

AMENDED IN ASSEMBLY APRIL 18, 2024

CALIFORNIA LEGISLATURE—2023–24 REGULAR SESSION

ASSEMBLY BILL

No. 3204

Introduced by Assembly Member Bauer-Kahan

February 16, 2024

An act to add Title 1.81.8 (commencing with Section 1798.321) to Part 4 of Division 3 of the Civil Code, relating to data digesters.

LEGISLATIVE COUNSEL’S DIGEST

AB 3204, as amended, Bauer-Kahan. ~~Data-digesters.~~ *Digesters Registration Act.*

The California Consumer Privacy Act of 2018 (CCPA) grants a consumer various rights with respect to personal information that is collected or sold by a business. The CCPA defines various terms for these purposes. The California Privacy Rights Act of 2020 (CPRA), approved by the voters as Proposition 24 at the November 3, 2020, statewide general election, amended, added to, and reenacted the CCPA and establishes the California Privacy Protection Agency (agency) and vests the agency with full administrative power, authority, and jurisdiction to enforce the CCPA.

Existing law requires data brokers to register with the agency, pay a registration fee, and provide certain information, prescribes penalties for failure to register as required by these provisions, requires the agency to create a page on its internet website where this registration information is accessible to the public, and creates a fund known as the “Data Brokers’ Registry Fund” that may be used by the agency, upon appropriation, to, among other things, offset the reasonable costs of establishing and maintaining the informational website and the costs incurred by the state courts and the agency in connection with enforcing

these provisions, as specified. Existing law defines various terms for these purposes, including by incorporating specified definitions provided in the CPRA.

This bill would require data digesters to register with the agency, pay a registration fee, and provide specified information, prescribe penalties for a failure to register as required by these provisions, require the agency to create a page on its internet website where this registration information is accessible to the public, and create a fund known as the “Data Digester Registry Fund” to be administered by the agency to be available for expenditure by the agency, upon appropriation, to offset the reasonable costs of establishing and maintaining the informational website and the costs incurred by the state courts and the agency in connection with enforcing these provisions, as specified. The bill would define “~~data digester~~” *various terms* and incorporate specified definitions provided in the CPRA for these purposes.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Title 1.81.8 (commencing with Section 1798.321)
2 is added to Part 4 of Division 3 of the Civil Code, to read:

3
4 TITLE 1.81.8. DATA DIGESTERS REGISTRATION ACT

5
6 1798.321. For purposes of this title:

7 (a) The definitions in Section 1798.140 shall apply unless
8 otherwise specified in this title.

9 (b) “Artificial intelligence” means an engineered or
10 machine-based system that varies in its level of autonomy and that
11 can, for explicit or implicit objectives, infer from the input it
12 receives how to generate outputs that can influence physical or
13 virtual environments.

14 (c) “Covered entity” means an organization or enterprise,
15 including, but not limited to, a proprietorship, partnership, firm,
16 business trust, joint venture, syndicate, corporation, association,
17 or nonprofit.

18 ~~(b)~~
19 (d) “Data digester” means a ~~business that uses personal~~
20 ~~information to train artificial intelligence.~~ covered entity that

1 *designs, codes, or produces an artificial intelligence system or*
2 *service, or that substantially modifies an existing artificial*
3 *intelligence system or service, by training the system or service*
4 *on the personal data of 1,000 or more individuals or households.*

5 (e) *“Train” or “training” means exposing artificial intelligence*
6 *to data in order to alter the relationship between inputs and*
7 *outputs.*

8 (f) *“Personal data” means any of the following:*

9 (1) *Personal data.*

10 (2) *Sensitive personal information.*

11 (3) *Information related to a consumer’s receipt of sensitive*
12 *services.*

13 (g) *“Personal information” has the same meaning as defined*
14 *in paragraph (1) of subdivision (v) of Section 1798.140.*

15 (h) *“Sensitive services” has the same meaning as defined in*
16 *Section 56.05.*

17 1798.322. A fund to be known as the “Data Digester Registry
18 Fund” is hereby created within the State Treasury. The fund shall
19 be administered by the California Privacy Protection Agency. All
20 moneys collected or received by the California Privacy Protection
21 Agency under this title shall be deposited into the Data Digester
22 Registry Fund, to be available for expenditure by the California
23 Privacy Protection Agency, upon appropriation by the Legislature,
24 to offset all of the following costs:

25 (a) The reasonable costs of establishing and maintaining the
26 informational internet website described in ~~Section 1798.324.~~
27 *1798.325.*

28 (b) The costs incurred by the state courts and the California
29 Privacy Protection Agency in connection with enforcing this title,
30 as specified in Section 1798.323.

31 1798.323. (a) On or before January 31 following each year in
32 which a ~~business~~ *covered entity* meets the definition of data digester
33 as provided in this title, the ~~business~~ *data digester* shall register
34 with the California Privacy Protection Agency pursuant to the
35 requirements of this section.

36 (b) In registering with the California Privacy Protection Agency,
37 as described in subdivision (a), a data digester shall do all of the
38 following:

39 (1) Pay a registration fee in an amount determined by the
40 California Privacy Protection Agency, not to exceed the reasonable

1 costs of establishing and maintaining the informational internet
2 website described in Section ~~1798.324~~. 1798.325.

3 (2) Provide the following information:

4 (A) The name of the data digester and its primary physical,
5 email, and internet website addresses.

