

Good morning Mr. Chair and members. I'm Rachel Michelin, President and CEO of the California Retailers Association. Thank you for holding this hearing today.

When this body passed the California Consumer Privacy Act in 2018, CRA was appreciative that the legislature – and particularly you, Mr. Chair and Mr. Hertzberg, took the initiative off the ballot. We believe that legislation is preferable to any initiative that locks the law in with virtually no ability to be amended.

The impetus behind CCPA, starting with a cocktail party conversation and spurred on by other issues that made headlines, had little to do with retailers. The vast majority of information we have is about our **customers** – those who have purchased goods or services from us. CCPA puts the brunt of the regulation on customer-facing businesses even though the preponderance of data processing is done by others.

CRA's members have always been concerned about protecting the privacy of our customers. Since passage of CCPA, we have spent tens of millions more dollars working on compliance, and that spending continues now that the AG's regulations have been finalized.

Our members are not anti-privacy. We are already subject to the most comprehensive privacy law in the nation, CCPA. But we are deeply concerned about CPRA because it is an **inflexible** measure. And it will be expensive for the public and private sectors at a time when we can ill-afford it.

CPRA has a provision that only provides for amendments which are "consistent with and further the purpose" of the initiative. While this sounds appealing on its face, it doesn't allow for any flexibility which could be needed as technology allows or a crisis demands.

When CPRA was drafted, none of us had heard about Covid-19 or social distancing. We couldn't have comprehended a time when access to the Capitol would be limited and one could only enter after a health screening. And most of us didn't know what contact tracing was.

I realize there are a number of privacy concerns about contact tracing – and there should be! But the Governor just announced the "California Connected" program for contact tracing. And Sonoma County is asking employers to report health data on their employees.

If CPRA were the law of the land, will the law prohibit some critical actions necessary to protect the health and safety of Californians? Today we are keenly aware that the world can change overnight, and our laws must be amendable and adaptable to help us respond when needed. CPRA simply won't allow for that to happen – even if 100% of the Legislature agreed.

I would also note that this measure creates a new state agency. At a time when we are facing painful budget cuts to schools and healthcare, should we create a new agency and the numerous rulemakings required by CPRA?

I'm also concerned about the cost to comply with this new law. Essential retailers are working hard to protect their employees and customers and deal with supply chain issues. Non-essential retailers are just re-opening. You all have read the headlines – sadly, some retailers won't survive this crisis. For those who do, their scarce resources should be spent putting Californians back to work and keeping their employees and customers safe. Instead, if CPRA passes, we will have to spend millions on compliance and privacy attorneys.

Right now, the legislature should be doing all it can to help main street businesses open their doors – and keep them open. CPRA goes in the wrong direction. One specific example of that is the changes made relating to loyalty and rewards programs. These programs will help get customers back into our stores, but the language in the initiative – while appearing helpful – actually creates greater uncertainty about what we can and cannot do. And we fear it will invite costly litigation.

Similarly, while the moratoria on employee and business-to-business information seems helpful, we are uncertain what the legislature will be able to do on those issues after 2022. Your hands may be tied on reasonable measures to protect employee privacy. Mr. Chair, your leadership on that issue last year was important and we hope you continue your work. We need another extension of the sunset now – the initiative is yet to qualify, and we don't know what the mood of the voters will be in November.

CCPA just went into effect and the ink on the regulations is barely dry. We encourage you to give time for the law to work. If there are deficiencies, let's work together to fix them. We encourage the legislature to do all you can to take this measure off the ballot in 2020. Let's not lock in an unamendable law at this unfathomable time in our history.