

**CALIFORNIA PRIVACY PROTECTION AGENCY**

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**Date:** May 3, 2024

**To:** California Privacy Protection Agency Board  
(Meeting of May 10, 2024)

**From:** Maureen Mahoney  
Deputy Director of Policy & Legislation  
California Privacy Protection Agency

**Subject:** **Agenda Item 3—Legislative Update and Authorization of CPPA Position on Pending Legislation. AB 1949 (Wicks): California Consumer Privacy Act of 2020: collection of personal information of a consumer less than 18 years of age**

This memorandum provides California Privacy Protection Agency (CPPA) staff's recommendation with respect to AB 1949 (Wicks), a bill sponsored by California Attorney General (AG) Rob Bonta that seeks to amend the California Consumer Privacy Act (CCPA) as it applies to children.<sup>1</sup>

This bill proposes to expand the CCPA's existing consent requirement for the sale or sharing of the personal information of children under 16 to include collection, use, and disclosure of children's personal information, and raise the age of consumers entitled to these protections to under 18. It proposes to eliminate the CCPA's actual knowledge standard—in other words, the existing standard that a business knows, rather than “should have known” that the consumer is a child—to determine who is entitled to opt-in protections for the purposes of the CCPA. It directs the CPPA to complete rulemakings with respect to age verification and establishing the technical specifications of an opt-out preference signal that can indicate that the consumer is a child by July 1, 2025.

CPPA staff recommends that the California Privacy Protection Agency Board support the bill if it is amended:

- To maintain the actual knowledge standard or establish in statute an alternative standard, for example, that the business “knew or should have known that the consumer is less than 18 years of age;”
- To identify factors suggesting the consumer is a child, such as the nature of the product or service offered by the business, consumer demographic

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<sup>1</sup> See, AB 1949 as amended on Apr. 4, 2024,  
[https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill\\_id=202320240AB1949](https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=202320240AB1949).

information, market research, the results of product testing, and reasonable inferences, among others;

- To emphasize that these provisions do not relieve businesses of their data minimization responsibilities;
- To remove the duplicative requirement that the Agency issue regulations to establish technical specifications for an opt-out preference signal that allows the consumer, or the consumer’s parent or guardian, to indicate that the consumer is a child;
- To remove the requirement for the Agency to complete an age verification rulemaking by July 1, 2025; or, at the very least, to extend the deadline to July 1, 2026 or later.

## Background

The California Consumer Privacy Act (CCPA) includes notice requirements for businesses, grants new privacy rights to consumers, including the rights to access, delete, correct, and stop the sale and sharing of their personal information, and imposes corresponding obligations on businesses.<sup>2</sup> The CCPA provides additional protections for children under 16. Businesses are not permitted to sell or share the personal information of consumers if the business has actual knowledge that the consumer is under 16, including if the business has willfully disregarded the consumer’s age, unless the consumer, or the consumer’s parent or guardian in the case of consumers who are under 13, has affirmatively authorized the sale or sharing of the consumer’s information. Businesses are also liable for higher fines and penalties for violations of the CCPA involving the personal information of a consumer whom the business has actual knowledge is under 16.

The CCPA’s actual knowledge standard reflects the federal Children Online Privacy Protection Act (COPPA), adopted in 1998.<sup>3</sup> COPPA requires operators of a website or online service that is directed to children, defined as under 13, or any operator that has actual knowledge it is collecting personal information from a child, to obtain verifiable parental consent before collecting, using, or disclosing the personal information of child. Children’s advocates have criticized the actual knowledge standard in COPPA and COPPA’s application only to children under 13.<sup>4</sup> Privacy advocates have countered those criticisms on the grounds that stricter age verification and teen protections could incentivize greater data collection.<sup>5</sup> (CCPA goes beyond COPPA, however, in providing opt-in protections for teens under 16).

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<sup>2</sup> Civ. Code § 1798.100 et seq.

<sup>3</sup> 15 U.S.C. § 6502.

