

# The CCPA Progeny: Where, When and How

March 24, 2021, 1:00pm ET

*Presented by*

Ross Parker, *Head of Privacy Operations; Global Privacy Strategy, S&P Global, Inc.*

Julia B. Jacobson, *Partner, Arent Fox LLP*

# About the presenters



Julia Jacobson  
*Partner*  
Arent Fox LLP



Ross Parker  
*Head of Privacy Operations; Global Privacy Strategy*  
S&P Global, Inc.

# Poll Question 1

**(polls are anonymous)**

# Today's Schedule

## I. California Consumer Privacy Act (CCPA)

*Poll Question 2*

## II. Virginia Consumer Data Protection Act (VCDPA)

## III. Which state is next?

*Poll Question 3*

## IV. Prepping the Privacy Program

# State Privacy Laws Overview

Amended: California Consumer Privacy Act and Consumer Privacy Rights and Enforcement Act (CPRA)

New: Virginia Consumer Data Protection Act (VCDPA)

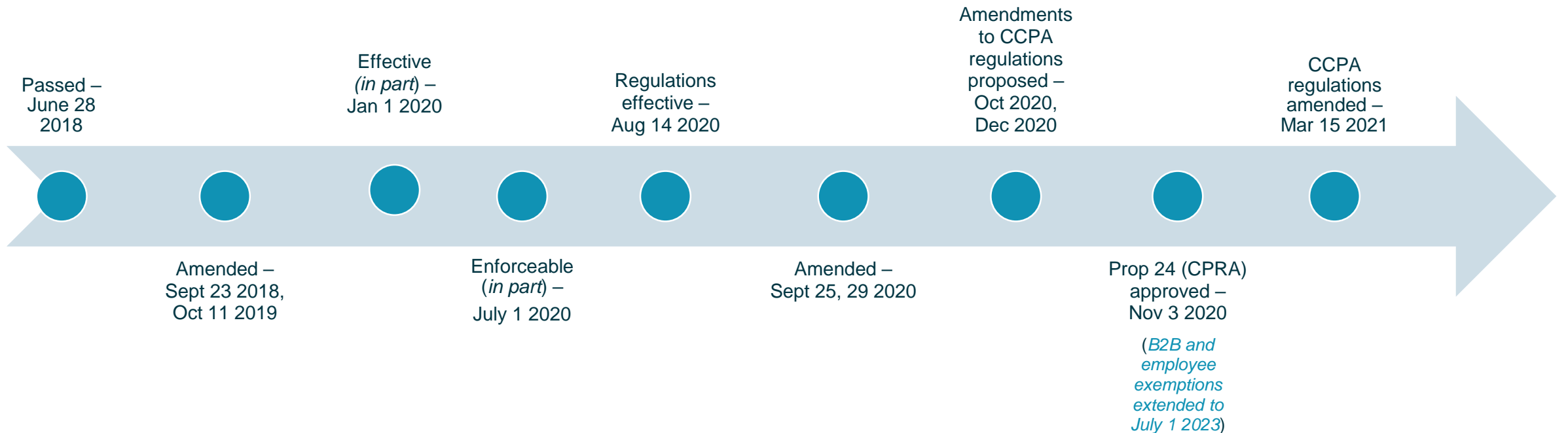
Under consideration:

- Alabama
- Arizona
- Colorado
- Connecticut
- Florida
- Illinois
- Kentucky
- Maryland
- Minnesota
- New Jersey
- New York
- Oklahoma
- Rhode Island
- South Carolina
- Texas
- Vermont
- Washington
- West Virginia

