

# Proposition 24

## Consumer Data Privacy

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### Purpose

Proposition 24 seeks to strengthen consumer right to privacy under state law. Proposition 24 would amend existing consumer data privacy laws, create new consumer privacy rights, and establish the California Privacy Protection Agency to implement and enforce these rights. Proposition 24 also would change the rules that govern which businesses are covered by the law.<sup>1</sup>

### Background

In 1972, voters amended the California Constitution to make privacy an “inalienable” right.<sup>2</sup> Over the years, California has developed the right to privacy in numerous ways.<sup>3</sup> Despite these protections, consumers’ personal information continues to be used, sold, and shared for various purposes, often without the consumer’s knowledge or permission.

In 2018, Allistair McTaggart, a Bay Area real estate developer, drafted a ballot initiative designed to strengthen consumer privacy rights in California. However, McTaggart decided to withdraw the initiative when the legislature agreed to adopt AB 375, the California Consumer Privacy Act (CCPA) of 2018.<sup>4</sup>

The CCPA expanded on previous law by further empowering consumers to understand and control how businesses use their personal information. Specifically, the CCPA requires businesses to notify consumers if they are collecting or selling personal data. It also grants consumers the right to:

- Request a business to provide a report on the information it has collected on them and the commercial purposes the information serves.
- Direct a business to delete their personal information.

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<sup>1</sup> Legislative Analyst’s Office, “Proposition 24,” <https://lao.ca.gov/ballot/2020/Prop24-110320.pdf>. See also, California Secretary of State, “Official Voter Information Guide, 2020 General Election: Proposition 24,” <https://vig.cdn.sos.ca.gov/2020/general/pdf/complete-vig.pdf>.)

<sup>2</sup> “California Consumer Privacy Act of 2018,” California Legislative Information, June 28, 2018, [https://leginfo.ca.gov/faces/billCompareClient.xhtml?bill\\_id=201720180AB375#:~:text=\(a\)%20In%201972%2C%20California,inalienable%E2%80%9D%20rights%20of%20all%20people.&text=Fundamental%20to%20this%20right%20of,sale%2C%20of%20their%20personal%20information](https://leginfo.ca.gov/faces/billCompareClient.xhtml?bill_id=201720180AB375#:~:text=(a)%20In%201972%2C%20California,inalienable%E2%80%9D%20rights%20of%20all%20people.&text=Fundamental%20to%20this%20right%20of,sale%2C%20of%20their%20personal%20information).

<sup>3</sup> Ballotpedia, “California Proposition 24, Consumer Personal Information Law and Agency Initiative,” [https://ballotpedia.org/California\\_Proposition\\_24,\\_Consumer\\_Personal\\_Information\\_Law\\_and\\_Agency\\_Initiative\\_\(2020\)](https://ballotpedia.org/California_Proposition_24,_Consumer_Personal_Information_Law_and_Agency_Initiative_(2020))

<sup>4</sup> Ibid.

- Direct a business not to sell their personal information.
- Sue a business that violates the law or experiences data breaches.

In addition, businesses cannot penalize customers who exercise these rights by charging them higher prices or giving them lower levels of service. However, businesses can provide customers financial or other incentives to allow for the collection and sale of their data.

The CCPA applies to for-profit companies that conduct business in California and meet any of the following qualifications:

- Earn annual gross revenues of over \$25 million;
- Buy, sell, or share the data of more than 50,000 consumers, households, or devices; or
- Derive 50 percent or more of their annual revenue from selling consumer data.<sup>5</sup>

The CCPA is considered the nation's strongest state-level consumer privacy law, but its effectiveness is still largely untested because the state only recently began to implement it.

This year, McTaggart has returned with a new initiative to strengthen CCPA and prevent the legislature from weakening privacy protections in the future. He contributed more than \$5 million to gather sufficient signatures to qualify Prop 24 for the ballot and to promote its passage.<sup>6</sup>

### Proposal

Proposition 24 would (1) change existing consumer data privacy laws, (2) create new consumer privacy rights, (3) increase penalties for violations, and (4) establish a new state agency to oversee and enforce consumer data privacy laws.<sup>7</sup>

(1) Proposition 24 would **amend the state's existing data privacy laws** in a number of ways.

