

**CALIFORNIA PRIVACY PROTECTION AGENCY**

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**Date:** July 11, 2024

**To:** California Privacy Protection Agency Board  
(Meeting of July 16, 2024)

**From:** Maureen Mahoney  
Deputy Director of Policy & Legislation  
California Privacy Protection Agency

**Subject:** **Agenda Item 7— Legislative Update and Possible Authorization for CPPA's Positions on Pending Legislation. SB 1223 (Becker), Consumer privacy: sensitive personal information: neural data, as amended June 26, 2024**

SB 1223 adds “neural data,” meaning “information that is generated by measuring the activity of a consumer’s central or peripheral nervous system, and that is not inferred from nonneural information,” as a category of sensitive personal information for the purposes of the California Consumer Privacy Act (CCPA), thereby giving this information additional protections under the law. Because it would increase protections with respect to this data, staff recommends a support position on the bill.

### **Summary**

The California Consumer Privacy Act (CCPA) includes specific notice requirements for businesses, grants new privacy rights to consumers, including the rights to access, delete, correct, and stop the sale and sharing of their personal information, and imposes corresponding obligations on businesses.

The CCPA also gives consumers the right to direct a business that collects sensitive personal information about the consumer to limit its use of their sensitive personal information to what is necessary to perform the services or provide the goods reasonably expected by an average consumer who requests such goods or services.

The CCPA defines “sensitive personal information” to mean personal information that reveals, among other things, a consumer’s precise geolocation, racial or ethnic origin, citizenship or immigration status, and genetic data.<sup>1</sup>

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<sup>1</sup> Civ. Code § 1798.140 (ae)

This bill amends the CCPA to define “sensitive personal information” to include a consumer’s neural data. Neural data is defined to mean “information that is generated by the measurement of the activity of an individual’s central or peripheral nervous systems, and that is not inferred from nonneural information.”

The Assembly Privacy bill analysis describes “neural information” as “inferred from the effects neurons have on their immediate surroundings[,]” and including “electrical activity, chemical signaling, or metabolic processing.” Per the analysis, “Nonneural information” includes “downstream physical effects of neuronal activity, such as pupil dilation, motor activity, and breathing rate.”<sup>2</sup> The most recent version of the bill excludes information inferred from nonneural information on the grounds that, according to the analysis, “all human behavior is ultimately the result of nervous system activity.”<sup>3</sup>

## Analysis

Businesses are already beginning to explore how to leverage the use of neural data into new technologies. For example, Neuralink is an implantable brain-computer interface that is being developed with the goal of enabling someone to use a computer solely by their brain activity, which could have benefits for those living with quadriplegia. It has already been implanted into one test patient.<sup>4</sup> Brain-computer interfaces developed by other businesses, such as Synchron and BlackRock Neurotech, also have been implanted into a handful of users.<sup>5</sup>

Because of the unique sensitivity of such data, in staff’s view, it is appropriate to afford it even greater protections under California law. As this technology develops, there is the risk that these measurements of brain activity can be used to draw inferences about the users’ emotions and state of mind. This bill seeks to give consumers even more control over this information.

Adopting this provision will also encourage consistency with other state laws. Similar legislation will go into effect in Colorado later this year. HB 1058 adds to the Colorado Privacy Act’s definition of sensitive data “biological data,” which means data “generated by the technological processing, measurement, or analysis of an individual’s biological, genetic, biochemical, physiological, or neural properties, compositions, or activities or of an individual’s body or bodily functions, which data

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<sup>2</sup> Assembly Privacy and Consumer Protection Analysis at 5-6 (June 30, 2024), [https://leginfo.legislature.ca.gov/faces/billAnalysisClient.xhtml?bill\\_id=202320240SB1223](https://leginfo.legislature.ca.gov/faces/billAnalysisClient.xhtml?bill_id=202320240SB1223).

<sup>3</sup> *Id.* at 6.

<sup>4</sup> Bill Chappell, *What to know about Elon Musk’s Neuralink, which put an implant into a human brain*, NPR (January 30, 2024), <https://www.npr.org/2024/01/30/1227850900/elon-musk-neuralink-implant-clinical-trial>.

<sup>5</sup> Cassandra Willyard, *Beyond Neuralink: Meet the other companies developing brain-computer interfaces*, MIT TECHNOLOGY REVIEW (April 19, 2024), <https://www.technologyreview.com/2024/04/19/1091505/companies-brain-computer-interfaces/>.

is used or intended to be used, singly or in combination with other personal data, for identification purposes. Biological data includes neural data.”<sup>6</sup>

## **Recommendation**

Support

### **Public support/opposition**

The following reflects registered support and opposition as of June 30, 2024, per the Assembly Privacy and Consumer Protection Committee analysis.<sup>7</sup>

#### Support

Neurorights Foundation (sponsor)  
American Academy of Neurology  
California Medical Association (CMA)  
Oakland Privacy  
Perk Advocacy

#### Oppose Unless Amended

California Chamber of Commerce  
Computer & Communications Industry Association  
TechNet-technology Network

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<sup>6</sup> Colorado HB 24-1058 (2024), <https://leg.colorado.gov/bills/hb24-1058>.

<sup>7</sup> Assembly Privacy and Consumer Protection Analysis, *supra* note 2, at 13-14.