

**SB 561 (JACKSON) CALIFORNIA CONSUMER PRIVACY ACT OF 2018:  
CONSUMER REMEDIES  
SENATE JUDICIARY COMMITTEE  
OPPOSE/**JOB KILLER** AS INTRODUCED FEBRUARY 22, 2019**



State Privacy and Security Coalition, Inc.



The National Business Coalition on E-Commerce & Privacy



April 3, 2019

TO: Members, Senate Judiciary Committee

**SUBJECT: SB 561 (JACKSON) CALIFORNIA CONSUMER PRIVACY ACT OF 2018: CONSUMER REMEDIES  
OPPOSE/JOB KILLER – AS INTRODUCED FEBRUARY 22, 2019  
SCHEDULED FOR HEARING – APRIL 9, 2019**

The California Chamber of Commerce and the undersigned coalition of business interests must respectfully **OPPOSE** your **SB 561 (Jackson)**, as introduced February 22, 2019, as a **JOB KILLER**. **SB 561** creates an onerous and costly private right of action that will primarily benefit trial lawyers, to sue for any violations of the California Consumer Privacy Act (CCPA) and removes businesses' 30-day right to cure an alleged violation of the CCPA as well as businesses' ability to seek guidance from the Attorney General on how to comply with this confusing and complex law.

The CCPA needs legislative fixes and clarifications, and covered businesses need sufficient time to operationalize it. Accordingly, the CCPA, which was signed into law in June of 2018, has an effective date of January 1, 2020. Further, the Attorney General is in the process of drafting regulations to offer businesses of all sizes and across all industries some guidance on how to comply with this complex law. For this reason, at the end of last year's session, the CCPA's enforcement date was extended to July 1, 2020. Any efforts to expand the CCPA and to impose more obligations on business – before this law even takes effect and before the Attorney General has finalized regulations – would create an unfair burden on businesses.

We understand that up to this point the Attorney General's primary role in California has been that of "top cop" or "lead prosecutor," and that the Attorney General has not yet held a significant role as a regulator. However, that changed with the passage of the CCPA – a bill that was largely modeled after the European Union's General Data Protection Regulation (GDPR), a law that is enforced by regulators who can offer guidance, issue warnings, and impose fines. California, too, needs a regulator for the CCPA to work, and the Legislature selected the Attorney General to fill that role for two main reasons: (1) the Attorney General's office already has a team of privacy experts – their Privacy Enforcement and Protection Unit has achieved significant results and headlines since their inception in 2012; and (2) the Attorney General's office already has the infrastructure in place to ensure that this complex law and its regulations are enforced uniformly throughout the state.

Trial lawyers were considered and rejected as the enforcers of the CCPA. The privacy ballot measure included a private right of action – and the Legislature purposely removed it as the primary enforcement mechanism when drafting the CCPA. Had they not done so, it is very unlikely the CCPA would have passed. And for good reason.

Numerous abuses have arisen from trial lawyer "enforcement" of the technicalities of government regulations in the employment context with the Labor Code's Private Attorneys General Act (PAGA) – a law that has resulted in a flood of litigation against California employers, often over minor or technical violations of the law where employees have suffered no harm. The Legislature acknowledged PAGA's abuses last year when it passed AB 1654 (Rubio), a law that carves unionized construction contractors out of PAGA in order to protect their employers from frivolous lawsuits. The abuses of PAGA will pale in comparison to the abuses that would stem from trial attorney enforcement of the complex CCPA, a law so confusing that even privacy experts disagree over the meaning of certain provisions.

Moreover, 50% of class action lawsuits in the United States are filed in California courts. That percentage will certainly increase if all of the many requirements of the CCPA are subject to a private right of action – especially in the first few years of this law, as businesses of all sizes struggle to figure out how to comply. Our underfunded court system cannot handle this burden, nor can our economy. Inviting trial attorneys to enforce this complex and confusing law will end up costing California more in the long run than an adequate budget allocation to the Attorney General.

