

Date of Hearing: April 19, 2022

ASSEMBLY COMMITTEE ON PRIVACY AND CONSUMER PROTECTION

Jesse Gabriel, Chair

AB 2486 (Gabriel) – As Introduced February 17, 2022

SUBJECT: California Privacy Rights Act of 2020: Office for the Protection of Children Online

SUMMARY: This bill would create, in the California Privacy Protection Agency (CPPA), the Office for the Protection of Children Online for the purpose of ensuring that digital media available to children in this state are designed, provided, and accessed in a manner that duly protects the privacy, civil liberties, and mental and physical well-being of children.

EXISTING LAW:

- 1) Establishes the California Consumer Privacy Act of 2018 (CCPA) and provides various rights to consumers pursuant to the act. Subject to various general exemptions, a consumer has, among other things:
 - the right to know what personal information (PI) a business collects about consumers, as specified, including the categories of third parties with whom the business shares PI;
 - the right to know what PI a business sells about consumers, as specified, including the categories of PI that the business sold about the consumer and the categories of third parties to whom the PI was sold, by category or categories of PI for each third party to whom the PI was sold;
 - the right to access the specific pieces of information a business has collected about the consumer;
 - the right to delete information that a business has collected from the consumer; and,
 - the right to opt-out of the sale of the consumer's PI if over 16 years of age, and the right to opt-in if the consumer is a minor (as exercised by the parent if the minor is under 13, or as exercised by the minor if the minor is between ages 13 and 16); and,
 - the right to equal service and price, despite exercising any of these rights. (Civ. Code Sec. 1798.100 et seq.)
- 2) Among other things, the California Privacy Rights Act (CPRA), enacted by Proposition 24 in 2020, creates a Privacy Protection Agency (CPPA) in California, vested with full administrative power, authority, and jurisdiction to implement and enforce the CCPA. The agency shall be governed by a five-member board, with the chairperson and one member appointed by the Governor, and the three remaining members appointed by the Attorney General, the Senate Rules Committee, and the Speaker of the Assembly. (Civ. Code Sec. 1798.199.10.)

FISCAL EFFECT: Unknown

COMMENTS:

1) **Purpose of this bill:** This bill seeks to ensure the well-being of children by creating an Office for the Protection of Children Online within the California Privacy Protection Agency. This bill is sponsored by Common Sense Media.

2) **Author's statement:** According to the author:

The United Nations Convention on the Rights of the Child recognizes that children require particular safeguards and care in all aspects of their lives. The tandem revelations of the COVID-19 pandemic, which thrust children into an increasingly digital social and educational environment, and the documents and testimony of the Facebook whistleblower (Francis Haugen), made clear the urgency and complexity of addressing the rights and wellbeing of children online.

AB 2486 would create, within the California Privacy Protection Agency (CPPA), an Office for the Protection of Children Online, for the purpose of ensuring that digital media available to children in this state are designed, provided, and accessed in a manner that duly protects the privacy, civil liberties, and mental and physical wellbeing of children. The Office would fall under the direction of a director appointed and serving at the pleasure of the Agency. By providing a specific body within the CPPA to focus on these priorities, which often warrant special consideration when concerning children in particular, the Office would ultimately help children better understand their rights, help parents locate resources to educate and protect their children as they engage with digital services, and help the State better establish informed policies around this sensitive subject.

3) **The California Privacy Protection Agency:** In 2018, the Legislature enacted the California Consumer Protection Act (CCPA) (AB 375, Chau, Ch. 55, Stats. 2018), which gives consumers certain rights regarding their personal information (PI), such as: (1) the right to know what PI that is collected and sold about them; (2) the right to request the categories and specific pieces of PI the business collects about them; and (3) the right to opt-out of the sale of their PI, or opt-in in the case of minors under 16 years of age. The CCPA was the byproduct of compromises made between business interests on one side, and consumer and privacy interests on the other, to provide a legislative alternative to a ballot initiative on the same subject.

Subsequently, in 2020, California voters passed Proposition 24, which, in addition to establishing certain new rights, renames the CCPA as the California Privacy Rights Act (CPRA). Among other things, Proposition 24 creates a Privacy Protection Agency (CPPA) in California, vested with full administrative power, authority, and jurisdiction to implement and enforce the CCPA and presumably, the CPRA. The CPPA is governed by a five-member board, with the chairperson and one member of the board appointed by the Governor, and one member each appointed by the Attorney General, Senate, and Assembly, respectively.

This bill would now create, within the CPPA, the Office for the Protection of Children Online for the purpose of ensuring that digital media available to children in this State are designed, provided, and accessed in a manner that duly protects the privacy, civil liberties, and mental and physical wellbeing of children.

