

(Without Reference to File)

CONCURRENCE IN SENATE AMENDMENTS

AB 1202 (Chau)

As Amended September 6, 2019

Majority vote

SUMMARY:

This bill requires data brokers to register with the Attorney General (AG), requires the AG to create a publicly available registry of data brokers on its website, and grants enforcement authority for violations of these requirements to the AG.

The Senate Amendments:

Are clarifying in nature. They 1) incorporate necessary definitions from the California Consumer Privacy Act (CCPA), 2) provide that the bill shall not be construed to supersede or interfere with the CCPA; and, 3) limit exemptions from the bill only to the extent that specified entities are covered by other governing statutory schemes.

COMMENTS:

- 1) *Purpose of the bill:* This bill seeks to create a registry of data brokers so that California consumers may better know what businesses to contact in order to opt-out of the sale of their personal information (PI). This bill is author-sponsored.
- 2) *Background:* As of 2016, there are over 286,942,747 internet users in the United States, and that number is increasing by approximately one user per second. Every internet user creates a "digital footprint," or a record of every action the user takes on the web. These footprints contain public activity, such as posts and comments made on social media websites, as well as more sensitive activities, such as cookies that follow a user from website to website, or archived lists of all the terms entered into a browser's search bar. Data brokers (generally businesses operating without any direct relationship with individual consumers), collect and sell this information without the knowledge of the individuals to whom the information relates. As an industry, data brokers have existed in the shadows and have largely been able to operate outside of any meaningful regulation, and until recently, public scrutiny.

That being said, the industry has arguably also provided a number of services that support integral functions in modern society, as indicated in the findings and declarations of this bill.

However, while data brokers may offer benefits, there are also risks associated with the widespread aggregation and sale of data about consumers. The Federal Trade Commission (FTC) has long been concerned regarding the business practices of data brokers. In fact, as early as 2012, the FTC proposed "targeted legislation" to regulate the industry in a report on consumer privacy. The report notes:

To address the invisibility of, and consumers' lack of control over, data brokers' collection and use of consumer information, the Commission supports targeted legislation [...] that would provide consumers with access to information about them held by a data broker. To further increase transparency, the Commission calls on data brokers that compile data for marketing purposes to explore creating a centralized website where data

brokers could 1) identify themselves to consumers and describe how they collect and use consumer data, and 2) detail the access rights and other choices they provide with respect to the consumer data they maintain (FTC, *Protecting Consumer Privacy in an Era of Rapid Change: recommendations for businesses and policymakers* (Mar. 2012)).

The FTC reiterated this proposal in a 2014 report focused specifically on data brokers (FTC, *Data Brokers: a call for transparency and accountability* (May 2014)). However, at the federal level, no specific data broker legislation has been enacted. At the state level there has been more movement and last year Vermont enacted a first-of-its kind data broker regulation which imposes several specific requirements on data brokers. This bill would similarly require data brokers to register with the AG and provide specified information so that consumers could exercise their rights under other state laws, namely the CCPA.

According to the Author:

The data industry is both pervasive and poorly understood by consumers. This bill would better allow privacy conscious consumers to exercise their rights granted under CCPA and develop a more thorough understanding of the data industry's scope and practices. It will also allow for a modicum of oversight over an industry that has so far been allowed to thrive with little to no obligations to the public or to the individuals whose personal information provides the foundation for their industry. In a world where an individual's real time location, arrest record, rental history, or court filings are available online, and conveniently aggregated for purchase, people deserve, at a minimum, to know who is collecting information about them, and to have the ability to opt-out of the sale of their personal information. AB 1202 would consolidate data brokers into one easily accessible list so that consumers may exercise their rights.

Arguments in Support:

In support, the Media Alliance and Oakland Privacy write:

[AB] 1202 is primarily a transparency bill that allows consumers to exercise their privacy rights as they desire without being blocked or impeded by the inability to locate or identify a third party broker who has acquired their data. The [California] Legislature acted in 2018 to give consumers a nationally unrivaled ability to seek and receive information about how their personally identifiable information has been sold, and if they desire, to take action to prevent further dissemination of their information without their consent. But that right, in order to be fully vested, requires consumers to be able to locate and contact recipients of their data to express their preference. This is an action that can be difficult in the shady world of third party data brokers. [AB] 1202 would provide a simple solution without greatly increasing administrative burden by employing a straightforward licensure process.

Arguments in Opposition:

Writing in opposition to a prior version of this bill, a coalition of advertising and marketing trade associations including the American Advertising Federation and the Association of National Advertisers argue that the bill's registration requirement does not provide consumers with new or helpful information; that the bill will create enormous new responsibilities for the AG at a time when that Office is burdened with responsibilities pertaining to the CCPA; and, that the bill's transparency and opt-out provisions are duplicative of the CCPA, and may conflict with the CCPA, thereby hurting consumers and undermining the goals of the CCPA.

FISCAL COMMENTS:

According to the Senate Appropriations Committee, the Department of Justice reports costs of \$378,000 in Fiscal Year (FY) 2019-20; \$1.74 million in FY 2020-21; \$901,000 in FY 2021-22; and \$485,000 annually thereafter to accomplish the anticipated increase in workload associated with this bill. (Special fund*, General Fund)

VOTES:**ASM PRIVACY AND CONSUMER PROTECTION: 9-2-0**

YES: Chau, Bauer-Kahan, Berman, Weber, Mullin, Gallagher, Irwin, Smith, Wicks

NO: Fong, Obernolte

ASM APPROPRIATIONS: 13-4-1

YES: Gonzalez, Bloom, Bonta, Calderon, Carrillo, Chau, Eggman, Gabriel, Eduardo Garcia, Maienschein, Petrie-Norris, Quirk, Robert Rivas

NO: Bigelow, Brough, Fong, Obernolte

ABS, ABST OR NV: Diep

ASSEMBLY FLOOR: 56-13-11

YES: Aguiar-Curry, Arambula, Bauer-Kahan, Berman, Bloom, Boerner Horvath, Bonta, Burke, Calderon, Carrillo, Cervantes, Chau, Chiu, Chu, Daly, Frazier, Friedman, Gabriel, Gallagher, Cristina Garcia, Gipson, Gloria, Gonzalez, Grayson, Holden, Irwin, Jones-Sawyer, Kalra, Kamlager-Dove, Levine, Limón, Low, Maienschein, McCarty, Medina, Mullin, Muratsuchi, Nazarian, O'Donnell, Petrie-Norris, Quirk, Quirk-Silva, Ramos, Reyes, Luz Rivas, Robert Rivas, Rodriguez, Blanca Rubio, Salas, Santiago, Smith, Mark Stone, Weber, Wicks, Wood, Rendon

NO: Bigelow, Chen, Choi, Dahle, Flora, Fong, Kiley, Lackey, Mathis, Melendez, Obernolte, Patterson, Voepel

ABS, ABST OR NV: Brough, Cooley, Cooper, Cunningham, Diep, Eggman, Eduardo Garcia, Gray, Mayes, Ting, Waldron

UPDATED:

VERSION: September 6, 2019

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