It would modify the criteria determining which businesses are subject to these laws. It would narrow their reach by raising the threshold on qualifying businesses from those that buy, sell, or share personal data from 50,000 consumers, households, or devices to those that buy, sell, or share personal data from 100,000 consumers or households.

It also would change some existing data privacy requirements by adding some and removing others. For example, it would add a requirement that businesses tell consumers how long they will keep the consumer's personal data. At the same time, it would reduce some requirements, for example by allowing businesses to refuse to delete data, such as student grades, in specific circumstances.<sup>8</sup>

(2) Proposition 24 would **create new consumer privacy rights** by:

- Allowing consumers to direct businesses not to share their personal data.

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<sup>5</sup> AB 375 of 2018. [https://leginfo.ca.gov/faces/billNavClient.xhtml?bill\\_id=201720180AB375](https://leginfo.ca.gov/faces/billNavClient.xhtml?bill_id=201720180AB375).

<sup>6</sup> Legislative Analyst's Office, "Proposition 24"; Ballotpedia, "California Proposition 24."

<sup>7</sup> Legislative Analyst's Office, "Proposition 24."

<sup>8</sup> Ibid.

- Allowing consumers to direct businesses to correct their personal data.
  - Limiting business use of “sensitive” personal information, such as social security numbers, health data, or passwords.
- (3) Proposition 24 also would **establish new penalties for violations** and procedures for enforcing those penalties. For example, the measure would:
- Impose a penalty of up to \$7,500 against companies that violate consumer privacy rights of minors.
  - Expand penalties for data breaches.
  - Eliminate businesses’ ability to avoid penalties by addressing violations within 30 days.
- (4) Proposition 24 would **create the California Privacy Protection Agency (CPPA)**, which would oversee and enforce the state’s consumer privacy laws. CPPA responsibilities would include adopting regulations, assessing violations, and penalizing violations. The measure would provide \$10 million annually (adjusted over time) from the state General Fund for the CPPA.<sup>9</sup>

If approved, most of this proposition would go into effect in January 2023, while some portions, including the creation of a new state agency, would take effect immediately.

### Fiscal Impact

Proposition 24 would affect both state spending and local finances. The new agency would be allocated \$10 million annually. Additionally, approving Proposition 24 could result in an increased workload for the California Department of Justice if it investigates more violations and files more cases against companies in state courts. The additional workload would depend on the number of investigations and types of cases filed and could be partially or fully offset as responsibilities are shifted to the CPPA. Overall, these costs are estimated to be in the low millions of dollars annually. Some or all of these costs would be offset by monetary penalties paid by businesses that violate the law.<sup>10</sup>

### Supporters

Supporters include:

- Consumer Watchdog
- Consumer Action
- NAACP
- Common Sense
- State Senator Robert Hertzberg (D-Van Nuys)
- Former presidential candidate Andrew Yang (D)

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<sup>9</sup> Ibid.

<sup>10</sup> Ibid.

The Californians for Consumer Privacy PAC raised \$5.4 million in support of the measure as of September 19, 2020. The measure’s author, Allistair Mactaggart, contributed nearly all of those funds.<sup>11</sup>

### Arguments of Supporters

Supporters argue Proposition 24 would:

- Strengthen existing privacy laws and make them harder to amend.
- Help protect minors and their data online.
- Hold corporations accountable through new enforceable mechanisms and penalties.

### Opponents

Opponents include:

- ACLU of California
- Consumer Federation of California
- Public Citizen
- Media Alliance
- California Republican Party

### Arguments of Opponents

Opponents argue Proposition 24 would:

- Encourage “pay for privacy” schemes.
- Empower tech giants to sell individual information and give them opportunities to negotiate with the new agency.
- Shift the burden on consumers to ensure that their data is protected.

### Conclusion

A YES vote on Proposition 24 would expand existing consumer data privacy rights, require businesses to meet new requirements, and establish a new agency to oversee and enforce these laws.

A NO vote would keep existing data privacy laws in place and maintain the California Department of Justice’s responsibility for enforcing these laws.

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<sup>11</sup>Ballotpedia, “California Proposition 24.”