

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

AB 1194 (Wendy Carrillo)
Version: February 16, 2023
Hearing Date: June 20, 2023
Fiscal: Yes
Urgency: No
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SUBJECT

California Privacy Rights Act of 2020: exemptions: abortion services

DIGEST

This bill provides stronger privacy protections pursuant to the California Consumer Privacy Act where the consumer information relates to specified reproductive health services.

EXECUTIVE SUMMARY

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).

The CCPA provides a list of exemptions from the obligations of the act to the extent they restrict the ability of the business to carry out certain conduct. Given the increased sensitivity of reproductive health information in the wake of the recent Supreme Court decision, this bill carves out that information from these exemptions, affording it heightened protection under the CCPA.

This bill is author-sponsored. It is supported by various privacy and professional medical groups, including the California Academy of Family Physicians and the Electronic Frontier Foundation. It is opposed by one individual.

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) Grants a consumer the right to request that a business that collects personal information about the consumer disclose to the consumer the following:
 - a) the categories of personal information it has collected about that consumer;
 - b) the categories of sources from which the personal information is collected;
 - c) the business or commercial purpose for collecting or selling personal information;
 - d) the categories of third parties with whom the business shares personal information; and
 - e) the specific pieces of personal information it has collected about that consumer. (Civ. Code § 1798.110.)
- 3) Provides consumers the right to request that a business that sells the consumer's personal information, or that discloses it for a business purpose, disclose to the consumer the following:
 - a) the categories of personal information that the business collected about the consumer;
 - b) the categories of personal information that the business sold about the consumer and the categories of third parties to whom the personal information was sold, by category or categories of personal information for each third party to whom the personal information was sold; and
 - c) the categories of personal information that the business disclosed about the consumer for a business purpose. (Civ. Code § 1798.115.)
- 4) Provides a consumer 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. It requires such a business to provide notice to consumers, as specified, that this information may be sold and that consumers have the right to opt out of the sale of their personal information. (Civ. Code § 1798.120.)
- 5) Prohibits a business from discriminating against a consumer because the consumer exercised any of the consumer's rights under the CCPA. (Civ. Code § 1798.125(a)(1).)

- 6) Provides that a business need not comply with the CCPA to the extent it restricts the business' 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 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).)
- 7) 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).)
- 8) 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).)
- 9) 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.)
- 10) 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).)
- 11) 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) Provides that certain exemptions do not apply if the consumer's personal information contains information related to accessing, procuring, or searching for services regarding contraception, pregnancy care, and perinatal care, including abortion services.
- 2) Provides that a consumer accessing, procuring, or searching for services regarding contraception, pregnancy care, and perinatal care, including abortion

services, shall not constitute a natural person being at risk or danger of death or serious physical injury for purposes of CCPA exemptions.

- 3) States that the Legislature finds and declares that the bill furthers the purposes and intent of the CPRA.

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 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 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(a).) The CPRA added a new category of information, sensitive information, which includes data such as information collected and analyzed concerning a consumer's health or sex life. Consumers are additionally empowered to limit businesses' use of such information.

2. Attacks on reproductive rights

Roe v. Wade (1973) 410 U.S. 113, was the landmark U.S. Supreme Court decision that held the implied constitutional right to privacy extended to a person's decision whether to terminate a pregnancy, while allowing that some state regulation of abortion access could be permissible. *Roe* has been one of the most debated U.S. Supreme Court decisions and its application and validity have been challenged numerous times, but its fundamental holding had continuously been upheld by the Court until June 2022. On June 24, 2022, the Court published its official opinion in *Dobbs* and voted 6-3 to overturn

the holding in *Roe*.¹ The majority opinion upholds the Mississippi law finding that, contrary to almost 50 years of precedent, there is no fundamental constitutional right to have an abortion. The opinion further provides that states should be allowed to decide how to regulate abortion and that a strong presumption of validity should be afforded to those state laws.²

