



March 2, 2022

The Honorable Sydney Kamlager, Chair
Senate Budget and Fiscal Review Subcommittee #4
On State Administration and General Government
1020 N Street, Room 502
Sacramento, CA 95814

Re: California Privacy Protection Agency Budget 1703

Dear Chair Kamlager,

Consumers Reports¹ writes to respectfully oppose requests to extend the California Privacy Protection Agency's ("CPPA" or "Agency") statutory deadline to adopt privacy regulations pursuant to Proposition 24, the California Privacy Rights Act (CPRA). California voters approved CPRA in November 2020 to strengthen the California Consumer Privacy Act (CCPA), a first-in-the-nation privacy law that gives consumers the right of access, delete, and stop the sale of their personal information, consistent with their right to privacy under the California Constitution. Several business groups have asked for legislative amendments to push back the regulatory deadline from July 1, 2022, to January 1, 2023, and to delay the enforcement date from July 1, 2023, to January 1, 2024.² But to delay implementation and enforcement would inappropriately deny consumers key privacy protections to which they are entitled.

¹ Founded in 1936, Consumer Reports (CR) is an independent, nonprofit and nonpartisan organization that works with consumers to create a fair and just marketplace. Known for its rigorous testing and ratings of products, CR advocates for laws and company practices that put consumers first. CR is dedicated to amplifying the voices of consumers to promote safety, digital rights, financial fairness, and sustainability. The organization surveys millions of Americans every year, reports extensively on the challenges and opportunities for today's consumers, and provides ad-free content and tools to 6 million members across the U.S.

² Letter from Julian Canete, CEO President/CEO California Hispanic Chambers of Commerce and Edwin A. Lombard III, President/CEO ELM Strategies, to The Honorable Sydney Kamlager, Chair, Senate Budget and Fiscal Review Subcommittee #4 (Feb. 25, 2022); Julian Canete and Edwin A. Lombard III, *Commentary: New Privacy Protection Agency needs more time to develop regulations*, CalMatters (March 1, 2022), <https://calmatters.org/commentary/2022/03/new-privacy-protection-agency-needs-more-time-to-develop-regulations/>.

The Executive Director of the CPPA has noted that the Agency is not likely to meet the July 1, 2022 statutory deadline for issuing regulations,³ but lawmakers should not remove rights for consumers by delaying the requirement for businesses to comply with the entire measure. Such a move would eliminate even those provisions that would not be affected by the rulemaking. Other alternatives discussed by the agency include (1) an emergency rulemaking and (2) delaying enforcement, at the agency's discretion, on provisions that would be affected by the rulemaking.⁴ Lawmakers should allow the Agency to recommend the best course of action to ensure that consumer privacy is protected, consistent with its mandate.

CPRA extends to consumers important privacy protections that are not dependent on a rulemaking to go into effect. For example, it adds a data security requirement to all of the personal information covered by the measure — which is particularly important in light of rampant data breaches.⁵ It clarifies that businesses must allow consumers to opt out of the sharing of their personal information for cross-context targeted advertising. And it covers information that can be used to access online accounts by the private right of action in the event of a negligent data breach. Consumers shouldn't be forced to give up those protections simply because the agency will need more time to complete their rulemaking process.

This latest request to delay enforcement is one of a series of efforts from many businesses to avoid compliance with the California privacy law. In March 2020, dozens of trade associations asked the AG to delay enforcement of the landmark online privacy law until the following year.⁶ In addition, many businesses have sought to avoid complying with the CCPA's opt out of sale with respect to targeted advertising since the measure went into effect in January 2020.⁷ And industry pushed for the introduction of over a dozen bills to weaken the CCPA in the 2019 legislative session, before the measure even went into effect.⁸

Any delay in enforcement will disproportionately benefit the biggest companies. Proposition 24 doubled the threshold for the privacy law, from businesses that sell the personal information of 50,000 consumers, households, or devices per year to those that sell the data of 100,000

³ Joseph Duball, *CPRA regulations delayed past July 1 deadline, expected Q3 or Q4*, IAPP (Feb. 23, 2022), <https://iapp.org/news/a/cpra-regulations-delayed-past-july-1-deadline-expected-q3-or-q4/>.

⁴ Lydia De La Torre, Christopher Thompson, Rulemaking Process Subcommittee presentation (Nov. 15, 2021), https://cppa.ca.gov/meetings/materials/20211115_item6.pdf.

⁵ Bree Fowler, *Data breaches break record in 2021*, CNET (Jan. 24, 2022), <https://www.cnet.com/tech/services-and-software/record-number-of-data-breaches-reported-in-2021-new-report-says/>.

⁶ Letter from Association of National Advertisers et al., Re: Request for Temporary Forbearance from CCPA Enforcement (March 17, 2020), <https://www.law360.com/articles/1255181/attachments/0>.

⁷ Maureen Mahoney, *Many companies are not taking the California Consumer Privacy Act seriously—the attorney general needs to act*, Digital Lab at Consumer Reports (Jan. 9, 2020), <https://medium.com/cr-digital-lab/companies-are-not-taking-the-california-consumer-privacy-act-seriously-dcb1d06128bb>

⁸ Joint news release: Privacy groups praise CA legislators for upholding privacy law against industry pressure (Sept. 13, 2019), https://advocacy.consumerreports.org/press_release/joint-news-release-privacy-groups-praise-ca-legislators-for-upholding-privacy-law-against-industry-pressure/.

consumers or households. As a result, the new law targets the businesses that have grown into giant behemoths by freely monetizing consumer data, typically without consumers' knowledge or consent. Since most small businesses are exempted from the measure, an enforcement delay will further exacerbate the imbalance between the biggest and smallest businesses.

It is more critical than ever for policymakers to ensure fairness, safety, and transparency for consumers in the marketplace. Now that more Americans are working from home⁹ and relying on tech companies for crucial communications, the Agency needs to be empowered to ensure that appropriate safeguards are in place. Consumers shouldn't have to give up their constitutional rights to engage in essential activities. Further, such a delay likely would be inconsistent with CPRA, which sought to counter industry efforts to weaken the law by permitting legislative amendments only if they are in keeping with the intent of the measure.

We urge you to resist this initiative to weaken the new privacy law at the expense of consumer privacy. We look forward to working with you to ensure that consumers are able to enjoy the privacy rights entitled to them under California law.

Sincerely,

Maureen Mahoney
Senior Policy Analyst
Consumer Reports

cc: Members, Senate Budget and Fiscal Review Subcommittee #4
Board Members, California Privacy Protection Agency

⁹ Lydia Saad and Ben Wigert, Ph.D., *Remote Work Persisting and Trending Permanent*, Gallup (Oct. 13, 2021), <https://news.gallup.com/poll/355907/remote-work-persisting-trending-permanent.aspx>.