

STATE OF CALIFORNIA
Budget Change Proposal - Cover Sheet
DF-46 (REV 08/17)

Fiscal Year 2019-20	Business Unit 0820	Department Department of Justice	Priority No. 8
Budget Request Name 0820-026-BCP-2019-GB		Program Division of Legal Services Administration	Subprogram Public Rights Division/ Consumer Law Section, Privacy Enforcement & Protection Unit, and Civil Law Division/Government Law Directorate/Public Inquiry Unit (PIU)

Budget Request Description
California Consumer Privacy Act of 2018 (AB 375 & SB 1121)

Budget Request Summary

The Department of Justice requests a permanent augmentation of 23.0 positions and \$1,827,000 General Fund and \$2,912,000 Unfair Competition Law Fund in 2019-20 and \$1,746,000 General Fund and \$2,808,000 Unfair Competition Law Fund in 2020-21 and ongoing, to implement and enforce the mandates of Chapter 55, Statutes of 2018 (AB 375) and Chapter 735, Statutes of 2018 (SB 1121).

Requires Legislation <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	Code Section(s) to be Added/Amended/Repealed	
Does this BCP contain information technology (IT) components? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No <i>If yes, departmental Chief Information Officer must sign.</i>	Department CIO	Date

For IT requests, specify the project number, the most recent project approval document (FSR, SPR, S1BA, S2AA, S3SD, S4PRA), and the approval date.

Project No. Project Approval Document: Approval Date:

If proposal affects another department, does other department concur with proposal? ☐ Yes ☐ No
Attach comments of affected department, signed and dated by the department director or designee.

Prepared By Catherine Taylor	Date 1/10/2019	Reviewed By Angela Sierra	Date 1/10/2019
Department Director Chris Ryan	Date 1/10/2019	Agency Secretary	Date

Department of Finance Use Only

Additional Review: ☐ Capital Outlay ☐ ITCU ☐ FSCU ☐ OSAE ☐ CALSTARS ☐ Dept. of Technology

PPBA	Original Signed By Emma Jungwirth	Date submitted to the Legislature 1/10/19
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BCP Fiscal Detail Sheet

BCP Title: California Consumer Privacy Act of 2018 (AB 375 & SB 1121)

BR Name: 0820-026-BCP-2019-GB

Budget Request Summary

	FY19					
	CY	BY	BY+1	BY+2	BY+3	BY+4
Personal Services						
Positions - Permanent	0.0	23.0	23.0	23.0	23.0	23.0
Total Positions	0.0	23.0	23.0	23.0	23.0	23.0
Salaries and Wages						
Earnings - Permanent	0	2,087	2,087	2,087	2,087	2,087
Total Salaries and Wages	\$0	\$2,087	\$2,087	\$2,087	\$2,087	\$2,087
Total Staff Benefits	0	1,139	1,139	1,139	1,139	1,139
Total Personal Services	\$0	\$3,226	\$3,226	\$3,226	\$3,226	\$3,226
Operating Expenses and Equipment						
5301 - General Expense	0	813	621	621	621	621
5302 - Printing	0	10	10	10	10	10
5304 - Communications	0	54	54	54	54	54
5306 - Postage	0	8	8	8	8	8
5320 - Travel: In-State	0	51	51	51	51	51
5322 - Training	0	18	20	20	20	20
5324 - Facilities Operation	0	115	120	120	120	120
5340 - Consulting and Professional Services - Interdepartmental	0	5	5	5	5	5
5340 - Consulting and Professional Services - External	0	393	393	393	393	393
5346 - Information Technology	0	46	46	46	46	46
Total Operating Expenses and Equipment	\$0	\$1,513	\$1,328	\$1,328	\$1,328	\$1,328
Total Budget Request	\$0	\$4,739	\$4,554	\$4,554	\$4,554	\$4,554
Fund Summary						
Fund Source - State Operations						
0001 - General Fund	0	1,827	1,746	1,746	1,746	1,746
3087 - Unfair Competition Law Fund	0	2,912	2,808	2,808	2,808	2,808
Total State Operations Expenditures	\$0	\$4,739	\$4,554	\$4,554	\$4,554	\$4,554
Total All Funds	\$0	\$4,739	\$4,554	\$4,554	\$4,554	\$4,554

