

CALIFORNIANS FOR CONSUMER PRIVACY

January 14, 2020

Members, California State Senate
California State Capitol
Sacramento, CA 95814

Dear Senator:

As you may have read in the news, Californians for Consumer Privacy (CCP) is sponsoring a ballot measure to build on the Legislature's success in enacting AB 375 (Chau/2018), the California Consumer Privacy Act of 2018 (CCPA). The adoption of the CCPA broke ground nationally, and the CCPA now represents the strongest privacy law in the United States, continuing the history of bold policy action by the California Legislature.

The new initiative, the California Privacy Rights Act (CPRA), received its title and summary from the Attorney General on 12/17/19. We have been gathering signatures since then, with the goal of qualifying the measure for the November 2020 ballot.

In case you have not seen it, here is the Title & Summary we received on 12/17/19:

AMENDS CONSUMER PRIVACY LAWS. INITIATIVE STATUTE. Permits consumers to: (1) prevent businesses from sharing personal information; (2) correct inaccurate personal information; and (3) limit businesses' use of "sensitive personal information"—such as precise geolocation; race; ethnicity; religion; genetic data; union membership; private communications; and certain sexual orientation, health, and biometric information. Changes criteria for which businesses must comply with these laws. Prohibits businesses' retention of personal information for longer than reasonably necessary. Triples maximum penalties for violations concerning consumers under age 16. Establishes California Privacy Protection Agency to enforce and implement consumer privacy laws, and impose administrative fines. Requires adoption of substantive regulations. Summary of estimate by Legislative Analyst and Director of Finance of fiscal impact on state and local governments: Increased annual state costs of roughly \$10 million for a new state agency to monitor compliance and enforcement of consumer privacy laws. Increased state costs, potentially reaching the low millions of dollars annually, from increased workload to DOJ and the state courts, some or all of which would be offset by penalty revenues. Unknown impact on state and local tax revenues due to economic effects resulting from new requirements on businesses to protect consumer information.

As you know, the CCPA went into effect on 1/1/20. The Attorney General's office is continuing to work on a regulatory package to implement the law. Enforcement of most of the law was delayed until July 1, 2020 pursuant to SB 1121 (Dodd/2018), but enforcement for negligent data breaches via a private right of action, went into effect January 1st.

Many people told me that now was not the time to do another initiative, given that CCPA is brand new, and the Attorney General has not yet published final regulations. They also suggest I must think something is terribly wrong with CCPA, to spend so much time and money trying for another ballot measure.

My response is simply this: now is the *perfect* time for another initiative. The CCPA is a great law, but that doesn't mean we can't make it better.

Moreover, our initiative process provided 49 days to solicit and receive feedback from various stakeholders, after the initial version was submitted for title and summary. During this period, we worked hard to solicit feedback from as many stakeholders as possible, and received robust, thoughtful comments from dozens of stakeholders, including comments from various industry groups, individual businesses, law enforcement, labor, consumer advocates, academics and other experts. While we were not able to make changes to respond to every comment provided to us, we did make significant changes and amended the CPRA following the public comment period. Many of these changes will strengthen privacy rights, facilitate compliance, and improve the experience for the consumer when exercising their rights.

The goal of this letter is to describe key areas where the CPRA will expand and strengthen privacy rights for Californians in more detail.

CPRA:

- 1) **Would establish a new category of sensitive personal information (SPI), and restrict its USE to a few very limited uses.** SPI includes: (1) *information that reveals (A) a consumer's social security, driver's license, state identification card, or passport number; (B) a consumer's account log-in, financial account, debit card, or credit card number in combination with any required security or access code, password, or credentials allowing access to an account; (C) a consumer's precise geolocation; (D) a consumer's racial or ethnic origin, religious or philosophical beliefs, or union membership; (E) the contents of a consumer's mail, email and text messages, unless the business is the intended recipient of the communication; (F) a consumer's genetic data; and (2)(A) the processing of biometric information for the purpose of uniquely identifying a consumer; (B) personal information collected and analyzed concerning a consumer's health; or (C) personal information collected and analyzed concerning a consumer's sex life or sexual orientation.*
- 2) **Would allow consumers to prohibit businesses from tracking them for advertising based on their precise geolocation, i.e. to a location within roughly 250 acres.**
 - a. This will ensure no more tracking whether consumers are in rehab, in a cancer clinic, at the gym (for how long), at a fast food restaurant (how often), sleeping in a separate part of the house from their partner (how recently), etc., all with the intention of monetizing that most intimate data that makes up people's lives.
- 3) **Would add email and password, to the list of items covered by the 'negligent data breach' section (which is subject to a private right of action).** This is important as so much identity theft starts with email.
- 4) **Would make it much harder to weaken privacy in California in the future.** This is important because in recent months there have been calls to alter the CCPA in various ways, including to weaken its consumer protections. Passage of this initiative will ensure the voters adopt these strong privacy rights and protect the work of the Legislature and Governor from external attacks on this groundbreaking law. **It should also be noted that the measure was written to give the Legislature the most important ongoing policy role.** The CPRA would give the Legislature the power to amend via a simple majority (though any amendment would have to be in furtherance of the purpose and intent of the measure, which is to enhance consumer privacy). This would allow

