
UNFINISHED BUSINESS

Bill No: SB 362
Author: Becker (D), et al.
Amended: 9/7/23
Vote: 21

SENATE JUDICIARY COMMITTEE: 9-2, 4/25/23
AYES: Umberg, Allen, Ashby, Caballero, Durazo, Laird, Min, Stern, Wiener
NOES: Wilk, Niello

SENATE APPROPRIATIONS COMMITTEE: 5-2, 5/18/23
AYES: Portantino, Ashby, Bradford, Wahab, Wiener
NOES: Jones, Seyarto

SENATE FLOOR: 32-8, 5/31/23
AYES: Allen, Alvarado-Gil, Archuleta, Ashby, Atkins, Becker, Blakespear,
Bradford, Caballero, Cortese, Dodd, Durazo, Eggman, Glazer, Gonzalez,
Hurtado, Laird, Limón, McGuire, Menjivar, Min, Newman, Padilla, Portantino,
Roth, Rubio, Skinner, Smallwood-Cuevas, Stern, Umberg, Wahab, Wiener
NOES: Dahle, Grove, Jones, Nguyen, Niello, Ochoa Bogh, Seyarto, Wilk

ASSEMBLY FLOOR: 52-14, 9/13/23 - See last page for vote

SUBJECT: Data broker registration: accessible deletion mechanism

SOURCE: Privacy Rights Clearinghouse

DIGEST: This bill enhances the data broker registry law and transfers most of the attendant duties from the Attorney General to the California Privacy Protection Agency (PPA).

Assembly Amendments create additional exemptions, refine the enforcement structure and the deletion mechanism, and other amendments to address stakeholder concerns.

ANALYSIS:

Existing law:

- 1) Requires a business, on or before January 31 following each year in which it meets the definition of a data broker, to register with the Attorney General, as provided. (Civ. Code § 1798.99.82.)
- 2) Defines “data broker” as a business that knowingly collects and sells to third parties the personal information of a consumer with whom the business does not have a direct relationship, except as provided. (Civ. Code § 1798.99.80.)
- 3) Requires data brokers to provide, and the Attorney General to include on its website, the name of the data broker and its primary physical, email, and Internet Web site addresses. Data brokers may, at their discretion, also provide additional information concerning their data collection practices. (Civ. Code §§ 1798.99.82, 1798.99.84.)
- 4) Subjects a data broker that fails to register as required to injunction and civil penalties, fees, and costs. (Civ. Code §§ 1798.99.81, 1798.99.82.)
- 5) Provides that the above shall not supersede or interfere with the operation of the California Consumer Privacy Act (CCPA). (Civ. Code § 1798.99.88.)
- 6) 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.)
- 7) Establishes the California Privacy Rights Act of 2020 (CPRA), which amends the CCPA and creates the PPA, which is charged with implementing these laws, promulgating regulations, and enforcement. (Civ. Code § 798.100 et seq.; Proposition 24 (2020).)
- 8) Provides consumers the right to request that a business delete any personal information about the consumer which the business has collected from the consumer. (Civ. Code § 1798.105(a).)
- 9) 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. (Civ. Code § 1798.120.)

- 10) Provides that these provisions do not restrict a business' ability to collect, use, retain, sell, share, or disclose consumers' personal information that is deidentified or aggregate consumer information. (Civ. Code § 1798.145(a)(6).)
- 11) Provides various exemptions from the obligations imposed by the CCPA, including where they would restrict a business' ability to comply with federal, state, or local laws. (Civ. Code § 1798.145.)
- 12) 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) Transfers the relevant duties of the Attorney General in the data broker registry law to the PPA. It authorizes administrative actions to be brought against data brokers in violation by the PPA and increases the applicable fine to \$200. Authorizes the PPA to adopt regulations in compliance with the Administrative Procedure Act, except as provided.
- 2) Updates definitions to cross-reference to the CPRA.
- 3) Exempts entities, or business associates of covered entities, to the extent their processing of personal information is exempt under Section 1798.146, from the obligations imposed on data brokers.
- 4) Allows for funds in the "Data Broker's Registry Fund," which shall include any monies collected or received by the PPA and Attorney General, to be used to offset certain costs, including enforcement costs and any costs associated with creating and maintaining the deletion mechanism.
- 5) Requires data brokers, when registering, to additionally provide various additional pieces of information. Requires data brokers to compile and report certain metrics related to CCPA compliance.
- 6) Requires the PPA to establish an accessible deletion mechanism, as provided, that allows consumers, through a single request, to request all data brokers to

delete any PI related to the consumer, as specified. Data brokers are required to regularly access the mechanism and process requests for deletion, as specified.

