



March 18, 2019

Chairman Ed Chau
Assembly Privacy and Consumer Protection Committee
Room 156A, Legislative Office Building
1020 N Street
Sacramento, CA 95814

Re: AB 1202, Data broker registration - OPPOSE

Dear Chairman Chau:

As the nation's leading advertising and marketing trade associations with members directly impacted by AB 1202, we write to inform the Committee of some of the unintended consequences of AB 1202, and we ask that the Committee take additional time to consider the bill's full impact on consumers, the California Attorney General's ("AG") office, and businesses before advancing the bill through the legislative process. Collectively, the undersigned companies and associations represent industries driven by data that take very seriously the responsibility to protect consumer data and provide transparency regarding data collection activities. Unfortunately, as currently drafted, AB 1202 would result in numerous problems for consumers, the California Attorney General, and businesses, making California a more difficult place to innovate and regulate, and hurting workers and consumers in nearly all sectors of the state's economy.

Given the recent passage of the California Consumer Privacy Act of 2018 ("CCPA"), which will create still unknown changes to the digital economy, and which currently is being updated through rulemaking, it is important to ensure that any additional changes to the State's information privacy laws are carefully crafted to work within an interoperable scheme. To that end, we believe it would be ill-advised to pass new laws directly regulating the information economy until the Attorney General completes the statutorily-mandated rulemaking to clarify the CCPA and there is time to assess the impact of this untested new law on consumers, businesses, and the ability of the Attorney General to effectively advise on and enforce the law.

I. The bill's registration requirement does not provide consumers with new or helpful information.

The annual registration requirement in AB 1202 does not increase transparency. Companies already include the type of information that would have to be reported to the Attorney General in their privacy policies. Requiring "data brokers" to provide the AG with certain information on an annual basis could lead to confusing and outdated information regarding each company's practices. To require that data brokers separately report on these practices would place unnecessary and unjustified burdens on a certain type of company.



II. The bill would create enormous new responsibilities for the Attorney General at a time when that Office is burdened with responsibilities pertaining to the CCPA.

California enacted the CCPA mere months ago. This new data privacy law, which has yet to go into effect, creates new obligations for the AG. As you know, the CCPA directs the AG to provide guidance on implementation of the law, along with rulemaking and enforcement. These duties are resource-intensive and demanding and will continue to have an outsized impact on the AG's enforcement capabilities. AB 1202 would direct the AG to manage a new registration system, complete with fee collection. This would be an onerous undertaking even absent the CCPA-related obligations. AB 1202 is premature in this regard and—at a minimum—should follow an economic impact assessment on the AG's Office.

III. The bill's transparency and opt-out provisions are duplicative of the CCPA, may conflict with the CCPA, hurting consumers and undermining the goals of the CCPA.

The bill creates data broker transparency provisions, which do not take into account similar provisions in the CCPA. The bill requires data brokers to provide “[t]he name of the data broker and its primary physical, email, and internet website addresses” as well as “[a]ny additional information or explanation the data broker chooses to provide concerning its data collection practices.” (Section 2). The bill also directs the AG to “create a page on its internet website where the information provided by data brokers...shall be accessible to the public.” (Section 2).

The CCPA creates similar requirements on the data brokers it covers and, as a result, the requirements in AB 1202 are at least duplicative and may conflict with information disclosures currently mandated under California law. The CCPA creates privacy policy disclosure requirements (Cal. Civ. Code § 1798.110(c)), specific notice obligations for third parties that sell personal information gathered from a business (Cal. Civ. Code § 1798.115(d)) and opt-out buttons on homepages of Internet websites (Cal. Civ. Code § 1798.135(c)), among other requirements. The CCPA also creates a consumer opt-out right for the sale of personal information by data brokers that empowers consumers to control data shared about them. (Cal. Civ. Code § 1798.120). As a result, consumers will be provided the same information in the CCPA that they would receive through AB 1202, and the right to control the further sale of this information. These duplicative requirements place into question the need for AB 1202.

Moreover, businesses and consumers currently await guidance from the Attorney General on the scope and placement of these CCPA disclosures and there is a risk that AB 1202 will create conflicting requirements. Although AB 1202 states that “it is the intent of the Legislature that this act shall not be construed to supersede or interfere with the operation of the [CCPA],” the bill's existing requirements create inherent problems that are duplicative of the CCPA and may conflict, which will undermine the goals of the CCPA to the detriment of consumers and businesses alike, and frustrate implementation enforcement of California law.



* * *

AB 1202 is unnecessary for consumers who already receive significant protections under federal and state rules, unduly burdensome for California businesses, and could affect California's tech and data-driven economy negatively. Companies doing business in California need time to learn how they will need to comply with the CCPA, and the impact of both the CCPA and AB 1202 on the Office of the Attorney General must be considered. For these reasons, the undersigned companies and associations respectfully oppose AB 1202.

Sincerely,

Dan Jaffe
Group EVP, Government Relations
Association of National Advertisers
202-296-2359

Clark Rector
Exec. Vice President-Government Affairs
American Advertising Federation
202-898-0089

Christopher Oswald
SVP, Government Relations
Association of National Advertisers
202-296-2359

David Grimaldi
Executive Vice President, Public Policy
Interactive Advertising Bureau
202-800-0771

Alison Pepper
Senior Vice President
American Association of Advertising
Agencies, 4A's
202-355-4564

David LeDuc
Vice President, Public Policy
Network Advertising Initiative
703-220-5943