

SB 1121 (DODD) PERSONAL INFORMATION
OPPOSE/JOB KILLER - AS AMENDED MAY 25, 2018

“SENATE FLOOR ALERT”



TO: Members, California State Senate

FROM: California Chamber of Commerce **SB**

Advanced Medical Technology Association
Alliance of Automobile Manufacturers
American Council of Life Insurers
American Insurance Association
American Pistachio Growers
Association of California Life & Health Insurance Companies
Association of National Advertisers
Bay Area Council
California Association of Collectors
California Association of Health Facilities
California Association of Health Underwriters
California Association of Nurseries and Garden Centers
California Bankers Association
California Business Properties Association
California Cable & Telecommunications Association
California Community Banking Network
California Cotton Ginners and Growers Association
California Dental Association
California Grocers Association
California Financial Services Association
California Fresh Fruit Association
California Hospital Association
California Hotel & Lodging Association
California Manufacturers and Technology Association
California Medical Association
California Retailers Association
Camarillo Chamber of Commerce
Citizens Against Lawsuit Abuse
Civil Justice Association of California
CompTIA
Consumer Technology Association
CTIA

Data & Marketing Association
East Bay Leadership Council
Electronic Transactions Association
Family Winemakers of California
Far West Equipment Dealers Association
Greater Coachella Valley Chamber of Commerce
Greater Irvine Chamber of Commerce
Independent Insurance Agents & Brokers of California
Internet Association
Internet Coalition
Lodi District Chamber of Commerce
Medical Imaging & Technology Association
Motion Picture Association of America
National Association of Chain Drug Stores
National Association of Mutual Insurance Companies
Oxnard Chamber of Commerce
Palm Desert Area Chamber of Commerce
Personal Insurance Federation of California
Property Casualty Insurers Association of America
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
Valley Industry and Commerce Association
Western Agricultural Processors Association
Western Insurance Agents Association
Western Manufactured Housing Communities Association

**SUBJECT: SB 1121 (DODD) PERSONAL INFORMATION
OPPOSE/JOB KILLER - AS AMENDED MAY 25, 2018**

The California Chamber of Commerce and the coalition of business and technology organizations listed above respectfully **OPPOSE SB 1121 (Dodd)**, as amended May 25, 2018 as a **JOB KILLER**.

The Recent Amendments to SB 1121 Do Not Address the Concerns of the Opposition

Under this new version of the bill, businesses and nonprofits still face massive liability for data breaches – even if no consumer was injured – and even if no data was actually extracted during a breach. These amendments do not address those concerns and other major concerns of the opposition. If anything, the confusing language of these amendments will prompt even more litigation.

SB 1121 Will Cause a DRASTIC Expansion of Civil Liability for Businesses AND Non-Profits

SB 1121 would impose a minimum of \$200 and a maximum of \$1000 in damages per person, per incident – without requiring any proof of consumer injury. Thus, awards of damages under **SB 1121** would be staggering – enough to put companies out of business. For example, a small business with just 1,000 customers that suffers a data breach will face civil liability of up to \$1 million just in statutory damages.

But there's more. **SB 1121** explicitly makes these new penalties cumulative to penalties that already exist in current law. If adopted, this will create a complicated overlay of state, federal, and potential new fines that will make the entity breached liable multiple times over for the same incident. For example, the November privacy ballot initiative, if passed, would impose \$1,000 in statutory damages per person, per incident of data breach. If this ballot initiative passes and this bill is adopted, the small business referenced above with 1,000 customers will face civil liability for at least \$2 million just in statutory damages in the event of a data breach.

SB 1121 increases the liability of businesses and non-profits even further by vastly expanding the scope of who can sue companies for data breaches. Under current law, a California customer who has been injured by a data breach can bring a lawsuit to recover. In addition to removing the injury requirement, as discussed above, **SB 1121** creates a new, private right of action for any consumer whose data has been breached. **SB 1121** defines a consumer as any natural person. Thus, even non-California residents will be able to sue our state's businesses and nonprofits.

SB 1121 Will Cause “Shakedown” Data Breach Lawsuits – Bypassing the Will of the Voters

Faced with the risk of such massive damages, even if no consumers were injured, businesses and nonprofits will be leveraged into immediate settlement – regardless of the strength of their defense to lawsuits brought in the wake of **SB 1121**. *The argument that this bill will only impact “bad actors” is simply not true.* This will unquestionably result in a barrage of “shakedown” data breach lawsuits.

SB 1121 is an attempt to bypass the will of California voters. In 2004, voters approved Proposition 64 by an 18-point margin to limit private lawsuits against businesses 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.

Businesses and Non-Profits Subjected to Data Breach Already Face Private and Public Lawsuits

Businesses and non-profits already have significant incentives to prevent data breaches – they already result in lawsuits and enforcement actions. 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 injury.

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

Finally, current law already requires businesses that have been breached to provide free identity theft and mitigation measures, like credit reporting services, to their customers **for at least one year**.

SB 1121 Will Not Make Californians Safer – and Could Make Things Worse

If **SB 1121** is adopted, most consumers whose data was exposed will be rolled into an early class action settlement for statutory damages. So if they do suffer an injury at a later date due to identity theft, they will no longer have recourse.

Additionally, 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 additional mitigation measures.

Part of SB 1121 Would be Preempted by Federal Law

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).

Trial Lawyers Will Be the Only Beneficiaries of SB 1121

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 businesses and nonprofits 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.

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
Christian Kurpiewski, Senate Judiciary Committee
Senate Floor Analysis
District Offices, Members, California State Senate

SB:ldl