

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

AB 947 (Gabriel)  
Version: March 6, 2023  
Hearing Date: June 20, 2023  
Fiscal: Yes  
Urgency: No  
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**SUBJECT**

California Consumer Privacy Act of 2018: sensitive personal information

**DIGEST**

This bill includes personal information that reveals a consumer’s citizenship or immigration status in the definition of “sensitive personal information” for purposes of the California Consumer Privacy Act.

**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 CPRA also created a new category of “sensitive personal information” and afforded consumers enhanced rights with respect to that information, including the ability to restrict businesses’ use of that information. Given the increased sensitivity of immigration status, this bill includes within the definition of sensitive information personal information that reveals a consumer’s citizenship or immigration status.

This bill is author-sponsored. It is supported by Oakland Privacy and the Electronic Frontier Foundation. There is no known opposition.

**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 includes personal information that reveals a consumer's citizenship or immigration status in the CCPA's definition of sensitive personal information.

## 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. (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. Immigrants are integral to California

The United States has more immigrants than any other country in the world: nearly 45 million people living in the U.S., or 13.7 percent of the population, were born in another country.<sup>1</sup> Approximately one quarter, or 10.5 million, of those immigrants are undocumented.<sup>2</sup> California has the largest immigration population in the country, with approximately 10.7 million residents born outside the U.S.<sup>3</sup> Recent estimates suggest that less than a quarter, or 2.2 million, of those immigrants are here without documentation.<sup>4</sup> Although many undocumented immigrants who work pay state,

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<sup>1</sup> Budiman, *Key findings about U.S. immigration*, Pew Research Center (Aug. 20, 2020), <https://www.pewresearch.org/fact-tank/2020/08/20/key-findings-about-u-s-immigrants/>. All internet citations are current as of June 14, 2023.

<sup>2</sup> *Ibid.*

<sup>3</sup> *Ibid.*

<sup>4</sup> Pew Research Center, *U.S. unauthorized immigrant population estimates* (Feb. 5, 2019), <https://www.pewresearch.org/hispanic/interactives/u-s-unauthorized-immigrants-by-state/>.

federal, and Social Security taxes, undocumented immigrants – including DACA recipients – are generally ineligible for most federal benefits.<sup>5</sup>

Simply put, California would cease to function without its undocumented immigrant residents – a reality made even more stark by the COVID-19 crisis. Approximately 78 percent of employed undocumented workers work in sectors designated as “essential” or “critical” as defined by the Department of Homeland Security (DHS) Cybersecurity and Infrastructure Agency.<sup>6</sup> According to the American Immigrant Council, immigrants account for over one-quarter of California’s population. In addition, nearly one in four residents is a native-born U.S. citizen with at least one immigrant parent.

One in three workers, approximately 6.6 million, in California is an immigrant, making up a vital part of the state’s labor force in a range of industries. Immigrant workers were most numerous in the manufacturing sector with nearly 890,000 workers, health care and social assistance with over 880,000 workers, and the retail trade with over 650,000 workers. The largest share of immigrant workers is the agricultural sector with approximately 64 percent being immigrant workers and the manufacturing sector with approximately 45 percent being immigrant workers.

According to the American Immigration Council, immigrant-led households in the state paid \$80.8 billion in federal taxes and \$38.9 billion in state and local taxes in 2018. Undocumented immigrants in California paid an estimated \$4.5 billion in federal taxes and \$2.5 billion in state and local taxes. Approximately 935,000 immigrant business owners account for 38 percent of all self-employed California residents in 2018 and generated \$24.5 billion in business income.

### 3. Protecting sensitive immigration and citizenship status information

Immigrants, both documented and undocumented, constitute an important and integral part of the California community. However, there is an increasingly hostile climate for immigrants in many other parts of the country as well as at the federal level. It is well documented that ICE agents sometimes employ deception in order to obtain information or access to information for enforcement purposes. A shocking recent revelation found that the Department of Homeland Security had been purchasing

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<sup>5</sup> National Immigration Forum, *Fact Sheet: Immigrants and Public Benefits* (Aug. 21, 2018), <https://immigrationforum.org/article/fact-sheet-immigrants-and-public-benefits/>.