<sup>4</sup> See, Dercem Kaya, *Ignoring COPPA: An Industry Standard*, Student Works at p. 23-4 (2023), [https://scholarship.shu.edu/cgi/viewcontent.cgi?article=2372&context=student\\_scholarship](https://scholarship.shu.edu/cgi/viewcontent.cgi?article=2372&context=student_scholarship).

<sup>5</sup> Center for Democracy and Technology, et al. *Comments on Implementation of the Children’s Online Privacy Protection Rule*, at p.7-10, June 30, 2010, [https://www.ftc.gov/sites/default/files/documents/public\\_comments/2010-childrens-online-privacy-protection-act-rule-review-547597-00050%2%A0/547597-00050-54859.pdf](https://www.ftc.gov/sites/default/files/documents/public_comments/2010-childrens-online-privacy-protection-act-rule-review-547597-00050%2%A0/547597-00050-54859.pdf).

In 2022, California sought to further increase protections for children online by adopting the California Age-Appropriate Design Code Act (CAADCA), also authored by Assemblymember Wicks.<sup>6</sup> It passed the legislature unanimously. Among other provisions, the measure restricts a covered business from collecting, selling, sharing, or retaining any personal information that is not necessary to provide an online service, product, or feature with which a child (defined as under 18) is actively and knowingly engaged, unless the business can demonstrate a compelling reason that it is in the best interests of the child. The Attorney General has optional rulemaking authority under the CAADCA and is tasked with enforcement and administering a working group to deliver regular reports to the legislature with recommendations for best practices with respect to implementation.

Compared to the CCPA, the CAADCA established stricter requirements on businesses to verify the age of the child. The CAADCA requires businesses to use reasonable procedures to “[e]stimate the age of child users[.]”<sup>7</sup> Furthermore, a website or online service is considered “likely to be accessed by children”—and thus subject to the law’s requirements—if it is reasonable to expect, based on several indicators, that the online service, product, or feature would be accessed by children. These indicators include, whether it is “directed to children” as defined by the Children’s Online Privacy Protection Act (COPPA); whether it is determined, based on evidence regarding audience composition, to be routinely accessed by a significant number of children (or is substantially similar to a service, product, or feature that meets that criteria), has advertisements marketed to children, has design elements that are known to be of interest to children, and whether internal company research indicates that a significant amount of the audience is children.

Not long after the bill was signed, NetChoice, an industry group representing Google, Amazon, Meta, and Tik Tok, among others, challenged CAADCA as unconstitutional under the First Amendment and the Dormant Commerce Clause.<sup>8</sup> On September 18, 2023, the law was enjoined by the U.S. District Court for the Northern District of California.<sup>9</sup> The court found that the measure “likely violates the First Amendment.”<sup>10</sup> One of the issues that the court discussed is the age estimation requirement, paired with the requirement that businesses either provide children with a high default privacy setting, or provide that same setting to every user.<sup>11</sup> The court found that those provisions “appear likely to impede the ‘availability and use’ of information and accordingly to regulate speech.”<sup>12</sup> On October 18, 2023,

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<sup>6</sup> See, Civ. Code § 1798.99.28.

<sup>7</sup> *Id.* at § 1798.99.31(a)(5).

<sup>8</sup> Complaint, NetChoice, LLC. v. Bonta, No. 5:2022cv08861 (N.D. Cal. Filed Dec. 14, 2022), at ¶ 51-75, <https://netchoice.org/wp-content/uploads/2022/12/NetChoice-v-Bonta-Official-AB-2273-Complaint-final.pdf>.

<sup>9</sup> Order Granting Motion for Preliminary Injunction, NetChoice, LLC. v. Bonta, No. 5:2022cv08861 (N.D. Cal. Filed Sept. 18, 2023), <https://netchoice.org/wp-content/uploads/2023/09/NETCHOICE-v-BONTA-PRELIMINARY-INJUNCTION-GRANTED.pdf>.

<sup>10</sup> *Id.* at 2.

<sup>11</sup> *Id.* at 14-15.

<sup>12</sup> *Id.* at 15.

