AB 1546 (Gabriel)
Version: February 17, 2023
Hearing Date: June 20, 2023
Fiscal: Yes
Urgency: No
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SUBJECT

California Consumer Privacy Act of 2018: statute of limitations

DIGEST

This bill 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.

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).

Responsibility for enforcement of the CCPA is shared between the PPA and the Attorney General. However, the PPA has five years within which to bring an administrative enforcement action. Actions brought by the Attorney General are subject to a one-year timeline.

To harmonize these statutes of limitations and to allow adequate time for the Attorney General to investigate and carry out enforcement, this bill extends the relevant statute of limitations to five years from the accrual of the cause of action.

This bill is sponsored by Attorney General Rob Bonta. It is supported by various privacy and consumer groups, including ACLU California Action. It is opposed by various industry groups, including the California Chamber of Commerce and TechNet.

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) 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).)

7) 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).)

8) 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.)

9) 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).)

10) Requires an action upon a statute for a forfeiture or penalty to the people of this state to be brought within one year if the statute does not specify otherwise. (Civ. Proc. Code § 340.)

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 extends the statute of limitations for civil actions brought by the Attorney General to enforce the CCPA to within five years after the cause of action accrued.

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 consumers the right to request that a business delete any personal information about the consumer that 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 precise geolocation and genetic information. Consumers are additionally empowered to limit businesses' use of such information.

2. CCPA enforcement

The CPRA created the PPA and transferred many of the responsibilities over to it from the Attorney General. This includes the responsibility for administering and implementing the CCPA, including promulgating regulations and educating consumers about their rights.

However, the CPRA established an enforcement framework that envisions the Attorney General maintaining a strong collaborative role with the PPA.

Upon the sworn complaint of any person or on its own initiative, the PPA may investigate possible violations and if probable cause is found, it shall hold a hearing, after providing notice to the alleged violator. If a violation is found to have occurred, the PPA may order the violator to cease and desist violation and impose administrative fines.

The Attorney General is authorized to bring a civil action against any business, service provider, contractor, or other person that violates the CCPA and may seek injunctive relief and civil penalties of not more than $2,500 for each violation or $7,500 for each intentional violation and each violation involving the personal information of minor consumers. The court may consider the good faith cooperation of the business, service provider, contractor, or other person in determining the amount of the civil penalty.[1]

The Attorney General may demand the PPA stay any administrative action or investigation to permit the Attorney General to proceed with an investigation or civil action, and the PPA cannot pursue an administrative action or investigation thereafter,

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[1] Penalties and fines imposed as part of enforcement actions brought by either the PPA or the Attorney General are all placed in the Consumer Privacy Fund within the General Fund.

unless the Attorney General subsequently determines not to pursue an investigation or civil action. The CCPA states that the PPA may not limit the enforcement authority of the Attorney General. However, the Attorney General is prohibited from filing a civil action after the PPA has issued a decision or an order against that person for the same violation.

The CCPA provides the PPA five years after the date on which the violation occurred within which to commence its action. The CCPA does not specifically state the statute relevant to Attorney General actions, but the Code of Civil Procedure establishes a default one-year statute of limitations for such actions.

In order to harmonize the two relevant time periods for bringing enforcement actions, this bill extends the statute of limitations for civil enforcement of the CCPA by the Attorney General to five years after the accrual of the cause of action.

According to the author:

> AB 1546 addresses an apparent oversight in the drafting of Proposition 24 (2020), the California Privacy Rights Act, by aligning the statutes of limitation for civil and administrative enforcement of the California Consumer Privacy Act (CCPA). The current statute of limitations for civil enforcement of CCPA by the Attorney General is an unreasonably short period of only one year. This is far too little time for the California Department of Justice (CalDOJ) to learn of a potential CCPA violation, conduct a thorough investigation, and file a civil lawsuit. By contrast, the California Privacy Protection Agency has five years to bring an administrative action to enforce the CCPA.