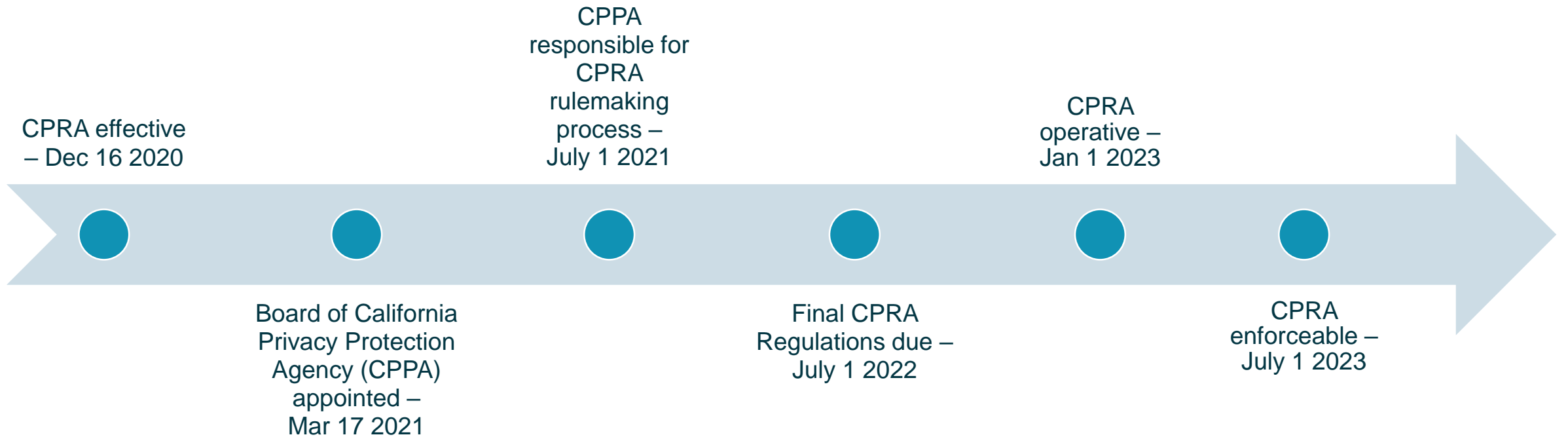
# California Consumer Privacy Act



# CCPA – Brief Chronology



# CPRA – Brief Chronology





Consumer Right	CCPA	CPRA
Right to know/access	✓	✓
Right to deletion	✓	✓
Right to opt out of sale	✓	✓
Right to equal service and price	✓	✓
Right to reasonable security	✓	✓
Right to correct inaccurate personal information	X	✓
Right to opt out of “sharing”	X	✓
Right to limit use/disclosure of sensitive personal information	X	✓

# CPRA Additions

- New definition of **sensitive personal information** (SPI)
- Extends exemption for processing of employee personal information and B2B personal information – now expires on **January 1, 2023**
- New definition of “**contractor**”, which means an individual or entity to whom/which a business “makes available a consumer’s personal information for a business purpose pursuant to a written contract with the business”
  - Compare “service provider”, which means an individual or entity “that processes personal information on behalf of a business and which receives from or on behalf of a business a consumer’s personal information for a business purpose pursuant to a written contract with the business”
- New definition of “**share**”, which means disclosure by a business to a third party for cross-context behavioral advertising for the benefit of a business whether or not for consideration
- Three opt-out choices: sale + share; limit SPI processing; do not sell/share + limit SPI processing for cross-context behavioral advertising

# CPRA Additions

- **Creates CPPA** to “help California residents understand and control their data privacy while holding online businesses accountable” (*Governor’s Press Release, March 17, 2021, quoting (now former) Attorney General Becerra*)
  - “Full administrative power, authority and jurisdiction to implement and enforce” (§1798.199.10)
  - Attorney General will retain civil enforcement authority
- Adds **15 new “areas”** for Attorney General to adopt regulations (§1798.185(a)(8) – (22))
  - Conduct **annual cybersecurity audit** for high-risk processing
  - Submit **annual risk assessment** to CPPA for high-risk processing
  - **Governing access, opt-out rights, logic and likely outcome for** automated decision-making technology
    - includes “profiling”, which means “any form of automated processing of personal information ... to evaluate certain personal aspects relating to a natural person, such as ... performance at work, economic situation, health, personal preferences, interests, reliability, behavior

# Virginia Consumer Data Protection Act




# POLL QUESTION 2

# VCDPA – Brief Chronology

VCDPA signed into law –  
March 3, 2021

VCDPA effective – Jan 1  
2023



VCDPA Working Group  
report\* due – Nov 1 2021

\* VCDPA §59.1-581(2): working group tasked with reviewing implementation issues and reporting on findings, best practices and recommendations



