

ASSEMBLY THIRD READING

AB 1490 (Chau)

As Amended May 6, 2021

Majority vote

SUMMARY

Requires members of the Privacy Protection Agency (PPA) board to be appointed from among Californians with expertise in the areas of privacy, technology and consumer rights.

Major Provisions**COMMENTS**

The California Privacy Protection Agency: In 2018, the Legislature enacted the California Consumer Protection Act (CCPA) (AB 375 (Chau), Chapter 55, Statutes of 2018), which gives consumers certain rights regarding their personal information (PI), such as: 1) the right to know what PI that is collected and sold about them; 2) the right to request the categories and specific pieces of PI the business collects about them; and 3) the right to opt-out of the sale of their PI, or opt-in in the case of minors under 16 years of age. The CCPA was the byproduct of compromises made between business interests on one side, and consumer and privacy interests on the other, to provide a legislative alternative to a ballot initiative on the same subject.

Last year, California voters passed Proposition 24, which, in addition to establishing certain new rights, renames the CCPA as the California Privacy Rights Act (CPRA). Among other things, Proposition 24 creates a PPA in California, vested with full administrative power, authority, and jurisdiction to implement and enforce the CCPA and presumably, the CPRA. The PPA is governed by a five-member board, with the chairperson and one member of the board appointed by the Governor, and one member each appointed by the Attorney General, Senate, and Assembly, respectively. (Civil Code (CC) Section 1798.199.10.). Board members will serve at the pleasure of their appointing authority but shall not serve longer than eight consecutive years. (CC Section 1798.199.20.) Proposition 24 permissively states that those appointments *should be* made from among Californians with expertise in the areas of privacy, technology, and consumer rights. This bill would now mandate that all three of those qualities are required in each board member. Staff notes that these appointments were first made in March of 2021, and each board member appears to have experience in consumer rights. Thus, this bill would simply maintain the status quo moving forward.

With this bill, the author seeks to ensure that the PPA is well equipped to benefit all Californians, not just those in particular sectors or of particular circumstances. Equitable implementation of consumer privacy policy requires an understanding of the unique factors affecting consumers, including those factors that can disproportionately affect certain demographics. Studies show that both public and private sector research often neglect to adequately consider large swaths of the consumer population, with minority communities in particular being under represented. As a result, emerging technologies and commercial and government programs can leave the state's most vulnerable residents in need of greater access to resources and protection unless this context is adequately addressed. As a matter of public policy, expertise in consumer rights is arguably vital for PPA board members to possess because experience in technology and privacy alone will not guarantee an understanding of how policies affect consumers based on varying factors such

as race, socioeconomics, age, or education level. Accordingly, this bill *requires* members of the board to have qualifications, experience, and skills in consumer rights, in addition to technology and privacy.

It should be noted that none of the qualifications required of appointees to the PPA are defined in Proposition 24, and defining "consumer rights" here might also require definitions explaining expertise in technology and privacy. In addition, this bill does not call for experience in consumer *advocacy*, but seems to instead require an understanding of consumer rights. Such experience could be obtained in a variety of manners, and not just by advocating on behalf of consumers. Arguably, a law professor who has studied consumer law would have the requisite knowledge and experience, as would an attorney who has advised corporations on how to comply with consumer laws. The bill does not require any particular experience nor a particular "political or social ideology."

Additionally, this bill's requirement that PPA board members possess experience consumer rights does not seem particularly onerous, as any potential appointee who has worked in public policy has likely worked on issues involving consumer rights. What this requirement will do is prevent an individual whose experience is limited to a highly specialized, marginally relevant niche from guiding decision-making that presumably requires broader contextual understanding and thorough consideration of existing consumer protection laws. For example, an X-ray technician with experience only working at a hospital likely meets the requirement of skills relating to both technology (i.e., medical device technology) and privacy (i.e., medical privacy protocols), but they may not understand either of these concepts as they apply to consumer technology and privacy rights. As a matter of public policy, this a limitation is seems appropriate given the vast responsibilities assigned to the PPA to protect consumers in California.

Bill is consistent with and furthers the purpose and intent of the CPRA: To protect Californians from any future legislative efforts to weaken statutory protections in the CPRA, Proposition 24 provided that the CPRA's contents may be amended by a majority vote of the Legislature only if the amendments are consistent with and further the purpose and intent of the CPRA, which is to further protect consumers' rights, including the constitutional right of privacy. (Ballot Pamphlet, Primary Election (November 3, 2020) text of Proposition 24, page 74.)

By ensuring that appointees to the board of the PPA have experience in consumer rights in addition to experience in privacy and technology, this bill would ensure that the board has particular expertise in *consumer* privacy, rather than medical privacy or more traditional privacy law (e.g., the tort for invasion of privacy). This change is entirely consistent with and furthers the stated purpose and intent of Proposition 24 to "protect consumers' rights, including the constitutional right of privacy." (Ballot Pamphlet, Primary Election (November 3, 2020) text of Proposition 24, pages 43 to 44.) Indeed, the entirety of Section 3 of Proposition 24, describing the initiative's purpose and intent, focuses solely on consumers' rights, with the exception of one paragraph that mentions employees.

Accordingly, this bill would make the requisite declaration that its provisions further the purposes and intent of the California Privacy Rights Act of 2020.

According to the Author

Existing law, the California Privacy Rights Act of 2020, approved by the voters as Proposition 24 at the November 3, 2020, statewide general election, establishes the California Privacy

Protection Agency and vests it with full administrative power, authority, and jurisdiction to implement and enforce the California Consumer Privacy Act of 2018 (CCPA).

Proposition 24 requires the agency to be governed by a five-member appointed board, and that those appointments *should* be made from among Californians with expertise in the areas of privacy, technology, and consumer rights. Proposition 24 then *requires* members of the board to have qualifications, experience, and skills, in only the areas of privacy and technology.

Expertise in consumer rights is vital experience for board members to possess, because experience in technology and privacy alone will not guarantee an understanding of how policies affect consumers based on varying factors such as socioeconomics, age, or education level.

This bill instead *mandates* that members of the board are appointed from among Californians with expertise in the areas of privacy, technology, and consumer rights.

This will ensure that an understanding of consumer rights is required when the Governor, the Legislature, and the Attorney General make appointments to the Privacy Protection Agency, which should ensure that the Agency benefits all Californians, not just those in particular sectors or of particular circumstances.

Arguments in Support

In support the Consumer Attorneys of California write:

AB 1490 clarifies an inconsistency in the requirements of the board. Proposition 24 says appointees should have expertise in privacy, technology, and consumer rights. However, then the Proposition goes on to require the members to have expertise in the areas of only privacy and technology. AB 1490 makes clear that expertise in consumer rights is also vital experience for board members to possess.

Arguments in Opposition

None on file.

FISCAL COMMENTS

According to the Assembly Appropriations Committee, this bill would not create any additional costs to the California Privacy Protection Agency.

VOTES

ASM PRIVACY AND CONSUMER PROTECTION: 9-0-2

YES: Chau, Bauer-Kahan, Bennett, Carrillo, Gabriel, Gallagher, Irwin, Lee, Wicks

ABS, ABST OR NV: Kiley, Cunningham

ASM APPROPRIATIONS: 12-0-4

YES: Lorena Gonzalez, Calderon, Carrillo, Chau, Gabriel, Eduardo Garcia, Levine, Quirk, Robert Rivas, Nazarian, Bloom, Kalra

ABS, ABST OR NV: Bigelow, Megan Dahle, Davies, Fong

UPDATED

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