

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

AB 1949 (Wicks)
Version: April 4, 2024
Hearing Date: July 2, 2024
Fiscal: Yes
Urgency: No
CK

SUBJECT

California Consumer Privacy Act of 2020: collection of personal information of a consumer less than 18 years of age

DIGEST

This bill prohibits collecting, sharing, selling, using, or disclosing the personal information of minors without affirmative consent from either the minor or their parent or guardian, as provided. The bill provides for regulations to be promulgated by the California Privacy Protection Agency (PPA).

EXECUTIVE SUMMARY

The California Consumer Privacy Act (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.) 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 PPA. The CCPA has special protections for children the business has actual knowledge are under 16 years old, prohibiting the selling or sharing of their information without affirmative authorization, as provided.

This bill removes the actual knowledge standard in this provision and raises the age to anyone under 18 years old. The bill also prohibits a business from collecting, using, or disclosing the personal information of a consumer less than 18 years of age, unless the business receives affirmative authorization, as provided.

The bill is supported by various organizations including Consumer Watchdog and the Children's Advocacy Institute. It is opposed by industry associations and privacy and civil liberties groups, including the California Retailers Association and Privacy Rights Clearinghouse.

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) Provides a consumer the right, at any time, to direct a business that sells or shares personal information about the consumer to third parties not to sell or share the consumer's personal information. It requires such a business to provide notice to consumers, as specified, that this information may be sold or shared and that consumers have the right to opt out of that selling and sharing. (Civ. Code § 1798.120(a)-(b).)
- 3) Prohibits a business, notwithstanding the above, from selling or sharing the personal information of consumers if the business has actual knowledge that the consumer is less than 16 years of age, unless the consumer, in the case of consumers at least 13 years of age and less than 16 years of age, or the consumer's parent or guardian, in the case of consumers who are less than 13 years of age, has affirmatively authorized the sale or sharing of the consumer's personal information. A business that willfully disregards the consumer's age shall be deemed to have had actual knowledge of the consumer's age. (Civ. Code § 1798.120(c).)
- 4) Provides that the obligations imposed by the CCPA shall not restrict a business's ability to carry out certain conduct, including complying with federal, state, or local laws or to cooperate with law enforcement. This also includes cooperating with a government agency's request for emergency access to a consumer's personal information if a natural person is at risk or danger of death or serious physical injury where certain circumstances are met. (Civ. Code § 1798.145(a).)
- 5) 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 identifiers, biometric information, and geolocation data. (Civ. Code § 1798.140(v).) The CCPA defines and provides additional protections for sensitive personal information, as defined, that reveals specified personal information about consumers. (Civ. Code § 1798.140(ae).)

- 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) Provides that administrative actions to enforce the CCPA must be brought by the PPA within five years after the date on which the underlying violation occurred. (Civ. Code § 1798.199.70.)
- 8) Establishes civil penalties for CCPA violations, to be recovered through a civil action brought on behalf of the people of the state of California by the Attorney General. (Civ. Code § 1798.199.90(a).)
- 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) Prohibits a business from collecting, using, disclosing, selling, or sharing the personal information of a consumer less than 18 years of age, unless the consumer, in the case of a consumer at least 13 years of age and less than 18 years of age, or the consumer's parent or guardian, in the case of a consumer less than 13 years of age, has affirmatively authorized the collection of the consumer's personal information. The bill clarifies that this does not prohibit short-term, transient use of personal information that is necessary and proportional to the purpose for which it is used, and is not used, disclosed, or retained for any other purpose, including to build a profile regarding the consumer.
- 2) Raises the age of consumers for whom regulations that must be promulgated by the Attorney General to allow for an opt-out preference signal shall apply.
- 3) Requires, on or before July 1, 2025, the PPA to solicit broad public participation and adopt regulations to further the purposes of the CCPA, including, but not limited to:
 - a) Issuing regulations to establish technical specifications for an opt-out preference signal that allows the consumer, or the consumer's parent or guardian, to specify that the consumer is less than 13 years of age, or at least 13 years of age and less than 18 years of age.
 - b) Issuing regulations regarding age verification and when a business must treat a consumer as being less than 13 or 18 years of age for purposes of this title.