Consumer Right	CPRA	VCDPA (§59.1-573)
Right to know/access	✓	✓
Right to deletion	✓	✓
Right to opt out of sale	✓	✓
Right to equal service and price	✓	✓ *
Right to reasonable security	✓	✓ *
Right to correct inaccurate personal information	✓	✓
Right to opt out of “sharing”	✓	<i>Right to opt-out of targeted advertising and profiling</i>
Right to limit use/disclosure of sensitive personal information/data	✓	<i>Process only after obtaining consumer consent *</i>

\* Controller and/or processor obligation vs. data subject right

# VCDPA

- Effective **January 1, 2023**
- 30 days' notice before Attorney General initiates action (similar to CCPA but not CPRA (§1798.155(b) as amended))
- **No private right of action** (vs. CCPA/CPRA private right of action for failure to implement reasonable security (after 30 days' prior notice))
- Civil penalties up to **\$7,500 per violation**
- Definition of consumer excludes a natural person acting in a commercial or employment context
  - Similar CPRA exclusion *expires* Jan 1, 2023



# VCDPA

- Responsibility according to role: **controller** and **processor** (similar to GDPR)
  - Fact-based role determination
  - Controller
    - Requires contract with processor (similar to GDPR Art 28) – broader than CPRA service provider or contractor agreements
    - Processing principles/obligations (§59.1-574): purpose limitation, minimization, reasonable security, transparency (CPRA has minimization obligation (§1798.100(c) as amended))
  - Processor
    - Compare CPRA “service provider” and “contractor”
    - In lieu of controller audit, permits processor to engage independent auditor to prepare written report consistent with “appropriate and accepted control standard or framework”

# VCDPA

Controller must conduct data protection assessment when:

- processing for the purposes of targeted advertising
- selling personal data
- processing personal data for purposes of profiling when reasonably foreseeable risks
- processing sensitive data
- processing presents a heightened risk of harm to consumers

# Which state is next?

# Our best guess: Washington Privacy Act





Consumer Right	CPRA	WPA
Right to know/access	✓	✓
Right to deletion	✓	✓
Right to opt out of sale	✓	✓
Right to equal service and price	✓	✓ *
Right to reasonable security	✓	✓ *
Right to correct inaccurate personal information	✓	✓
Right to opt out of “sharing”	✓	<i>Right to opt-out of targeted advertising and profiling</i>
Right to limit use/disclosure of sensitive personal information/data	✓	<i>Process only after obtaining consumer consent *</i>