California Attorney General Rob Bonta filed a notice of appeal to overturn the preliminary injunction,<sup>13</sup> and in December, AG Bonta filed an opening brief with the Ninth Circuit Court of Appeals.<sup>14</sup>

AB 1949 seeks to provide augmented online protections for children under 18 and would require businesses to meet a higher standard of identity verification than under the existing CCPA. According to the sponsor of AB 1949, AG Bonta, the CCPA's actual knowledge standard:

[A]llows businesses to skirt the CCPA's specific prohibition on selling young users' data or using it for certain behavioral advertising by arguing that they did not have actual knowledge that the user was under the threshold age, which is currently age 16. This gives businesses an incentive to ignore signs that children are using their sites, and puts businesses that try to identify and protect young users at a competitive disadvantage.<sup>15</sup>

For example, AG Bonta recently co-led a coalition of 33 attorneys general in an action against Meta alleging that Meta violated COPPA, among other laws, in its treatment of children. The complaint alleged that Meta sought to "maintain willful ignorance of its users under the age of 13" but that Meta "routinely obtains actual knowledge of under-13 users on Instagram."<sup>16</sup> Indeed, that "Meta's actual knowledge that millions of Instagram users are under the age of 13 is an open secret that is routinely documented, rigorously analyzed and confirmed, and zealously protected from disclosure to the public."<sup>17</sup> This includes "an internal report presented to Zuckerberg regarding the four million under-13 users on Instagram[.]"<sup>18</sup>

According to the complaint, "Despite Meta's actual knowledge and documentation of under-13 Instagram users and data collection from under-13 users in the 2018 report, Meta did not obtain verifiable parental consent for its ongoing collection of personal information from those users."<sup>19</sup> Instead, according to the complaint, "After Meta receives a report that an Instagram user is under 13 years old, Meta's policy is

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<sup>13</sup> Notice of Preliminary Injunction Appeal, *NetChoice, LLC. v. Bonta, Bonta*, No. 5:2022cv08861 (N.D. Cal. Filed Oct. 18, 2023), [https://netchoice.org/wp-content/uploads/2023/10/Bonta-Appeal\\_PI\\_NetChoicevBonta.pdf](https://netchoice.org/wp-content/uploads/2023/10/Bonta-Appeal_PI_NetChoicevBonta.pdf).

<sup>14</sup> Appellant's Opening Brief, *NetChoice, LLC. v. Bonta, Bonta*, No. 23-2969 (9th Cir. 2023), <https://oag.ca.gov/system/files/attachments/press-docs/NetChoice%20Ninth%20Cir.%20Opening%20Brief.pdf>.

<sup>15</sup> Quoted in Assembly Committee on Privacy and Consumer Protection Analysis, AB 1949 (Wicks – As Introduced January 29, 2024 at 1 (March 30, 2024).

<sup>16</sup> Complaint, *Arizona et. al. v. Meta Platforms. Inc. et. al.*, No. 4:23-cv-05448-YGR (N.D. Cal. Filed Nov. 22, 2023), at ¶ 644, <https://oag.ca.gov/system/files/attachments/press-docs/Less-redacted%20complaint%20-%20released.pdf/>.

<sup>17</sup> *Id.* at 645.

<sup>18</sup> *Id.* at 646.

<sup>19</sup> *Id.* at 660.

to allow the user to continue using their Instagram account and disregard the report if the account does not contain a user bio or photos.”<sup>20</sup>

However, rather than amending a separate part of the Civil Code, like the CAADCA, this bill seeks to amend the privacy statute, raising questions with respect to the bill’s impact on the privacy of all Californians. Staff notes that there is currently no privacy-protective way to determine whether a consumer is a child. Thus, by seeking to remove the actual knowledge provision from the CCPA, and not replacing it with a set of criteria for determining whether the consumer is a child, this bill could reduce privacy by incentivizing businesses to collect even more personal information from all users to verify children’s ages.

The Assembly Privacy & Consumer Protection Committee advanced AB 1949 on April 2. The bill is now under consideration by the Assembly Appropriations Committee.

