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California's Delete Act builds on previous landmark data privacy legislation

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The California Legislature again expanded privacy protections during the 2023 session, passing a bill that will require data brokers to delete all information they have collected about an individual, when requested — making California the first state to pass regulations for universal data deletion.

SB 362, also known as the Delete Act, was signed into law by Gov. Gavin Newsom on Oct. 10 and will go into effect on Jan. 1, 2024. It builds upon the landmark California Consumer Privacy Act, which originally passed in 2018 and was touted as the nation's first comprehensive consumer privacy law. Current law requires data brokers to delete information about a person collected directly from the individual, but they aren't necessarily required to delete all information about them that's been collected from other sources.

The updated law will require the California Privacy Protection Agency to create a system by 2026 that allows for individuals to direct data brokers to delete all personal information collected about them every 45 days. The bill faced opposition from the data broker and advertising industries, including one of the world's largest advertising firms, POLITICO reported.

The bill's author, Sen. Josh Becker (D-Menlo Park), said in a statement after Newsom signed the bill that the Delete Act "enshrines California as a leader in consumer privacy and we are determined to restore consumer control over their own personal data."

"Data brokers possess thousands of data points on each and every one of us, and they currently sell reproductive healthcare, geolocation, and purchasing data to the highest bidder," Becker added. "The DELETE Act protects our most sensitive information."

WHAT'S IN THE BILL?

This Pro Bill Analysis is based on the text of the bill as signed into law on Oct. 10.

SB 362 amends and adds several sections to the California Civil Code, beginning with Section 1798.99.80. The measure makes slight amendments to who could be exempted as a "data broker," defined as a business that knowingly collects and sells the personal information of a consumer with whom the business does not have a direct relationship. It exempts all "entities" covered under the Fair Credit Reporting Act and the Gramm-Leach-Bliley Act rather than referencing a "consumer reporting agency" or "financial institution," respectively (Sec. 1).

Funds collected from the law will be deposited into the "Data Brokers' Registry Fund," and by amending Section 1798.99.81, the measure shifts oversight of the fund to the California Privacy Protection Agency, CPPA. Meanwhile, the Legislature can appropriate the funds for actions related to the bill (Sec. 2).

Businesses that meet the definition of data broker will need to register with the CPPA rather than the Attorney General, which collected that information under the prior law. The CPPA — under amendments to Section 1798.99.82 — can determine a registration fee, which will be deposited into the fund (Sec. 3).

Data brokers will be required to provide the information to the CPPA (Sec. 3):

— A name, along with a physical address, email and website

— Metrics regarding how many requests it received to delete data

— Whether it collects the personal information of minors, precise geolocation or reproductive health care data

— Whether it has undergone an audit of its deletion mechanism, beginning in 2029

— Whether it is regulated by the federal Fair Credit Reporting Act, the Gramm-Leach-Bliley Act, the Insurance Information and Privacy Protection Act or the Confidentiality of Medical Information Act

Each broker will also need to provide the CPPA with a link to the page on its website where it describes how people can exercise their privacy rights (Sec. 3). The website should inform people how to:

— Delete or correct personal information

— Learn what personal information is being collected and shared and how to opt out

— Limit the use and disclosure of sensitive personal information

Data brokers who fail to register with the CPPA could face a $200 fine per day, as well as an additional amount based on fees due during the period it failed to register and expenses incurred by the CPPA during its investigation. Additionally, if a data broker doesn't comply with the measure, it faces a $200 daily fine per deletion request (Sec. 3).

The measure shifts duties for creating a website with information provided by data brokers and the deletion mechanism from the Attorney General to the CPPA, amending Section 1798.99.84 (Sec. 4).

Next, the law adds language to the Civil Code requiring data brokers to compile the number of requests it had to delete personal data and the amount of time it took to respond to those requests. It also should disclose the reason for denying any requests and specify the number of requests where deletion was not required (Sec. 5).

The bill will require the CPPA to establish a deletion mechanism to implement requests. Consumers will be able to seek the deletion of personal information that any data broker has about them through a single request. However, consumers can exclude specific data brokers from the request and will be given 45 days to change a request (Sec. 6).