- 4) States that the Legislature finds and declares that this act furthers the purposes and intent of The California Privacy Rights Act of 2020.

COMMENTS

1. 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.

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. Enhanced protections for minors

The CCPA currently provides heightened protections for children. If a business has actual knowledge that a consumer is less than 16 years of age, it is prohibited from selling or sharing the child's personal information, with one exception. If the business gets affirmative authorization from a child over 13, or the child's parent or guardian if they are younger than 13 years old, the business can sell or share the child's personal information. A business that willfully disregards the consumer's age shall be deemed to have had actual knowledge of the consumer's age.

This bill enhances these protections by moving the age to less than 18 years of age and removing the actual knowledge standard. The bill further prohibits the collection, use, and disclosure of a minor's personal information without affirmative consent, as provided.

According to the author:

According to research from UNICEF, approximately one in three internet users is a child who will generate tens of thousands of data points by the time the individual turns 18. This data, if used responsibly, can provide important information. However, without appropriate safeguards, it can also have a chilling effect on children at crucial development stages and potentially negatively impact their futures.

In a 2018 report, the London School of Economics noted that privacy is vital for child development. The report suggested that key privacy-related media literacy skills are closely associated with a number of child developmental areas, including autonomy, identity, responsibility, trust, pro-social behavior, resilience, and critical thinking. While online platforms can provide opportunities for such development, they also introduce and amplify risks that children may not have the capacity to navigate.

While existing federal and state privacy laws offer important protections that guard children's privacy, California's groundbreaking privacy protections - the CCPA and the CPRA - do not expressly include children. AB 1949 seeks to hold businesses accountable for unauthorized collection of children's data, in addition to updating safeguards and enforcements within the CCPA and the CPRA.

One area that such protections are particularly important in is social media interactions. The negative consequences of social media for children have been well-documented, including encouragement of eating disorders or drug use and severe effects on mental health.¹ In fact, the problem has become so dire that the United States Surgeon General recently issued a health advisory with respect to social media usage. The effects on mental health are intensified by the algorithms that are used to determine what content to push out to users, even children.² The algorithmic feeds are fueled by a user's own

¹ See Zaheer Hussain and Mark D Griffiths, *Problematic Social Networking Site Use and Comorbid Psychiatric Disorders: A Systematic Review of Recent Large-Scale Studies.* (December 14, 2018) *Frontiers in psychiatry* vol. 9 686, <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6302102/pdf/fpsy-09-00686.pdf>; Jeff Horowitz & Deepa Seetharaman, *Facebook Executives Shut Down Efforts to Make the Site Less Divisive* (May 26, 2020) *Wall Street Journal*, <https://www.wsj.com/articles/facebook-knows-it-encourages-division-top-executives-nixed-solutions-11590507499>. All internet citations are current as of June 20, 2024.

² See Sheera Frenkel & Cecilia Kang, *Mark Zuckerberg and Sheryl Sandberg's Partnership Did Not Survive Trump* (July 8, 2021) *The New York Times*, <https://www.nytimes.com/2021/07/08/business/mark-zuckerberg-sheryl-sandberg-facebook.html>; Caroline Atkinson, et al., *Recommendations to the Biden Administration On Regulating Disinformation and Other Harmful Content on Social Media* (March 2021) Harvard Kennedy School & New York University Stern School of Business, https://static1.squarespace.com/static/5b6df958f8370af3217d4178/t/6058a456ca24454a73370dc8/1616421974691/TechnologyRecommendations_2021final.pdf.

information and inferences drawn from their past behavior and data collected from other sources. While these features can effectively serve up content curated for users' personal tastes and create social connections among users, it is these types of features that are most concerning to advocates for reform. The Surgeon General's report included the following recommendation:

Limit children's exposure to harmful online content. This can involve a mix of limiting access for younger users, reducing content amplification, prohibiting data collection of and targeted advertising to children, ensuring privacy settings are maximized by default, removing content quickly if it violates company policies, tightening age verification requirements and audits, enabling independent algorithm audits, and imposing consequences for users found to be circumventing age restrictions or other policies.³

Writing in support, Consumer Watchdog states:

Consumer Watchdog wholeheartedly supports any efforts to implement a more fulsome "opt-in" system of privacy regulation, which is the system most commonly used outside the United States, such as by the European Union through its General Data Protection Regulation. The CCPA currently requires that businesses obtain opt-ins to sell or share children's data, but only if the business has "actual knowledge" that the data in question is a child's data. This bill expands that right by requiring that businesses obtain affirmative authorization before not only sharing or selling, but also collecting, using, or disclosing the personal information of a minor, while also removing the "actual knowledge" limiting language.

Ultimately, this is a matter of personal rights and liberties. Children today are continually having their personal information collected and processed in order to better profile them for targeted advertising. As you have previously noted: "By the time a child is 13 years old, online advertising firms have collected an average of 72 million data points about them."⁴ Passing AB 1949 is a critical step towards ensuring Californians have the opportunity to "pursue and obtain privacy" as adults without having unknowingly forfeited that right as children.

³ U.S. Surgeon General's Advisory, *Social Media and Youth Mental Health* (May 23, 2023) <https://www.hhs.gov/sites/default/files/sg-youth-mental-health-social-media-advisory.pdf>.

3. Concerns with age verification and the standard applied

A number of concerns have been raised by opposition, specifically focused on the removal of the actual knowledge standard and the attendant age verification practices that will be made necessary by the bill.

A coalition of industry groups, including the California Chamber of Commerce and Technet, write:

AB 1949 undermines privacy by striking the CCPA's knowledge standard and forcing businesses to investigate the age of all consumers.

Currently, under the CCPA, minors under the age of 16 have an “opt-in right” to the sale or sharing of their PI. In furtherance of this right, the CCPA prohibits a business from selling or sharing the PI of a consumer who is less than 16 years of age absent affirmative authorization from either the minor (in the case of minors who are at least 13 years of age and less than 16) or the parent or guardian (in the case of minors who are under 13 years of age). That prohibition, however, applies only “if the business has actual knowledge that the consumer is less than 16 years of age [...]” At the same time, to discourage willful ignorance, the CCPA sets forth that “a[ny] business that willfully disregards the consumer’s age shall be deemed to have had actual knowledge of the consumer’s age.” (See Civ. Code Sec. 1798.120(c), emphasis added.)

AB 1949 not only abandons the CCPA’s actual knowledge standard which was baked into the CCPA’s right to opt-in for minors since its inception in 2018, but it also requires affirmative authorization prior to the collection, use, or disclosure of a minor’s PI regardless of the business having actual knowledge of the consumer’s age. This will have far reaching impacts for all businesses, including brick and mortar stores.

Effectively, AB 1949 would create strict liability any time the business is wrong, even if the business took every reasonable effort to verify the consumer’s age. As such, the bill forces every business covered by the CCPA to collect and validate detailed PI about every consumer entering their physical stores or establishments, or websites - in other words, effectively mandating age verification. Of course, accurately confirming a specific individual’s age requires gathering more granular information on the consumer, which runs counter to data minimization principles. It is also incredibly impractical.

A coalition of privacy and civil liberties groups also write in opposition to the age verification scheme required by this bill:

[B]y directing the California Privacy Protection Agency ("the Agency) to create guidelines for age verification, the bill sets the foundation for a system that would burden all internet users' ability to access information online. EFF strongly opposes age verification schemes, because they harm everyone's First Amendment rights, limit online anonymity, and limit people's ability to access protected speech. Both adults and minors have a First Amendment right to access lawful speech online, including the news, social media, and health websites, without having to provide proof of their age or have that information collected. Moreover, although California has a legitimate interest in protecting children, that interest "does not include a free-floating power to restrict the ideas to which children may be exposed." *Brown v. Ent. Merchants Ass'n*, 564 U.S. 786, 794 (2011). Age verification implemented to restrict children generally from accessing online services violate the First Amendment.

