

SENATE JUDICIARY COMMITTEE
Senator Thomas Umberg, Chair
2021-2022 Regular Session

AB 694 (Committee on Privacy and Consumer Protection)

Version: June 24, 2021

Hearing Date: July 6, 2021

Fiscal: Yes

Urgency: No

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SUBJECT

Privacy and Consumer Protection: omnibus bill

DIGEST

This bill is the Assembly Privacy and Consumer Protection Committee omnibus bill. It extends the authority of a county's board of supervisors to charge certain fees and extend related provisions. The bill makes minor updates and nonsubstantive changes to other statutes.¹

EXECUTIVE SUMMARY

This omnibus bill from the Assembly Privacy and Consumer Protection Committee makes changes to a handful of statutes in the Business and Professions Code and to the California Consumer Privacy Act (CCPA) in the Civil Code.

The bill extends a sunset date by five years that applies to an article in the Business and Professions Code dealing with weights and measures. In part, it extends the authority of counties to charge fees to recover the costs associated with actually inspecting or testing weighing and measuring devices required of the county sealer.

The bill also updates a requirement for certain equipment to meet appropriate national standards. Finally, the bill makes several nonsubstantive changes to the CCPA, as amended by Proposition 24 (2020), the California Privacy Rights Act (CPRA).

The bill is committee-sponsored. There is no support or opposition to the bill.

¹ The bill also includes substantive changes to Section 50474.3 of the Government Code. However, the Assembly Privacy and Consumer Protection Committee has agreed to remove this section of the bill. This analysis will be of the bill as so amended.

PROPOSED CHANGES TO THE LAW

Existing law:

- 1) Authorizes the board of supervisors of a county, by ordinance, to charge fees, not to exceed the county's total cost of actually inspecting or testing weighing and measuring devices required of the county sealer, to recover the costs of the county sealer to perform these duties. (Bus. & Prof. Code § 12240(a).)
- 2) States that an annual registration fee for a business that uses a commercial weighing or measuring device consists of a business location fee, department administrative fee, and a device fee, as specified, and further provides that the location fee and the device fee cannot exceed \$100, as specified. (Bus. & Prof. Code § 12240(f).)
- 3) Sunsets the above provisions, and other related sections, on January 1, 2022. (Bus. & Prof. Code § 12246.)
- 4) Requires a service agency to ensure that, when applicable, the standards and testing equipment meet the specifications and tolerances published in the most current National Institute of Standards and Technology 105 Series Handbooks for Field Standard Weights (NIST Class F), Field Standard Measuring Flasks, and Graduated Neck Type Volumetric Field Standards. (Bus. & Prof. Code § 12533.)
- 5) Establishes the CCPA, which grants consumers certain rights with regard to their personal information, including enhanced notice, access, and disclosure; the right to deletion; the right to restrict the sale of information; and protection from discrimination for exercising these rights. It places attendant obligations on businesses to respect those rights. (Civ. Code § 1798.100 et seq.)
- 6) Establishes the CPRA, which amends the CCPA and creates the PPA, which is charged with implementing these privacy laws, promulgating regulations, and carrying out enforcement actions. (Civ. Code § 798.100 et seq.; Proposition 24 (2020).)
- 7) Permits amendment of the CPRA by a majority vote of each house of the Legislature and the signature of the Governor provided such amendments are consistent with and further the purpose and intent of this act as set forth therein. (Proposition 24 § 25 (2020).)

This bill:

- 1) Extends the sunset date in Section 12246 of the Business and Professions Code to January 1, 2027.

- 2) Updates Section 12533 of the Business and Professions Code to require service agencies to ensure the standards and testing equipment meet the specifications and tolerances published in the most current National Institute of Standards and Technology 105 Series Handbooks for Specifications and Tolerances for Reference Standards and Field Standard Weights and Measures.
- 3) Makes nonsubstantive and conforming changes to the CCPA.

COMMENTS

1. Stated intent of the bill

According to the Assembly Privacy & Consumer Protection Committee:

This bill constitutes the omnibus bill of the Assembly Privacy & Consumer Protection Committee. The purpose of the omnibus bill is to increase the efficiency of the legislative process, conserve legislative resources, and eliminate the need to unnecessarily hear a number of technical, clarifying, or modest stand-alone bills that might otherwise have to be introduced and require individual consideration by this Committee.

2. Weights and measures

Enforcement of California's weights and measures laws and regulations is the responsibility of the Division of Measurement Standards (DMS) under the Department of Food and Agriculture. The DMS works with county sealers of weights and measures who, under the supervision and direction of the Secretary, carry out many of the weights and measures inspection and enforcement activities at the local level.

The inspection and testing of weighing and measuring devices is overseen by a County Sealer of Weights and Measures. Historically, sealers have been responsible for ensuring that consumers reliably get what they paid for. As such, these sealers and their offices enforce the laws and regulations of the state under the general direction and oversight of the Secretary. In practice, this oversight involves the inspection and testing of packaged commodities and all commercially-used weighing and measuring devices.

