

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

AB 2388 (Joe Patterson)
Version: April 10, 2024
Hearing Date: June 18, 2024
Fiscal: Yes
Urgency: No
CK

SUBJECT

Information Practices Act of 1977: personal information

DIGEST

This bill amends the Information Practices Act (IPA) by expanding the definition of “personal information” (PI) and bolstering protections against agencies distributing, selling, or renting the personal information of Californians for financial gain.

EXECUTIVE SUMMARY

The Information Practices Act of 1977 is the statutory scheme that governs the collection, use, retention, and disclosure of personal information by state agencies in California. Passed over 40 years ago, it has not been meaningfully updated since.

With reports of state agencies making a profit off of Californian’s personal information, calls for strengthening the IPA have grown stronger.

This bill makes two key changes to the IPA. It expands the definition of personal information to include information that relates to or is capable of being associated with a particular individual and includes a broader list of nonexclusive examples. Currently the IPA prohibits the distribution, sale, or renting of personal information for “commercial purposes.” This bill expands this protection by prohibiting such conduct for any purpose that has financial gain.

These changes bring a long overdue strengthening of this important but woefully antiquated privacy protection statute.

The bill is author sponsored. It is supported by ACLU California Action and Oakland Privacy. No timely opposition was received by this Committee.

PROPOSED CHANGES TO THE LAW

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, Sec. 1.)
- 2) Establishes the Information Practices Act of 1977 (IPA), which declares that the right to privacy is a personal and fundamental right protected by Section 1 of Article I of the Constitution of California and by the United States Constitution and that all individuals have a right of privacy in information pertaining to them. It further states the following legislative findings:
 - a) the right to privacy is being threatened by the indiscriminate collection, maintenance, and dissemination of personal information and the lack of effective laws and legal remedies;
 - b) the increasing use of computers and other sophisticated information technology has greatly magnified the potential risk to individual privacy that can occur from the maintenance of personal information; and
 - c) in order to protect the privacy of individuals, it is necessary that the maintenance and dissemination of personal information be subject to strict limits. (Civ. Code § 1798 et seq.)
- 3) Defines “personal information” for purposes of the IPA as any information that is maintained by an agency that identifies or describes an individual, including, but not limited to, the individual’s name, social security number, physical description, home address, home telephone number, education, financial matters, and medical or employment history. It includes statements made by, or attributed to, the individual. (Civ. Code § 1798.3(a).)
- 4) Defines “agency” to include every state office, officer, department, division, bureau, board, commission, or other state agency. “Agency” explicitly excludes:
 - a) the California Legislature;
 - b) any agency established under Article VI of the California Constitution;
 - c) the State Compensation Insurance Fund, except as to any records that contain personal information about the employees of the State Compensation Insurance Fund; or
 - d) a local agency, as defined. (Civ. Code § 1798.3(b).)
- 5) Defines “commercial purpose” to mean any purpose that has financial gain as a major objective. It does not include the gathering or dissemination of newsworthy facts by a publisher or broadcaster. (Civ. Code § 1798.3(j).)

- 6) Prohibits an individual's name and address from being distributed for commercial purposes, sold, or rented by an agency unless such action is specifically authorized by law.
- 7) Provides that each agency shall maintain in its records only PI which is relevant and necessary to accomplish a purpose of the agency required or authorized by the California Constitution or statute or mandated by the federal government; and requires each agency to maintain all records, to the maximum extent possible, with accuracy, relevance, timeliness, and completeness. (Civ. Code §§ 1798.14, 1798.18.)
- 8) Requires an agency that collects PI to maintain the source of that information, except as specified; and specifies that each agency shall collect PI to the greatest extent practicable directly from the individual who is the subject of the PI. (Civ. Code §§ 1798.15, 1798.16.)
- 9) Requires each agency to provide with any form used to collect PI from individuals a notice containing specified information including: the name and specified contact information of the agency requesting the information; the statutory, regulatory, or executive authority that authorizes the maintenance of the information; whether submission of the information is mandatory or voluntary; the consequences, if any, of not providing all or any part of the requested information; the principal purpose or purposes for which the information is to be used; any known or foreseeable disclosures that may be made of the information; and the individual's right of access to records containing PI which are maintained by the agency. (Civ. Code § 1798.17.)
- 10) Requires each agency to establish rules of conduct for persons involved in the design, development, operation, disclosure, or maintenance of records containing PI and to instruct each such person with respect to those rules; and further requires each agency to establish appropriate and reasonable administrative, technical, and physical safeguards to ensure compliance with the provisions of the IPA, to ensure the security and confidentiality of records, and to protect against anticipated threats or hazards to their security or integrity which could result in an injury. (Civ. Code § 1798.20.)
- 11) Prohibits an agency from disclosing any PI in a manner that would link the information disclosed to the individual to whom it pertains unless the information is disclosed as specified, including:
 - a) with the prior written voluntary consent of the individual to whom the PI pertains within the preceding 30 days;
 - b) to a person or another agency if the transfer is necessary for the transferee agency to perform its constitutional or statutory duties, and the use is compatible with a purpose for which the information was collected;

