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THIRD READING

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Bill No: AB 335  
Author: Boerner Horvath (D), et al.  
Amended: 9/3/21 in Senate  
Vote: 21

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SENATE JUDICIARY COMMITTEE: 11-0, 6/8/21

AYES: Umberg, Borgeas, Caballero, Durazo, Gonzalez, Hertzberg, Jones, Laird, Stern, Wieckowski, Wiener

SENATE APPROPRIATIONS COMMITTEE: Senate Rule 28.8

ASSEMBLY FLOOR: 74-1, 5/3/21 - See last page for vote

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**SUBJECT:** California Consumer Privacy Act of 2018: vessel information

**SOURCE:** National Marine Manufacturers Association

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**DIGEST:** This bill exempts from the California Consumer Privacy Act's (CCPA) right to opt out certain information related to vessels that is retained or shared in connection with a vessel warranty or recall, as specified.

*Senate Floor Amendments of 9/3/21 add chaptering out amendments.*

**ANALYSIS:**

Existing law:

- 1) Establishes the CCPA, which grants consumers certain rights with regard to their personal information, including enhanced notice, access, and disclosure; the right to deletion; the right to restrict the sale of information; and protection from discrimination for exercising these rights. It places attendant obligations on businesses to respect those rights. (Civ. Code § 1798.100 et seq.)
- 2) Provides a consumer the right, at any time, to direct a business that sells personal information about the consumer to third parties not to sell the consumer's personal information. It requires such a business to provide notice

to consumers, as specified, that this information may be sold and that consumers have the right to opt out of the sale of their personal information. (Civ. Code § 1798.120.)

- 3) Provides various exemptions from the obligations imposed by the CCPA, including where they would restrict a business' ability to comply with federal, state, or local laws. (Civ. Code § 1798.145.)
- 4) Establishes the California Privacy Rights Act of 2020 (CPRA), which amends the CCPA and permits further amendment by a majority vote of each house of the Legislature and the signature of the Governor provided such amendments are consistent with and further the purpose and intent of this act as set forth therein. (Civ. Code § 798.100 et seq.; Proposition 24 (2020).)
- 5) Defines "vessel" to include every description of a watercraft or other artificial contrivance used or capable of being used as a means of transportation on water, except a seaplane on the water or a watercraft specifically designed to operate on a permanently fixed course, the movement of which is restricted to a fixed track or arm to which the watercraft is attached or by which the watercraft is controlled. (Harb. & Nav. Code § 651(aa).)
- 6) Defines "manufacturer" as any person engaged in any of the following:
  - a) the manufacture, construction, or assembly of boats or associated equipment;
  - b) the manufacture or construction of components for boats and associated equipment to be sold for subsequent assembly; or
  - c) the importation into this state for sale of boats, associated equipment, or components thereof. (Harb. & Nav. Code § 651(l).)

This bill:

- 1) Provides that Section 1798.120 shall not apply to vessel information or ownership information retained or shared between a vessel dealer and the vessel's manufacturer, as defined in Section 651 of the Harbors and Navigation Code, if the vessel information or ownership information is shared for the purpose of effectuating, or in anticipation of effectuating, a vessel repair covered by a vessel warranty or a recall conducted pursuant to Section 4310 of Title 46 of the United States Code.

- 2) Provides that the vessel dealer or vessel manufacturer with which the vessel information or ownership information is shared does not sell, share, or use that information for any other purpose.
- 3) Defines “vessel dealer” as a person who is engaged, wholly or in part, in the business of selling or offering for sale, buying or taking in trade for the purpose of resale, or exchanging, any vessel or vessels, as defined in Section 651 of the Harbors and Navigation Code, and receives or expects to receive money, profit, or any other thing of value.
- 4) Defines “vessel information” as the hull identification number, model, year, month and year of production, and information describing any of the following equipment as shipped, transferred, or sold from the place of manufacture, including all attached parts and accessories:
  - a) an inboard or outboard engine;
  - b) a stern drive unit; and
  - c) an inflatable personal flotation device, as provided.
- 5) Defines “ownership information” as the name or names of the registered owner or owners and the contact information for the owner or owners.

## **Comments**

### *Executive Summary*

The CCPA grants consumers certain rights with regard to their personal information, including enhanced notice, access, and disclosure; the right to deletion; the right to restrict the sale of information; and protection from discrimination for exercising these rights. (Civ. Code § 1798.100 et seq.) It places attendant obligations on businesses to respect those rights. In the November 3, 2020, election, voters approved Proposition 24, which established the CPRA. The CPRA amends the CCPA, limits further amendment, and creates the California Privacy Protection Agency.