The *Roe* decision was the foundation for allowing people the ability to control their reproductive lives because it established a federal constitutional right for anyone who could become pregnant in the United States to decide when and if to have children and prevented the criminalization of having an abortion or providing an abortion. Prior to *Roe*, legal abortion did exist in some states, but the choices available to those seeking to terminate an unwanted pregnancy were limited and disproportionately affected those who were younger, lower income, and members of communities of color.³ In the wake of the *Dobbs* decision, it is very probable that abortion will be banned or severely restricted in dozens of states,⁴ with 13 states already having total abortion bans in effect.⁵ Almost one-third of women and people who can become pregnant of reproductive age in the United States live in a state where abortion is not legal or is severely restricted.⁶ If all the states expected to enact a total ban on abortion actually do, the number of patients who would find that their nearest clinic is in California could increase to 1.4 million, an almost 3,000 percent increase.⁷ The increased attacks on reproductive freedom in this country only make the privacy concerns regarding reproductive health information all the more urgent.

3. Strengthening CCPA rights in connection with reproductive health information

Currently, the CCPA establishes a number of exemptions for businesses from having to comply with the obligations of the act. The obligations imposed on businesses by the

¹ *Dobbs v. Jackson Women's Health* (2022) 597 U.S. __ (142 S.Ct. 2228) at p. 5, https://www.supremecourt.gov/opinions/21pdf/19-1392_6j37.pdf.

² *Id.* at 77.

³ Rachel Benson Gold, *Lessons from Before Roe: Will Past be Prologue*, Guttmacher Institute (Mar. 1, 2003), <https://www.guttmacher.org/gpr/2003/03/lessons-roe-will-past-be-prologue>.

⁴ Elizabeth Nash and Isabel Guarnieri, *Six Months Post-Roe, 24 US States Have Banned Abortion or Are Likely to Do So: A Roundup*, Guttmacher Institute (Jan. 10, 2023) <https://www.guttmacher.org/2023/01/six-months-post-roe-24-us-states-have-banned-abortion-or-are-likely-do-so-roundup>.

⁵ Sharon Bernstein, *Factbox: US. abortion restrictions mount after overturn of Roe v. Wade*, Reuters, (Oct. 4, 2022), available at <https://www.reuters.com/business/healthcare-pharmaceuticals/us-abortion-restrictions-mount-after-overturn-roe-v-wade-2022-10-04/#:~:text=ACTIVE%20BANS,an%20abortion%20rights%20research%20group>.

⁶ Katie Shepherd, Rachel Roubein, and Caroline Kitchner, *1 in 3 American women have already lost abortion access. More restrictive laws are coming*, The Washington Post, (Aug. 22, 2022) <https://www.washingtonpost.com/nation/2022/08/22/more-trigger-bans-loom-1-3-women-lose-most-abortion-access-post-roe/>.

⁷ April Dembosky, *As states ban abortion, Californians open their arms and wallets*, NPR (June 27, 2022), <https://www.npr.org/sections/health-shots/2022/06/27/1103479722/as-states-ban-abortion-californians-open-their-arms-and-wallets>.

CCPA cannot restrict a business' ability to carry out certain conduct. This includes complying with federal, state, or local laws; complying with a court order or subpoena to provide information; and cooperating with law enforcement agencies concerning conduct or activity that the business, service provider, or third party reasonably and in good faith believes may violate federal, state, or local law. Where certain conditions are met, businesses are also not restricted from cooperating with a government agency 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.

Recognizing the hostile climate for reproductive freedoms and the heightened sensitivity of this information, this bill removes these exemptions where the relevant personal information of the consumer contains information related to accessing, procuring, or searching for services regarding contraception, pregnancy care, and perinatal care, including abortion services. Furthermore, with respect to the specific exemption for cooperation with government agencies, the bill provides that a consumer accessing, procuring, or searching for services regarding contraception, pregnancy care, and perinatal care, including abortion services, does not constitute a "natural person being at risk or danger of death or serious physical injury."

