

April 11, 2023

TO: Members, Senate Judiciary Committee

FROM: Ronak Daylami, Policy Advocate



**SUBJECT: SB 362 (BECKER) DATA BROKERS: PRIVACY  
OPPOSE – AS AMENDED APRIL 10, 2023  
SCHEDULED FOR HEARING – APRIL 18, 2023**

The California Chamber of Commerce respectfully **OPPOSES SB 362 (Becker)** as amended April 10, 2023. Among other things, this bill makes significant changes to the Data Brokers' Registry and the Data Brokers' Registry Fund, adding extensive disclosure requirements and deletion obligations under the Data Brokers' Registry law, for a subset of businesses that are already subject to the California Consumer Privacy Act (CCPA). Unfortunately, based on an inaccurate interpretation of existing law, the bill creates a duplicative and potentially confusing regime for companies that are already subject to the CCPA, which already includes disclosures around collection activities and otherwise provides consumers with deletion rights and the ability to opt out of the sale and sharing of PI. We are also very concerned that the bill places new, onerous obligations on the California Privacy Protection Agency (CPPA) to create an unnecessary deletion mechanism for CCPA-covered businesses that also must register with the Attorney General's Office as a data broker.

First and foremost, we understand that the bill is premised on a perceived loophole in the CCPA due to data brokers not collecting data directly from consumers. We disagree.

In fact, the policy rationale behind the data broker registry when added by AB 1202 (Chau, Chapter 753, Statutes of 2019) was that a registry was needed to help consumers effectuate their CCPA rights against data brokers, because it is difficult to identify the companies that have their data in the absence of a direct relationship. As such, the central repository would enable consumers to identify companies that might have their PI and initiate requests under the CCPA, such as a request to opt out of the sale of their personal information.

Under the CCPA, "buying, renting, gathering, obtaining, receiving, or accessing any personal information pertaining to a consumer by any means" is considered "collection". "This includes receiving information from the consumer, either actively or passively, or by observing the consumer's behavior." 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 data, among other things.

Because notice may not be at the time of collection due to the nature of the indirect relationship between the data broker and consumer, the CCPA regulations implementing the law states that "[a] data broker registered with the Attorney General pursuant to Civil Code section 1798.99.80 et seq. that collects personal information from a source other than directly from the consumer does not need to provide a Notice at Collection to the consumer if it has included in its registration submission a link to its online privacy policy that includes instructions on how a consumer can submit a request to opt-out of sale/sharing." (See CCPA Regulations, Section 7012(i), as added by the Attorney General and amended by the California Privacy Protection Agency.) This acknowledges that a data broker cannot feasibly provide notice of their data collection practices at the time of collection, but also makes clear that they do have to provide consumers the ability to submit their right to opt out under the CCPA from any further selling/sharing of their PI by that data broker.

The CCPA also provides consumers the ability to opt out of any selling or sharing of their PI, which also extends to data brokers. Civil Code Section 1798.115(d) clearly states: "a third party shall not sell or share personal information about a consumer that has been sold to, or shared with, the third party by a business

unless the consumer has received explicit notice and is provided an opportunity to exercise the right to opt-out pursuant to Section 1798.120.”

Furthermore, while the CCPA’s right of deletion has necessary, voter-approved, limitations (such as for first amendment considerations, to defend against a lawsuit, or ensure security, to name a few), data brokers do not entirely sidestep the CCPA. 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.) Thus, data brokers are subject to CCPA deletion requests if they buy or receive PI from another business, or if they receive data from the consumer, subject to existing law exceptions that apply to all CCPA-covered entities.

Again, there is no loophole.

What consumers need is to know who these companies are, how to access the same privacy disclosures that they could access from any other business that they might have a direct relationship with, and how to initiate CCPA requests, the same as they would with other businesses – things that are already done by the existing repository created in AB 1202.

Data brokers provide services to many other businesses in support of anti-money laundering, sanction compliance, cybersecurity, and underwriting activities. Creating duplicative and conflicting reporting requirements and deletion obligations not only creates unnecessary work and increases the chances of mistakes being made, but it also can undermine these legitimate and necessary functions.

Lastly, establishing new and major responsibilities for the CPPA is not only unnecessary as illustrated above, but concerning given how far behind the CPPA currently is on issuing full and final regulations implementing the CCPA as it was amended by Proposition 24 in 2020.

Because this bill was gutted and amended the day prior to the Committee’s letter deadline, we are still reviewing this bill and may have additional feedback in addition to the concerns outlined above. Nonetheless, due to the unnecessary and duplicative nature of the bill, and the onerous responsibilities placed on the CPPA, we must **OPPOSE SB 362 (Becker)**.

cc: Legislative Affairs, Office of the Governor  
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