the Legislature to modify the law as necessary to adjust to the future, all with the goal of further protecting consumer privacy.

- 5) **Would establish the California Privacy Protection Agency** to protect privacy for Californians. This agency would issue regulations, respond to consumers, and give guidance to businesses. Most importantly, it would be well-funded (\$10M annual budget from the general fund), allowing the regulator to operate in a nimble manner in this ever-evolving technological and policy area.
 - a. **This funding should equate to roughly the same number of privacy enforcement staff as the FTC has to police *the entire country* (the FTC has 40 privacy professionals).**
 - b. We think effective enforcement is key to any effective privacy law.

In conclusion: when I began this journey in 2015, I was cautious, and did not make CCPA as far-reaching as I could have, since I was concerned about winning an election fight against the largest, most profitable industry in history.

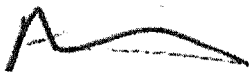
Now, if the CPRA is adopted by voters in California, and I firmly believe it will be, it will send a strong signal of support for consumer privacy laws across the nation. Moreover, it would assist in pushing back on efforts to preempt the CCPA in Congress, where many have called for a national privacy law that is significantly weaker than the current CCPA. As many of you know, that would be a significant change from precedent on privacy laws adopted by Congress. Measures such as the Health Insurance Portability and Accountability Act (HIPAA—health data) and the Gramm- Leach-Bliley Act (GLBA—financial data) established a national policy ‘floor’ and permit states to strengthen those laws as they see fit.

I did not make the decision to pursue another measure lightly but do believe firmly that the time is right to pursue this measure at the ballot and further strengthen privacy rights for Californians.

Finally, please see the attached document that highlights the consumer rights that would be authorized under the CPRA and compares them to the rights afforded by the CCPA and European Union’s General Data Protection Regulation (GDPR).

I look forward to working with you in 2020 and beyond. Should you have any questions please do not hesitate to contact me at amactaggart@caprivacy.org, or my campaign team at nvelazquez@caprivacy.org.

