



June 13, 2023

TO: Members, Senate Judiciary Committee

**SUBJECT: AB 1546 (GABRIEL) CALIFORNIA CONSUMER PRIVACY ACT OF 2018: STATUTE OF LIMITATIONS  
OPPOSE – AS INTRODUCED FEBRUARY 17, 2023  
SCHEDULED FOR HEARING – JUNE 20, 2023**

The undersigned organizations must respectfully **OPPOSE AB 1546 (Gabriel)**, as introduced February 17, 2023, which would provide the Attorney General (AG) with up to *five times* as many years to bring a civil enforcement action under the California Consumer Privacy Act (CCPA) than it has under existing law. Specifically, as amended by Proposition 24 in 2020, the CCPA requires the California Privacy Protection Agency (Agency) to commence any administrative enforcement action no more than five years after the alleged violation occurred. Seeking parity, this bill would now also authorize the AG to bring an action to enforce the CCPA within five years after the cause of action accrued. Simply put, parity is not a sufficient reason to drastically extend the applicable limitations period for the AG to commence civil CCPA enforcement actions, particularly when businesses have not been afforded the necessary tools (i.e., implementing regulations) and opportunity to successfully come into full compliance with this complex, and often vague, law. We are extremely concerned that the bill is not only ill-timed, but it is also wholly unnecessary given that the AG has been successfully enforcing the 2018 iteration of the CCPA for years and has not provided any examples that might indicate a serious problem warranting legislation.

**AB 1546 focuses on extended enforcement by the AG, when we should be focused on achieving compliance.**

Our members care deeply about data privacy and compliance with California's data privacy law. Businesses have spent thousands of hours and in some cases tens of millions of dollars to come into compliance with the CCPA (AB 375, Chau, Chapter 55, Statutes of 2018) and the amendments made to that law by the California Privacy Rights Act (CPRA; approved by voters in Proposition 24 of 2020). The law is complex and often vague to begin with, and compliance has only been made exponentially more difficult due the Agency's significant delay in issuing comprehensive, final implementing regulations.<sup>1</sup>

That delay has significantly cut down the one-year window that businesses would have had to come into full compliance before Proposition 24 enforcement actions could commence. Now, businesses are in an untenable position of having to defend themselves for possible violations of provisions that they did not have adequate time to implement, or for which there are no regulations in place at all. Yet, instead of

<sup>1</sup> The Agency commenced formal rulemaking on some, but not all, of the identified rulemaking topics on July 8, 2022, clearly missing their voter approved July 1, 2022, deadline for issuing final regulations. There are a host of other issues on which regulations are still due, and for which formal rulemaking has yet to even commence.

addressing issues that continue to undermine the ability of businesses to achieve compliance, **AB 1546** prioritizes giving the AG additional time to bring claims for potential violations. There is potential to achieve greater consumer benefits by dedicating limited resources toward overseeing the prompt adoption of regulations and giving businesses adequate time to come into full compliance, instead of providing the AG five years to bring enforcement actions for violations they could have pursued in year one.

**AB 1546 is premature and unnecessary: robust enforcement already exists, and Californians are better served by preserving the existing statute of limitations.**

Fundamentally, we question the need for this bill as we are unaware of any examples of time-barred claims that the AG would have otherwise pursued in the five years since the CCPA was first passed. To the contrary, we have every reason to believe that there is vigorous, real-time enforcement happening. There are no less than 40 examples of “CCPA Enforcement Case Examples” cited on the AG’s website at this time. (See [CCPA Enforcement Case Examples | State of California - Department of Justice - Office of the Attorney General](#).)

Extending the statute of limitations for civil enforcement would only amplify the risk that businesses face for alleged violations, through no fault of their own. In contrast, preserving the status quo does not harm consumers because violations can still feasibly be pursued by the Privacy Agency for up to five years. In the rare event that the AG’s clock runs out to commence an enforcement action, this “fallback” ensures that consumer rights are still protected and undercuts any need to extend the AG’s limitations period. Nor does the status quo harm the Consumer Privacy Fund in any way. There is no difference in the applicable penalties for violations, including for intentional violations and violations involving the rights of minors in an action brought by the Agency, as opposed to the AG. Meaning, the Fund would receive the same amount in penalties if the Agency were to bring an action in years two through five.