## Summary

Existing federal law, the Children’s Online Privacy Protection Act (COPPA):

- Prohibits an operator of a website or online service that is directed to children (defined as under 13), or any operator that has actual knowledge that it is collecting personal information from a child, from collecting, using, or disclosing the personal information of child without obtaining verifiable parental consent.<sup>21</sup>

Existing law, the California Consumer Privacy Act of 2018 (CCPA):

- Prohibits a business from selling or sharing the personal information of a consumer if the business has actual knowledge that the consumer is less than 16 years of age, unless the consumer (for children at least 13 years old and under 16 years of age) or a parent/guardian (for children under 13) affirmatively authorized the sale or sharing of the consumer’s personal information.
- Requires the California Privacy Protection Agency to establish the technical specifications for an opt-out preference signal that allows the consumer or a parent/guardian to specify that the consumer is less than 13 years of age or at least 13 years old and less than 16 years old.

This bill would amend the CCPA to:

- Remove the condition that the business have actual knowledge that the consumer is less than 16 years of age; and

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<sup>20</sup> *Id.* at 671.

<sup>21</sup> 15 U.S.C. § 6502.

- Prohibit a business from collecting, using (unless the use is short-term or transient), disclosing, selling or sharing the personal information of a consumer less than 18 years of age, unless the consumer (for children between 13 and 18 years of age) or a parent/guardian (for children under 13) affirmatively authorized the collection, use, disclosure, sale or sharing of the consumer’s personal information.

Additionally, this bill would amend the CCPA to require the California Privacy Protection Agency, on or before July 1, 2025 to adopt regulations:

- To establish technical specifications for an opt-out preference signal that allows the consumer or a parent/guardian to specify that the consumer is less than 13 years old or between 13-18 years old; and
- Regarding age verification and when a business must treat a consumer as being less than 13 or 18 years of age for purposes of the CCPA.

### **Support/Opposition**

As of March 30, 2024, AB 1949 is supported by several advocacy groups, including the Children’s Advocacy Institute, Common Sense Media, Consumer Attorneys of California, and Consumer Watchdog. It is sponsored by Attorney General Rob Bonta.<sup>22</sup>

AB 1949 is opposed by several industry groups and privacy advocates on the grounds that it will incentivize businesses to collect more information about users. Industry groups opposing the bill include California Chamber of Commerce, Technet, and the Computer & Communications Industry Association. Privacy groups opposing the bill include the Electronic Frontier Foundation and Privacy Rights Clearinghouse.<sup>23</sup>

Other privacy groups have weighed in as well. ACLU California Action has a “support if amended” position, explaining that the bill “removes the ‘actual knowledge’ standard under current law, creating uncertainty around when stronger privacy protections might apply. That ambiguity could lead companies to engage in more surveillance and profiling of users in an effort to infer the age of internet users.”<sup>24</sup> Oakland Privacy has an “oppose unless amended” position, noting that “An affirmative opt-in, when paired with the other provisions in the bill regarding actual knowledge of a minor’s age, would likely create significant burdens on online access for young people just a few months shy of voting or being able to join the military.”<sup>25</sup>

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<sup>22</sup> Cal. Assembly, Analysis of Assem. Bill No. 1949, Comm. on Privacy and Consumer Protection, (Apr. 2, 2024) at 12.

<sup>23</sup> *Id.*

<sup>24</sup> Letter from ACLU California Action to Assemblymember Wicks, Re: AB 1949 – as introduced, SUPPORT IF AMENDED (March 26, 2024).

<sup>25</sup> Cal. Assembly, *supra* note 22 at 11.

## Analysis

Given the tension between updating the actual knowledge standard and protecting users' privacy, staff recommends a balanced approach: to either maintain the actual knowledge standard or establish in statute an alternative standard, such as that the business "knew or should have known that the consumer is less than 18 years of age," based on factors suggesting the consumer is a child, such as the nature of the product or service offered by the business, consumer demographic information; market research, the results of product testing, and reasonable inferences. Staff also recommends that the bill emphasize that these provisions do not relieve businesses of their data minimization responsibilities.