- c) to a governmental entity if required by state or federal law;
 - d) pursuant to the California Public Records Act (Gov. Code § 6250, et seq.);
 - e) pursuant to a subpoena, court order, search warrant, or other compulsory legal process with notification to the individual, unless notification is prohibited by law; and
 - f) for statistical and research purposes, as specified. (Civ. Code § 1798.24.)
- 12) Requires each agency to keep an accurate accounting of the date, nature, and purpose of each disclosure of a record made pursuant to specified circumstances; and requires each agency to retain that accounting for at least three years after the disclosure, or until the record is destroyed, whichever is shorter. (Civ. Code §§ 1798.25, 1798.27.)
- 13) Grants individuals with specified rights in connection with their PI, including the right to inquire and be notified as to whether the agency maintains a record about them; to inspect all PI in any record maintained; and to submit a request in writing to amend a record containing PI pertaining to them maintained by an agency. (Civ. Code § 1798.30, et seq.)
- 14) Provides that an agency that fails to comply with any provisions of the IPA may be enjoined by any court of competent jurisdiction, and, as specified, the agency may be liable to the individual in an amount equal to the sum of actual damages sustained by the individual, including damages for mental suffering, and the costs of the action together with reasonable attorney's fees as determined by the court. (Civ. Code §§ 1798.46-1798.48.)
- 15) Provides that the intentional violation of any provision of the IPA, or any rules or regulations adopted thereunder, by an officer or employee of an agency shall constitute a cause for discipline, including termination of employment; and further specifies that the intentional disclosure of medical, psychiatric, or psychological information in violation of the disclosure provisions of the IPA is punishable as a misdemeanor if the wrongful disclosure results in economic loss or personal injury to the individual to whom the information pertains. (Civ. Code §§ 1798.55, 1798.57.)
- 16) Establishes the California Consumer Privacy Act (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. It does not apply to government entities. (Civ. Code § 1798.100 et seq.)
- 17) Defines "personal information" for purposes of the CCPA 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. The CCPA provides a nonexclusive series of categories of information deemed to be personal information, including biometric information, geolocation data, and “sensitive personal information.” (Civ. Code § 1798.140(v)(1).)

This bill:

- 1) Updates the definition of “personal information” in the IPA to include any information that is maintained by an agency that identifies, relates to, describes, or is capable of being associated with a particular individual, including, but not limited to, the individual’s name, signature, social security number, physical characteristics or description, address, telephone number, passport number, driver’s license or state identification card number, vehicle registration information, license plate number, insurance policy number, education, employment, employment history, bank account number, credit card number, debit card number, or any other financial information, medical information, or health insurance information. It includes statements made by, or attributed to, the individual.
- 2) Prohibits any agency from distributing, selling, or renting personal information, pursuant to the IPA, for any purpose that has financial gain unless that action is specifically authorized by law.
- 3) Deletes the definition of “commercial purpose.”

COMMENTS

1. The IPA and Californians’ privacy

Article I, Section 1 of the California Constitution provides: “All people are by nature free and independent and have inalienable rights. Among these are enjoying and defending life and liberty, acquiring, possessing, and protecting property, and pursuing and obtaining safety, happiness, and privacy.” Privacy is therefore not just a policy goal, it is a constitutional right of every Californian. However, it has been under increasing assault.