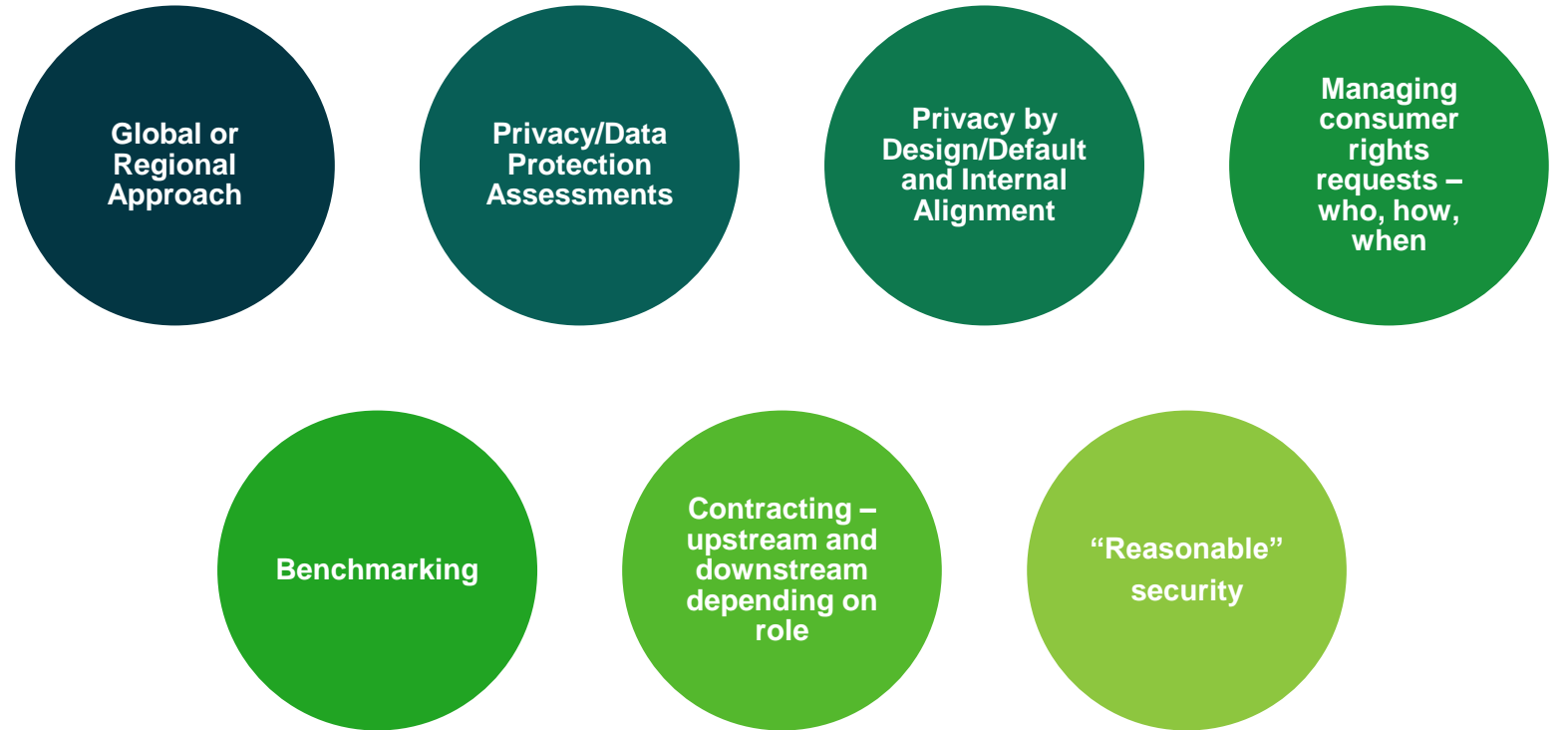
\* Controller and/or processor obligation vs. data subject right

# Washington Privacy Act

- Definition of consumer excludes a natural person acting in a commercial or employment context
  - Same as VCDPA but CPRA exclusion *expires* Jan 1, 2023
- Responsibility according to role: **controller** and **processor**
  - similar to VCDPA and GDPR
- Controller has 15 days to respond to request to opt out of sale, targeted advertising and profiling
  - 45 days for other rights, which is similar to VCDPA
- Controller must conduct data protection assessment for targeted advertising, sale, profiling when foreseeable high-risk impact and sensitive data

# POLL QUESTION 3

# Prepping the Privacy Compliance Program





# Our Lessons Learned from CCPA

1. Get help – privacy is a team effort – management support, shared vision, cooperative planning process
  - Use the headlines to help with buy-in
2. Don't wait – privacy compliance is an ongoing process
  - Creating a bunch of policies at the last minute that don't match reality and/or that are not followed is worse than no policies at all
3. Don't rush it – you have plenty to do so don't get too in the weeds before all the facts are in
4. Explore technology solutions – one size does not fit all

# Questions?

*(if time allows)*

## **Julia Jacobson**

Julia.Jacobson@arentfox.com

617.549.1055 MOBILE

617.973.6297 OFFICE

## **Ross Parker**

Ross.Parker@spglobal.com

434.951.7703 OFFICE

434.484.2949 MOBILE

# Save the Date

**The CCPA Progeny, *Part II*: Facing Customers & What's New in State Privacy Law**

*Wednesday, April 28, 2021, 1:00 – 2:00 pm ET*

**The CCPA Progeny, *Part III*: Data Ethics & What's New in State Privacy Law**

*Tuesday, May 25, 2021, 1:00 – 2:00 pm ET*

# Thank you for joining us!