### *Age verification*

This bill seeks to expand the scope of opt-in protections in the CCPA for children under 16 to encompass collection, use, and disclosure of personal information for children under 18. By removing the actual knowledge standard, however, these additional protections for children online could come at the expense of other Californians' privacy, by incentivizing additional data collection for all Californians to verify the user's age. While the bill does not require businesses to collect additional information to verify age, by removing the actual knowledge standard, businesses will have strong incentives to do so.

Currently, age verification systems are likely not sufficiently advanced to ensure accurate age verification while protecting privacy. In light of European legislation designed to increase online protections for children and teens, the French data protection authority, the National Commission for Information Technology and Civil Liberties (CNIL), studied available age verification systems and found in 2022 that "there is currently no [age verification] solution that satisfactorily meets" their three criteria: reliable verification, adequate coverage of the population, and data protection, privacy and security.<sup>26</sup> Instead, the CNIL called for additional research and development of new solutions.

According to the CNIL, the most promising age verification system involves the use of zero knowledge proof. Zero knowledge proof is a cryptographic method that "allows identified individuals to prove a situation without having to reveal any further information."<sup>27</sup> This could involve, for example, uploading identification to a private device, which generates a proof to confirm the users' age. The proof is then shared with a requesting party without any attached personal information about the consumer. Through this method, a requesting party, such as a website, is unaware of the identity of the proof generating service or the identity of the consumer while

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<sup>26</sup> CNIL, *Online age verification: balancing privacy and the protection of minors*, Sept. 22, 2022, <https://www.cnil.fr/en/online-age-verification-balancing-privacy-and-protection-minors>.

<sup>27</sup> *Id.*

similarly a proof generating service is unaware of the requesting party. As a result, a consumer's anonymity is preserved with a requesting party and a proof-generating service is unable to track a consumer's online activities. However, CNIL cautions that this method is predicated on the proof generating service being "completely independent of the publishers."<sup>28</sup>

While the CNIL's Digital Innovation Laboratory is developing a prototype of such a system with Professor Olivier Blazy, a cryptography researcher at the École Polytechnique, and tested the system in 2023,<sup>29</sup> it does not yet have wide adoption.<sup>30</sup> New America, a technology policy think tank, likewise agreed in an April 2024 report on age verification.<sup>31</sup> The report states that while the CNIL prototype demonstrates a system that assures privacy is technologically possible, without an "established and widely adopted protocol, it is unlikely that strict age verification can be widely done at a scale in privacy-preserving ways."<sup>32</sup>

Existing age verification options raise obvious problems, including privacy concerns. Use of payment cards or government ID to confirm age would not work in the context of a bill that seeks to provide children with additional protections, since most children do not have payment cards or government ID. In a recent interview, Professor Blazy states the use of payment cards poses its own data privacy and security risks "because you are telling people to input banking information on a website that is not necessarily super secure."<sup>33</sup> These procedures would require additional collection of sensitive data, leaving consumers vulnerable to misuse, data breach, surveillance, or even blackmail, depending on the sites that the user seeks to visit.<sup>34</sup>

The use of video selfies, such as through Meta's age verification service provider, Yoti, also raises serious privacy concerns.<sup>35</sup> The method was originally unveiled in 2022 for Meta's subsidiary, Instagram, which requires a user to take a video of their face, which is then shared with Yoti "and nothing else."<sup>36</sup> Yoti then uses artificial intelligence (AI) to estimate a user's age based on their facial features, shares the estimated age with Meta, and deletes the video selfie. Not only does this method involve significant biometric data collection, it also requires the user to allow the business to access his or her camera. While Yoti assures users that it trains its AI on

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<sup>28</sup> *Id.*

<sup>29</sup> CNIL Digital Innovation Laboratory, *[Follow-up] Age verification: the economic argument*, July 19, 2023, <https://linc.cnil.fr/follow-age-verification-economic-argument>.

<sup>30</sup> *Id.*

<sup>31</sup> Sarah Forland et. al., *The Path Forward: Minimizing Potential Ramification of Online Age Verification*, New America (Apr. 23, 2024), <https://www.newamerica.org/oti/reports/age-verification-the-complicated-effort-to-protect-youth-online/the-path-forward-minimizing-potential-ramifications-of-online-age-verification>.