In support, the Consumer Federation of California writes:

CFC is actively involved in issues that impact consumer privacy; this is especially true when it comes to children. Young children are being exposed new and varying forms of digital media, including social media websites, mobile applications, streaming services, and more. It is critical that this media is designed and accessed in such a way that children’s privacy, liberties, and well-being are not compromised. Just last year, Meta, parent company of Facebook, Instagram and WhatsApp, was forced to pause development of their “Instagram for Kids” service after it was exposed that the company had internal research showing the harmful mental health effects that Instagram has on teenage girls. Instagram ignored this research but ultimately whistleblowers helped expose this information, causing the product to be “paused.” This is just one example of the many harms that children, whose brains are still developing, may be exposed to through this media.

AB 2486 would create the Office for the Protection of Children Online within the California Privacy Protection Agency. This office would coordinate efforts to ensure that digital media available to children protects their privacy, civil liberties, and mental/physical wellbeing. By establishing a single office to spearhead these efforts, this bill will ensure that much needed action is taken to protect these young consumers.

- 4) **Challenges of an increasingly digital childhood:** On February 8, 2022, United States Surgeon General Vivek Murthy testified before the United States Senate Committee on Finance regarding the crisis of deteriorating mental health among the nation’s youth, which he dubbed a “crisis of loneliness and hopelessness.”¹ Murthy’s testimony identified several factors contributing to the uniquely difficult circumstances affecting the emotional, psychological, and social wellbeing of young people today, beginning with their unprecedented relationship with technology. According to Murthy:

The recent ubiquity of technology platforms, especially social media platforms, has had harmful effects on many children. Though undoubtedly a benefit to our lives in important ways, these platforms have also exacerbated feelings of isolation and futility for some youth. They’ve reduced time for positive in-person activities, pitted kids against each other, reinforced negative behaviors like bullying and exclusion, impeded healthy habits, and undermined the safe and supportive environments kids need to thrive.

This increase in social media use has also contributed to a bombardment of messages that undermine this generation’s sense of self-worth – messages that tell our kids with greater frequency and volume than ever before that they’re not good looking enough, not popular enough, not smart enough, not rich enough.²

In the U.S. Surgeon General’s Advisory on the topic entitled “Protecting Youth Mental Health,” however, Murthy offered some qualification of this indictment alongside further evidence of its severity. The Advisory noted:

Importantly, the impact of technology almost certainly varies from person to person, and it also matters what technology is being used and how. [Citation] So, even if technology

¹ Vivek H. Murthy, Testimony before United States Senate Committee on Finance, Feb. 8, 2022.

² *Id.*

doesn't harm young people on average, certain kinds of online activities likely do harm some young people. For example, some research has linked "passive" social media use (such as scrolling through posts and auto-play video) to declines in wellbeing (versus more "active" use such as commenting on posts or recording videos). [Citation]

There can also be benefits to certain online activities such as connecting meaningfully with friends and family, learning a new skill, or accessing health care, and these also vary from person to person. [Citation] For example, LGBTQ+ young people may be more vulnerable than other young people to cyberbullying but also more likely to consider social media important for feeling less alone, expressing themselves, finding inspiration, and getting support. [Citations]³

Together, these statements highlight the complexity of resolving issues related to the online harms facing today's youth. The breadth of content online is vast and diverse, and the circumstances and conditions of internet use can vary substantially between children, leading to both positive and negative outcomes. The internet has undeniable utility for young people to explore new ideas and interests, develop practical skills, and stay connected with family and friends. At the same time, online media have the potential to amplify harms associated with traditional media, and to present novel threats to the wellbeing of children. The majority of adolescents consider social media to contribute positively to their lives,⁴ but a growing body of academic literature documents profound socio-emotional and health-related harms associated with increased internet use.

While these issues predate the COVID-19 pandemic, public health measures taken to combat the virus have exacerbated many of these harms. In addition to the toll imposed on youth mental health as a result of prolonged stress and social isolation, the COVID-19 pandemic dramatically increased screen time for children. Internet use has become a ubiquitous and essential endeavor for children and adults alike – 90% of U.S. adults say the internet has been *essential* or *important* for them personally during the pandemic⁵ – but the implications of the internet's growing role in society are most pronounced for children. As a 2021 UNICEF/Gallup report surveying young people from around the globe to explore "what it means to be a child in the 21st century" points out:

More than any other issue the survey covers, the deepest divide between young and old relates to digital technology. A generational gap exists not only in the use of digital technologies, but also in perspectives about its benefits for, and risks to, children.