Program Summary

Program Funding

0435010 - Civil Law	0	402	391	391	391	391
0435028 - Public Rights	0	4,337	4,163	4,163	4,163	4,163
9900100 - Administration	0	1,427	1,297	1,297	1,297	1,297
9900200 - Administration - Distributed	0	-1,427	-1,297	-1,297	-1,297	-1,297
Total All Programs	\$0	\$4,739	\$4,554	\$4,554	\$4,554	\$4,554

[illegible]

Analysis of Problem

A. Budget Request Summary

The Department of Justice (DOJ) requests a permanent augmentation of 23.0 positions, \$1,827,000 General Fund and \$2,912,000 Unfair Competition Law Fund in 2019-20, and \$1,746,000 General Fund and \$2,808,000 Unfair Competition Law Fund in 2020-21 and ongoing, to implement and enforce the mandates of Chapter 55, Statutes of 2018 (AB 375) and Chapter 735, Statutes of 2018 (SB 1121).

The DOJ seeks approval for the following increased authority:

- Unfair Competition Law Fund
 - ✓ \$2,912,000 in FY 2019-20 and \$2,808,000 in FY 2020-21 and ongoing
 - ✓ 9.0 Permanent Positions
 - ✓ 1.0 Supervising Deputy Attorney General (SDAG)
 - ✓ 5.0 Deputy Attorneys General (DAG)
 - ✓ 3.0 Associate Governmental Program Analyst (AGPA)
 - ✓ \$250,000 annually for expert consultants
- General Fund
 - \$1,827,000 in FY 2019-20 and \$1,746,000 in FY 2020-21 and ongoing
 - 14.0 Permanent Positions
 - ✓ 3.0 Deputy Attorneys General (DAG)
 - ✓ 5.0 Associate Governmental Program Analyst (AGPA)
 - ✓ 6.0 Legal Secretary (LS)

Total Positions: 23.0

Total Funding: \$4,739,000 FY 2019-20

\$4,554,000 FY 2020-21 and Ongoing

B. Background/History

*(Provide **relevant** background/history and provide program resource history. Provide workload metrics, if applicable.)*

The Consumer Law Section has broad responsibility to combat unlawful, unfair and deceptive conduct, false advertising, and other illegal practices directed at California consumers. It does so by conducting investigations, pursuing litigation, supporting local prosecutors, filing appellate briefs, and engaging in legislative and policy advocacy to protect the rights of consumers under state and federal law. The Section's cases are among the most complex and high profile in the office, and in recent years have included investigations and prosecutions in areas that affect the lives of all Californians. The Section regularly obtains substantial relief for both victims and the State, as well as injunctions and civil penalties that reform industry behavior, deter future misconduct, and protect both consumers and the marketplace.

DOJ currently enforces privacy rights through PRD's Consumer Law Unit and Privacy Unit, a small sub-section of attorneys, currently staffed with 1.0 SDAG overseeing the work of 4.0 DAGs.

On June 28, 2018, AB 375, known as The California Consumer Privacy Act of 2018, was enacted and included an implementation date of January 1, 2020. On September 23, 2018, SB 1121 was enacted, which amended the provisions of the California Consumer Privacy Act of 2018, and revised the mandates for the Office of the Attorney General effective July 1, 2020.

The California Consumer Privacy Act of 2018 grants California consumers many new privacy rights. In brief, the law vests a consumer with the right to request: what personal information a business collects about the consumer, that the business delete personal

Analysis of Problem

information, and that a business disclose the identity of third parties to which a consumer's personal information was sold or disclosed. Consumers are permitted to opt out of the sale of personal information by a business and a business cannot discriminate against the consumer for exercising this right, such as by charging the consumer who opts out a different price or providing the consumer a different quality of goods or services. The California Consumer Privacy Act of 2018 also prohibits a business from selling the personal information of a consumer under 16 years of age, unless affirmatively authorized by an "opt-in" and as specified. In addition, the law sets forth various definitions to define the scope of the bill's application, as well as broadly defines "personal information."