<sup>32</sup> *Id.*

<sup>33</sup> Lauren Leffer, "Online Age Verification Laws Could Do More Harm Than Good," *Scientific American*, Apr. 16, 2024, <https://www.scientificamerican.com/article/online-age-verification-laws-privacy/>.

<sup>34</sup> CNIL, *supra* note 26.

<sup>35</sup> *Introducing New Ways to Verify Age on Instagram*, Meta (June 23, 2023), <https://about.fb.com/news/2022/06/new-ways-to-verify-age-on-instagram/>.

<sup>36</sup> *Id.*



a diverse dataset of faces, the use of facial recognition can pose a risk of gender or racial discrimination.<sup>37</sup>

The FTC's recent decision to deny Yoti's petition "without prejudice to the applicants filing in the future" for approval of their technology as a verifiable parental consent method under COPPA also suggests that these methods are not yet ready for widespread use. Yoti and other groups had sought approval for a "Privacy-Protective Facial Age Estimation" technology, in which the user's facial geometry is analyzed to determine age. During the public comment period of the application process, concerns were raised about privacy protections, accuracy of the technology, and potential use of deepfakes to fool the system. In denying the petition, the FTC noted that in the future, they will likely have additional information to better understand age verification technologies and the result of the National Institute of Standards and Technology's (NIST) evaluation of Yoti's technology.<sup>38</sup>

### *Recent legislation in other jurisdictions*

While COPPA and most state privacy laws have an actual knowledge standard for determining whether the consumer is a child, momentum has been building in Congress to update COPPA with a new standard. For example, Senators Markey and Cassidy have recently updated the Children and Teen's Online Privacy Protection Act, known as "COPPA 2.0" co-sponsored by Senate Commerce Committee Chair Maria Cantwell and Ranking Member Ted Cruz.<sup>39</sup> COPPA 2.0 expands COPPA's consent requirement for the collection, use, and disclosure of personal information to teens under 17. It also adjusts COPPA's actual knowledge standard to a constructive knowledge standard—it covers online services directed to a child or an online service that has "actual knowledge or knowledge fairly implied on the basis of objective circumstances is used by a child or teen."<sup>40</sup>

Similarly, the Maryland legislature recently passed a comprehensive privacy bill that would require a controller to not "process or sell the personal data of a consumer if the controller knew or should have known the consumer is under the age of 18 years old."<sup>41</sup> As of this writing, the bill is awaiting the Governor's signature.

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<sup>37</sup> NIST Study Evaluates Effects of Race, Age, Sex on Face Recognition Software, NIST (Dec. 19, 2019), <https://www.nist.gov/news-events/news/2019/12/nist-study-evaluates-effects-race-age-sex-face-recognition-software>.

<sup>38</sup> FTC Denies Application for New Parental Consent Mechanism Under COPPA, Fed. Trade Comm'n Press Release (Mar. 29, 2024), <https://www.ftc.gov/news-events/news/press-releases/2024/03/ftc-denies-application-new-parental-consent-mechanism-under-coppa>.

<sup>39</sup> Senators Markey, Cassidy Announce Chair Cantwell and Ranking member Cruz as Cosponsors of COPPA 2.0 Children's Privacy Legislation, Press Release (Feb. 15, 2024), <https://www.markey.senate.gov/news/press-releases/senators-markey-cassidy-announce-chair-cantwell-and-ranking-member-cruz-as-cosponsors-of-coppa-20-childrens-privacy-legislation>.

<sup>40</sup> S. 1418 (2024), [https://www.markey.senate.gov/imo/media/doc/coppa\\_20billtext.pdf](https://www.markey.senate.gov/imo/media/doc/coppa_20billtext.pdf).

<sup>41</sup> SB 541 as enrolled on Apr. 6, 2024, Section 14-4607(A)(5), <https://mgaleg.maryland.gov/2024RS/bills/sb/sb0541e.pdf>.