- 7) Provides that after a consumer has submitted a deletion request and a data broker has deleted the consumer's data pursuant hereto, the data broker must delete all personal information of the consumer, except as provided, beginning August 1, 2026. After a consumer has submitted a deletion request and a data broker has deleted the consumer's data, the data broker shall not sell or share new personal information of the consumer unless the consumer requests otherwise or the selling or sharing is otherwise permitted, as provided. Requires data brokers to undergo audits every three years to determine compliance with the data broker registry law.
- 8) Provides that the Legislature finds and declares that this act furthers the purposes and intent of the CPRA.

Background

Companies regularly and systematically collect, analyze, share, and sell the personal information of consumers. This includes data brokers that collect and profit from this data without having any direct relationship with the consumers whose information they amass.

In order to bring this industry into the light and more fully inform consumers about who is collecting their personal information and how, a data broker registry was established in California law requiring data brokers to register annually with the Attorney General. Responding to concerns that existing law does not do enough to bring this industry into the light and to provide consumers more control over their personal information, this bill bolsters the data broker registry law by, in part, requiring more information to be reported, including an annual report from data brokers on their compliance with CCPA/CPRA requests, increasing the penalties for violations, and transferring much of the relevant duties from the Attorney General to the PPA. It also expands consumers' deletion rights and requires the PPA to create an accessible deletion mechanism that allows a consumer, through a single request, to request that every data broker delete the personal information related to the consumer and held by the data broker, except as specified.

This bill is sponsored by Privacy Rights Clearinghouse. It is supported by a variety of consumer and privacy rights organizations, including Consumer Action and the Electronic Frontier Foundation. It is opposed by various industry groups, including

the Consumer Data Industry Association. For a more thorough analysis, see the Senate Judiciary Committee analysis, which is incorporated herein by reference.

Comments

According to the author:

“While California has taken steps to require data brokers to register with the Attorney General, our existing frameworks fall short of providing the necessary tools for individuals to protect their privacy. Currently, the data broker registry is impractical because it requires Californians to request each of the more than five-hundred registered brokers to delete their personal information, a practically impossible task for all but the most concerned consumers. Those that do attempt to delete their information using the data broker registry will find that the Right to Delete under the California Consumer Privacy Act is limited to information “collected from the consumer” and doesn’t cover most of the information that a data broker will possess.

SB 362 seeks to address these concerns by creating a user-friendly webpage within the California Privacy Protection Agency where all Californians can delete their information from data brokers free of charge. The bill also strengthens our privacy rights by requiring data brokers to report what information they collect on us and mandating deletion of that information upon request. By making data brokers more transparent and accountable, we can better protect ourselves against potential misuse of our data and exercise our privacy rights.”

FISCAL EFFECT: Appropriation: No Fiscal Com.: Yes Local: No

According to the Assembly Appropriations Committee:

- Costs (Data Brokers’ Registration Fund, General Fund) in the hundreds of thousands to low millions of dollars to CPPA to establish and maintain its data broker registry, issue and update regulations, establish and maintain the accessible deletion mechanism, and receive audits submitted by data brokers. CPPA reports costs of about \$1.14 million in fiscal years (FY) 2024-26 and \$600,000 in FY 2026-27 and ongoing. These costs cover a one-time IT contract to develop and implement the registry and accessible deletion mechanism, one limited-term position (an IT manager to manage the contract), and three permanent positions (an

attorney, an analyst, and an IT specialist). This estimate does not include resources needed by CPPA to enforce the DBRL, which may increase costs by an unknown but significant amount in additional staffing for attorneys and support staff. Costs to CPPA may be offset by fees, penalties, and expenses collected in the Data Brokers' Registration Fund. CPPA reports that the balance of the Data Brokers' Registration Fund was approximately \$770,000 in May 2023.

- DOJ reports no costs associated with the transfer of duties required by this bill.