> AB 1546 would increase the statute of limitations for CCPA enforcement by providing CalDOJ five years, not one year, to bring a civil enforcement action. By doing so, the bill seeks to enhance DOJ's ability to carry out its duty to enforce California's landmark privacy law, thereby enhancing the consumer privacy of all Californians.

3. Stakeholder positions

Attorney General Rob Bonta, the sponsor of this bill, explains the need for it:

> The current one-year SOL for civil enforcement is unreasonably short and limits DOJ's ability to enforce California's landmark privacy law and protect the public. Furthermore, the conspicuous discrepancy between the one-year SOL for civil enforcement by DOJ and the five-year SOL for administrative enforcement by the Agency makes little sense as public policy. Without a longer SOL, the AG's office may have no choice but to

quickly sue targets, without the opportunity for a full investigation or engagement, to unilaterally toll the statute and preserve its ability to seek appropriate penalties. A longer SOL allows DOJ more time to engage with businesses and address issues fully, as opposed to the more heavy-handed alternative of having to sue quickly.

The lack of alignment between the Agency's and DOJ's statute of limitations can also create inefficiencies in cases that involve violations of the CCPA and other laws that can only be enforced by DOJ. If the DOJ's short one-year SOL has expired, the two agencies might be forced to bring parallel administrative and civil actions, rather than having those issues addressed in a single civil action brought by DOJ.

Writing in support, Oakland Privacy states:

Privacy harms, or violations of the right to know, right to correct and right to delete, do not always come to light immediately. In some cases, consumers might not be aware that their instructions are not being followed, or it may take some time to connect a quantity of consumer complaints with a widespread and significant violation of Act after review and investigation.

In order to robustly enforce the CCPA as envisioned by the Legislature, the statute of limitations needs to be sufficient for harms to become apparent and for their full scope to be accurately investigated.

A coalition of business and industry interests, including the California Grocers Association and NetChoice, writes in opposition:

Fundamentally, we question the need for this bill as we are unaware of any examples of time-barred claims that the AG would have otherwise pursued in the five years since the CCPA was first passed and that might indicate a serious problem warranting legislation. To the contrary, we have every reason to believe that there is vigorous, real-time enforcement happening. There are no less than 40 examples of "CCPA Enforcement Case Examples" cited on the AG's website at this time. (See CCPA Enforcement Case Examples | State of California - Department of Justice - Office of the Attorney General.)

Extending the statute of limitations for civil enforcement would only amplify the risk that businesses face for alleged violations, through no fault of their own. In contrast, preserving the status quo does not harm consumers because violations can still feasibly be pursued by the Privacy Agency for up to five years. In the rare event that the AG's clock runs out

to commence an enforcement action, this "fallback" ensures that consumer rights are still protected and undercuts any need to extend the AG's limitations period.

4. 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 more time for the state's top lawyer to investigate and enforce violations of the CCPA. 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

Attorney General Rob Bonta (sponsor)
ACLU California Action
Electronic Frontier Foundation
Oakland Privacy

OPPOSITION

Advanced Medical Technology Association
American Financial Services Association
California Chamber of Commerce
California Credit Union League
California Financial Services Association

California Grocers Association
California League of Food Producers
California Manufacturers & Technology Association
California Mortgage Bankers Association
California Retailers Association
Card Coalition
Civil Justice Association of California
Computer & Communications Industry Association (CCIA)
Insights Association
National Association of Mutual Insurance Companies
National Payroll Reporting Consortium
NetChoice
Personal Insurance Federation of California
Securities Industry and Financial Markets Association
Silicon Valley Leadership Group
Software & Information Industry Association
State Privacy & Security Coalition, Inc.
TechNet

RELATED LEGISLATION

Pending Legislation:

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 1194 (Wendy Carrillo, 2023) provides 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 1194 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 (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 59, Noes 15)
Assembly Appropriations Committee (Ayes 12, Noes 4)
Assembly Judiciary Committee (Ayes 8, Noes 3)
Assembly Privacy and Consumer Protection Committee (Ayes 8, Noes 3)
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