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GOVERNOR

THE STATE OF CALIFORNIA  
OFFICE OF THE GOVERNOR  
THE STATE OF CALIFORNIA  
OFFICE OF THE ATTORNEY GENERAL  
THE STATE OF CALIFORNIA  
PRIVACY PROTECTION AGENCY



ROB BONTA  
ATTORNEY GENERAL

February 28, 2023

Dear Congressional Leaders:

As you continue considering federal privacy legislation, California remains steadfast in our position that federal privacy law must not preempt state law privacy protections. California leads the nation in protecting consumer privacy – and in cultivating an innovation economy while doing so. The path forward to a robust data privacy law is one that sets a federal floor, not a ceiling, to allow states to continue to innovate and be nimble in protecting their residents.

The American Data Privacy and Protection Act (ADPPA) seeks to extend to every American the privacy rights that they deserve. However, by prohibiting states from adopting, maintaining, enforcing, or continuing in effect any law covered by the legislation, it would eliminate existing protections for residents in California and sister states. Undermining existing state protections is unnecessary to secure passage of the ADPPA.

The technology field is rapidly evolving and regulating the industry demands that states continue to have flexibility to adapt quickly. The ADPPA need not diverge from existing federal privacy frameworks that also regulate technology products and services, but do not preempt State law. For example, the Health Insurance Portability and Accountability Act of 1996 (HIPAA) provides a national floor for privacy protections for individuals' individually identifiable health information, and the HIPAA Privacy Rule only preempts State laws that are "contrary." (45 C.F.R. § 160.203.) In this context, HIPAA applies to mobile applications developed by Covered Entities. Because HIPAA set a floor and not a ceiling, California passed and amended its medical privacy law, the Confidentiality of Medical Information Act (CMIA), to provide additional protections for patient privacy on top of those provided by HIPAA. (Cal. Civ. Code, § 56, *et. seq.*) In 2013, the CMIA was amended to apply broadly to businesses that offer hardware or software designed to maintain medical information, including commercially available mobile applications or a connected device, such as a fitness app that stores the consumer's diabetic diagnosis information. (See 2013 Cal. Legis. Serv. Ch. 296 (A.B. 658) (WEST).) California provides greater protections for its residents' data as it relates to businesses that handle medical information.

The ADPPA is an important policy step to protect privacy – but it should not come at the expense of the fundamental protections Californians already enjoy. California passed the nation's first data security breach notification law in 2003, began enforcing the first comprehensive privacy law in 2020, and thanks to California voters, established the first data protection agency in the country, which possesses the authority to defend California's constitutional right to

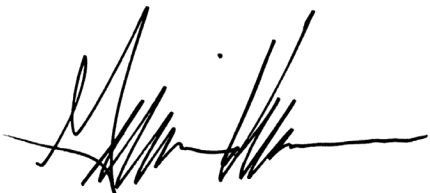
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privacy. Unless amended, the ADPPA would undermine California's comprehensive consumer privacy protections in the California Consumer Privacy Act, including as amended by the California Privacy Rights Act. Any federal privacy framework must leave room for states to respond to changes in technology and data collection practices to allow rigorous enforcement in those areas most affecting our respective residents.

California continues to lead on data privacy, and to adapt our laws in response to rapidly evolving technology. A federal law that regulates technology but preempts state law, however, would be frozen in time until Congress is able to amend and update the law. This would potentially render federal protections obsolete in the face of technological progress. Given the reality of technology's rapid pace, Americans would be best served by a strong federal privacy law that also allows states to continue our legislative efforts to protect our residents. Passing a strong federal law today that remains strong tomorrow must be reinforced with language that allows the states to legislatively innovate and respond in real-time to emerging consumer protection issues. We therefore urge Congress to ensure that the ADPPA is passed without a preemption clause in order to protect critical data privacy protections in state law and preserve California's authority to establish and enforce those protections. Thank you for consideration of California's concerns.



GAVIN NEWSOM  
California Governor



ASHKAN SOLTANI  
Executive Director  
California Privacy Protection Agency

Sincerely,



ROB BONTA  
California Attorney General