The phrase “and privacy” was added to the California Constitution as a result of Proposition 11 in 1972; it was known as the “Privacy Initiative.” The arguments in favor of the amendment were written by Assemblymember Kenneth Cory and Senator George Moscone. The ballot pamphlet stated in relevant part:

At present there are no effective restraints on the information activities of government and business. This amendment creates a legal and enforceable right of

privacy for every Californian. The right of privacy . . . prevents government and business interests from collecting and stockpiling unnecessary information about us and from misusing information gathered for one purpose in order to serve other purposes or to embarrass us. . . . The proliferation of government and business records over which we have no control limits our ability to control our personal lives. . . . Even more dangerous is the loss of control over the accuracy of government and business records on individuals. . . . Even if the existence of this information is known, few government agencies or private businesses permit individuals to review their files and correct errors. . . . Each time we apply for a credit card or a life insurance policy, file a tax return, interview for a job[,] or get a drivers' license, a dossier is opened and an informational profile is sketched.¹

In 1977, the Legislature reaffirmed through the IPA that the right of privacy is a “personal and fundamental right” and that “all individuals have a right of privacy in information pertaining to them.”² The Legislature further stated the following findings:

- “The right to privacy is being threatened by the indiscriminate collection, maintenance, and dissemination of personal information and the lack of effective laws and legal remedies.”
- “The increasing use of computers and other sophisticated information technology has greatly magnified the potential risk to individual privacy that can occur from the maintenance of personal information.”
- “In order to protect the privacy of individuals, it is necessary that the maintenance and dissemination of personal information be subject to strict limits.”

Modeled after the Federal Privacy Act of 1974, the IPA governs the collection, maintenance, and disclosure of personal information by state agencies, specifically excluding local agencies. The IPA places guidelines and restrictions on the collection, maintenance, and disclosure of Californians’ PI, including a prohibition on the disclosure of an individual’s PI that can be used to identify them without the individual’s consent except under one of a list of specified circumstances. State agencies are required to provide notice to individuals of their rights with respect to their PI, the purposes for which the PI will be used, and any foreseeable disclosures of that PI.

The IPA also provides individuals with certain rights to be informed of what PI an agency holds relating to that individual, to access and inspect that PI, and to request corrections to that PI, subject to specified exceptions. In addition, when state agencies contract with private entities for services, the contractors are typically governed by the IPA.

¹ *Hill v. National Collegiate Athletic Assn.* (1994) 7 Cal.4th 1, 17, quoting the official ballot pamphlet for the Privacy Initiative.

² Civ. Code § 1798.1.

2. Updating the existing framework for the digital age

In response to growing concerns about the privacy and safety of consumers' data, AB 375 (Chau, Ch. 55, Stats. 2018) created the CCPA, later amended by initiative, which grants a set of rights to consumers with regard to their PI, including enhanced notice and disclosure rights regarding information collection and use practices, access to the information collected, the right to delete certain information, the right to restrict the sale of information, and protection from discrimination for exercising these rights.

The CCPA 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. The CCPA provides a nonexclusive series of categories of information deemed to be personal information, including biometric information, geolocation data, and "sensitive personal information."

However, the modernized protections of the CCPA only apply to businesses. The IPA, on the other hand, has not been updated in decades, leaving its framework vulnerable. The Legislature at the time could not conceive of the digital information revolution that was to come. This bill seeks to bring the IPA into this new era and bolster the protections for Californians' PI that is collected, used, and retained by state agencies.

3. A strengthened IPA

According to the author:

California continues to be a leader on privacy, making it imperative that state agencies uphold the same standards of personal data privacy. Our state has long been at the forefront of advocating for robust privacy protections, recognizing that safeguarding personal information is foundational to individual autonomy and dignity. Therefore, it is incumbent upon state agencies to not only comply with existing privacy laws, but also to exceed them in their commitment to protecting sensitive data entrusted to them by the public.

This bill first expands the definition of "personal information," recognizing the enhanced ability to reidentify what previously was anonymous data and to cover the full scope of what is now considered personal information. The current definition is "any information that is maintained by an agency that identifies or describes an individual, including, but not limited to, the individual's name, social security number, physical description, home address, home telephone number, education, financial matters, and medical or employment history. It includes statements made by, or attributed to, the individual." This antiquated definition leaves a variety of forms of PI

out and can be narrowly read to only apply to information that is maintained in a form that it can be actively associated with a specific individual.

Conversely, the definition of PI in the CCPA appreciates that in combination with other sources of data an otherwise non-identifying data set can be connected to a specific person.

This bill borrows from that definition to update the definition currently in the IPA:

The term “personal information” means any information that is maintained by an agency that identifies, relates to, describes, or is capable of being associated with a particular individual, including, but not limited to, the individual’s name, signature, social security number, physical characteristics or description, address, telephone number, passport number, driver’s license or state identification card number, vehicle registration information, license plate number, insurance policy number, education, employment, employment history, bank account number, credit card number, debit card number, or any other financial information, medical information, or health insurance information. It includes statements made by, or attributed to, the individual.

