

000SENATE JUDICIARY COMMITTEE
Senator Thomas Umberg, Chair
2023-2024 Regular Session

AB 2723 (Irwin)
Version: June 24, 2024
Hearing Date: July 2, 2024
Fiscal: Yes
Urgency: Yes
CK

SUBJECT

The California Cradle-to-Career Data System Act

DIGEST

This bill exempts the Cradle-to-Career Data System (C2C) from key provisions of the Information Practices Act of 1977 (IPA) and deletes certain privacy protections. The bill reworks various other provisions of the C2C law.

EXECUTIVE SUMMARY

The Cradle-to-Career Data System is a statewide longitudinal data system that helps students achieve their goals and provides information on education and workforce outcomes. It receives and manages information supplied by provider agencies with all relevant federal and state privacy laws in effect.

This bill removes some of the protections on that data and eliminates certain rights held by Californians with respect to that data. This bill exempts data maintained in the C2C system from key provisions of the IPA.

Namely, Californians will no longer have the right to inquire and be notified as to whether the system includes personal information about them and to inspect those records. The bill also removes the right to amend incorrect information within those records. It also removes the requirement that data collected be treated as personal information and be deidentified unless otherwise specified.

This bill is supported by various educational and children's organizations, including the Education Trust – West and the California Chamber of Commerce. It is opposed by Oakland Privacy and A Voice for Choice Advocacy. This bill passed out of the Senate Education Committee on a 6 to 0 vote.

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 C2C Data System for the purpose of connecting individuals and organizations to trusted information and resources. The data system shall be considered a source for actionable data and research on education, economic, and health outcomes for individuals, families, and communities, and provide for expanded access to tools and services that support the navigation of the education-to-employment pipeline. (Educ. Code § 10860(a).)
- 3) Requires the C2C system to comply with federal and state laws to protect individual privacy, including, but not necessarily limited to, all of the following:
 - a) The federal Family Educational Rights and Privacy Act of 1974 (FERPA).
 - b) The federal Health Insurance Portability and Accountability Act of 1996 (HIPAA).
 - c) The federal Higher Education Act of 1965 (HEA).
 - d) The federal Privacy Act of 1974. (Educ. Code § 10860(f).)
- 4) Provides that any data managed by C2C that meets the definition of personal information, as defined in Section 1798.3 of the Civil Code, shall not be used or disclosed except for purposes consistent with the law. Whether or not it is protected under applicable federal or state law, personal information shall be deidentified before being released to the public. (Educ. Code § 10860(g).)
- 5) Requires the C2C governing board members, advisory board members, and managing entity employees to comply with FERPA, HIPAA, and the HEA. (Educ. Code § 10863(b).)
- 6) Requires any data collected pursuant to the C2C law to be treated as personal information, as defined, and to be deidentified unless otherwise specified. (Educ. Code § 10863(c).)
- 7) 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.)
- 8) 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).)
- 9) 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).)
- 10) 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.)
- 11) Provides each individual the right to inquire and be notified as to whether the agency maintains a record about the individual. Agencies shall take reasonable steps to assist individuals in making their requests sufficiently specific. Any notice sent to an individual which in any way indicates that the agency maintains any record concerning that individual shall include the title and business address of the agency official responsible for maintaining the records, the procedures to be followed to gain access to the records, and the procedures to be followed for an individual to contest the contents of these records unless the individual has received this notice from the agency during the past year. In implementing the right conferred by this section, an agency may specify in its rules or regulations reasonable times, places, and requirements for identifying an individual who requests access to a record, and for disclosing the contents of a record. (Civ. Code § 1798.32.)

- 12) Requires each agency to permit any individual upon request and proper identification to inspect all the personal information in any record containing their personal information and have an exact copy made of all or any portion thereof within 15 days of the inspection. The agency shall present the information in the record in a form reasonably comprehensible to the general public. (Civ. Code § 1798.34.)
- 13) Provides that whenever an agency is unable to access a record by reference to name only, or when access by name only would impose an unreasonable administrative burden, it may require the individual to submit such other identifying information as will facilitate access to the record. (Civ. Code § 1798.34.)
- 14) Requires each agency to permit an individual to request in writing an amendment of a record and, shall within 30 days of the date of receipt of such request:
 - a) Make each correction in accordance with the individual's request of any portion of a record which the individual believes is not accurate, relevant, timely, or complete and inform the individual of the corrections made in accordance with their request; or
 - b) Inform the individual of its refusal to amend the record in accordance with such individuals' request, the reason for the refusal, the procedures established by the agency for the individual to request a review by the head of the agency or an official specifically designated by the head of the agency of the refusal to amend, and the name, title, and business address of the reviewing official. (Civ. Code § 1798.35.)
- 15) 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 under specified conditions. (Civ. Code § 1798.24.)
- 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.)