The author and sponsor assert that there is ambiguity about the ability to retain or share consumer information between dealers and manufacturers of various watercraft and other water-based transportation vessels. This bill addresses their concern by exempting from the CCPA right to opt out vessel information or ownership information retained or shared between a vessel dealer and the vessel’s manufacturer, if the information is shared for the purpose of effectuating or in anticipation of effectuating a vessel repair covered by a vessel warranty or a recall.

Opposition argues, among other things, that this bill runs afoul of Proposition 24's restriction on further amendment.

According to the author:

Currently, boat and marine engine dealers send a buyer's contact information to the product's manufacturer. Manufacturers use this information to verify warranty eligibility and to conduct safety recalls. Dealers use these data to verify the products' ownership and eligibility at the point of repair.

AB 335 will provide manufacturers the legal certainty they need to collect and retain this information and to use it to perform safety recalls while benefiting consumers who purchase these products with this limited use of data.

*Exemptions for personal information related to warranties and recalls*

AB 1146 (Berman, Chapter 751, Statutes of 2019) provided that a business is not required to comply with a consumer's request to delete the consumer's personal information if it is necessary to maintain the consumer's personal information in order to fulfill the terms of a written warranty or product recall conducted in accordance with federal law. It further provided that the right to opt out did not apply to vehicle or ownership information retained or shared between a new motor vehicle dealer and the manufacturer if the information is shared for the purpose of effectuating, or in anticipation of effectuating, a vehicle repair covered by a vehicle warranty or a recall conducted pursuant federal law. The parties are prohibited from selling, sharing, or using that information for any other purpose.

This bill provides that Section 1798.120, the section granting consumers the right to opt out of the sale (or sharing) of their personal information, shall not apply to vessel or ownership information retained or shared between a vessel dealer and manufacturer, as defined, if the vessel information or ownership information is shared for the purpose of effectuating, or in anticipation of effectuating, a vessel repair covered by a vessel warranty or a recall. The bill prohibits the vessel dealer or vessel manufacturer with which the relevant vessel information or ownership information is shared from selling, sharing, or using that information for any other purpose.

The sponsors of this bill assert that this is a federal mandate and the CCPA must be amended to accommodate these communications. However, it should be noted that the CCPA already has broad exemptions. It specifically provides that the obligations it imposes on businesses cannot restrict a business' ability to comply with federal law. (Civ. Code § 1798.145(a)(1).)

*Is this a permissible amendment of the CCPA pursuant to the CPRA?*

Section 25 of the CPRA, passed by voters in November 2020, requires any amendments thereto to be “consistent with and further the purpose and intent of this act as set forth in Section 3.” Section 3 declares that “it is the purpose and intent of the people of the State of California to further protect consumers’ rights, including the constitutional right of privacy.” It then lays out a series of guiding principles.

This bill simply states: “The Legislature finds and declares that this act furthers the purposes and intent of The California Privacy Rights Act of 2020.” The author argues that ultimately this bill effectuates a change to law that promotes consumer protections and therefore furthers the purpose and intent of the CPRA. As seen below, consumer and privacy groups in opposition believe this is an unnecessary and impermissible amendment of the CCPA.

At root, this bill is limiting a right granted to consumers by the CCPA. Given the strength of the language in the CPRA restricting further amendment, this change to the CCPA arguably runs afoul of it and may be the subject of future litigation for the reasons articulated by those in opposition. Generally, adding provisions that facilitate critical safety measures that protect consumers, as recalls and repairs of defective products surely are, certainly furthers consumer protection. However, as pointed out by the opposition, consumers already have the choice to allow such communications to take place, and in fact that is the default. What this bill does is remove the ability of consumers to decide that they no longer wish for their personal information to be retained and shared in this manner.

NOTE: For a more thorough discussion of this bill, see the Senate Judiciary Committee analysis of the bill.

**FISCAL EFFECT:** Appropriation: No    Fiscal Com.: Yes    Local: No

**SUPPORT:** (Verified 9/2/21)

National Marine Manufacturers Association (source)

Action Boats

Aktion Parks

Bass Cat

Bayliner

BoatUS

Boston Whaler

Brunswick Boat Group

Bryant Boats  
California Association of Harbor Masters and Port Captains  
Centurion Boats  
Chaparral Boats  
Chris-Craft  
Correct Craft  
Crestliner  
Cypress Cay  
Everglades Boats  
Formula Boats  
Harris Boats  
Heyday Boats  
Lowe Boats  
Lund Boats  
Marine Recreation Association  
Mercury Marine  
Nautique Boats  
Parker Boats  
Pleasure Craft Engine Group  
Princess Yachts America  
Ranger Tugs  
Recreational Boaters of California  
Regulator Marine  
Sailfish Boats/Seminole Marine Group  
Sea Ray  
SeaArk  
Skeeter Boats  
Sportsman Boats  
Supreme Boats  
Suzuki Marine  
Thunder Jet  
Tiara Yachts  
Volvo Penta  
Water Craft Group  
Watershed Boats  
Yamaha  
Yar Craft

