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CREDIT UNION LEAGUE



April 24, 2019

TO: Members, Assembly Privacy and Consumer Protection Committee

SUBJECT: AB 1416 (COOLEY) BUSINESS: COLLECTION AND DISCLOSURES OF CONSUMER PERSONAL INFORMATION SUPPORT – AS INTRODUCED FEBRUARY 22, 2019 SCHEDULED FOR HEARING – APRIL 30, 2019

The California Chamber of Commerce and the listed organizations **SUPPORT AB 1416 (Cooley)**, as introduced February 22, 2019, because it ensures that crucial government programs can continue without interruption and that businesses can continue protecting consumers against fraud and identity theft, while still carrying out the intent of the California Consumer Privacy Act (CCPA).

Under the CCPA, local governments will face difficulty receiving data services provided by businesses that are necessary for the operation of many important programs. Although government entities are not considered “Businesses” under the CCPA, they are “third parties” with whom businesses can be prevented from selling information pursuant to a consumer opt-out. When a consumer exercises the right to opt-out, it prevents a business from selling information to other private companies as well as government entities.

The CCPA includes a number of exemptions pertaining to a government entity’s use of data. Unfortunately, the exemptions do not fully address the relationship between local government and their private partners. The definition of “service provider” under the CCPA provides solely for a “business” to process data on behalf of another “business,” not for a business to provide data to a government entity.

Here are just a handful of real-life examples of how local governments use data provided by businesses:

- Assessing placement options for foster youth with immediate and extended family members, or other homes when family reunification is not possible;
- Collecting overdue child support payments from parents with missing or incorrect information on file with the county;
- Determining the eligibility of Medi-Cal providers to ensure patient safety;
- Verifying information about public pension recipients or their beneficiaries; and
- Locating abducted children within the critical 24-hour window of a missing child report.

AB 1416 will ensure that these important government programs can continue.

AB 1416 addresses another problem with the CCPA that could harm consumers. The CCPA’s opt-out provision also undermines legal compliance activities and efforts by businesses to protect consumers from identity theft and to prevent other crimes, like money laundering and human trafficking, because it contains no exception for the prevention or investigation of fraud or other illegal activities. If not fixed, this would allow bad actors to opt out of services designed to prevent or investigate fraudulent or illegal behavior.

For example, under the CCPA, a company providing anti-money laundering data services to a bank is not directly subject to the bank’s anti-money laundering legal obligations and cannot, therefore, claim a “legal compliance exemption.” That same company is also not a “service provider,” which is a business handling data at the direction of a business, such as a bank. Instead, the company providing anti-money laundering data services is a business putting together a service it then provides to the bank. A service from which bad actors can opt out and evade detection if the CCPA is not fixed.

The CCPA already recognizes part of this problem in the deletion section of the law, which has an exemption stating that businesses need not delete data that is necessary to detect security incidents or to protect against malicious, deceptive, fraudulent, or illegal activity. **AB 1416** ensures that this same type of exemption can be applied to the right to opt out of the sale of data for these limited purposes.

This fix is necessary because other provisions of the CCPA do not address this concern. Although the definition of business purpose in the CCPA contains an exemption for “detecting security incidents, protecting against malicious, deceptive, fraudulent, or illegal activity, and prosecuting those responsible for that activity,” there is no provision stating that by having a statutorily defined “business purpose” a business may refuse to honor an opt-out request.

Further, as discussed in the example above, provisions that exempt some data exchanges between a “Business” and a “Service Provider” from the definition of “sale” do not address the problem either. Companies providing fraud or crime prevention/investigation data services to businesses and governments are not “Service Providers” to those customers under the CCPA. A “Service Provider” is an entity that receives data from a Business and processes it solely for the Business.¹ Instead, companies providing fraud or crime prevention/investigation services are selling data they control to another business or government agency; they are not only processing the data of the business or government agency.

Further, the customers to whom fraud or crime prevention/investigation data services are provided often do not fall within the CCPA definition of “Business.” Many are government agencies, some are charities, and many are smaller businesses not covered by the CCPA. Since these entities are not a “Business” under the CCPA, by definition, another entity providing them data cannot be a “Service Provider” as that definition requires processing done on behalf of a “Business.” Thus, the fixes offered by **AB 1416** are necessary.

For these and other reasons, we **SUPPORT AB 1416**.

Sincerely,



Sarah Boot
Policy Advocate
California Chamber of Commerce

California Attractions and Parks Association
California Bankers Association
California Credit Union League
California Land Title Association
CompTIA
Consumer Data Industry Association
CTIA
Electronic Transactions Association
Entertainment Software Association
Internet Association
Symantec
Tech Net

cc: Legislative Affairs, Office of the Governor
Brian Ricks, Office of Assemblymember Ken Cooley
Ronak Daylami, Assembly Privacy and Consumer Protection Committee
Paul Dress, Assembly Republican Caucus

SB:ldl

¹ The CCPA defines “Service Provider” as an entity “to which the business discloses a consumer’s personal information.”