6 (B) Each category of personal information that the data digester
7 ~~uses~~ *has used* to train artificial intelligence, identified by reference
8 to the applicable subparagraph enumerated under paragraph (1)
9 of subdivision (v) of Section 1798.140.

10 (C) Each category of sensitive personal information that the
11 data digester ~~uses~~ *has used* to train artificial intelligence, identified
12 by reference to the applicable paragraph and subparagraph
13 enumerated under subdivision (ae) of Section 1798.140.

14 (D) Each category of information related to consumers' receipt
15 of sensitive ~~services, as that term is defined in Section 56.05~~;
16 ~~services~~ that the data digester ~~uses~~ *has used* to train artificial
17 intelligence, identified by reference to the specific category of
18 sensitive service enumerated in ~~the definition~~. *subdivision (s) of*
19 *Section 56.05*.

20 (E) Whether the data digester ~~trains~~ *has trained* artificial
21 intelligence using the personal ~~information~~ *data* of minors.

22 (F) Whether and to what extent the data digester or any of its
23 subsidiaries is regulated by any of the following:

24 (i) The federal Fair Credit Reporting Act (15 U.S.C. Sec. 1681
25 et seq.).

26 (ii) The federal Gramm-Leach-Bliley Act (Public Law 106-102)
27 and implementing regulations.

28 (iii) The federal Driver's Privacy Protection Act of 1994 (18
29 U.S.C. Sec. 2721 et seq.).

30 (iv) The Insurance Information and Privacy Protection Act
31 (Article 6.6 (commencing with Section 791) of Chapter 1 of Part
32 2 of Division 1 of the Insurance Code).

33 (v) The Confidentiality of Medical Information Act (Part 2.6
34 (commencing with Section 56) of Division 1) or the privacy,
35 security, and breach notification rules issued by the United States
36 Department of Health and Human Services, Parts 160 and 164 of
37 Title 45 of the Code of Federal Regulations, established pursuant
38 to the federal Health Insurance Portability and Accountability Act
39 of 1996 (Public Law 104-191).

1 (vi) The privacy of pupil records pursuant to Article 5
2 (commencing with Section 49073) of Chapter 6.5 of Part 27 of
3 Division 4 of Title 2 of the Education Code.

4 (G) Any additional information or explanation the data digester
5 chooses to provide concerning its artificial intelligence training
6 practices.

7 (c) If the California Privacy Protection Agency reasonably
8 believes that a data digester has failed to register within 90 days
9 of the date on which it is required to register under this section,
10 the California Privacy Protection Agency shall provide notice of
11 failure to the data digester and post a copy of the notice on the
12 informational internet website described in Section ~~1798.324.~~
13 ~~1798.325.~~

14 (d) A data digester that fails to register as required by this section
15 is liable for administrative fines and costs in an administrative
16 action brought by the California Privacy Protection Agency as
17 follows:

18 (1) Administrative fines according to the following schedule:

19 (A) An administrative fine of two hundred dollars (\$200) for
20 each day the data digester fails to register as required by this section
21 prior to the date on which notice is posted on the informational
22 internet website pursuant to subdivision (c).

23 (B) An administrative fine of five thousand dollars (\$5,000) for
24 each day the data digester fails to register as required by this section
25 beginning the 15th day after notice is posted on the informational
26 internet website pursuant to subdivision (c).

27 (2) An amount equal to the fees that were due during the period
28 it failed to register.

29 (3) Expenses incurred by the California Privacy Protection
30 Agency in the investigation and administration of the action as the
31 court deems appropriate.

32 (e) Any penalties, fines, fees, and expenses recovered in an
33 action prosecuted under subdivision (d) shall be deposited in the
34 Data Digester Registry Fund, created within the State Treasury
35 pursuant to Section 1798.322, with the intent that they be used to
36 fully offset costs incurred by the state courts and the California
37 Privacy Protection Agency in connection with this title.

38 *1798.324. If a covered entity sells, leases, or otherwise*
39 *transfers an artificial intelligence system or service to a third*
40 *party, and the system or service can be substantially modified*

1 *through training on personal data, the covered entity shall inform*
2 *the recipient in writing of the responsibilities under this title.*

3 ~~1798.324.~~

4 1798.325. The California Privacy Protection Agency shall
5 create a page on its internet website where the registration
6 information provided by data digesters described in paragraph (2)
7 of subdivision (b) of Section 1798.323 shall be accessible to the
8 public.

9 ~~1798.325.~~

10 1798.326. (a) Except as provided in subdivision (b), the
11 California Privacy Protection Agency may adopt regulations
12 pursuant to the Administrative Procedure Act (Chapter 3.5
13 (commencing with Section 11340) of Part 1 of Division 3 of Title
14 2 of the Government Code) to implement and administer this title.

15 (b) Notwithstanding subdivision (a), any regulation adopted by
16 the California Privacy Protection Agency to establish fees
17 authorized by this title shall be exempt from the Administrative
18 Procedure Act (Chapter 3.5 (commencing with Section 11340) of
19 Part 1 of Division 3 of Title 2 of the Government Code).

20 ~~1798.326.~~

21 1798.327. This title shall not be construed to supersede or
22 interfere with the operation of the California Consumer Privacy
23 Act of 2018 (Title 1.81.5 (commencing with Section 1798.100)).

24 ~~1798.327.~~

25 1798.328. An administrative action brought pursuant to this
26 title alleging a violation of any of the provisions of this title shall
27 not be commenced more than five years after the date on which
28 the violation occurred.

29 1798.329. *This title shall be operative February 1, 2025.*