

**SB 1121 (DODD) PERSONAL INFORMATION
OPPOSE/JOB KILLER - AS AMENDED APRIL 26, 2018
SENATE APPROPRIATIONS COMMITTEE**

"UPDATED"



STATE PRIVACY AND SECURITY COALITION

May 7, 2018

TO: Members, Senate Appropriations Committee

FROM: California Chamber of Commerce [SB](#)
 American Council of Life Insurers
 American Insurance Association
 Association of California Life & Health Insurance Companies
 Association of National Advertisers
 California Association of Health Facilities
 California Bankers Association
 California Cable & Telecommunications Association
 California Community Banking Network

California Financial Services Association
 California Hospital Association
 California Manufacturers and Technology Association
 California Medical Association
 California Retailers Association
 Camarillo Chamber of Commerce
 Civil Justice Association of California
 CompTIA
 Consumer Technology Association
 Data & Marketing Association
 East Bay Leadership Council

Electronic Transactions Association
Greater Coachella Valley Chamber of
Commerce
Greater Irvine Chamber of Commerce
Internet Association
Internet Coalition
Lodi District Chamber of Commerce
Motion Picture Association of America
National Association of Chain Drug Stores
Palm Desert Area Chamber of Commerce
Personal Insurance Federation of California
Rancho Cordova Chamber of Commerce
Redondo Beach Chamber of Commerce

Retail Industry Leaders Association
San Gabriel Valley Economic Partnership
Santa Maria Valley Chamber of Commerce
Securities Industry and Financial Markets
Association
Silicon Valley Leadership Group
South Bay Association of Chambers of
Commerce
Southwest California Legislative Council
State Privacy and Security Coalition
TechNet
Torrance Chamber of Commerce
Vacaville Chamber of Commerce

**SUBJECT: SB 1121 (DODD) PERSONAL INFORMATION
OPPOSE/JOB KILLER - AS AMENDED APRIL 26, 2018
SET FOR HEARING – MAY 14, 2018**

The California Chamber of Commerce and the coalition of business and technology organizations listed above respectfully **OPPOSE SB 1121 (Dodd)**, as amended April 26, 2018 as a **JOB KILLER**.

The stated goal of **SB 1121** is to help prevent data breaches exposing the personal information of California residents. The reality is that **SB 1121** would drastically expand the civil liability of companies providing goods and services in California without any corresponding benefit to California consumers. The only beneficiaries of **SB 1121** would be consumer class action attorneys – and they stand to benefit greatly if this bill is adopted.

SB 1121 vastly expands the scope of who can sue companies for data breaches in California. Under current law, a customer who has been injured by a data breach (due to a violation of Civil Code §1798.81.5 or §1798.82) already has a remedy under California’s Unfair Competition Law (UCL). Yet, **SB 1121** would create a new, private right of action for consumer data breaches alleged to violate the above-listed Civil Code sections – a private right of action that does not require any showing of injury. **SB 1121** goes even further. If adopted, a consumer would not even have to show that their data had been breached, let alone show an injury from that breach. **SB 1121** would allow “[a]ny consumer whose personal information has been or is reasonably believed to have been breached” to bring a lawsuit.

SB 1121 attempts to bypass the will of California voters. In 2004, voters approved Proposition 64 by an 18-point margin to limit private lawsuits against companies under the UCL to only those brought by an individual or individuals who have actually been injured. Voters supported Prop 64 to limit “shakedown” lawsuits that mainly result in windfalls for lawyers and higher prices passed down to consumers due to litigation costs.

Yet, **SB 1121** would unquestionably result in a barrage of “shakedown” data breach cases in California. The bill would impose a minimum of \$200 in damages per consumer breach – again, without requiring any proof of consumer injury. Thus, awards of damages under **SB 1121** would be staggering – enough to put companies out of business. Faced with the risk of such massive damages, even if no consumers were injured, companies would be leveraged into immediate settlement – regardless of the strength of their defense.

SB 1121 would inevitably result in enormous payouts to consumer attorneys, imposing significant costs on companies and consumers, and ultimately weighing down California’s economy – and all of it is completely unnecessary. California already has some of the strongest data breach consumer protection laws in the country. Under current law, companies are required to immediately report a data breach to California consumers – even if no harm has been detected whatsoever. (Many states require a showing of harm to trigger their data breach reporting requirement). Once reported, news of a data breach results in damage to a company’s relationship with its customers as well as its brand and its reputation. It also opens a company up to UCL lawsuits by customers who can allege harm.

Moreover, if a data breach involves more than 500 California consumers, companies must immediately report the breach to California's Attorney General. This means the company may be subjected to a civil enforcement action brought by the Attorney General or another government enforcement agency.

SB 1121's vast expansion of civil liability will not make Californians any safer. As discussed, companies already have significant incentive to prevent data breaches. When data breaches do happen, proactive measures are key to protecting consumers. After receiving prompt notice of a breach, as required under current law, consumers can close imperiled accounts, put a fraud alert or security freeze on their credit records, and take other steps to protect themselves from identity theft. Current law already requires companies that have been breached to help consumers take such action by mandating that they provide free identity theft and mitigation measures, like credit reporting services, for at least one year.

Under the current law, companies have an incentive to act as quickly as possible to notify consumers and to do as much as possible to mitigate their harm. **SB 1121** diminishes this incentive because, if this bill is adopted, a company that acts aggressively to eliminate injury to consumers will be exposed to the same liability as a company that delays announcing a data breach and fails to offer any mitigation measures.

Finally, if adopted, **SB 1121's** attempt to prohibit a consumer's ability to waive their right to a class action lawsuit would likely be preempted by the Federal Arbitration Act to the extent it bars class action waivers in arbitration agreements, as indicated by the California Supreme Court in *Sanchez v. Valencia Holding Co., LLC*, S199119, 2015 WL 4605381 (Cal. Aug. 3, 2015).

For these reasons and more, we are **OPPOSED** to **SB 1121 (Dodd)** as a **JOB KILLER**.

cc: Tom Dyer, Office of the Governor
The Honorable Bill Dodd
Mike Petersen, Senate Republican Caucus
Shaun Naidu, Senate Appropriations Committee
District Offices, Members, Senate Appropriations Committee

SB:ldl