The CPPA must maintain reasonable security procedures and practices to protect personal information. The system should allow data brokers to determine whether a request is verifiable and must be free of charge, available in different languages and accessible to consumers with disabilities. An authorized agent can also make a request on behalf of a consumer, and the consumer should be able to check on the status of their request.

Further, the system should also include a description of what kind of deletion is permitted, along with the process for submitting a request and examples of information that can be deleted.

Beginning in August 2026, data brokers will have 45 days to process and delete all personal information related to requests. If the data broker denies the request, they should process it as an opt-out of the sale or sharing of the consumer's personal information. Service providers or contractors associated with the data broker must also comply with a consumer's deletion request within 45 days (Sec. 6).

A data broker is not required to comply with a deletion request if the request falls within the parameters of exemptions under the California Consumer Privacy Act, as outlined in Section 1798.105 of the Civil Code. The provision states that a business — or its service provider or contractor — does not need to delete consumer's personal information if it is "reasonably necessary" in order for the business to (Sec. 6):

— Conduct transactions

— Ensure security and integrity

— Identify and repair errors

— Exercise free speech or another right protected by law

— Comply with a warrant request pursuant to the California Electronic Communications Privacy Act

— Take part in research, if the consumer has provided consent

— Enable internal use that is "reasonably aligned" with the consumer's expectations and the context in which the information was provided

— Comply with a legal obligation

Other exemptions included in the CCPA that would also apply to data brokers under this law are stated in Sections 1798.145 and 1798.146 of the Civil Code. These sections describe cooperation with law enforcement or government agencies and regulations regarding collecting medical information.

SB 362 explicitly states that personal information collected via exemptions can only be used for the purposes described — not for marketing.

After initially complying with a request to delete a consumer's personal information, data brokers must then continue deleting the information at least once every 45 days, as of August 2026. Additionally, the brokers will also not be allowed to sell or share new personal information from that consumer, unless requested.

Data brokers will be required to undergo an audit by an independent third party beginning in 2028 on their compliance with the law and submit any relevant materials for the audit to the CPPA (Sec. 6).

The law allows the CPPA to adopt regulations pursuant to the Administrative Procedure Act to administer the law. Any fees it establishes pursuant to the measure will be exempt from the act (Sec. 7).

Anyone alleging a violation related to the law has five years to bring forth administrative action (Sec. 8).

The bill concludes by noting the Legislature's finding that the law will further the purpose and intent of the California Privacy Rights Act of 2020 by protecting consumers' rights (Sec. 9).

WHO ARE THE POWER PLAYERS?

The bill was introduced by Sen. **Josh Becker** (D-Menlo Park) and primarily sponsored by **Privacy Rights Clearinghouse** and **Californians for Consumer Privacy** — the same group that backed Proposition 24, which passed in 2020 and expanded the CCPA. **Alastair Mactaggart,** a Bay Area real estate developer who led the charge to pass the original privacy law, is the founder and chair of Californians for Consumer Privacy.

Tom Kemp, an author and policy adviser who worked on the campaign for Prop 24, said in an interview with POLITICO that he helped propose the idea to Becker after working with the senator on another data broker-related measure last year.

Becker's press secretary, Charles Lawlor, told POLITICO that their office reached out to a wide range of stakeholders for a "highly technical and complex bill" that also included the **California Privacy Protection Agency**, Attorney General **Rob Bonta**, **Planned Parenthood** and the **Electronic Frontier Foundation**. Lawler added that Becker sought "expert advice from everywhere" throughout the legislative process.

Kemp said that the support from reproductive rights advocates, including **Planned Parenthood Affiliates of California** and **Access Reproductive Justice**, also played a key role in convincing lawmakers to pass the bill. In the wake of the Supreme Court's 2022 decision to overturn *Roe v. Wade*, the groups were concerned about data brokers compiling and sharing information about people accessing reproductive health services.

"It became not just a privacy bill, but then it became like, 'Oh, I can also think about this in the context of protecting reproductive rights,'" Kemp said.

Bonta's office sent Becker a letter of support, noting the burden on consumers to individually request deletion from all registered data brokers. Under the measure, purview of the data broker registry will shift from the Attorney General's office to the CCPA.

