

Recent CCPA Amendments Bring Some Certainty And Clarity For Employers, Healthcare Providers and “B2B” Interactions

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While the ink dried on the California Attorney General's final implementing regulations for the California Consumer Privacy Act (“CCPA”), lawmakers were already considering several changes to the statute itself. Here's a recap of key amendments that Governor Gavin Newsom recently signed into law, as well as those that failed to pass before the Legislature's August 31, 2020 deadline for making changes this year.

Passed and Signed Into Law

Extension of Employee and “B2B” Exemptions

Two of the CCPA's significant exemptions were due to expire on January 1, 2021. First, the CCPA largely exempts personal information of a business's employees and similar personnel. As a result, California employees generally cannot exercise their consumer rights (the right to access their personal information, delete their personal information, or opt-out of sales of their personal information) vis a vis their employer. Employers must simply provide notice to their employees of categories of personal information collected and the purposes for which that information is used. Second, the CCPA similarly exempts the personal information of individuals who interact with a business on behalf of another entity as part of a business-to-business (“B2B”) relationship. (Employees and B2B contacts, like other California consumers, still have a right to sue under the CCPA if their sensitive personal information is breached as a result of the employer/business failing to maintain reasonable security procedures and practices.)

Assembly Bill 1281, which the governor signed into law on September 29, 2020, extends both the employee and B2B exemptions for another year, until January 1, 2022. This amendment is contingent on California voters failing to approve the California Privacy Rights Act (“CPRA”), an initiative on the November 3 ballot that, as we examined in [a previous post](#), would enact several major changes to the CCPA. If the CPRA passes, it will also immediately extend the employee and B2B exemptions for two years, until January 1, 2023, overriding AB 1281. Other major changes in the CPRA would not take effect until January 1, 2023.

New Healthcare-Related Exemption

Assembly Bill 713 was also signed into law on September 25, 2020. Prior to the introduction of this bill, the CCPA only exempted clinical trial data and provided its own definition for “de-identified” information, which did not follow the definition set out by the Health Insurance Portability and Accountability Act (HIPAA). This imposed more obligations on medical research and healthcare businesses while also causing more confusion due to the different standards for de-identification.

The bill addresses many of these issues. Under AB 713, all medical and health information that (i) is derived from patient information that was originally collected, created, transmitted, or maintained by a HIPAA-regulated entity, and (ii) has been de-identified in accordance with the HIPAA, is exempt from the CCPA. This means

a broader exemption that extends beyond just clinical trial data as well as a harmonization of the different definitions for de-identification under the HIPAA's regulatory standard.

Rejected Or Expired

The following amendments have been rejected or expired:

- **AB 288:** This amendment would have allowed consumers the right to request that their social media data be permanently erased and not used for future sale after deactivation or deletion of their account.
- **AB 950:** This amendment would have required businesses to disclose the average monetary value of a consumer's personal information to the business.
- **AB 1138:** This amendment would have prohibited social media businesses from allowing children under 13 from creating an account without their parent or guardian's consent.
- **AB 1758:** This amendment would have fixed non-substantive errors.
- **AB 1760:** This amendment would have established a right to opt-in consent for sharing personal information.
- **SB 561:** This amendment would have expanded the private right of action for consumers to allow them to enforce their own rights for any violation of the CCPA.

Unresolved

The following amendments did not advance this year, but may be taken up again in a future legislative session:

- **AB 873:** This amendment would change the definition of "deidentified" and narrow the definition of "personal information."
- **AB 981:** This amendment would exempt insurance organizations from the CCPA by prohibiting consumers from requesting such businesses to delete or not sell their personal information if it was necessary to complete an insurance transaction requested by the consumer.
- **AB 1416:** This amendment would permit businesses to sell personal information of consumers who have opted-out of the sale for the sole purpose of detecting security incidents, protecting against illegal activity, or prosecuting those responsible for such activity. The amendment would also allow businesses to share information with government agencies for the sole purpose of carrying out a government program or complying with any rules or regulations.

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