Indeed, we believe consumers and businesses are all better served by preserving the existing statute of limitations. Enforcement actions not only serve as a deterrent for future violations, but they also serve to place a violating business on notice that they are not compliant, including in cases involving good faith errors as opposed to intentional violations. By placing businesses on notice earlier, the shorter statute of limitations helps prevent future violations against additional consumers. Furthermore, the shorter limitations period also ensures that penalties for violations will not continue to accrue until year five against a company that operated in good faith, if the claim could have been brought in year one when the violation was first discovered or discoverable. All of these benefits would be undermined based on a desire for parity, needlessly overburdening our overworked courts.

**Silence does not constitute “oversight” and AB 1546’s desire to provide parity in disparate situations is both unnecessary and unfair.**

Fundamentally, we disagree that the lack of parity between the statute of limitations for administrative actions by the Agency and civil enforcement by the AG was an oversight. Not only does the statute clearly state that the five-year period applies to “administrative” actions, but silence on applicable period for civil enforcement actions can easily be interpreted in multiple ways. We contend that the failure to provide the AG five years to commence a civil enforcement action after a violation occurs was intentional and logical given the differences in the Agency and AG’s experience and resources. Arguably, providing a brand-new agency with extended statute of limitations was a practical necessity, as it had zero enforcement capabilities at the time Proposition 24 was passed, and still has very little enforcement capabilities three years later as it continues to staff up. In contrast, the AG has far greater years of experience and resources in its privacy unit. Striving for parity in such clearly disparate situations is neither justified, nor fair.

Moreover, despite the stated premise, **AB 1546** does not achieve true parity. While Proposition 24 granted the Agency five years to commence an administrative action, it also provided the Agency the authority to offer businesses an opportunity to cure, prior to pursuing an alleged violation. **AB 1546** would extend the same statute of limitations to civil enforcement actions commenced by the AG, but noticeably neglects to extend the opportunity to cure to the civil enforcement context. Providing the AG five times longer to commence an action for an alleged CCPA violation than it currently has would be immensely unfair to businesses after the law was changed to remove their authority to seek guidance from the AG and to avoid penalties by addressing alleged violations within 30 days of notice.

**AB 1546's overlooks important differences between administrative and civil enforcement actions.**

Finally, the differences between and impacts of administrative enforcement as opposed to civil enforcement, as well as the differences between the two governmental bodies between which parity is sought, should not be overlooked. Consider for example, the impact of longer limitations periods to the courts and our already overburdened legal system is, for obvious reasons, of greater concern with civil enforcement. A five-year statute of limitations only further incentivizes businesses to retain all consumer information for five years, contravening pro-privacy and data minimization principles, and exposes both businesses and consumers alike to high risks associated with data breaches. This, in turn, means greater liability exposure under the CCPA's data breach private right of action.

In sum, because we are concerned that it is ill-timed, unwarranted, unfair, and undermines the beneficial impacts of shorter limitations periods for businesses, consumers and the courts, we respectfully must **OPPOSE AB 1546 (Gabriel)**.

Sincerely,



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Policy Advocate  
on behalf of

Advanced Medical Technology Association – Jack Yanos  
American Financial Services Association – Matt Kownacki  
California Chamber of Commerce – Ronak Daylami  
California Credit Union League – Robert Wilson  
California Financial Services Association – Scott Govenar  
California Grocers Association – Leticia Garcia  
California League of Food Producers – Ben Ebbink  
California Manufacturers & Technology Association – Ashley Hong  
California Mortgage Bankers Association – Indira McDonald  
California Retailers Association – Rachel Michelin  
Card Coalition – Toni Bellissimo  
Civil Justice Association of California – Jaime Huff  
Computer & Communications Industry Association (CCIA) – Naomi Padron  
Insights Association – Howard Fienberg  
National Association of Mutual Insurance Companies – Allison Adey  
National Payroll Reporting Consortium – Ben Ebbink  
NetChoice – Carl Szabo  
Personal Insurance Federation of California – Allison Adey  
Securities Industry and Financial Markets Association – Joanne Bettencourt  
Silicon Valley Leadership Group – Peter Leroe-Muñoz  
Software & Information Industry Association – Paul Lekas  
State Privacy & Security Coalition, Inc. – Andrew Kingman  
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cc: Legislative Affairs, Office of the Governor  
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