In addition, the IPA currently provides a protection against agencies using PI for financial gain. However, it is an extremely weak protection. It provides: “An individual’s name and address may not be distributed for commercial purposes, sold, or rented by an agency unless such action is specifically authorized by law.” “Commercial purpose” means any purpose that has financial gain as a major objective. This therefore allows agencies to distribute information so long as financial gain is not a *major* objective. More importantly, this protection only applies to names and addresses.

This bill bolsters this protection by applying it to all PI and expressly prohibiting any distribution, selling, or renting of PI for any purpose that has financial gain, unless specifically authorized by law.

The author points to one recent incident that motivates such a change:

The California Department of Motor Vehicles is generating revenue of \$50,000,000 a year through selling drivers’ personal information, according to a DMV document obtained by Motherboard.

DMVs across the country are selling data that drivers are required to provide to the organization in order to obtain a license. This information includes names, physical addresses, and car registration information. California’s sales come from a state which generally scrutinizes privacy to a higher degree than the rest of the country.

In a public record acts request, Motherboard asked the California DMV for the total dollar amounts paid by commercial requesters of data for the past six years. The responsive document shows the total revenue in financial year 2013/14 as \$41,562,735, before steadily climbing to \$52,048,236 in the financial year 2017/18.

The document doesn't name the commercial requesters, but some specific companies appeared frequently in Motherboard's earlier investigation that looked at DMVs across the country. They included data broker LexisNexis and consumer credit reporting agency Experian. Motherboard also found DMVs sold information to private investigators, including those who are hired to find out if a spouse is cheating. It is unclear if the California DMV has recently sold data to these sorts of entities.

In an email to Motherboard, the California DMV said that requesters may also include insurance companies, vehicle manufacturers, and prospective employers.³

Writing in support, ACLU California Action asserts:

When the IPA was passed in 1977, some of the categories AB 2388 would add to the definition of personal information were not even in existence, such as a cell phone number. Other categories listed in AB 2388 are natural extensions of the intent of the IPA that would greatly increase the protections personal information has when it is in the hands of state actors.

The changes to the IPA contemplated by AB 2388 are an important first step towards modernizing the IPA and ensuring its intent – protecting the privacy of personal information held by state actors – continues to be lived out in the modern era.

SUPPORT

ACLU California Action
Oakland Privacy

OPPOSITION

None received

³ Joseph Cox, *The California DMV Is Making \$50M a Year Selling Drivers' Personal Information* (November 25, 2019) Vice, <https://www.vice.com/en/article/evjekz/the-california-dmv-is-making-dollar50m-a-year-selling-drivers-personal-information> [as of June 14, 2024].

RELATED LEGISLATION

Pending Legislation: None known.

Prior Legislation:

AB 2677 (Gabriel, 2022) would have amended the Information Practices Act by updating definitions, bolstering existing protections, applying data minimization principles, limiting disclosure, and increasing accountability. The bill was vetoed by Governor Newsom, who stated: "I am concerned this bill is overly prescriptive and could conflict with the State's goal to provide person-centered, data driven, and integrated services. Additionally, this bill would cost tens of millions of dollars to implement across multiple state agencies that were not accounted for in the budget."

AB 825 (Levine, Ch. 527, Stats. 2021) added "genetic information" to the definition of personal information for purposes of the laws requiring certain businesses to implement and maintain reasonable security procedures and practices to protect personal information they own, license, or maintain. It required businesses and agencies that maintain personal information to disclose a breach of genetic information.

AB 3223 (Gallagher, 2020) would have prohibited an agency from selling, renting, or exchanging for commercial purposes the PI an agency holds without the consent of the person to whom that information applies. It would have held an agency liable for all damages resulting from a negligent or intentional violation of the IPA. This bill died at the Assembly Desk.

AB 1130 (Levine, Ch. 750, Stats. 2019) updated the definition of "personal information" in various consumer protection statutes, including the DBNL, to include certain government identification numbers and biometric data.

AB 375 (Chau, Ch. 55, Stats. 2018) *See* Comment 2.

AB 928 (Olsen, Ch. 851, Stats. 2014) required each state department and state agency to conspicuously post its privacy policy, including specified information, on its website.

PRIOR VOTES:

Assembly Floor (Ayes 67, Noes 0)
Assembly Appropriations Committee (Ayes 15, Noes 0)
Assembly Privacy and Consumer Protection Committee (Ayes 11, Noes 0)