Resource History
Public Rights Division
Consumer Law Section and Privacy Enforcement & Protection Unit
(Dollars in thousands)

Program Budget	2013-14	2014-15	2015-16	2016-17	2017-18
Authorized Expenditures	9,021	9,425	10,035	9,874	11,617
Actual Expenditures	8,898	9,192	10,007	9,889	12,933
Authorized Positions	35.0	33.0	41.0	41.0	47.0
Filled Positions	32.0	33.0	37.0	40.0	42.0
Vacancies	3.0	0	4.0	1.0	5.0

Resource History
Civil Law Division
Government Law Section
(Dollars in thousands)

Program Budget	2013-14	2014-15	2015-16	2016-17	2017-18
Authorized Expenditures	10,062	10,224	11,097	11,494	15,228
Actual Expenditures	8,601	10,419	11,196	12,636	13,551
Authorized Positions	43.0	43.0	46.0	47.0	65.0
Filled Positions	38.0	40.0	42.0	44.0	42.0
Vacancies	5.0	3.0	4.0	3.0	23.0

C. State Level Considerations

The California Consumer Privacy Act of 2018 centralizes enforcement with the Attorney General, and does not provide for any action by other law enforcement entities within the state, such as District Attorneys or City Attorneys. Enforcing this law will require additional resources for investigating and prosecuting violations of the law by companies in the technology industry, who will likely be represented by some of the nation's largest and most sophisticated law firms. Accordingly, this law places an exceptional burden on the Attorney General's Office to enforce, as well as promulgate, regulations.

D. Justification

While the California Consumer Privacy Act of 2018 is a ground-breaking privacy measure for California consumers, it creates unique and significant operational challenges for the

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Attorney General in its enforcement framework that must be addressed through proper funding and additional staffing in order to fulfill the bill's mandates.

Public Rights Division

Consumer Law Section

New Rights Created Requiring Enforcement

The California Consumer Privacy Act of 2018 establishes new requirements for businesses in how it collects and handles consumer personal information. The law is complex and broad in its scope; it will apply to many companies across the country, if not the globe. Since the law is the first of its kind in the United States, enforcement will leverage significant resources for complex investigations and prosecutions against opponents typically represented by some of the largest and most sophisticated law firms. Resources will be needed to identify issues and alleged violations of the law; conduct factual and legal research to assess each violation and viability of potential claims; and make recommendations to the Attorney General regarding the strategy and success for each action. In cases where the Attorney General will be forced to sue, DOJ will require additional resources dedicated to active litigation. We estimate that we will have at least 3 cases litigated a year. In total, we estimate enforcement will require 1.0 SDAG, 5.0 DAGs and 3.0 AGPAs, plus substantial travel and expert consultants' costs.

Promulgation of Regulations

The law provides for the Attorney General to promulgate regulations and expressly mandates the solicitation of "broad public participation." The level of workload will vary depending on the number of petitions for rulemaking that we receive, the outcome of any legal challenges to our rules, and our obligation to periodically update the regulations. The rulemaking will likely require the services of expert consultants, given the technical nature of the AB 375 and SB 1121, and how "personal information" is defined. In 2018-19, the DOJ received 2.0 DAGs and 1.0 AGPA to begin the regulations process. In addition to these positions, 2.0 AGPAs are needed in 2019-20 and ongoing to continue with the rulemaking and regulations.

Civil Law Division

The costs specific to the Government Law Section (GLS) will primarily be to defend the statute and regulations from legal challenges, in the trial courts and on appeal. Since AB 375 and SB 1121 were only recently passed, no lawsuits have yet been filed, and the number of lawsuits that will be filed is uncertain. Nonetheless, given the economic and privacy interests at stake, litigation is probable. Solely for budgeting purposes, the Civil Law Division anticipates four lawsuits through 2023-24: a state lawsuit challenging the Act, a federal lawsuit challenging the Act, a state lawsuit challenging the original regulations, and a state lawsuit challenging one of the amendments to the regulations. Civil anticipates that each lawsuit will take an average of three years to complete, from inception through appeal. The Section will require 1.0 DAG in FY 2019-20 and ongoing. The GLS DAG will also provide advice regarding the AG's regulations, and review of the regulations during the promulgation process for both the initial regulations and the amended regulations envisioned by the Act.

