May 30, 2022

FLOOR ALERT: VOTE "NO" ON SB 362 (BECKER)

The California Chamber of Commerce and above organizations respectfully **OPPOSE SB 362 (Becker)** as amended May 18, 2023. The bill is premised on a purported loophole in the California Consumer Privacy Act (CCPA) that does not exist, creating a duplicative and potentially confusing regime for businesses that are already subject to the CCPA's disclosure, deletion, and opt-out rights; and imposing unnecessary and significant burdens on the new Privacy Agency, which remains behind on CCPA regulations.

The Attorney General's Office expressly states data brokers are businesses subject to the CCPA.

To be clear: data brokers *are* "businesses" under the CCPA and are subject to CCPA requirements to disclose to consumers information regarding the data that they collect, how it is shared or sold, and the opportunity to opt-out from the sale of that date, among other things. The AG's website, which currently houses the data broker registry, expressly recognizes that businesses are subject to regulation under the CCPA, stating: "[b]usinesses that are subject to the CCPA have several responsibilities, including responding to consumer requests to exercise these rights and giving consumers certain notices explaining their privacy practices. *The CCPA applies to many businesses, including data brokers."* (*See* https://oag.ca.gov/privacy/ccpa#sectioni, updated as of May 10, 2023, emphasis added.)

Consumers already have all the information needed to effectuate their CCPA rights against data brokers.

AB 1202, the 2019 legislation enacting the data broker registry, already addressed any "information gap" or difficulty consumers may have in identifying and exercising their rights against companies with whom they have no direct relationship. In order to exercise their existing data privacy rights under the California Consumer Privacy Act (CCPA) with companies who collect their data indirectly, consumers need to know: (1) who these companies are, (2) how to access the same disclosures that they receive from businesses with which they have a direct relationship, regarding data collection practices and consumers' data privacy rights under the CCPA, from such companies, and (3) how to initiate CCPA requests with such companies – all of which has *already been accomplished by the existing data broker repository* created by AB 1202 (Chau, Ch. 753, Stats. 2019). While consumers may have to reach out to each data broker individually to exercise such rights, that is *no different* from how they exercise rights with any other CCPA-covered business with which they have a direct relationship.

The CCPA's deletion rights have a significant downstream effect. Any limits exist out of necessity, not loopholes.

While the CCPA's right of deletion is not without (voter-approved) limits, there is no data broker loophole allowing them to entirely sidestep deletion requirements. The CCPA provides if a business receives a deletion request from a consumer, they must not only delete the PI that they received *from* the consumer, but they *must also* then inform their service providers and contractors of the deletion request, as well as third parties to whom they sold or shared that PI (e.g., data brokers). Those parties would then have to also process the deletion request unless doing so proves impossible or involves disproportionate effort. (*See* Civ. Code Sec. 1798.105.)

Again, **there is NO loophole**.