"Submitting individual deletion requests would be time-consuming and practically impossible for even the most dedicated consumers, but especially for those with limited access to technology or facing language barriers," Anthony Lew, deputy attorney general, wrote in the letter on Bonta's behalf.

However, the bill faced a fierce opposition campaign from the tech and business industry. POLITICO obtained emails showing that the **Interpublic Group**, an advertising firm, coordinated an effort to fight the bill along with groups like the **Consumer Data Industry Association**. A website launched to target the legislation argued that SB 362 was unnecessary, would lead to a rise in fraud and could harm small businesses.

The **California Chamber of Commerce** also opposed the bill, arguing in an analysis by the Senate Rules Committee that the measure is duplicative and undermines the services that data brokers provide to other businesses such as "anti-money laundering, sanction compliance, cybersecurity, and underwriting activities."

Amendments taken by Becker in the Assembly that allowed exceptions for data brokers to keep data related to security and fraud protection — and other exceptions permitted under the California Privacy Rights Act — helped soften concerns from some opponents, according to multiple people with knowledge of negotiations. The chamber, which sued earlier this year to delay implementation of the CPRA, did not elevate the bill on its "job killer" list.

WHAT'S HAPPENED SO FAR?

The bill — which was introduced in February — passed the Legislature along party lines on Sept. 14, and Newsom signed it on Oct. 10. It expands upon several previous data privacy laws, including:

— AB 375 (2018), which created the California Consumer Privacy Act

— AB 1202 (2020), which required data brokers to register with the state

— Proposition 24 (2020), a ballot initiative that created the California Privacy Rights Act and amended the California Consumer Privacy Act, and received support from 56 percent of voters

Last year, another data measure by Becker, SB 1059, got stuck in the suspense file in the Assembly Appropriations Committee. That bill, which was also championed by Kemp, included provisions that were ultimately approved in SB 362, such as transferring authority of the registry from the Attorney General to the CPPA.

SB 362 was modeled after the federal Delete Act proposal, which was reintroduced in the upper chamber in June by Sens. Bill Cassidy (R-La.) and Jon Ossoff (D-Ga.), and in the House by Reps. Lori Trahan (R-Mass.) and Chuck Edwards (R-N.C). Cassidy, Ossoff and Trahan had previously proposed the bill — unsuccessfully — in 2022, and Becker introduced the legislation at the state level after "we realized that there was no chance of it passing in Congress," according to Lawlor. The federal versions of the measure would direct the Federal Trade Commission to create an online dashboard for consumers to submit one-time data deletion requests and establish a "do not track" list.

The passage of the California law broke a streak of wins by the tech industry this year in watering down bills that sought to impose stronger privacy protections. Lobbyists immediately began calling for a federal privacy law after the California Consumer Privacy Act passed in 2018, citing a study by the Information Technology and Innovation Foundation — which often promotes policies that align with industry interests — that found a 50-state patchwork of rules could cost businesses $1 trillion over 10 years. Virginia, Colorado, Utah and Connecticut are among the states that have passed industry-friendly privacy laws.

WHAT'S NEXT?

Provisions of the bill will go into effect at different stages for the 530 data brokers currently registered with the state.

Data brokers will have to disclose their information to the CPPA starting in 2024, and the data deletion system will be ready by 2026, after which data brokers will have to begin taking in requests to erase data. Then, beginning in 2028, data brokers will have to undergo audits on their compliance with the law.

The law is a victory for data privacy advocates who have long expressed concerns regarding the role data brokers play in accessing personal information and selling it to third parties.

As SB 362 is implemented, it may impact smaller companies more than larger companies that have more resources to comply with the regulations, according to Julie Rubash, chief privacy officer at Sourcepoint, a privacy software company whose clients include data brokers. Rubash said that, as a result, smaller publishers could end up turning to subscription models to access their websites.

“It’s important to think about not just the consumer, but what this might do to the way we know the internet as a whole, and the ability to access information that we all have today,” Rubash said.

WHAT ARE SOME STORIES ON THE BILL?

Read POLITICO news on SB 362.

Alfred Ng and Brendan Bordelon contributed to this report.