Age verification schemes also frustrate everyone's right to remain anonymous online while they access lawful speech. This includes, for example, young people seeking information on issues that may not be supported in their households—LGBTQ+ community support, reproductive care, gender-affirming care—without their parent's knowledge.

Aside from the constitutional problems, age verification schemes create new privacy concerns. Because the purpose of the age-gate is to identify minors v. adults, all minors and adults must pass through and be verified. Doing so sets up a system that necessitates additional data collection from every user—opening up new avenues for security breach or data misuse.

In response to these concerns, the author has agreed to amendments that replace the actual knowledge standard into the various sections of the bill, essentially imposing the restrictions of the bill for only those consumers the business has actual knowledge are under 18 years of age. Similar to the existing opt-out right language for children, a business that willfully disregards the consumer's age is deemed to have had actual knowledge of the consumer's age. Furthermore, businesses are required to treat a consumer as under age 18 if the consumer, through a platform, technology, or mechanism, transmits a signal indicating that the consumer is less than 18 years of age. This shall thus amount to actual knowledge. The amendments remove the requirement for the PPA to promulgate regulations.

This new approach removes the strict liability standard but still ensures children are given enhanced privacy rights in order to avoid the ills outlined above.

SUPPORT

Children's Advocacy Institute
Cleaneearth4kids.org
Consumer Watchdog
Democrats for Israel - CA
Democrats for Israel Los Angeles
Etta
Hadassah
Holocaust Museum LA
Jewish Big Brothers Big Sisters of Los Angeles
Jewish Center for Justice
Jewish Democratic Club of Marin
Jewish Democratic Club of Solano County
Jewish Democratic Coalition of the Bay Area
Jewish Family and Children's Service of Long Beach and Orange County
Jewish Family and Children's Services of San Francisco, the Peninsula, Marin and Sonoma Counties
Jewish Family Service of Los Angeles
Jewish Family Service of the Desert
Jewish Family Services of Silicon Valley
Jewish Federation of Greater Los Angeles, the
Jewish Federation of the Greater San Gabriel and Pomona Valleys
Jewish Long Beach
Jewish Public Affairs Committee
Jewish Silicon Valley
Perk Advocacy
Progressive Zionists of California

OPPOSITION

American Property Casualty Insurance Association
California Chamber of Commerce
California Retailers Association
Civil Justice Association of California
Computer & Communications Industry Association
Electronic Frontier Foundation
Insights Association
Oakland Privacy
Privacy Rights Clearinghouse
Software & Information Industry Association
TechNet
4 Individuals

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 in the Assembly Privacy and Consumer Protection Committee.

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 on the Senate Floor.

AB 2013 (Irwin, 2024) requires developers of AI systems or services that are made available for Californians to use to post on their website documentation regarding the data used to train the system or service, including high-level summaries of the datasets used. AB 2013 is currently in this Committee.

AB 2877 (Bauer-Kahan, 2024) prohibits CCPA covered-businesses that are the developers of AI systems or tools from using the personal information of consumers under the age of 16 to train AI systems or services without first obtaining affirmative authorization, and even with such authorization the data must be de-identified and aggregated before it is used to train. AB 2877 is currently in the Senate Appropriations 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 947 (Gabriel, Ch. 551, Stats. 2023) included personal information that reveals a consumer’s citizenship or immigration status in the definition of “sensitive personal information” for purposes of the CCPA.

AB 1194 (Wendy Carrillo, Ch. 567, Stats. 2023) provided stronger privacy protections pursuant to the CCPA where the consumer information contains information related to accessing, procuring, or searching for services regarding contraception, pregnancy care, and perinatal care, including abortion services.

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

PRIOR VOTES:

Assembly Floor (Ayes 58, Noes 0)

Assembly Appropriations Committee (Ayes 11, Noes 0)

Assembly Privacy and Consumer Protection Committee (Ayes 8, Noes 0)