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Directorate

The Public Inquiry Unit (PIU) handles all complaint intake and response for the DOJ. Currently, 1.0 senior analyst spends an average of 50-75 percent of their time working on privacy complaints. These include complaints related to data brokers who publish consumers' personal information online, complaints from Safe at Home program participants whose physical address is improperly posted online, complaints from consumers about websites that violate the Online Privacy Protection Act of 2003, complaints from consumers whose data has been breached, and complaints from victims of cyberbullying and cyber exploitation (revenge porn). The California Consumer Privacy Act of 2018 significantly expands the privacy rights of consumers, and requires the Attorney General's Office to enforce these rights. We anticipate a huge influx of complaints from consumers who want businesses to disclose what information they have collected and to delete this information. The PIU needs 2.0 AGPAs to: (a) educate consumers what rights they do and do not have under the new law; (b) handle complaints against businesses, including contacting non-compliant businesses and informing them of their obligations under the law; and (c) coordinate with the Consumer Law Section, to identify businesses or industries that may require enforcement action.

- E. **Outcomes and Accountability** *(Provide summary of expected outcomes associated with Budget Request and provide the projected workload metrics that reflect how this proposal improves the metrics outlines in the Background/History Section.)*

Projected Outcomes Public Rights Division Consumer Law Section and Privacy Enforcement & Protection Unit						
Workload (Hours)	2018-19	2019-20	2020-21	2021-22	2022-23	2023-24
Investigations and Prosecutions	600	14,083	14,946	14,726	14,836	15,056
Regulations Promulgation	8,550	8,265	8,600	8,491	8,392	8,609

Projected outcomes for the Consumer Law Unit and Privacy Unit include the initial regulations promulgation as well as ongoing updates to the regulations per year. Based on inquiries received in the two weeks following the passage of AB 375, these estimates may reflect a minimum. The Consumer Law Unit and Privacy Unit also estimate at least two litigated matters annually.

Projected Outcomes Civil Law Division Government Law Section						
Workload (Hours)	2018-19	2019-20	2020-21	2021-22	2022-23	2023-24
Litigation	735	1,470	1,470	1,470	1,470	735
Regulations	0	60	60	30	30	30

GLS anticipates four lawsuits through 2023-24. It is assumed that each lawsuit will take an average of three years to complete, from inception through appeal. Each lawsuit is estimated to require 735 hours per year to litigate to completion. GLS estimates a greater amount of hours spent in 2019-20 and 2020-21 when the initial regulations will be promulgated. GLS estimates these numbers will decrease in subsequent years, based on amendments to the regulations.

Analysis of Problem

F. Analysis of All Feasible Alternatives

Alternative 1: Accept Proposal as Outlined

Approve a permanent augmentation of 23.0 positions, and \$1,827,000 General Fund and \$2,912,000 Unfair Competition Law Fund in 2019-20, and \$1,746,000 General Fund and \$2,808,000 Unfair Competition Law Fund in 2020-21 and ongoing. The requested resources will allow DOJ to handle the ground-breaking privacy measure for California consumers.

Alternative 2: Deny Request

Do not approve this BCP. This alternative would require the Attorney General to stop work on other matters vital to consumer protection to meet the demands of AB 375 and SB 1121.

G. Implementation Plan

Upon approval of this proposal, DOJ would immediately bring on the resources required to meet the start date.

H. Supplemental Information *(Describe special resources and provide details to support costs including appropriate back up.)*

Appendix A – Workload Tables

I. Recommendation

Alternative 1: Approve the requested for resources necessary to implement AB 375 and SB 1121.

Analysis of Problem

APPENDIX A Workload Tables

Supervising Deputy Attorney General	
Consumer Law Section, Public Rights Division - Enforcement and Litigation	
420-450-5703-XXX	
Provides proactive, hands-on supervision to a team of legal professionals that includes Deputy Attorneys General and that may include paralegals; and support staff	
TASKS	Hours per Year
Participates in, assists, and monitors subordinate attorneys, paralegals, and staff	300
Participates in all phases of the work of the legal professionals supervised	344
Plans the distribution of work and reviews attorney and paralegal work product	244
Handles a variety of general administrative matters; evaluates performance of subordinate attorneys and support staff; assists in the recruitment process for new attorneys and support staff.	444
Performs the most difficult legal work related to jury trials, bench trials, writs, appeals, and administrative hearings;	444
Total Hours	1,776
Total FTE	1.0

