

JUNE 12, 2020

Initiative Statute: Amends Consumer Privacy Laws

PRESENTED TO:

Assembly Committee
on Privacy and Consumer Protection
Hon. Ed Chau, Chair



LEGISLATIVE ANALYST'S OFFICE

LAO Role in Initiative Process

▶ **Fiscal Analysis Prior to Signature Collection**

- State law requires our office to work with the Department of Finance to prepare a joint impartial fiscal analysis of each initiative before it can be circulated for signatures. State law requires that this analysis provide an estimate of the measure's fiscal impact on the state and local governments.
- A summary of the estimated fiscal impact is included on petitions that are circulated for signatures.

▶ **Analyses for Qualified Measures**

- State law requires our office to provide impartial analyses of all statewide ballot propositions for the statewide voter information guide, including a description of the measure and its fiscal effects.
- We are currently in the process of preparing these materials for the November 2020 ballot.



Background

▶ **Businesses Collect and Use Consumer Data**

- Businesses collect data about consumers from different sources, including (1) public sources, (2) consumers themselves, or (3) other businesses. Businesses can use this data in different ways, such as to improve customer service, make predictions about consumers' preferences, and provide services to other businesses.

▶ **Certain Businesses Must Meet Consumer Data Privacy Requirements**

- **Covered Businesses.** Certain businesses operating in California and collecting personal data (such as names or Internet activity) must meet consumer data privacy requirements. These businesses generally (1) earn more than \$25 million in annual revenue; (2) buy, sell, or share the personal data of 50,000 or more consumers, households, or devices annually; or (3) earn 50 percent or more of their annual revenues from selling personal data.
- **Specific Consumer Data Privacy Requirements.** Businesses generally must tell consumers if they collect or sell personal data and how they will use the data. In addition, businesses must also comply with various personal data privacy rights, such as allowing consumers to request free reports on personal data collected or sold by the business. Consumers can also tell businesses to delete or to not sell their personal data. Businesses must also not treat consumers who make use of their rights differently, such as charging different prices or providing different levels of service.
- **Penalties.** If a business fails to address a violation of these requirements within 30 days of being notified, the California Department of Justice (DOJ) can seek penalties of up to \$2,500 for each violation and up to \$7,500 for each intentional violation. Penalties are generally deposited into the state's Consumer Privacy Fund (CPF). The CPF must first be used to offset state trial court and DOJ costs related to certain consumer privacy laws before being used for any other state purpose.



Background

(Continued)

▶ **Businesses Must Meet Data Breach Requirements**

- Businesses must take reasonable steps to protect consumer data from breaches and inform people if their data was accessed in a data breach. Breaches of certain personal data can result in penalties of \$100 to \$750 per consumer per event or actual damages—whichever is greater.
- A consumer affected by the breach can seek these penalties if a business fails to address the breach within 30 days of being told to do so. DOJ may also seek penalties for data breaches. Some of these penalties could be deposited into the CPF.

▶ **DOJ Enforces Consumer Privacy and Data Breach Laws**

- DOJ enforces the state's consumer privacy and data breach laws by (1) developing regulations on how businesses and consumers can comply with these laws and (2) prosecuting crimes (such as identity theft) or filing lawsuits in state trial courts.



Proposal

► Changes Existing Consumer Data Privacy Laws

- ***Changes Which Businesses Must Meet Data Privacy Requirements.*** In some cases, certain businesses would no longer need to comply. For example, businesses that buy or sell the personal data of 50,000 to 100,000 consumers or households annually would no longer need to comply. In other cases, additional businesses may need to comply. For example, businesses that earn 50 percent or more of their annual revenues from sharing personal data will now need to comply with data privacy requirements.
- ***Expands Existing Consumer Data Privacy Requirements.*** For example, businesses must tell consumers if they share personal data.
- ***Eases Certain Consumer Data Privacy Requirements.*** Businesses would be able to not comply with certain consumer privacy requirements under specific conditions. For example, businesses could refuse to delete student grades.

► Provides New Consumer Privacy Rights

- These include directing businesses to (1) not share their personal data, (2) correct personal data, and (3) limit use of sensitive data (such as social security numbers and health data) to providing requested services or goods and fulfilling key business purposes.

► Changes Existing Penalties and Limits Use of Penalty Revenues

- For example, a penalty of \$7,500 for violations of minors' consumer privacy rights would be permitted. Additionally, businesses would be unable to avoid penalties by addressing violations within 30 days of being notified.



Proposal

(Continued)

- The measure limits the use of CPF revenues for purposes other than consumer privacy. After paying for state trial court and DOJ costs each year, 91 percent of remaining funds would be invested by the state with any interest or earnings sent to the state General Fund. The remaining 9 percent of funds would support public education on consumer privacy and fighting fraud resulting from data breaches.

► **Creates New State Agency**

- The measure creates the California Privacy Protection Agency (CPPA) to oversee and enforce the state's consumer privacy laws. CPPA responsibilities would include: investigating violations, assessing penalties, and developing regulations. Any CPPA decision related to a complaint against a business or a penalty could be reviewed by the state trial courts.
- The measure shifts some of DOJ's current responsibilities to CPPA, such as developing regulations. However, DOJ could still enforce consumer data privacy laws by prosecuting crimes and filing lawsuits in the state trial courts. DOJ investigation and enforcement actions would have priority over those of CPPA.



Major State and Local Fiscal Effects

► Increased State Costs for New Agency

- The measure provides CPPA with at least \$10 million annually (adjusted over time) from the General Fund to support the agency's operations. Depending on how the agency carries out its responsibilities, it is possible that CPPA's actual workload costs could be higher.

► Increased State DOJ and Court Costs

- DOJ workload could increase if it chooses to investigate and/or file more consumer data privacy cases. However, this could be partially or fully offset by reductions in workload from shifting responsibilities from DOJ to CPPA. Additionally, state court workload could increase if the measure results in more court cases being filed.
- The costs of the increased workload would depend on the number of investigations started and the types of cases filed in state courts. In total, increased state costs to DOJ and trial courts are not likely to exceed the low millions of dollars annually. Some or all of these costs would be paid by increased revenue from penalties collected from businesses violating consumer privacy laws.

► Potential Impacts on Tax Revenues

- This measure would have various impacts on business and consumers, which could then impact state and local tax revenues.
- On the one hand, tax revenues could decrease—such as if compliance costs reduce businesses profits. On the other hand, tax revenues could increase. For example, if businesses and consumers lose less money from fewer or less severe data breaches, tax revenues would increase if consumers then spend more on taxable items and/or businesses earn more revenue. The total net impact on the economy and state and local revenue is unknown.