Nearly every state comprehensive consumer privacy law requires consent for certain processing of the personal information of a known child under 13, similar to COPPA. Some states have sought to provide additional protections. For example, an amendment to the Connecticut law, which will go into full effect on October 1, 2024, will raise the age of a “minor” to under 18 years of age, among other protections.<sup>42</sup> With respect to minors, Connecticut retains the actual knowledge standard.<sup>43</sup> Florida has similar protections with respect to online platforms “likely to be predominantly accessed by children[.]”<sup>44</sup> Colorado is currently considering a similar bill that would raise the age of a “minor” to under 18 years of age<sup>45</sup> and apply the actual knowledge standard to controllers.<sup>46</sup> Once New Jersey’s law goes into effect in January 2025, teens will receive additional protections (requiring consent for certain processing, such as for targeted advertising, sale of data, or profiling) when a business has actual knowledge a consumer is between the ages of 13 to 16.<sup>47</sup>

### *Regulations*

Staff recommends that the Board indicate that the Agency’s support of the bill also hinges on the removal or amendment of the bill’s new rulemaking requirements. The bill currently requires the CPPA to complete a rulemaking with respect to age verification by July 1, 2025—approximately six months after the bill goes into effect. This is unnecessary because the Agency already has broad rulemaking authority under Civ. Code § 1798.185(b). Additionally, under the Administrative Procedure Act process, it is likely impossible to complete a rulemaking in six months. Staff’s suggested amendments to the bill, which would outline factors to determine if the consumer is a child, would also preclude the need for a separate rulemaking.

Staff recommends that the Board support removal of the duplicative requirement that the CPPA develop the technical specifications for an opt-out preference signal that can indicate that the user is a child, also by July 1, 2025. CCPA already directs the CPPA to undertake such a rulemaking, so adding another provision is unnecessary and confusing.<sup>48</sup> It is also potentially harmful, since the technology for this tool does not yet exist, and additional opt-out preference signals can compromise privacy by making it easier to fingerprint the user.

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<sup>42</sup> Public Act No.23-56, Section 8(8), <https://www.cga.ct.gov/2023/ACT/PA/PDF/2023PA-00056-R00SB-00003-PA.PDF>.

<sup>43</sup> Public Act No. 23-56, Section 9(a), <https://www.cga.ct.gov/2023/ACT/PA/PDF/2023PA-00056-R00SB-00003-PA.PDF>.

<sup>44</sup> Fla. Stat. § 501.1735(2), <https://laws.flrules.org/2023/201>.

<sup>45</sup> Senate Bill 41, as reengrossed on Apr. 23, 2024, § 6-1-1303(16.5), [https://leg.colorado.gov/sites/default/files/documents/2024A/bills/2024a\\_041\\_ren.pdf](https://leg.colorado.gov/sites/default/files/documents/2024A/bills/2024a_041_ren.pdf).

<sup>46</sup> *Id.* at § 6-1-1308.5(1)(a).

<sup>47</sup> P.L.2023, c.266, Section 9(7), effective Jan. 15, 2025, [https://pub.njleg.state.nj.us/Bills/2022/AL23/266\\_.PDF](https://pub.njleg.state.nj.us/Bills/2022/AL23/266_.PDF).

<sup>48</sup> Civ. Code § 1798.185(a)(B)(19).

## **Recommendation**

CPPA staff recommends that the Board support the bill if it is amended:

- To maintain the actual knowledge standard or establish in statute an alternative standard, for example that the business “knew or should have known that the consumer is less than 18 years of age”;
- To identify factors suggesting that the consumer is a child, such as the nature of the product or service offered by the business; consumer demographic information; market research, the results of product testing, and reasonable inferences;
- To emphasize that these provisions do not relieve businesses of their data minimization responsibilities;
- To remove the duplicative requirement that the Agency issue regulations to establish technical specifications for an opt-out preference signal that allows the consumer, or the consumer’s parent or guardian, to indicate that the consumer is a child;
- To remove the requirement for the Agency to complete an age verification rulemaking by July 1, 2025; or, at the very least, to extend the deadline to July 1, 2026 or later.