

Date of Hearing: April 8, 2021

ASSEMBLY COMMITTEE ON PRIVACY AND CONSUMER PROTECTION

Ed Chau, Chair

AB 1490 (Chau) – As Introduced February 19, 2021

SUBJECT: California Privacy Rights Act of 2020: California Privacy Protection Agency

SUMMARY: This bill would require members of the Privacy Protection Agency board to have qualification, experience, and skills in consumer rights, and would declare that its provisions further the purposes and intent of the California Privacy Rights Act of 2020.

EXISTING LAW:

- 1) Establishes the California Consumer Privacy Act of 2018 (CCPA) and provides various rights to consumers pursuant to the act. Subject to various exemptions, a consumer has, among other things:
 - the right to know what personal information (PI) a business collects about consumers, as specified, including the categories of third parties with whom the business shares PI, and the specific pieces of information collected about the consumer;
 - the right to know what PI a business sells about consumers, as specified, including the categories of PI that the business sold about the consumer and the categories of third parties to whom the PI was sold, by category or categories of PI for each third party to whom the PI was sold;
 - the right to access the specific pieces of information a business has collected about the consumer;
 - the right to delete information that a business has collected from the consumer; and
 - the right to opt-out of the sale of the consumer's PI if over 16 years of age, and the right to opt-in, as specified, if the consumer is a minor; and,
 - the right to equal service and price, despite exercising any of these rights. (Civ. Code Sec. 1798.100 et seq.)
- 2) Among other things, the California Privacy Rights Act (CPRA), enacted by Proposition 24 in 2020, creates a Privacy Protection Agency (PPA) in California, vested with full administrative power, authority, and jurisdiction to implement and enforce the CCPA. The agency shall be governed by a five-member board, with the chairperson and one member appointed by the Governor, and the three remaining members appointed by the Attorney General, the Senate Rules Committee, and the Speaker of the Assembly. (Civ. Code Sec. 1798.199.10.)
- 3) Provides that the five appointments to the PPA board should be made from among Californians with expertise in the areas of privacy, technology, and consumer rights. (Civ. Code Sec. 1798.199.10.)

- 4) Requires PPA board members to have qualifications, experience, and skills, in particular in the areas of privacy and technology, required to perform the duties of the agency and exercise its powers. (Civ. Code Sec. 1798.199.15.)
- 5) Provides that the CPRA 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, as provided, which are to further protect consumers' rights, including the constitutional right of privacy. (Ballot Pamp., Primary Elec. (Nov. 3, 2020) text of Prop. 24, p. 74.)

FISCAL EFFECT: Unknown

COMMENTS:

- 1) **Purpose of this bill:** This bill seeks to protect Californians by ensuring that appointees to the Privacy Protection Agency have experience in consumer rights. This bill is author-sponsored.
- 2) **Author's statement:** According to the author:
- 3) **The California Privacy Protection Agency:** In 2018, the Legislature enacted the California Consumer Protection Act (CCPA) (AB 375, Chau, Ch. 55, Stats. 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 Privacy Protection Agency (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. (Civ. Code Sec. 1798.199.10.). Board members will serve at the pleasure of their appointing authority but shall not serve longer than eight consecutive years. (Civ. Code Sec. 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, socioeconomic status, 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. 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.

In opposition to this bill a coalition of organizations including the Internet Association, TechNet, and the California Chamber of Commerce not concern that this bill would:

place restrictive limitations on the candidates allowed to serve on the CPPA board. Proposition 24 requires that the CPPA board should bring expertise in the areas of privacy, technology, and consumer rights, and shall have qualifications, experience, and skills in the areas of privacy and technology. AB 1490 changes this to require experience in consumer rights. The five inaugural board appointments that were announced on March 17th collectively bring a balanced set of qualifications, expertise, and skillset. By requiring that members of the board additionally have qualification, experience, and skills in "consumer rights," which is undefined in AB 1490's new mandate, not all of the newly-appointed members would qualify for the CPPA board positions they occupy. Indeed, if the term "consumer rights" is interpreted to mean experience working specifically on behalf of consumers for specific organizations, groups, or political causes, many otherwise qualified candidates would be excluded from consideration. Narrowing the qualifications to members who belong to one political or social ideology in this way would hinder diversity and inclusion on the CPPA board.

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."

Staff further notes that this bill's requirement that PPA board members possess experience in 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.

- 4) **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 Pamp., Primary Elec. (Nov. 3, 2020) text of Prop. 24, p. 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 Pamp., Primary Elec. (Nov. 3, 2020) text of Prop. 24, pp. 43-44.) 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.

- 5) **Prior legislation:** AB 375 (Chau, Ch. 55, Stats. 2018) *See* Comment 3.

SB 1121 (Dodd, Ch. 735, Stats. 2018) ensured that a private right of action under the CCPA applies only to the CCPA’s data breach section on and not to any other section of the CCPA, as specified, corrected numerous drafting errors, made non-controversial clarifying amendments, and addressed several policy suggestions made by the AG in a preliminary clean-up bill to AB 375.

REGISTERED SUPPORT / OPPOSITION:

Support

Consumer Attorneys of California

Opposition

California Chamber of Commerce
California Retailers Association
Insights Association
Internet Association
Technet

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