), thus requiring that businesses take additional steps to safeguard it.

The CCPA gives consumers certain rights regarding their personal information, such as: (1) the right to know what personal information is collected and sold about them; (2) the right to request the categories and specific pieces of personal information that a business collects about them; and (3) the right to opt-out of the sale of their personal information, or opt-in, in the case of minors under 16 years of age.

When it comes to the use of their sensitive personal information, consumers have the right to further restrict a business’s use and disclosure of that information. Specifically, a person has the right to restrict a business’ use of their sensitive personal information to “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.”

This bill is supported by Electronic Frontier Foundation and Oakland Privacy. It has no opposition on file.

SUMMARY: Adds “citizenship or immigration status” to the definition of “sensitive personal information” under the California Consumer Privacy Act.

EXISTING LAW:

- 1) Provides, pursuant to the California Constitution, that all people have inalienable rights, including the right to pursue and obtain privacy. (Cal. Const., art. I, § 1.)
- 2) Establishes the California Consumer Privacy Act (CCPA). (Civ. Code §§ 1798.100-1798.199.100.)
- 3) Provides that the CCPA applies to any for-profit entity that collects consumers’ personal information, does business in California, and meets one or more of the following criteria:

- a) It had gross annual revenue of over \$25 million in the previous calendar year.
 - b) It buys, receives, or sells the personal information of 100,000 or more California residents, households, or devices annually.
 - c) It derives 50% or more of its annual revenue from selling California residents' personal information. (Civ. Code § 1798.140(d).)
- 4) Defines "consumer" as a natural person who is a California resident. (Civ. Code § 1798.140(i).)
- 5) Provides a consumer, subject to exemptions and qualifications, various rights, including the following:
- a) The right to know the business or commercial purpose for collecting, selling, or sharing personal information and the categories of persons to whom the business discloses personal information. (Civ. Code § 1798.110.)
 - b) The right to request that a business disclose the specific pieces of information the business has collected about the consumer, and the categories of third parties to whom the personal information was disclosed. (Civ. Code § 1798.110.)
 - c) The right to request deletion of personal information that a business has collected from the consumer. (Civ. Code § 1798.105.)
 - d) The right to opt-out of the sale of the consumer's personal information if the consumer is over 16 years of age. (Sale of the personal information of a consumer below the age of 16 is barred unless the minor opts-in to its sale.) (Civ. Code § 1798.120.)
 - e) The right to equal service and price, despite the consumer's exercise of any of these rights, unless the difference in price is reasonably related to the value of the customer's data. (Civ. Code § 1798.125.)
 - f) The right, at any time, to direct a business that collects sensitive personal information about the consumer to limit its use of the consumer's sensitive personal information to 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, to perform the services. (Civ. Code § 1798.121.(a))
- 6) Defines "personal information" as information that identifies, relates to, describes, is reasonably capable of being associated with, or could reasonably be linked, directly or indirectly, with a particular consumer or household. Personal information includes such information as:
- a) Name, alias, postal address, unique personal identifier, online identifier, IP address, email address, account name, social security number, driver's license number, passport number, or other identifier.
 - b) Commercial information, including records of personal property, products or services purchased, obtained, or considered, or other purchasing or consuming histories or tendencies.

- c) Biometric information.
 - d) Internet activity information, including browsing history and search history.
 - e) Geolocation data.
 - f) Professional or employment-related information. (Civ. Code § 1798.140(v).)
- 7) Defines “sensitive personal information” as personal information that reveals:
- a) A consumer’s social security, driver’s license, state identification card, or passport number.
 - b) A consumer’s account log-in, financial account, debit card, or credit card number in combination with any required security or access code, password, or credentials allowing access to an account.
 - c) A consumer’s precise geolocation.
 - d) A consumer’s racial or ethnic origin, religious or philosophical beliefs, or union membership.
 - e) The contents of a consumer’s mail, email, and text messages unless the business is the intended recipient of the communication.
 - f) A consumer’s genetic data. (Civ. Code § 1798.140(ae))

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

COMMENTS:

1) **Purpose of the bill.** The purpose of this bill is to tighten up the definition of “sensitive personal information” to insure that immigration status and citizenship information is properly protected from disclosure by businesses that collect, store, and share data that includes personal information about consumers.

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

California has long been at the forefront in establishing laws that protect individuals on the basis of citizenship and/or immigration status. Among those are protections related to obtaining housing, a driver’s license, income and healthcare supports, a number of labor protections, and protections for our students.