Deputy Attorney General IV	
Consumer Law Section, Public Rights Division	
Litigation and Enforcement	
420-450-5701-XXX	
TASKS	Hours per Year
Pre-Investigation: Conducts legal research and prepares legal documents for appeals, writs, trials and arbitration proceedings.	250
Investigation: Conducts discovery and makes appearances before federal and state trial and appellate courts. Conducts special investigations of the more difficult, complex and sensitive nature.	4,865
Enforcement: Collaborates with legal and investigative staff in other states, the federal government, and local jurisdictions.	197
Settlements: Preparation for, review, comment on communications/meetings with investigatory target re: findings and proposed settlement terms.	135
Pre-Trial: Planning and preparation for trial.	2,144
Trial/Hearing: Conduct trial.	1,330
Post Trial: Conduct post trial activities and strategies.	98
Total Hours	9,019
Total FTE	5.0

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Associate Governmental Program Analyst Consumer Law Section, Public Rights Division Enforcement and Litigation 420-450-5393-XXX	
TASKS	Hours per Year
Intake and Management	240
Interpret complex or technical information and materials (e.g., trade journals, academic journals, technical reports, work procedures and standards) for application to work assignments.	325
Conduct research to compile information needed for projects or assignments using available resources (e.g., work database, internal/external clients, internet sources).	2,825
Retrieve information regarding project activities and work assignments from hard copy and electronic files for use in planning work activities and completing assignments.	221
Use spreadsheet software to present data and information in an organized manner (e.g., tables, graphs, charts).	1,456
Total Hours	5,067
Total FTE	3.0

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Deputy Attorney General IV	
Consumer Law Section, Public Rights Division	
Regulations Promulgation	
420-450-5701-XXX	
TASKS	Hours per Year
Conducting Legal and Factual Research Need to Draft Regulations	1,050
Consult with Stakeholders	240
Drafting and Promulgating Regulations Drafting proposed regulations Reviewing and reconciling a high volume of divergent comments Responding to all public comments Convening public hearings Preparing Regulatory Package for submission to Office of Administrative Law	2,310
Total Hours	3,600
Total FTE	2.0

Associate Governmental Program Analyst	
Consumer Law Section, Public Rights Division	
Regulation Promulgation	
420-450-5393-XXX	
TASKS	Hours per Year
Conducting Legal and Factual Research Need to Draft Regulations	1,500
Consult with Stakeholders	1,500
Assist with Drafting and Promulgating Regulations; Drafting proposed regulations;; Reviewing and reconciling a high volume of divergent comments; Responding to all public comments; Convening public hearings; Preparing Regulatory Package for submission to Office of Administrative Law	2,000
Total Hours	5,000
Total FTE	3.0

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Deputy Attorney General IV	
Government Law Section, Civil Law Division	
420-120-5701-XXX	
TASKS	Hours per Year
Advice regarding the Attorney General's regulations.	600
Review of the regulations during the promulgation process—for both the initial regulations and the amended regulations envisioned by AB 375.	1,000
Litigation of AB 375, Litigation of Regulations, Litigation regarding challenges to amendments to regulations	170
Total Hours	1,770
FTE	1.0

Analysis of Problem

**Associate Governmental Program Analyst
Public Inquiry Unit, Executive Division
420-840-5393-XXX**

TASKS	Hours per Year
Handle written complaints from consumers pertaining to the CCPA. Evaluate complaints to determine if there has been a violation of the CCPA. Contact businesses that are the subject of complaints to inform them of their obligations under the law. Review responses from businesses to ensure compliance. Follow-up with consumers to confirm complaints have been resolved.	3,000
Handle telephone calls from consumers who have questions about the CCPA or complaints against businesses who are not complying with the law. Explain the requirements of the law and provide information and recommendations to consumers about how to enforce their rights and file complaints.	312
Enter information into database regarding complaints/violations. Provide hard copy and electronic records of complaints to the Consumer Law Section. Prepare reports and spreadsheets documenting complaints and violations for use in enforcement actions.	200
Prepare standard letters, telephone system recordings, and website content to inform consumers of their rights and remedies under the CPPA.	40
Total Hours	3,552
Total FTE	2.0