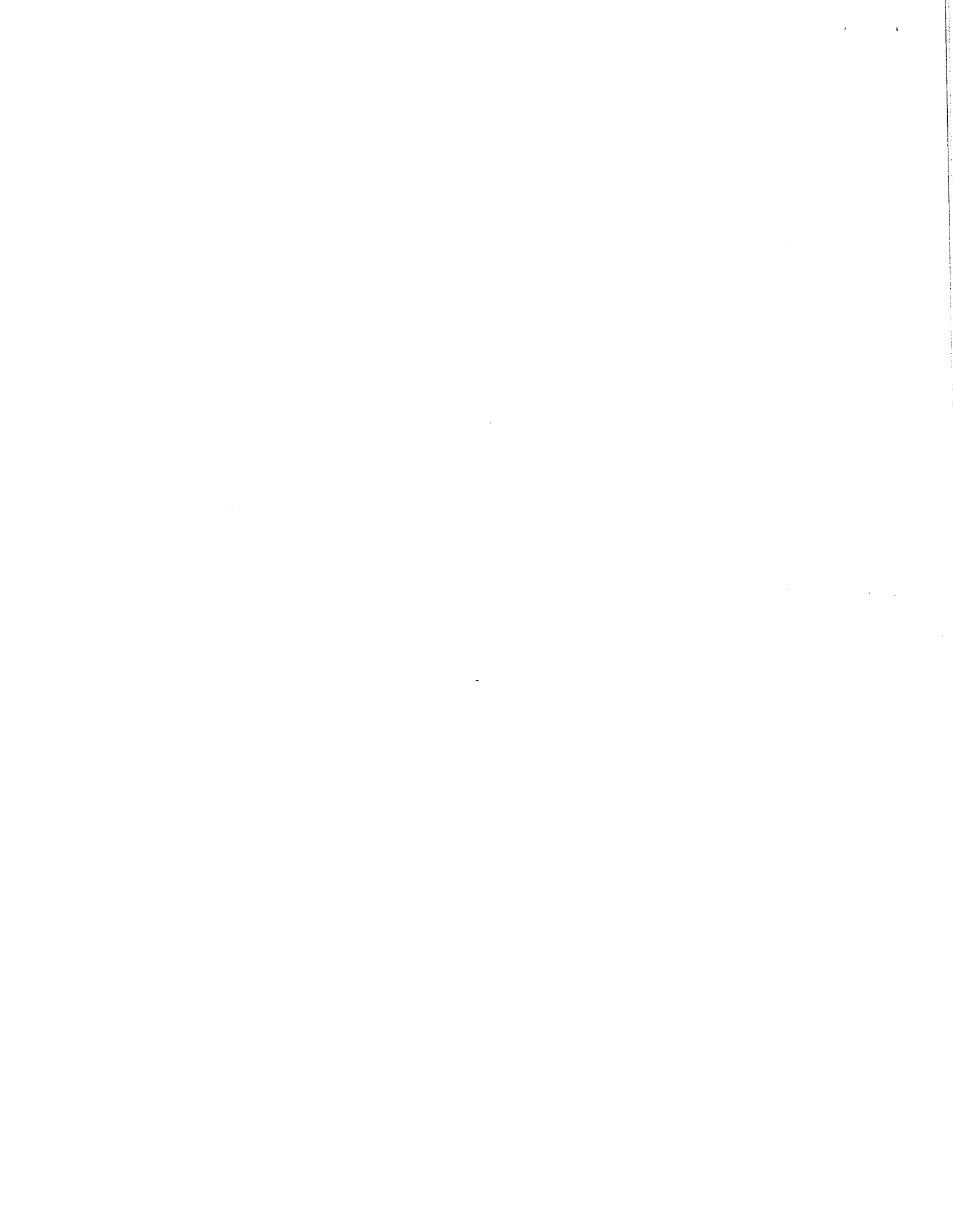
Sincerely,



Alastair Mactaggart
Board Chair, Californians for Consumer Privacy

Ad paid for by Californians for Consumer Privacy
Committee major funding from:
Alastair Mactaggart

Funding Details at <http://www.fppc.ca.gov/transparency/top-contributors.html>



Comparison of the California Privacy Rights Act to European GDPR and existing CCPA

Components	EU Privacy Law (GDPR)	CCPA	CPRA
Right to Know What Information a Business has Collected About You			
Right to Say No to Sale of Your Info			
Right to Delete Your Information			
Data Security: Businesses Required to Keep Your Info Safe			
Data Portability: Right to Access Your Information in Portable Format			
Special Protection for Minors			
Requires Easy "Do Not Sell My Info Button" for Consumers			
Provides Ability to Browse with No Pop-ups or Sale of Your Information			
Penalties if Email Plus Password Stolen due to Negligence			
Right to Restrict Use of Your Sensitive Personal Information			

Components	EU Privacy Law (GDPR)	CCPA	CPRA
Right to Correct Your Data			
Storage Limitation: Right to Prevent Companies from Storing Info Longer than Necessary			
Data Minimization: Right to Prevent Companies from Collecting More Info than Necessary			
Right to Opt Out of Advertisers Using Precise Geolocation (< than 1/3 mile)			
Ability to Override Privacy in Emergencies (Threat of Injury/Death to a Consumer)			
Provides Transparency around "Profiling" and "Automated Decision Making"			
Establishes Dedicated Data Protection Agency to Protect Consumers			
Restrictions on Onward Transfer to Protect Your Personal Information			
Requires High Risk Data Processors to Perform Regular Cybersecurity Audits			
Requires High Risk Data Processors to Perform Regular Risk Assessments			
Appoints Chief Auditor with Power to Audit Businesses' Data Practices			
Protects California Privacy Law from being Weakened in Legislature	N/A		