

*2020 California Data Privacy & Security Legislation Year in Review***By: Justin T. Yedor, McGuireWoods LLP**

California continues to lead the nation in regulating the privacy and security of personal information. As has been widely reported, in November, voters approved Proposition 24, the California Privacy Rights and Enforcement Act of 2020 (the “CPRA”), which expands and modifies many parts of the California Consumer Privacy Act of 2018 (the “CCPA”). The California Legislature was also busy throughout 2020 in drafting new rules regulating data privacy and modifying existing rules. While most of the bills pending in 2020 failed to become law either because the Governor declined to sign them or because they never reached his desk, the sheer number of bills—at least 13 by our count—shows that data privacy and security issues continue to be key priorities for California legislators.

While addressing the details of all the privacy legislation proposed, considered, or passed in California in 2020 is beyond our newsletter’s scope, here is a summary of some of the highlights, starting with those that became law.

<i>Data Privacy and Security Laws Enacted in 2020</i>		
Citation	Title	Description
Prop. 24 CIV. CODE § 1798.100, <i>et seq.</i>	The California Privacy Rights and Enforcement Act of 2020	An update of the CCPA that expands consumer privacy rights, and includes a right of correction, limitations on the use of sensitive personal information, and an opt-out of sharing personal information for cross-context behavioral advertising, among other new or modified rights. The CPRA imposes additional requirements on businesses relating to collection notices, data retention and contracts, and creates a dedicated privacy enforcement agency. Please see the author’s blog post on the CPRA for more details.
AB 82 CIV. CODE § 1798.99.80, <i>et seq.</i> <i>See also</i> SB 108	Data Brokers’ Registry Fund	Establishes the Data Brokers’ Registry Fund to be used by the Department of Justice to offset the costs associated with operating the Data Brokers’ Registry website.

AB 713 CIV. CODE §§ 1798.130, 1798.146, 1798.148	CCPA Amendment for Certain Health Information	Better aligns CCPA with federal health privacy laws such as HIPAA, including by exempting from CCPA information deidentified pursuant to federal standards. Establishes new protections for deidentified information, including a ban on re-identification.
AB 1281 CIV. CODE § 1798.145	Extension of CCPA Employee and B2B Exemptions	Was to extend the CCPA’s exemptions for personal information collected from employees, independent contractors, job applicants, and business contacts until January 1, 2022, but the CPRA’s approval means AB 1281 will not go into effect. The CPRA instead extends these exemptions until January 1, 2023.

<i>Data Privacy & Security Related Bills that Failed to Become Law</i>			
Citation	Title	Status	Description
SB 980	California Genetic Information Privacy Act	Vetoed by Governor	Would have created a comprehensive set of rules governing direct-to-consumer genetic testing companies. Gov. Newsom stated that while he “agree[d] with the primary goals of this bill,” its “broad language risks unintended consequences” that could interfere with labs’ mandatory reporting of COVID-19 test outcomes. The Governor asked the California Health and Human Services Agency and the Department of Public Health to work with the Legislature to find a solution.
AB 1138	Social Media: The Parent’s Accountability and Child Protection Act	Vetoed by Governor	Would have required parental consent for children under the age of 13 to create social media accounts. In his veto message, Gov. Newsom stated that he believed the bill would cause “unnecessary confusion” due to overlap with the federal Children’s Online Privacy Protection Act (which may be enforced at both the federal and state levels).
AB 873	Amendment of CCPA Regulation of Deidentified Information	Died – Senate Judiciary Committee	Would have revised the CCPA’s definition of “deidentified” to apply to information that does not identify and is not reasonably linkable, directly or indirectly, to a consumer so long as the information cannot be re-identified and meets other requirements.

AB 981	Amendment of CCPA Regarding Insurance Transactions	Died – Senate Insurance Committee	Would have exempted from the CCPA’s right to delete and right to opt-out of the sale of personal information needed to complete an insurance transaction with the consumer.
AB 1395	Amendment of Information Privacy Rules for Smart Speaker Devices	Died – Senate Judiciary Committee	Would have required “prominent” notice to consumers during the initial setup of a smart speaker regarding the operation of voice-recognition features. Would have prohibited recordings or transcripts that qualify as personal information from being used for advertising purposes, sold, or shared without affirmative, written consent.
AB 1416	Amendment of CCPA Sale Rules	Died – Senate Judiciary Committee	Would have created exceptions to the CCPA when a business provides personal information to a government agency to carry out a government program and when a business sells the personal information of consumers for security-related purposes, even when a consumer has opted-out of sales.
AB 2261	Modification of CCPA Regarding Facial Recognition Technology	Died – Assembly Appropriations Committee	Would have created several rights and requirements specific to facial-recognition technology within the CCPA. For example, requiring facial-recognition providers to make available an interface allowing for testing for accuracy and bias. Would also have required specific and conspicuous notice wherever facial recognition is used and consent before an individual’s image is enrolled in a facial-recognition service.
AB 2280	Amendment of Confidentiality of Medical Information Act (“CMIA”)	Died – Senate Judiciary Committee	Would expand the CMIA to cover “personal health record information” collected via a commercial website “through a direct measurement of an individual’s mental or physical condition, or user input regarding an individual’s mental or physical condition.”
AB 3212	The Parent’s Accountability and Child Protection Act	Died – Assembly Privacy and Consumer Protection Committee	Would have required social media sites and apps to obtain opt-in consent for sales of minors’ personal information via a mechanism that is separate from the site’s or app’s general terms and conditions.