To that point, we understand and appreciate the Attorney General's concern over ensuring adequate funding to operationalize the CCPA, which will be a daunting task. The Legislature acknowledged these concerns when passing SB 1121 (Dodd) in August of 2018, which provided that "[a]ny civil penalty assessed for a violation of [the CCPA], and the proceeds of any settlement of an action brought [by the Attorney General],

shall be deposited into the Consumer Privacy Fund, created. . .with the intent to fully offset any costs incurred by the state courts and the Attorney General in connection with [the CCPA.]” The Governor also acknowledged the Attorney General’s concerns by proposing \$4.7 million be allocated to the Attorney General’s office to support 23 positions for the Department of Justice to implement the CCPA. To the extent the Attorney General finds this funding level to be insufficient, we would strongly support an increase in the Attorney General’s budget allocation to achieve the goals of the CCPA.

California has decided that privacy is worth the investment. The Legislature is requiring that California businesses make significant investments in technology and personnel resources to implement the CCPA. Businesses covered by the CCPA will need to invest in the following: data mapping (which cannot be fully automated, and requires discussions with each business unit and IT); amending contracts with all service providers (which requires legal advice); updating privacy policies (which also requires legal counsel); setting up and maintaining mechanisms for consumers to make requests for access and deletion; and training personnel. To put an estimate on the costs of these changes, we can look to the GDPR. Businesses in California with a presence in Europe have already spent anywhere between tens of thousands to hundreds of thousands or even millions of dollars getting ready for GDPR and complying since it took effect on May 25, 2018. According to CSO magazine, 88% of companies spent more than \$1 million on preparing for the GDPR.

Given the massive investment businesses will be making to effectuate the rights provided to consumers in the CCPA, the state should be prepared to make a significant investment as well. And the goal of that investment should be compliance. Not lawsuits or attorney’s fees. Not even enforcement actions. A goal of compliance means that state resources for the Attorney General to provide opinions to businesses on how to comply with this complex and confusing law would be a wise investment. It also means that state resources to ensure that businesses have the opportunity – if needed - to cure their approach to implementing the complex requirements of the CCPA and its regulations would be a wise investment. More importantly, these educational approaches to the CCPA are going to be a far more efficient use of resources than costly enforcement actions – especially when considering that the vast majority of businesses that must comply with this law are nowhere close to tech giants. According to the International Association of Privacy Professionals over 500,000 businesses will be required to comply with the CCPA, “the vast majority of which are small-to-medium-sized businesses.” These businesses are going to need the guidance of a regulator and the latitude a regulator can offer them to make changes if their good faith efforts to comply with the many nuances of the CCPA fall short.

For these reasons, we **OPPOSE** your **SB 561 (Jackson)** as a **JOB KILLER**.

Sincerely,



Sarah Boot  
Policy Advocate  
California Chamber of Commerce

Advanced Medical Technology Association  
Alliance of Automobile Manufacturers  
CALASIAN Chamber of Commerce  
California Association of Collectors  
California Association of Licensed Investigators  
California Bankers Association  
California Business Properties Association  
California Cable & Telecommunications  
Association  
California Communications Association  
California Community Banking Network  
California Credit Union League  
California Fuels & Convenience Alliance  
California Grocers Association  
California Hospital Association  
California Life Sciences Association  
California Land Title Association  
California Manufacturers & Technology  
Association

California Mortgage Bankers Association  
California New Car Dealers Association  
California News Publishers Association  
California Restaurant Association  
California Retailers Association  
Card Coalition  
Cemetery and Mortuary Association of California  
CompTIA  
Connected Commerce Council  
Consumer Data Industry Association  
Consumer Technology Association  
CTIA  
Email Sender & Provider Coalition  
Engine Advocacy  
Entertainment Software Association  
Insights Association  
Interactive Advertising Bureau  
International Franchise Association  
Internet Association

Internet Coalition  
Investment Company Institute  
Motion Picture Association of America  
National Business Coalition on E-Commerce &  
Privacy  
National Federation of Independent Business  
National Payroll Reporting Consortium  
NetChoice  
Network Advertising Initiative  
Plumbing Manufacturers International

San Diego Gas & Electric  
Satellite Broadcasting and Communications  
Association  
Securities Industry and Finance Markets  
Association  
Southern California Gas Company  
State Privacy & Security Coalition  
Software & Information Industry Association  
TechNet  
The Toy Association

cc: Melissa Immel, Office of the Governor  
Christian Kurpiewski, Office of Senator Hannah-Beth Jackson  
Morgan Branch, Senate Republican Caucus

SB:ldl