This bill:

- 1) Provides that the following rights in the IPA do not apply to records or source data from the P20W data set that are maintained under the C2C system:

- a) The individual right to inquire and be notified as to whether the data system maintains a record about that individual, as provided in Section 1798.32 of the Civil Code.
 - b) The individual right to inspect personal information in any record maintained in the data system, as provided in Section 1798.34 of the Civil Code.
 - c) The individual right to request to amend any record maintained in the data system, as provided in Section 1798.35 of the Civil Code.
- 2) Makes explicit that in the event of a “security incident,” as defined in the participation agreement, the managing entity shall comply with the requirements of Section 1798.29 of the Civil Code.
 - 3) Clarifies that it does not affect an individual’s right to request to amend a record maintained by a data provider of record. To assist individuals who wish to exercise such rights, as applicable, the managing entity shall include on its internet website, a notice to contact the data provider and a link to the data provider.
 - 4) Deletes the requirement that any data collected by the C2C law shall be treated as personal information and be deidentified unless otherwise specified.
 - 5) Provides that the governing board shall be designated as a state educational authority for purposes of ensuring privacy and effective use of the data system consistent with the purpose thereof.
 - 6) Makes other modifications to the C2C law.
 - 7) Includes an urgency clause.

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.

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.

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.

2. C2C Data System

The C2C Data System is housed in the Government Operations Agency and was established for the purpose of connecting individuals and organizations to trusted information and resources. The data system is intended to be a source for actionable data and research on education, economic, and health outcomes for individuals, families, and communities, and provide for expanded access to tools and services that support the navigation of the education-to-employment pipeline, including providing insights into critical milestones, early learning and care to grade 12, and into higher education, skills training opportunities, and employment to better enable individuals to maximize their educational and career opportunities, and to foster evidence-based decisionmaking to help the state build a more equitable future.

3. Curtailing protections covering personal information in the C2C program

According to the author:

The Cradle to Career Data System celebrated its first round of data submissions from Data Providers last fall, and anticipates making its first analytical tools – data dashboards – available later this year. As with any maturing State Entity, there are aspects of its governing statute that benefit from refinement, and that is what this bill seeks to provide for this year. These additions include clarifying the role C2C holds in relation to the data they maintain on behalf of the data providers, and reinforce how C2C works within the Information Practices Act.

This bill makes a number of changes to the C2C law, including eliminating an obsolete workgroup, recasting the role played as “maintainers” rather than “managers” of the C2C data. The C2C law currently provides: “Any data collected pursuant to this article shall be treated as personal information, as defined in Section 1798.3 of the Civil Code, and shall be deidentified unless otherwise specified in this article.” This bill deletes this protection.

In addition, the bill modifies the application of the main privacy law applying to state agencies, the IPA, to C2C by removing several key rights of Californians with respect to the records and source data that is held by the C2C program. It eliminates the following rights:

- The individual right to inquire and be notified as to whether the data system maintains a record about that individual.
- The individual right to inspect personal information in any record maintained in the data system.
- The individual right to request to amend any record maintained in the data system.

The author states: “The IPA governs how state entities, including C2C, approach data management. By aligning terminology between the C2C statute and the IPA, as well as delineating responsibilities between data providers and the managing entity, the requirements of the IPA can be effectively honored.” The assertion is that C2C has no way to determine which records belong to any particular person and argue the resources necessary to effectuate such rights is not worth the attendant benefit.

Writing in support, the Campaign for College Opportunity states: “AB 2723 will streamline the Cradle-to-Career Data System and improve its efficiency with the long-term goal of ensuring the state has access to data to better inform policy and ultimately improve equitable college access and success.”

4. Concerns regarding the bill

Several groups in opposition have highlighted concerns with the rollback of provisions of the IPA.

A Voice for Choice Advocacy writes in opposition:

California prides itself on being an advocate of consumer privacy. The California Consumer Privacy Act is one of the strictest privacy acts in the country. Last year this act was strengthened by this legislature through the DELETE act, which requires those who oversee consumer databases to fully delete customer data if requested. These consumer privacy laws do not currently apply to government databases, and AB 2723 diametrically opposes the huge strides California has made in this area, by making the Cradle to Career (C2C) database completely inaccessible and permanent to the consumers whose data is included in it. AVFCA believes these California’s strict privacy laws and the ability to opt out and delete personal identifying data should be applied to databases overseen by local and state agencies, when that data is not directly needed for the benefit of the individual or the state.