Current law regulates the fees that can be charged for inspecting each device, and each individual county determines what that fee is. Counties are authorized to charge anywhere up to the maximum in order to reimburse their costs of inspection or testing of the weighing or measuring device.

Section 12246 of the Business and Professions Code sunsets these fee provisions on January 1, 2022. As has been done in the past, this bill extends out this sunset for five years.

The law also directly regulates registered service agencies. According to the Department of Food and Agriculture: “Every state in the U.S. has similar requirements for standards used by Registered Service Agencies who install and repair commercial weighing and measuring devices.” This bill updates the national standards to which service agencies are required to have their standards and testing equipment meet.

3. Nonsubstantive changes to the CCPA

The California Consumer Privacy Act of 2018 (CCPA) grants consumers certain rights with regard to their personal information, including enhanced notice, access, and disclosure; the right to deletion; the right to restrict the sale of information; and protection from discrimination for exercising these rights. (Civ. Code § 1798.100 et seq.) It places attendant obligations on businesses to respect those rights. In the November 3, 2020, election, voters approved Proposition 24, which established the California Privacy Rights Act of 2020 (CPRA). The CPRA amends the CCPA, limits further amendment, and creates the California Privacy Protection Agency (PPA).

This bill makes several minor changes to the CCPA.

Currently the CCPA, as amended by the CPRA, provides a definition of “personal information,” a core term of the act, and further provides what is not included:

“Personal information” does not include publicly available information or lawfully obtained, truthful information that is a matter of public concern. For purposes of this paragraph, “publicly available” means: information that is lawfully made available from federal, state, or local government records, or information that a business has a reasonable basis to believe is lawfully made available to the general public *by the consumer* or from widely distributed media, *or by the consumer*; or information made available by a person to whom the consumer has disclosed the information if the consumer has not restricted the information to a specific audience. “Publicly available” does not mean biometric information collected by a business about a consumer without the consumer’s knowledge. (Civ. Code § 1798.140(v)(2) (emphasis added).)

This bill simply removes the unnecessary duplication of the phrase “by the consumer” in this provision.

The next change simply removes three commas, and adds another, in Section 1798.145 of the Civil Code.

The final change is to Section 1798.199.40 of the Civil Code, a new provision added by the CPRA that relates to the newly formed PPA’s authority. The provision provides that the PPA shall perform the following function:

On and after the *earlier of* July 1, 2021, or within six months of the agency providing the Attorney General with notice that it is prepared to assume rulemaking responsibilities under this title, adopt, amend, and rescind regulations pursuant to Section 1798.185 to carry out the purposes and provisions of the California Consumer Privacy Act of 2018, including regulations specifying recordkeeping requirements for businesses to ensure compliance with this title. (Emphasis added.)

However, a separate section of the CCPA provides a conflicting edict:

Beginning the *later of* July 1, 2021, or six months after the agency provides notice to the Attorney General that it is prepared to begin rulemaking under this title, the authority assigned to the Attorney General to adopt regulations under this section shall be exercised by the California Privacy Protection Agency. (Civ. Code § 1798.185(d), emphasis added.)

This bill changes the former provision by replacing “earlier” with “later,” harmonizing the two provisions.

Section 25 of the CPRA requires any amendments thereto to be “consistent with and further the purpose and intent of this act as set forth in Section 3.” Section 3 declares that “it is the purpose and intent of the people of the State of California to further protect consumers’ rights, including the constitutional right of privacy.”

The bill includes a finding that the bill “furthers the purposes and intent of the California Privacy Rights Act of 2020.” As the bill helps clarify the law without impacting consumer privacy, it furthers the intent of the CPRA.

SUPPORT

None known

OPPOSITION

None known

RELATED LEGISLATION

Pending Legislation:

SB 746 (Skinner, 2021) grants a consumer the right to request that a business disclose to the consumer whether the business uses personal information collected about the consumer for a political purpose, as defined. The business is required to disclose the name of any candidate or committee for which the consumer’s personal information

was used for a political purpose. The bill also requires the business to disclose that information to the California Privacy Protection Agency or the Attorney General, as specified. This bill is on the Senate Floor.

AB 335 (Boerner Horvath, 2021) exempts from the CCPA right to opt out vessel information or ownership information retained or shared between a vessel dealer and the vessel's manufacturer, if the information is shared for the purpose of effectuating or in anticipation of effectuating a vessel repair covered by a vessel warranty or a recall, as specified. This bill is on the Senate Floor.

Prior Legislation: AB 347 (Chau, Ch. 521, Stats. 2018) extended the sunset in Section 12246 to January 1, 2022.

PRIOR VOTES:

Assembly Floor (Ayes 75, Noes 0)

Assembly Appropriations Committee (Ayes 16, Noes 0)

Assembly Privacy and Consumer Protection Committee (Ayes 11, Noes 0)