According to the author:

AB 1194 closes a loophole in the California Privacy Rights Act (CPRA) that ensures individuals searching for information related to contraception, pregnancy care, perinatal care, and abortion services will have their data protected under the CPRA, without exception. Closing this loophole will ensure that the right to privacy when one is making personal health care decisions is never subject to unwanted scrutiny.

These protective amendments to the CCPA ensure that this sensitive information is not used or disclosed for purposes that undermine the public policy goals of the State of California or facilitate attacks on Californian's state constitutional rights.

4. Stakeholder positions

Attorney General Rob Bonta writes in support:

The CPRA extends unique privacy protections to consumer data storage and use, but ambiguity within a current health related exemption leaves the door open for businesses to bypass consent and share private health information without accountability. This would hinder individuals from freely accessing reproductive information and health care in California, and violate the expectation of privacy that people have come to expect in our state. AB 1194 would help ensure that consumer reproductive health information is subject to the strongest data privacy protections in the

nation, without exception, especially when making personal health care decisions.

While abortion remains legal in California, anti-abortion states have passed an array of laws in response to the overturn of *Roe v. Wade* that criminalize abortion and threaten the safety and legal freedom of those seeking or providing reproductive care. These laws have sown terror and confusion among patients and providers who may fear legal and criminal repercussions for seeking or performing reproductive services. The threat of jail times, fines, or protracted legal battles have already caused providers to deny critical care and forced patients to turn to unsafe measures.

Writing in support, the National Association of Social Workers, California Chapter explains the need for the bill:

Since the overturn of *Roe*, 11 states have criminalized abortion, and many more are considering doing the same. Over 15 states have enacted or are considering restrictions on gender affirming healthcare. This criminalization of the right to bodily autonomy puts the security of millions of people at risk. In the post *Roe* world, personal information related to reproductive health care must be protected.

5. 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 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.” 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 provides stronger protections for this incredibly sensitive information. This allows for a fuller realization of the benefits intended by the law. Therefore, as it explicitly states, this bill “furthers the purposes and intent of the California Privacy Rights Act of 2020.”

SUPPORT

American Association of University Women - California
Attorney General Rob Bonta
California Academy of Family Physicians
City and County of San Francisco
City and County of San Francisco Department on the Status of Women
Electronic Frontier Foundation
National Association of Social Workers, California Chapter
Oakland Privacy

OPPOSITION

One individual

RELATED LEGISLATION

Pending Legislation:

AB 352 (Bauer-Kahan, 2023) requires specified businesses that electronically store or maintain medical information on the provision of sensitive services, as specified, on or before July 1, 2024, to enable certain security features, including limiting user access privileges and segregating medical information related to sensitive services, as specified. It prohibits a health care provider, health care service plan, contractor, or employer from cooperating with any inquiry or investigation by, or from providing medical information to, an individual, agency, or department from another state or, to the extent permitted by federal law, to a federal law enforcement agency that would identify an individual or that is related to an individual seeking or obtaining an abortion or abortion-related services that are lawful under the laws of this state, unless authorized. AB 352 is currently in this Committee.

AB 793 (Bonta, 2023) prohibits a government entity from seeking or obtaining information from a reverse-location demand or a reverse-keyword demand, and prohibits any person or government entity from complying with a reverse-location demand or a reverse-keyword demand. This bill is currently in the Senate Public Safety Committee.

AB 947 (Gabriel, 2023) adds citizenship and immigration status to the definition of “sensitive information” for purposes of the CCPA. AB 947 is set to be heard the same day as this bill.

AB 1546 (Gabriel, 2023) extends the statute of limitations for actions brought by the Attorney General to enforce the California Consumer Privacy Act to five years after the accrual of the cause of action. AB 1546 is set to be heard the same day as this bill.

Prior Legislation:

AB 335 (Boerner Horvath, Ch. 700, Stats. 2021) exempted from provisions of the CCPA certain vessel information retained or shared between a vessel dealer and the vessel’s manufacturer.

AB 694 (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 64, Noes 8)

Assembly Appropriations Committee (Ayes 12, Noes 2)

Assembly Privacy and Consumer Protection Committee (Ayes 8, Noes 1)
