

**SENATE JUDICIARY COMMITTEE**  
**Senator Thomas Umberg, Chair**  
**2023-2024 Regular Session**

AB 3286 (Committee on Privacy and Consumer Protection)

Version: April 25, 2024

Hearing Date: June 11, 2024

Fiscal: Yes

Urgency: No

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**SUBJECT**

California Consumer Privacy Act of 2018: monetary thresholds: grants

**DIGEST**

This bill restates the methodology for calculating Consumer Price Index (CPI) adjustments for various provisions within the California Consumer Privacy Act (CCPA), provides a monetary threshold before grants are administered, and makes other clarifying and technical changes to the CCPA.

**EXECUTIVE SUMMARY**

The 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 or sharing 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).

The CCPA created a Consumer Privacy Fund (CPF), which allows for the court and the Attorney General to recoup costs. This bill ensures that the PPA can also recoup its costs. In addition, a portion of the CPF is to fund grants to various programs to further the purposes of the CCPA. This bill sets a threshold of \$300,000 before such grants are to be administered. Various sections of the CCPA provide for monetary amounts, either compensation, penalty amounts, or thresholds, that are to be adjusted biennially in line with changes to the CPI. This bill restates that methodology and removes the requirement to promulgate attendant regulations. The bill also makes technical changes.

This is an Assembly Committee on Privacy and Consumer Protection bill. No timely support or opposition was received by the Committee.

**PROPOSED CHANGES TO THE LAW**

Existing law:

- 1) 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.)
- 2) 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).)
- 3) Authorizes the Attorney General to adjust the monetary thresholds, in January of every odd-numbered year to reflect any increase in the Consumer Price Index (CPI), in specified portions of the CCPA. (Civ. Code § 1798.185(a)(5).)
- 4) Provides that any consumer whose nonencrypted and nonredacted personal information, as defined, or whose email address in combination with a password or security question and answer that would permit access to the account is subject to an unauthorized access and exfiltration, theft, or disclosure as a result of the business's violation of the duty to implement and maintain reasonable security procedures and practices to protect the personal information may institute a civil action to recover damages in an amount between \$100 and \$750 per consumer per incident or actual damages, whichever is greater. The consumer can also receive injunctive or declaratory relief and any other relief the court deems proper. (Civ. Code § 1798.150(a).)
- 5) Provides that any business, service provider, contractor, or other person in violation of the CCPA is liable for an administrative fine of not more than \$2,500 for each violation or \$7,500 in an administrative enforcement action brought by the PPA for each intentional violation or violations involving the personal information of consumers whom the business, service provider, contractor, or other person has actual knowledge are under 16 years of age, as adjusted every other year in relation to CPI. (Civ. Code § 1798.155(a).)
- 6) Provides that for each day on which they engage in official duties, members of the PPA board shall be compensated at the rate of \$100, as adjusted. (Civ. Code § 1798.199.25.)
- 7) Establishes the "Consumer Privacy Fund" (CPF) within the General Fund that is available upon appropriation first to offset any costs incurred by the state courts

in connection with CCPA enforcement actions and the costs incurred by the Attorney General in carrying out their duties. 91 percent of the remaining funds shall be invested as provided with the remaining nine percent made available to the PPA for the purpose of making grants to promote and protect consumer privacy, educate children in the area of online privacy, and fund cooperative programs with international law enforcement organizations to combat fraudulent activities with respect to consumer data breaches. (Civ. Code § 1798.160.)

- 8) Authorizes the PPA, upon the sworn complaint of any person or on its own initiative, to investigate possible violations. The PPA is required to notify in writing the person who made the complaint of the action, if any, the PPA has taken or plans to take on the complaint, together with the reasons for that action or nonaction. (Civ. Code § 1798.199.45.)
- 9) 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) Delays administration of the CPF grant program, initially and annually thereafter, until the amount of grant funds available, after all other distributions have been made, exceeds \$300,000.
- 2) Authorizes the PPA to access the CPF to offset costs incurred in connection with carrying out its duties pursuant to the CCPA.
- 3) Restates the methodology for calculating and publishing the CPI adjustments for various provisions in the CCPA, including the business thresholds, the PPA board member per diem, and adjustments to the penalties provided for in the CCPA.
- 4) Provides that when responding to a complainant the PPA's written notification must exclude information that is subject to law enforcement exemptions and privileges, including confidential information that is privileged under the Evidence Code and the Government Code.
- 5) Makes clarifying and technical changes.
- 6) Includes a finding and declaration that these changes further the purposes of the CPRA.

## COMMENTS

### 1. Updating California's landmark privacy protection law

As stated, the CCPA grants consumers certain rights with regard to their personal information, as defined. With passage of the CPRA in 2020, the CCPA got an overhaul. Consumers are afforded the right to receive notice from businesses at the point of collection of personal information and the right to access that information at any time. The CCPA also grants a consumer the right to request that a business delete any personal information about the consumer the business has collected from the consumer. However, a business is not required to comply with such a request to delete if it is necessary for the business to maintain the consumer's personal information in order to carry out certain obligations or other conduct. (Civ. Code § 1798.105(d).)

