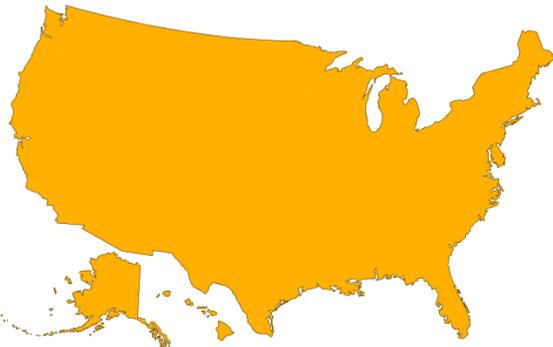


Legislative Update and Authorizing CPPA's Position on Pending Legislation

July 16, 2024

Maureen Mahoney
Deputy Director, Policy & Legislation

Policy and Legislation Update



**Federal
Privacy**



**California
Legislation**

FEDERAL PRIVACY

AMERICAN PRIVACY RIGHTS ACT

STATE OF CALIFORNIA

ASHKAN SOLTANI, EXECUTIVE DIRECTOR

CALIFORNIA PRIVACY PROTECTION AGENCY

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June 26, 2024

The Honorable Cathy McMorris Rodgers, Chair
The Honorable Frank J. Pallone, Jr., Ranking Member
House Energy & Commerce Committee
United States House of Representatives
Washington, DC 20515

Re: H.R. 8818, The American Privacy Rights Act of 2024—Opposed

Dear Chair McMorris Rodgers and Ranking Member Pallone,

The California Privacy Protection Agency¹ (Privacy Agency) writes in respectful opposition to The American Privacy Rights Act of 2024 (APRA).² The Agency appreciates the House Energy and Commerce Committee’s work to advance a federal privacy law, as all Americans deserve strong, meaningful protections over the collection, use, retention, and disclosure of the personal information. But those protections must not come at the expense of safeguards that consumers already enjoy. The Privacy Agency would support a federal privacy law that sets a floor on protections and allows states to continue to adopt stronger safeguards, consistent with most federal privacy laws. Instead, APRA seeks to preempt nearly every provision in groundbreaking state laws like the California Consumer Privacy Act (CCPA)³ and the California Delete Act⁴—a setback for many consumers, and one that would override the will of the millions of Californians

Updated Board and Agency Policies and Practices: Legislative Process

- CPPA's jurisdiction with respect to legislation, including for purposes of providing technical assistance:
 - Bills that relate to the processing of personal information. This includes bills relating to artificial intelligence to the extent that personal information or privacy is implicated.
- Criteria for taking positions on bills:
 - Bills that meaningfully affect the Agency, for example, bills that amend the CCPA, task the Agency with specific responsibilities, or present significant overlap with the CCPA and implementing regulations.

California Legislative Calendar

1

August 31, 2024
Deadline for the
Legislature to pass bills

2

September 30, 2024
Deadline for Governor to
sign or veto bills

3

January 1, 2025
Effective date of bills,
unless otherwise stated

CPPA-Sponsored Legislation

AB 3048

(Lowenthal)

**California Consumer Privacy Act of 2018:
Opt-out Preference Signal**
(as amended July 3, 2024)

STATUS

Under consideration
by Senate
Appropriations

Opt-out preference signals (OOPS) are a simple and easy-to-use way for consumers to opt-out of sale and sharing of their personal information.

Receiving businesses are required to honor these signals, but most consumers don't have easy access to them.

This bill addresses that by requiring browsers and mobile operating systems to offer opt-out preference signals.

Additional CCPA Bills

AB 3286

(Privacy and Consumer Protection Committee)

California Consumer Privacy Act of 2018:
Monetary Thresholds: Grants

STATUS

Under consideration
by Governor

Clarifies in the CCPA:

- The method for calculating CPI adjustments to monetary thresholds;
- When responding to sworn complaints, the CPPA does so with existing law enforcement privileges; and
- That the CPPA must begin administering the grant program when the amount of grant funds available after all other distributions have been made is over \$300,000.