Currently under the California Consumer Protection Act (CCPA), sensitive personal information allows an individual to opt out of having this information used or shared by businesses that collect their data. Notably omitted from the definition of “sensitive personal information” is a person’s immigration and citizenship status. While there is protection for a consumer’s racial or ethnic origin (e.g., that an individual has Slavic heritage), this protection is insufficient to encompass the consumer’s immigration status (e.g., that the individual has applied for asylum due to the war in Ukraine).

It remains critical that the state continue to enact sensible policies that will protect Californians from punitive anti-immigrant efforts that continue to be considered at the federal level. AB 947 is a simple bill that adds four words to the definition of sensitive information, “citizenship and immigration status.” But adding those words provides important protections for our immigrant neighbors. It helps them insure that any information shared with businesses, that might somehow disclose their immigration status, is not sold to or shared with any entity making these Californians more vulnerable than they already are to being separated from their families, imprisoned, and ultimately returned to countries that many were often forced to flee from for their own safety.

3) **California is a sanctuary state.** California leads the nation with pro-immigrant policies that have sparked change nationwide, including expanding access to higher education, expanding access to health care and public benefits, advancing protections for immigrant workers, supporting immigrant students through partnerships with school districts, and improving opportunities for economic mobility and inclusion through access to driver’s licenses and pro bono immigration services.

Considered the most widespread state protections for undocumented immigrants: Senate Bill 54, the California Values Act, which took effect on January 1, 2018. The law builds on previous “sanctuary” policies with regard to assisting federal immigration efforts—and extends them—by establishing statewide non-cooperative policies between state law enforcement officials and federal immigration authorities.

California prohibits state or local law enforcement agencies from the following actions:

1. Detaining an individual on a hold request from the federal government unless there is a felony or a warrant.
2. Transferring undocumented immigrants into federal custody unless they've been convicted in the last 15 years of a crime that is one of the listed offenses under California’s TRUST Act of 2013 or the individual is a registered sex offender.
3. Asking about a person's immigration status or sharing any information with federal immigration authorities that is not available to the general public.

Unlike some states, which have made legislative efforts to limit illegal immigrant access to in-state tuition rates, California passed the DREAM Act, which explicitly permits current and prospective students who are undocumented immigrants to pay the same tuition that in-state legal residents enjoy at public universities. Related legislation will allow these same students who qualify for in-state tuition rates to apply for and receive financial aid benefits. Also, test sponsors of graduate exams must provide alternative means of proving identification.

This bill is in keeping with the Legislature’s longstanding goal of ensuring that California is a place of sanctuary and refuge for all that need it.

4) **The California Consumer Protection Act (CCPA).** In 2018, the Legislature enacted the California Consumer Protection Act (CCPA) (AB 375 (Chau, Chap. 55, Stats. 2018)), which gives consumers certain rights regarding their personal information, such as: (1) the right to know what personal information that is collected and sold about them; (2) the right to request the categories and specific pieces of personal information the business collects about them; and (3)

the right to opt-out of the sale of their personal information, or opt-in, in the case of minors under 16 years of age. The CCPA was the byproduct of compromises made between business interests on one side, and consumer and privacy interests on the other, to provide a legislative alternative to a ballot initiative on the same subject.

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. (Ballot Pamphlet., Primary Elec. (Nov. 3, 2020) text of Prop. 24, p. 74.) While this bill does not amend the contents of the CPRA, it is consistent with the intent by insuring that the constitutional right to privacy is enhanced, since data regarding citizenship and immigration status will have heightened protection if this bill is enacted.

Importantly, the CPRA included additional restrictions on information that is considered "sensitive personal information." When it comes to personal information, consumers have the four rights outlined above. However, when it comes to the use of their sensitive personal information, consumers have the right to further restrict a business's use and disclosure of that information. Specifically, a person has the right to restrict a business's use of their sensitive personal information to "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).)

Sensitive personal information is a specific subset of personal information that includes certain government identifiers (such as social security numbers); an account log-in; a financial account, debit card, or credit card number, along with any required security code, password, or credentials allowing access to an account; precise geolocation; contents of mail, email, and text messages; genetic data; biometric information processed to identify a consumer; information concerning a consumer's health, sex life, or sexual orientation; or information about racial or ethnic origin, religious or philosophical beliefs, or union membership.

Curiously missing from the list of sensitive information, is information that may disclose a person's immigration status or country of citizenship. As the author notes, "While there is protection for a consumer's racial or ethnic origin (e.g., that an individual has Slavic heritage), this protection is insufficient to encompass the consumer's immigration status (e.g., that the individual has applied for asylum due to the war in Ukraine)."