**OPPOSITION:** (Verified 9/2/21)

ACLU California Action

Common Sense  
Consumer Federation of California  
Privacy Rights Clearinghouse

**ARGUMENTS IN SUPPORT:** The National Marine Manufacturers Association, the sponsor of this bill, explains the need for and the operation of the bill: “AB 335 uses the exact same language and framework as the Berman bill. Just as with cars, federal law requires recreational boat and engine manufacturers to be able to contact boat and marine engine owners regarding warranty and product safety recalls and to provide the instructions they need to have their boat or engine repaired without charge.

“Currently, boat and marine engine dealers send a buyer’s contact information to the product’s manufacturer. Manufacturers use this information to verify warranty eligibility and to conduct safety recalls. Dealers use these data to verify the products’ ownership and eligibility at the point of repair. In order for the process to work, the vessel manufacturer must know who bought the vessel or engine that is subject to a recall.

“AB 335 would ensure that California’s landmark consumer privacy law would allow manufacturers of recreational boats and marine engines to receive and retain specific contact information for buyers of its products, for the limited and exclusive use of conducting product safety recalls and warranty verification as required by federal law. By allowing this limited sharing and retention of information, the [L]egislature will ensure that consumers receive important and timely safety recall information and can easily confirm warranty eligibility.”

**ARGUMENTS IN OPPOSITION:** Writing in opposition, a coalition of groups argue this bill is an impermissible amendment of the CPRA: “The fundamental purpose and intent of Proposition 24 was to protect consumer privacy and to stop further attempts to weaken privacy law in California in the future. This is evident from the text of Proposition 24 and direct statements from the authors, including those in the ballot summaries distributed to the electorate ahead of the 2020 election. Indeed, the authors of Proposition 24 published thirty-seven separate press releases between June 25 and November 4, 2020, and each and every one stressed that the initiative would prevent amendments to weaken privacy protections in the future. Any amending legislation therefore must strengthen consumer privacy and better protect consumers.

“The exemption sought here by the boat industry would not enhance consumer privacy. Rather, it would eliminate privacy rights that California consumers currently have to stop the sale of their personal information. A new exception to California’s privacy law is not necessary for interested Californians to get warranty information for their vessels. The CCPA in no way prevents consumers from receiving warranty information they desire. Rather, the CCPA enables consumers who want to stop the sale of their personal information between businesses--for boat warranties or any other purpose--from doing so. This bill would take that right away.

“California voters have spoken, and they intended to make it harder to pass laws that erode their newly gained CCPA protections. The purposes and intent of Proposition 24 were not ambiguous. The amendment restrictions embedded in Proposition 24 were intended to prevent precisely this situation. SB 335 does not further the purposes and intent of Proposition 24, and does not strengthen consumer privacy.”

ASSEMBLY FLOOR: 74-1, 5/3/21

AYES: Aguiar-Curry, Arambula, Bauer-Kahan, Bennett, Berman, Bigelow, Bloom, Boerner Horvath, Burke, Calderon, Carrillo, Cervantes, Chau, Chen, Chiu, Choi, Cooley, Cooper, Cunningham, Megan Dahle, Daly, Davies, Flora, Fong, Frazier, Gabriel, Gallagher, Cristina Garcia, Eduardo Garcia, Gipson, Lorena Gonzalez, Gray, Grayson, Holden, Irwin, Jones-Sawyer, Kalra, Kiley, Lackey, Lee, Levine, Low, Maienschein, Mathis, Mayes, McCarty, Medina, Mullin, Nazarian, Nguyen, O'Donnell, Patterson, Petrie-Norris, Quirk-Silva, Ramos, Reyes, Luz Rivas, Robert Rivas, Rodriguez, Blanca Rubio, Salas, Santiago, Seyarto, Smith, Ting, Valladares, Villapudua, Voepel, Waldron, Ward, Akilah Weber, Wicks, Wood, Rendon

NOES: Stone

NO VOTE RECORDED: Friedman, Muratsuchi, Quirk

Prepared by: Christian Kurpiewski / JUD. / (916) 651-4113  
9/7/21 17:36:39

\*\*\*\* END \*\*\*\*