In terms of usage, the generational gap is yawning, and young people are far more likely than those over 40 years old to be online every day. Across 21 countries surveyed, a median of 77 per cent of young people say they use the internet daily versus just 52 per cent of older people. [...] In every country, young people are at least 10 percentage points

³ Vivek H. Murthy, "Protecting Youth Mental Health: The U.S. Surgeon General's Advisory," U.S. Dept. of Health & Human Services, 2021, p. 25.

⁴ Anderson M & Jingjing Jiang, "Teens and their experiences on social media," *Pew Research Center*, Nov. 28, 2018, <https://www.pewresearch.org/internet/2018/11/28/teens-and-their-experiences-on-social-media/>.

⁵ *Supra*, fn. 5.

more likely than older people to use online sources for information, and in most countries, the difference is 30 percentage points or more.⁶

Extensive surveys of youth across the globe also highlight significant differences in perception of internet media between younger and older users, including disparate relative evaluation of the respective risks and benefits. A 2017 collaboration between Western Sydney University, UNICEF, and RErights systematically solicited the perspectives of young people worldwide on the role of online media in their lives. According to that study, global youth are “overwhelmingly positive about the possibilities [digital technology] affords them.”⁷ The youth surveyed also reported a range of concerns regarding their engagement with digital technologies. These included fear of interacting with strangers, accessing inappropriate content, or being exposed to malware or viruses, reliability of access to technology, parental intrusion into their “private” lives online, and insufficiency of their digital literacy skills. The study indicated that “overall, participants report being most concerned – and careful – about their online privacy,” but believe that their parents are primarily worried about “the bad influence the internet might have on [them]; including the possibility that they would develop inappropriate contacts and friendship networks, potentially corrupting them.”⁸

It is important to note that young people are not a monolith, and even among youth, engagement with, attitudes toward, and impacts of online media can and do vary. Though it seems self-evident that the ways very young children engage with online media, and the consequences of that engagement, differ from online activity by adolescents, most efforts to combat potential harms do not distinguish among these groups. Often, the voices of young people are left out of the discourse surrounding these issues entirely, despite the fact that the dialogue centers on how best to cater to their development and wellbeing.

These differences in perspective apply across the spectrum of youth from infancy to young adulthood (with adult perspectives diverging further still), across demographic and socioeconomic categories, and across the spectrum of neurodivergency. Accordingly, when contemplating potential approaches to resolving documented harms facing children online, these varying relationships with technology must be considered.

Seeking to address the complexities of protecting children online in a nuanced and equitable manner, this bill would create, within the CPPA, the Office for the Protection of Children Online.

California has long recognized that children warrant special consideration, and increasingly so in the digital space. Most recently, this recognition was evidenced by several provisions of the CPRA (and its enacting Proposition 24), which created the CPPA. Specifically, the CPRA made findings that “children are particularly vulnerable from a negotiating perspective with respect to their privacy rights,” and that “businesses should be held accountable when they violate consumers’ privacy rights, and the penalties should be higher when the violation affects children.” Additionally, the CPRA explicitly permits the use of Consumer Privacy

⁶ “The Changing Childhood Project: A multigenerational, international survey on 21st century childhood,” *UNICEF, Gallup*, 2021, p. 8.

⁷ Third A, et al., “Young and Online: Children’s perspectives on life in the digital age,” *Western Sydney University, UNICEF, RErights*, Dec. 2017, p. 39.

⁸ *Id.* at pp. 64-65, 67-68.

Fund monies for the purpose of making grants to “educate children in the area of online privacy.” As such, the Office for the Protection of Children Online would be intended to serve as a mechanism for realizing and prioritizing this aspect of the Agency’s mandate, and for providing expert guidance and recommendations to the Legislature as it contemplates policy in this space.

- 5) **Bill should not interfere with the CPPA’s present obligations to issue specified regulations:** In November 2020, California voters passed Proposition 24, the CPRA. To implement the law, the CPRA established the CPPA and vested it with the full administrative power, authority and jurisdiction to implement and enforce the CCPA. The Agency’s responsibilities include updating existing regulations, and adopting new regulations.

The California Attorney General’s Office published an initial set of regulations implementing the CCPA. The CPRA now directs the new Agency to engage in further rulemaking on a variety of topics by July 1, 2022. The CPPA has indicated that it will not meet that deadline, causing concern for a variety of stakeholders. This bill would not create any timeline by which the CPPA needs to staff the Office for the Protection of the Children Online, thereby arguably ensuring that the obligations of this bill should not interfere or take priority over the rulemaking currently before the CPPA.

- 6) **Prior legislation:** AB 375 (Chau, Ch. 55, Stats. 2018) *See* Comment 3.

7) **REGISTERED SUPPORT / OPPOSITION:**

Support

Common Sense Media (Sponsor)
Consumer Federation of California

Opposition

None on file

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