This bill is intended to rectify that omission by including the phrase "citizenship or immigration status" in the definition.

5) **Analysis: This bill is consistent with California’s public policy goals of respecting immigrants.** As discussed above, California’s recent history has been one of inclusion and respect for our immigrant neighbors. While Congress has failed to pass comprehensive immigration reform, California has exercised its state power to protect immigrants who are caught in limbo due to Washington’s inaction. The Legislature year after year continues to act by passing significant legislation to both protect people from harm who have immigrated to California and to provide them with many of the supports and services provided to all California residents. This bill, in keeping with that tradition, endeavors to insure the protection of Californians’ personal data that might disclose their citizenship and immigration status by clarifying the CCPA’s definition of “sensitive personal information,” thus requiring that businesses take additional steps in protecting that data.

6) **Related legislation.** In the current session, AB 1194 (Wendy Carillo) would, if the consumer’s personal information contains information related to accessing, procuring, or searching for services regarding contraception, pregnancy care, and perinatal care, including, but not limited to, abortion services, require a business to comply with the obligations imposed by the CCPA. It would also specify that a consumer accessing, procuring, or searching for those services does not constitute a natural person being at risk or danger of death or serious physical injury. That bill is currently pending before this Committee.

AB 2091 (Bonta, Chap. 628, Stat. 2022) established requirements to protect the private information of individuals who seek or consider an abortion.

AB 375 (Chau, Chap. 55, Stats. 2018) established the CCPA, which provides consumers the right to access their personal information that is collected by a business, the right to delete it, the right to know what personal information is collected, the right to know whether and what personal information is being sold or disclosed, the right to stop a business from selling their information, and the right to equal service and price.

SB 54 (De León, Chap. 495, Stats. 2017) enacted the California Values Act, which further limits the involvement of state and local law enforcement agencies in federal immigration enforcement.

AB 4 (Ammiano, Chap. 570, Stats. 2013) enacted the TRUST Act, which prohibits a law enforcement official, as defined, from detaining an individual on the basis of a United States Immigration and Customs Enforcement hold after that individual becomes eligible for release from custody, unless, at the time that the individual becomes eligible for release from custody, certain conditions are met, including, among other things, that the individual has been convicted of specified crimes.

ARGUMENTS IN SUPPORT. In support of the bill, Oakland Privacy writes:

California has more than 10 million immigrants, making up almost a third of the state’s total population. Immigrants are at risk of facing barriers, discrimination, and exploitation simply because of their citizenship status. For example, in recent elections, anti-immigrant rhetoric and campaign ads were particularly rampant. In a recent survey capturing the sentiments of immigrant communities about the impact of campaign ads discriminating against immigrants, 29% said it made them feel that they were not wanted in the U.S..

Given that California is one of the largest economies in the world and immigrants make up a large percentage of California’s thriving economy, it is imperative that this population be

protected against discrimination. Californians should be able to thrive and contribute without fear or risk of being discriminated against regardless of citizenship status. Even more egregious is the recent investigation revealing that the Department of Homeland Security had been using information about immigration status purchased from data broker LexisNexis to target, seek out and deport immigrants. At its best, this practice circumvents laws protecting discrimination based on national origin or immigration status, but worse, this is contributing to warrantless surveillance against immigrant communities.

Adding immigration status to “sensitive personal information” under CPRA would align with the inclusion of immigration status and/or national origin as a protected class in other laws. For example, in California, the Unruh Civil Rights Act explicitly states “national origin,” “citizenship” and “immigration status”. The California Fair Employment and Housing Act (FEHA) also prohibits discrimination based on “national origin”. Other states are also expanding laws to include immigration status under protected classes, such as New York’s Human Rights Law of 2022.

Also in support, the Electronic Frontier Foundation notes:

EFF thanks you for your leadership in addressing this important issue. The California Privacy Rights Act of 2020 established the category of "sensitive personal information" in the law but did not include protections for data related to immigration or citizenship status in its definition. We highlighted this as an oversight in the ballot initiative at the time, and are glad to see it corrected. People should have control over their information, particularly information such as citizenship or immigration status that can easily expose them to unwarranted discrimination if this information is used in ways they do not expect.

REGISTERED SUPPORT / OPPOSITION:

Support

Electronic Frontier Foundation
Oakland Privacy

Opposition

None on file

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