The CCPA provides adult consumers the right, at any time, "to direct a business that sells personal information about the consumer to third parties not to sell the consumer's personal information. This right may be referred to as the right to opt-out." Changes made by the CPRA extend this to opting out of the "sharing" of the personal information as well. A business is thereafter prohibited from selling (or sharing) that information unless consent is subsequently provided. A business that sells or shares personal information to third parties is required to notify consumers that this information may be sold and that they have the right to opt out of such sales. (Civ. Code § 1798.120(b).) The CPRA added a new category of information, sensitive information, which includes data such as precise geolocation and genetic information. Consumers are additionally empowered to limit businesses' use of such information.

### 2. Updating and clarifying the CCPA

This is an Assembly Privacy and Consumer Protection Committee omnibus bill that provides various clarifying and technical changes. It also reworks various sections of the regulatory scheme.

Under existing law, the Attorney General is charged with calculating and publishing the CPI adjustments for the business thresholds, per diems, and penalties included in the CCPA in January of every odd-numbered year. The current language requires the promulgation of regulations each time the thresholds and penalties need to be adjusted. The five thresholds and penalties currently contained in Civil Code Section 1798.185(a)(5) are:

- The monetary thresholds for businesses covered by CCPA.
- Damages pursuant to a civil action in the event of a negligent data breach.
- Administrative enforcement fines.
- Civil penalties.
- Privacy Agency Board member per diem.

This bill reworks this mechanism by authorizing the PPA to adjust these thresholds directly as provided.

In addition, the PPA may investigate possible violations upon its own initiative or upon the sworn complaint of any person. In the latter scenario, the PPA is required to notify the complainant in writing of any action it has taken on the complaint, together with the reason for that action or inaction. This bill clarifies that this notification is not to include information that is subject to law enforcement exemptions and privileges, including confidential information related to investigations and privileged information pursuant to the Evidence or Government Codes.

Finally, the CCPA instructs the PPA to use a portion of the funds in the CPF to administer grants to the following:

- Nonprofit organizations to promote and protect consumer privacy.
- Nonprofit organizations and public agencies, including school districts, to educate children in the area of online privacy.
- State and local law enforcement agencies to fund cooperative programs with international law enforcement organizations to combat fraudulent activities with respect to consumer data breaches.

For the sake of efficiency, this bill provides that such grants shall only be administered once the amount of grant funds available reaches \$300,000. Going forward, if the amount in any fiscal year does not reach this threshold, the funds shall be rolled over to the subsequent year for disbursement.

According to the Assembly Privacy and Protection Committee:

This bill constitutes the omnibus bill of the Assembly Privacy and Consumer Protection Committee (Committee). The purpose of the omnibus bill is to assist the California Privacy Protection Agency (Privacy Agency) by streamlining their operations and removing inconsistencies between the CCPA and other statutes.

### 3. Furthering the purpose and intent of the CPRA

Section 25 of the CPRA requires any amendments thereto to be “consistent with and further the purpose and intent of the 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.” It then lays out a series of guiding principles. These include various consumer rights such as:

- consumers should know who is collecting their personal information;
- consumers should have control over how their personal information is used; and

- consumers should benefit from businesses' use of their personal information.

Section 3 also includes a series of responsibilities that businesses should have. These include:

- businesses should specifically and clearly inform consumers about how they use personal information; and
- businesses should only collect consumers' personal information for specific, explicit, and legitimate disclosed purposes.

Section 3 also lays out various guiding principles about how the law should be implemented.

This bill clarifies various provisions of the law and makes non-controversial amendments that enhance the efficiency of administering the law. Therefore, it is likely to be found to further the purposes and intent of the CPRA.

### **SUPPORT**

None received

### **OPPOSITION**

None received

### **RELATED LEGISLATION**

#### **Pending Legislation:**

SB 1223 (Becker, 2024) includes "neural data," as defined, within the definition of "sensitive personal information" for purposes of the CCPA. SB 1223 is currently pending referral in the Assembly.

AB 1824 (Valencia, 2024) requires a business that assumes control of all or some part of a transferor business that includes the transfer of a consumer's personal information to comply with a consumer's direction to the transferor pursuant to the CCPA. AB 1824 is currently in the Senate Appropriations Committee.

AB 1949 (Wicks, 2024) amends the CCPA to prohibit a business from collecting the personal information of a consumer under 18 years of age unless the consumer, or the consumer's parent or guardian if under 13, affirmatively authorizes the collection. AB 1949 is currently in this Committee.

AB 2877 (Bauer-Kahan, 2024) requires members of the PPA board to have qualifications, experience, and skills in the area of consumer rights. AB 2877 is currently in this Committee.

AB 3048 (Lowenthal, 2024) requires that internet browsers include an opt-out preference signal allowing consumers interacting with businesses online to automatically exercise their right to opt-out of the selling and sharing of their personal information. AB 3048 is currently in this Committee.

Prior Legislation:

AB 694 (Assembly Committee on Privacy and Consumer Protection, Ch. 525, Stats. 2021) made nonsubstantive and conforming changes to the CCPA to clean up the language amended in by the CPRA.

AB 375 (Chau, Ch. 55, Stats. 2018) established the CCPA.

**PRIOR VOTES:**

Assembly Floor (Ayes 71, Noes 0)

Assembly Appropriations Committee (Ayes 15, Noes 0)

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

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