CCPA-related Kids' Privacy Legislation

AB 1949

(Wicks)

California Consumer Privacy Act of 2020: Collection of personal information of a consumer less than 18 years of age
(Staff anticipates a support position on the bill as amended July 3, 2024)

Amends the CCPA:

- Prohibits a business from collecting, using (unless the use is short-term or transient), disclosing, selling or sharing the personal information of a consumer less than 18 years of age, unless the consumer (for children between 13 and 18 years of age) or a parent/guardian (for children under 13) affirmatively authorized the collection, use, disclosure, sale or sharing of the consumer's personal information.
- Retains actual knowledge standard for consumers under 18; and
- Requires businesses to treat a consumer as under age 18 if the consumer, through a platform, technology, or mechanism, transmits a signal indicating that the consumer is under 18.

CCPA-related AI Legislation

AB 2877

(Bauer-Kahan)

**California Consumer Privacy
Act of 2018:**

Artificial intelligence: training
(Staff has a "watch" position on the bill as
amended June 27, 2024)

Amends the CCPA:

- Prohibits a developer from using the personal information of a minor to train or fine-tune an artificial intelligence system or service without affirmative authorization.

CPPA-related AI Legislation

SB 892 (Padilla)

**Public contracts: automated
decision tools: procurement**
(Staff has a "watch" position on the bill
as amended July 3, 2024)

- Requires the Department of Technology (CDT) to adopt regulations establishing an automated decision tool (ADT) procurement standard, following CPPA's adoption of ADMT regs or enactment of comprehensive ADT legislation, whichever occurs sooner;
- Requires CDT to consult with CPPA in the development of these regulations; and
- Regulations must be consistent with CPPA's and with adopted ADT legislation.

CPPA-related AI Legislation

SB 893 (Padilla)

**California Artificial
Intelligence Research Hub**
(Staff has a "watch" position on the bill
as amended July 3, 2024)

- Requires Government Operations Agency (GovOps), Governor's Office of Business and Economic Development (GO-Biz), CPPA, and CDT to establish the California Artificial Intelligence Research Hub in GovOps.
- The Hub is a centralized facility to facilitate collaboration to advance AI research, including by increasing academic researchers' lawful access to government data.
- CPPA must review and approve for release any government data disclosed pursuant to the bill.

CPPA-related AI Legislation

SB 896 (Dodd)

Generative Artificial Intelligence Accountability Act (Staff has a "watch" position on the bill as amended July 3, 2024)

- Requires GovOps, CDT, Office of Data and Innovation (ODI), and CPPA to develop, and update as needed, a State of California Benefits and Risk of Generative Artificial Intelligence Report;
- Requires GovOps, Department of General Services (DGS), CDT, the California Cybersecurity Integration Center, and the CPPA to develop, and update as needed, general guidelines for public sector procurement of GenAI;
- Requires GovOps, CDT, ODI, and CPPA to develop, and update as needed, guidelines for agencies to analyze the impact that adopting a GenAI tool may have on vulnerable communities;
- Requires GovOps, CDT, and CPPA to make available trainings for state government worker use of state-approved GenAI tools; and
- Adds new state agency disclosure requirements regarding their use of GenAI to communicate.

CCPA-related Legislation

SB 1223 (Becker)

SB 1223 (Becker), Consumer Privacy: Sensitive Personal Information: Neural Data
(Staff recommends a support position on the bill as amended June 26, 2024)

Amends the CCPA:

- Adds “neural data” to the definition of sensitive personal information.
- “Neural data” is defined as “information that is generated by the measurement of the activity of a consumer's central or peripheral nervous system, and that is not inferred from nonneural information.”

CCPA-related AI Legislation

AB 1008

(Bauer-Kahan)

**California Consumer
Privacy Act of 2018:
Personal Information**

(Staff recommends a support position
on the bill as amended July 3, 2024)

Amends the CCPA:

- Underscores that personal information can exist in various formats, including physical, digital, and abstract digital formats.
- Abstract digital formats includes compressed or encrypted files, metadata, or artificial intelligence systems capable of outputting personal information.

Automated Decisionmaking Technology

AB 2930

(Bauer-Kahan)

Automated Decision Tools (staff recommends a "support if amended" position on the bill as amended July 3, 2024)

Requires deployers of automated decision tools (ADTs) to:

- Refrain from using ADTs in a manner that results in unlawful algorithmic discrimination;
- Perform impact assessments on ADTs;
- Provide notice to consumers; and
- If feasible, accommodate a request to not be subject to the ADT.

Requires developers of automated decision tools (ADTs) to:

- Provide deployers with a statement with respect to intended uses and documentation;
- Perform impact assessments on ADTs; and
- Not make available an ADT that poses a reasonable risk of algorithmic discrimination.