Writing in opposition, Oakland Privacy argues:

The basic rights provided under the Information Practices Act were broadly intended to touch all aspects of state operations and

operationalize the privacy protection clause in the California Constitution with all of the activities of the State. We appreciate the desire for advanced data science and analysis in the educational system and in no way seek to impede the operations of the [C2C]. But it is a massive warehousing of Californian's personal information under the auspices of a 21-person governing board and housing in the state governmental operations office and that is exactly what the IPA was and is intended to address.

The attempt to wriggle out of this uncontestable fact by referring to the operations of [C2C] as "data maintainers", not "data collectors" is incorrect. The [C2C] will be utilizing the data for analysis and evaluation, and sharing it with policymakers, advocates and researchers per their own website. That is owning and using the data, not simply maintaining it in a data icebox. The [C2C] is collecting student information from [local educational agencies (LEA)], aggregating it, presenting it for consumption in various forms, and making it available to researchers. This use by the state of locally-collected educational data falls under the Information Practices Act and California students and parents have the rights granted to them under law, common practice and the California Constitution. These include the rights of notice, consent, inspection and correction when the State acquires their information from their LEA and deposits it in the CTCDS.

The author responds by stating that the information does not come from LEAs but rather the data is provided by LEAs to CALPADS and then provided to C2C. Supporters highlight that the bill states that it does not affect an individual's right to request to amend a record maintained by a data provider of record. The bill further states that C2C must post on its website "a notice to contact the data provider and a link to the data provider."

It is arguably a far cry from existing rights to be redirected to a list of agencies that *may* have information about what records C2C has that contain an individual's personal information. For instance, the C2C website currently lists the California Department of Education (CDE) as a data provider. The author counters opposition by stating: "AB 2723's IPA provisions would direct K-12 students and parents to CDE to assert their IPA rights as it relates to their information stored in CALPADS." However, without a specific point of contact, telephone number, or email address, it is hard to understand how one would exercise this right with such a large institution. Illustrating this point, CDE's website states in its FAQs:

How do I obtain copies of my student records?

The California Department of Education does not collect and/or store student transcripts, records, or cumulative files for students in California public schools.³

Turning to the CALPADs program mentioned above as the source of C2C information, their FAQs provide:

A parent or legal guardian desiring to inspect his/her child's CALPADS data should first contact the LEA or independently-reporting charter school where the student is enrolled to initiate this procedure, and then the LEA will make the data available to the parent or guardian.⁴

To mitigate the impact of losing these rights, the author has agreed to an amendment that further requires the managing entity to include on its website links to the contact information for a data provider's privacy officer, and a link to the relevant privacy web form maintained by the data provider.

SUPPORT

Alliance for Children's Rights
California Association for Bilingual Education
California Chamber of Commerce
California Competes: Higher Education for a Strong Economy
California Edge Coalition
Californians Together
Campaign for College Opportunity
Children's Defense Fund-California
Go Public Schools
Growing Inland Achievement
Northern California College Promise Coalition
Public Advocates
Simi Valley Chamber of Commerce
Sobrato Early Academic Language (SEAL)
Teach Plus - California
The Education Trust - West
The Institute for College Access & Success
UAspire
UNITE-LA

³ California Department of Education FAQ, CDE, <https://www.cde.ca.gov/re/di/fq/#Records>. All internet citations are current as of June 21, 2024.

⁴ CALPADS Frequently Asked Questions, CDE, <https://www.cde.ca.gov/ds/sp/cl/calpadsfaqs.asp>.

OPPOSITION

Oakland Privacy
A Voice for Choice Advocacy

RELATED LEGISLATION

Pending Legislation: AB 2388 (Joe Patterson, 2024) amends the IPA by expanding the definition of “personal information” and bolstering protections against agencies distributing, selling, or renting the personal information of Californians for financial gain. This bill is currently in the Senate Appropriations Committee.

Prior Legislation: AB 2677 (Gabriel, 2022) would have amended the IPA 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.”

PRIOR VOTES:

Senate Education Committee (Ayes 6, Noes 0)
Assembly Floor (Ayes 71, Noes 0)
Assembly Appropriations Committee (Ayes 15, Noes 0)
Assembly Education Committee (Ayes 7, Noes 0)
Assembly Higher Education Committee (Ayes 11, Noes 0)