<sup>6</sup> Hinojosa & Robinson, *Report Essential but Disposable: Undocumented Workers and Their Mixed-Status Families*, UCLA North American Integration and Development (NAID) Center and the Mexican Instituto Nacional de Estadística y Geografía, [http://www.naid.ucla.edu/uploads/4/2/1/9/4219226/essential\\_undocumented\\_workers\\_final.pdf](http://www.naid.ucla.edu/uploads/4/2/1/9/4219226/essential_undocumented_workers_final.pdf), at pp. 4, 6.

massive troves of data from private companies for enforcement purposes, including tracking individuals crossing the border using geolocation data privately purchased.<sup>7</sup>

Other states are pushing their own legislation to terrorize immigrant communities. In Florida, Governor DeSantis has pushed legislation that would expose people to felony charges for sheltering, hiring and transporting undocumented immigrants; require hospitals to ask patients their immigration status and report to the state; invalidate out-of-state driver's licenses issued to undocumented immigrants; prevent undocumented immigrants from being admitted to practice law in Florida; and direct the Florida Department of Law Enforcement to provide assistance to federal authorities in enforcing the nation's immigration laws.<sup>8</sup>

The California Legislature has taken care in the past to protect sensitive data the disclosure of which might put Californians in danger. For instance, California law famously restricts state law enforcement agencies from inquiring into an individual's immigration status or providing information about a person for immigration enforcement purposes.

This bill recognizes the increased sensitivity of information revealing a person's immigration or citizenship status by including such information into the definition of "sensitive personal information" in the CCPA. This affords the heightened protections of the CPRA to this data. According to the author:

California has long been at the forefront in establishing laws that protect individuals on the basis of citizenship and/or immigration status. Among those are protections related to obtaining housing, a driver's license, income and healthcare supports, a number of labor protections, and protections for our students.

Currently under the California Consumer Protection Act (CCPA), sensitive personal information allows an individual to opt out of having this information used or shared by businesses that collect their data. Notably omitted from the definition of "sensitive personal information" is a person's immigration and citizenship status. While there is protection for a consumer's racial or ethnic origin (e.g., that an individual has Slavic heritage), this protection is insufficient to encompass the consumer's immigration status (e.g., that the individual has applied for asylum due to the war in Ukraine).

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<sup>7</sup> Alfred Ng, *Homeland Security records show 'shocking' use of phone data, ACLU says* (July 18, 2022) Politico, <https://www.politico.com/news/2022/07/18/dhs-location-data-aclu-00046208>.

<sup>8</sup> Miriam Jordan, *DeSantis Pushes Toughest Immigration Crackdown in the Nation* (April 10, 2023) The New York Times, <https://www.nytimes.com/2023/04/10/us/florida-desantis-immigration.html>.

It remains critical that the state continue to enact sensible policies that will protect Californians from punitive anti-immigrant efforts that continue to be considered at the federal level. AB 947 is a simple bill that adds four words to the definition of sensitive information, “citizenship and immigration status.” But adding those words provides important protections for our immigrant neighbors. It helps them insure that any information shared with businesses, that might somehow disclose their immigration status, is not sold to or shared with any entity making these Californians more vulnerable than they already are to being separated from their families, imprisoned, and ultimately returned to countries that many were often forced to flee from for their own safety

These protective amendments provide consumers greater control over this sensitive information to better ensure it is not used or disclosed for purposes that undermine the public policy goals of the State of California.

#### 4. Stakeholder positions

Oakland Privacy writes in support:

Immigrants are at risk of facing barriers, discrimination, and exploitation simply because of their citizenship status. For example, in recent elections, anti-immigrant rhetoric and campaign ads were particularly rampant. In a recent survey capturing the sentiments of immigrant communities about the impact of campaign ads discriminating against immigrants, 29% said it made them feel that they were not wanted in the U.S.

Given that California is one of the largest economies in the world and immigrants make up a large percentage of California’s thriving economy, it is imperative that this population be protected against discrimination. Californians should be able to thrive and contribute without fear or risk of being discriminated against regardless of citizenship status. Even more egregious is the recent investigation revealing that the Department of Homeland Security had been using information about immigration status purchased from data broker LexisNexis to target, seek out and deport immigrants. At its best, this practice circumvents laws protecting discrimination based on national origin or immigration status, but worse, this is contributing to warrantless surveillance against immigrant communities.

Adding immigration status to “sensitive personal information” under CPRA would align with the inclusion of immigration status and/or national origin as a protected class in other laws.

Writing in support, the Electronic Frontier Foundation states:

The California Privacy Rights Act of 2020 established the category of “sensitive personal information” in the law but did not include protections for data related to immigration or citizenship status in its definition. We highlighted this as an oversight in the ballot initiative at the time, and are glad to see it corrected. People should have control over their information, particularly information such as citizenship or immigration status that can easily expose them to unwarranted discrimination if this information is used in ways they do not expect.

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**

Oakland Privacy  
Electronic Frontier Foundation



## OPPOSITION

None known

## 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. AB 793 is currently in the Senate Public Safety Committee.

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.

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.

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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 76, Noes 0)

Assembly Appropriations Committee (Ayes 14, Noes 0)

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

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