



MORTGAGE BANKERS ASSOCIATION

September 13, 2018

The Council of State Governments
Shared State Legislation Committee
1776 Avenue of the States
Lexington, Kentucky 40511

Dear Shared State Legislation (SSL) Committee Members:

The Mortgage Bankers Association (MBA)¹ writes to express concern and opposition to the inclusion of the California Consumer Privacy Act of 2018 (CCPA or AB 375) in the Council of State Government's (CSG) 2019 Cycle Docket Book B. The inclusion of CCPA as written incorporates provisions of a flawed state law, legislated under duress, and does not even reflect current California law. Consequently, states that use this as a model risk hampering the industry's ability to provide consumers with the very financial products they request.

CCPA was developed in extreme haste as an alternative to a deeply flawed general election ballot initiative on consumer privacy. In just over one week, the legislature drafted, passed and enacted AB 375 without holding a single public hearing in order to beat a deadline set by the sponsors of the ballot initiative. The sponsors of the initiative threatened to move forward if the legislation did not meet their demands. A bill drafted under such conditions should never be considered by the CSG as "model state legislation."

Because of the rushed nature in which CCPA was enacted, the law required immediate amendments to prevent harm to the California economy. Even federal financial regulators weighed in to raise concerns about the CCPA.² On August 31, the California Legislature unanimously passed SB 1121 to amend CCPA in an effort to address many of these issues. However, the version of CCPA that is offered in the SSL docket does not reflect any of these important changes. It also is important to note that even these amendments to the law were developed quickly and are already the subject of concern by the state's Attorney General. Consequently, the text is likely to be revised further in 2019 prior to the CCPA's effective date.

The history of the CCPA alone should disqualify it for consideration as a model state privacy bill. On substance, we urge the CSG to consider carefully the implications on commerce – particularly in financial services – of states adopting divergent consumer privacy laws without coordinating with widely accepted federal standards, such as Graham, Leach, Bliley. Privacy and cybersecurity regulations issued by only one state – or by several states – without an effort

¹ MBA is the national association representing the real estate finance industry, an industry that employs more than 280,000 people in virtually every community in the country. Headquartered in Washington, D.C., the association works to ensure the continued strength of the nation's residential and commercial real estate markets; expand homeownership; and extend access to affordable housing to all Americans. MBA promotes fair and ethical lending practices and fosters professional excellence among real estate finance employees through a wide range of educational programs and a variety of publications. Its membership of over 2,200 companies includes all elements of real estate finance: mortgage companies, mortgage brokers, commercial banks, thrifts, REITs, Wall Street conduits, life insurance companies and others in the mortgage lending field.

² Federal Housing Finance Agency (FHFA) General Counsel Alfred Pollard's letter to the California legislature.

to emulate broadly accepted national privacy and cybersecurity requirements will lead to confusion and misalignment across the real estate finance industry. MBA's member companies cannot separate their information technology infrastructures to comply with varying state requirements, as well as those of the federal government. The cost and complexity of divergent or potentially conflicting requirements established by multiple states will ultimately be passed on to consumers in the form of higher costs and reduced access to financial products and services. Moreover, a balkanized system of privacy protections will create conflicts and outsized costs that will be disproportionately felt by small – and medium – sized financial services firms. This approach stands in sharp contrast to the direction by the U.S. Treasury Department in its report on Fintech in July where it recommends policies to align state and federal financial regulations in order improve consumer protections and foster innovation.³

As noted, the process alone by which the CCPA was adopted should disqualify it for consideration as a model law. We also urge the CSG to consider the adverse implications of adopting privacy standards that are not closely aligned and coordinated with federal standards. Protecting privacy and data security – particularly in the financial context – is a national security issue that warrants a coordinated federal-state solution. For these reasons, MBA strongly urges removal of the CCPA from CSG's 2019 Cycle Docket Book B. Should your committee have any questions, please do not hesitate to contact Kobie Pruitt (kpruitt@mba.org).

Sincerely,

A handwritten signature in black ink, appearing to read "Pete Mills". The signature is fluid and cursive, with a prominent initial "P" and "M".

Pete Mills
Senior Vice President, Residential Policy
Mortgage Bankers Association

Attachement

³ <https://home.treasury.gov/news/press-releases/sm447>