



State Privacy and Security Coalition, Inc.



March 25, 2013

The Honorable Ed Chau
California State Assembly
State Capitol, Room 6011
Sacramento, CA 95814

**SUBJECT: AB 242 (CHAU) PRIVACY POLICY BILL
OPPOSED**

Dear Assemblymember Chau:

We the undersigned organizations would like to inform you of our **OPPOSITION** to **AB 242**, as currently drafted. The bill would require a privacy policy to be: no more than 100 words, written in clear and concise language, written at no greater than an 8th grade reading level, and to include a statement indicating whether the personally identifiable information may be sold or shared with others, and if so, how and with whom the information may be shared. This would create significant uncertainty and class action risk for businesses that provide key benefits and services to California residents.

Our coalition strongly supports simpler, clearer privacy policies and is strongly committed to protecting the online privacy of consumers. Further, counsel to our coalition is working actively to support self-regulatory initiatives, such as the U.S. Department of Commerce's short-form notice of mobile app privacy practices that advance the bill's goal of improving streamlined and transparent notice of online privacy practices.

However, AB 242 would be extremely impractical and unworkable. It is impossible to create an informative privacy policy that covers the elements required under California's Online Privacy Protection Act with 100 words. The California State Legislature's own privacy policy has more than 100 words. This bill itself is well over 100 words.

If the bill were enacted, it would require every business in the state to revamp its privacy policy, hire experts to measure whether the policy was written at an 8th grade reading level, and make privacy policies so general and under-inclusive that Californians would have even less information about the collection and sharing of their personally identifiable information.

Additionally, AB 242 would not materially improve online privacy. Popular online sites, such as those of our members, receive more than 90% of all web traffic already post CA-compliant privacy policies. Our policies are more robust than what would be required by AB 242, simply because this is good business. Passage of this bill would in no way change the practices of bad actors.

Further, the legislation would likely lead to a conflict with existing federal requirements for privacy notices, such as regulations around the Gramm-Leach-Bliley Act or HIPPA, where a 100 word notice would likely be deemed inadequate.

Finally, we are concerned that AB 242 would unleash a class action bonanza. The bill would create exposure to class action lawsuits for even a technical defect in a privacy policy after receiving notice of non-compliance. As you know, California Business & Professions Code § 17200 allows any person (regardless of whether they have suffered any injury) to bring a class action lawsuit to obtain restitution and injunctions against any practice that violates state law. Passage of AB 242 would provide a clear statutory predicate for class action lawsuits regarding technical defects in a privacy policy, such as if a privacy policy were more than 100 words or written a reading level greater than the bill's subjective 8th grade standard. The result would be wasteful litigation.

While we strongly support the goals of AB 242, for all of these reasons above we respectfully **OPPOSE AB 242**, as currently written. Please feel free to contact us, if you have any questions or would like to discuss our concerns in greater detail. Thank you for your time and consideration.

Sincerely,

California Chamber of Commerce
American Council of Life Insurers
American International Group
Association of California Life and Health Insurance Companies
California Bankers Association
California Cable and Telecommunications Association
California Manufacturers and Technology Association
California Independent Bankers
California Retailers Association
California Travel Association
Civil Justice Association of California
Direct Marketing Association
Internet Alliance
Personal Insurance Federation of California

Securities Industry and Financial Markets Association
TechAmerica
TechNet

cc: District Office Assemblymember Chau