SUPPORT: (Verified 9/12/23)

Californians for Consumer Privacy (co-source)
Privacy Rights Clearinghouse (co-source)
Access Humboldt
Access Reproductive Justice
Attorney General Rob Bonta
Bet Tzedek Legal Services
Calegislation
California Association for Micro Enterprise Opportunity
CALPIRG
Center for Digital Democracy
Centro Legal de La Raza
Community Legal Services of East Palo Alto
Consumer Action
Consumer Attorneys of California
Consumer Federation of America
Consumer Reports
Electronic Frontier Foundation
Electronic Privacy Information Center
Encode Justice
Fairplay: Childhood Beyond Brands
Greenlining Institute
Legal Aid of Marin
Legal Aid of San Bernardino
Legal Assistance for Seniors
LGBT Technology Partnership & Institute
Oakland Privacy
Open Door Legal
Planned Parenthood Affiliates of California

Public Counsel
Public Law Center
Riverside Legal Aid
Santa Clara University, Alexander Community Law Center
Secure Justice
Ultraviolet Action
Watsonville Law Center
One individual

OPPOSITION: (Verified 9/12/23)

American Advertising Federation
American Association of Advertising Agencies
American Association of Political Consultants
American Fintech Council
American Financial Services Association
Association of National Advertisers
California Bankers Association
California Chamber of Commerce
California Financial Services Association
California Retailers Association
Consumer Brands Association
Consumer Data Industry Association
Digital Advertising Alliance
Experian
Insights Association
Interactive Advertising Bureau
Los Angeles Area Chamber of Commerce
National Business Coalition on E-Commerce and Privacy
National Federation of Independent Businesses
NetChoice
Software & Information Industry Association
State Privacy and Security Coalition
TechNet
Transunion, LLC

ARGUMENTS IN SUPPORT: Attorney General Rob Bonta writes:

Though the California Consumer Privacy Act (CCPA) empowers individuals with a “Right to Delete” information from businesses that collect their personal information, that right is limited to that collected “from the

consumer.” Data brokers may not always collect information from consumers directly, creating a loophole that leaves Californians unable to exercise this essential right and vulnerable to the risks associated with unauthorized collection, sale, and misuse.

It is impractical to expect Californians to individually exercise their privacy rights and request deletion from each of the more than five-hundred (and counting) data brokers registered with DOJ. Submitting individual deletion requests would be time-consuming and practically impossible for even the most dedicated consumers, but especially for those with limited access to technology or facing language barriers. Further, data brokers are not required to disclose what kind of information they collect from consumers. As a result, Californians are left unable to effectively protect their privacy and exercise their rights.

Accordingly, SB 362 seeks to strengthen the Data Broker Registration Law by requiring the California Privacy Protection Agency to establish an “accessible deletion mechanism.” Beginning August 1, 2026, the mechanism would allow a consumer to make a single secure and verifiable request that data brokers which maintain personal information about the consumer proceed to delete that information—and to continue to delete personal information received about them in perpetuity.

ARGUMENTS IN OPPOSITION: The California Chamber of Commerce writes in opposition:

What consumers need is to know who these companies are, how to access the same privacy disclosures that they could access from any other business that they might have a direct relationship with, and how to initiate CCPA requests, the same as they would with other businesses – things that are already done by the existing repository created in AB 1202.

Data brokers provide services to many other businesses in support of anti-money laundering, sanction compliance, cybersecurity, and underwriting activities. Creating duplicative and conflicting reporting requirements and deletion obligations not only creates unnecessary work and increases the chances of mistakes being made, but it also can undermine these legitimate and necessary functions.

ASSEMBLY FLOOR: 52-14, 9/13/23

AYES: Addis, Aguiar-Curry, Alvarez, Arambula, Bauer-Kahan, Bennett, Berman, Boerner, Bonta, Bryan, Juan Carrillo, Wendy Carrillo, Cervantes, Connolly, Mike Fong, Friedman, Gabriel, Garcia, Gipson, Grayson, Haney, Hart, Holden, Irwin, Jackson, Jones-Sawyer, Kalra, Lee, Low, Lowenthal, Maienschein, McCarty, McKinnor, Muratsuchi, Ortega, Papan, Pellerin, Quirk-Silva, Rendon, Reyes, Luz Rivas, Santiago, Schiavo, Ting, Waldron, Ward, Weber, Wicks, Wilson, Wood, Zbur, Robert Rivas

NOES: Alanis, Chen, Megan Dahle, Davies, Dixon, Flora, Gallagher, Hoover, Lackey, Mathis, Joe Patterson, Sanchez, Ta, Wallis

NO VOTE RECORDED: Bains, Calderon, Essayli, Vince Fong, Stephanie Nguyen, Pacheco, Jim Patterson, Petrie-Norris, Ramos, Rodriguez, Blanca Rubio, Soria, Valencia, Villapudua

Prepared by: Christian Kurpiewski / JUD. / (916) 651-4113
9/14/23 10:00:52

**** END ****