

**CALIFORNIA PRIVACY PROTECTION AGENCY**

2101 Arena Blvd  
Sacramento, CA 95834  
www.cppa.ca.gov



June 13, 2022

The Honorable Jan Schakowsky, Chair  
The Honorable Gus Bilrakis, Ranking Member  
Committee on Energy and Commerce  
Consumer Protection & Commerce Subcommittee  
United States House of Representatives  
Washington, DC 20510

Subject: California Pre-emption in the American Data Privacy and Protection Act

Dear Chair Schakowsky and Ranking Member Bilrakis,

Thank you for your work on consumer privacy, as demonstrated by Tuesday's hearing on "Protecting America's Consumers: Bipartisan Legislation to Strengthen Data Privacy and Security" and the release of the American Data Privacy and Protection Act Discussion Draft (ADPPA). As the Executive Director of the California Privacy Protection Agency (CPPA), I write to clarify how the ADPPA affects Californians and our agency. Californians currently have important rights under the California Consumer Privacy Act (CCPA) as amended by the California Privacy Rights Act (CPRA), which would be taken away by this measure, and would not be replaced with an equivalent federal right.

The ADPPA as written, similar to Consumer Online Privacy Rights Act proposal of June 8, 2022, proposes to pre-empt nearly all provisions of the California Privacy Protection Act, and would significantly weaken the privacy protections that 40 million Californians—one in eight Americans—currently enjoy. ADPPA seeks to replace stronger provisions with weaker ones. It proposes to subject the global opt out of the transfer of information to third parties to a feasibility study, and limit protections over deceptive interfaces that subvert consumer intent, known as "dark patterns." It also seeks to remove the existing "floor" on the CCPA: importantly, the CCPA as amended by the California Privacy Rights Act cannot be weakened. Finally, in seeking to pre-empt our expert agency, it would significantly reduce privacy enforcement capabilities. These points will be explored in more detail below.

In 2018, the California State Legislature unanimously approved the CCPA, which grants Californians certain inalienable rights with respect to consumer privacy, including the right to access, delete, and stop the sale of personal information. These are rights that Californians have enjoyed since the measure went into effect on January 1, 2020, and that have been actively enforced by the Attorney General since July 1, 2020.<sup>1</sup> In November 2020, California voters approved Proposition 24, the California Privacy Rights Act, which expands and further enshrines these protections, and adds new ones, including a data minimization provision, a rulemaking to provide an opt out of automated decisionmaking, and the ability to limit the use of sensitive information. These provisions will become operative on January 1, 2023.

---

<sup>1</sup> State of California Department of Justice, CCPA Enforcement Case Examples, <https://oag.ca.gov/privacy/ccpa/enforcement>.

The initiative also created and funded an expert agency, the California Privacy Protection Agency, with a primary focus on privacy and data protection. The initiative enlists our agency to issue implementing regulations and, along with the Attorney General, to enforce these rights. Not only does the CPPA provide administrative enforcement under California law, but it has audit authority as well. Privacy-specific staffing is projected to match what currently exists at the Federal Trade Commission.

ADPPA would strip Californians of these rights and protections, as it proposes to pre-empt the California Consumer Privacy Act, § 1798.100 et seq., except for a single provision, § 1798.150, the private right of action in the event of a negligent data breach. The bill also proposes to pre-empt our agency's enforcement. In the current draft, the Agency likely would not be able to enforce the federal bill with respect to violations involving Californians—which would compromise consumer privacy further, given the CPPA's unique capabilities in this area.

Because the CPRA was passed by initiative, and the initiative holds that amendments to the act be in furtherance of the privacy intent of the measure, California enjoys a floor of privacy protections that cannot be weakened. This provision allows the California State Legislature, with the Governor's approval, to amend the law to strengthen privacy protections, but does not allow the measure to be weakened by future amendments that are incompatible with the purpose and intent of the act: to strengthen consumer privacy. However, ADPPA proposes to eliminate those protections.

Additionally, while ADPPA includes concepts similar to those in the CCPA as amended by CPRA, the federal proposal as written seeks to reduce privacy protections that Californians currently enjoy, including a prohibition on manipulative “dark pattern” interfaces in opting out of data sales and a requirement that businesses honor browser privacy signals as an opt out of sale. These are just two examples of ways in which ADPPA is weaker. These weaker provisions, together with the elimination of the CCPA's “floor” on privacy protections and the CPPA's enforcement capacity, would lower the bar on privacy protections for Californians.

While we appreciate the work that has been done on ADPPA, it is important that no rights are taken away. I would be pleased to connect with you and any of your colleagues to discuss California's approach and the impact of this measure on California and the California Privacy Protection Agency.

Respectfully submitted,

Ashkan Soltani  
Executive Director  
California Privacy Protection Agency

cc: Members, Consumer Protection & Commerce Subcommittee

The Honorable Nancy Pelosi  
The Honorable Anna G. Eshoo  
The Honorable Doris O. Matsui  
The Honorable Raul Ruiz  
The Honorable Scott H. Peters  
The Honorable Nanette Diaz Barragan