

AB 1281 (CHAU) CALIFORNIA CONSUMER PRIVACY ACT OF 2018
SUPPORT- AS AMENDED JUNE 25, 2020

UPDATED



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August 6, 2020

TO: Members, Senate Judiciary Committee

**SUBJECT: AB 1281 (CHAU) CALIFORNIA CONSUMER PRIVACY ACT OF 2018
SUPPORT– AS AMENDED JUNE 25, 2020
SCHEDULED FOR HEARING – AUGUST 12, 2020**

The California Chamber of Commerce and the listed organizations are pleased to **SUPPORT AB 1281 (Chau)**, as amended June 25, 2020. **AB 1281** extends the existing sunset on a crucial fix to the California Consumer Privacy Act (CCPA) by exempting information collected in the employment or job applicant context from the applicable provisions of the law until January 1, 2022.

The CCPA's current exemption for this data will sunset on January 1, 2021. This 2021 sunset date represents a compromise among a diverse group of stakeholders, including privacy groups and labor advocates, and reflects an agreement that although the CCPA did not provide a solution for the handling of such data, stakeholders are nevertheless committed to working together to find a better solution for the same. The agreement called for stakeholders to come together and develop a solution in 2020, but the COVID-19 crisis denied stakeholders the opportunity to engage on this issue. And though the California Privacy Rights Act of 2020 (CPRA) would itself extend the sunset date at issue if it passes in the November election; no allowance has been made to account for the possibility that CPRA does not pass in November. Accordingly, **AB 1281** extends this sunset for the CCPA exemptions until January 1, 2022 but will not take effect if CPRA passes in the November election.

The extension is necessary because CCPA is broad enough to include employees and job applicants within its definition of "consumers." But without a well-designed framework to deal specifically with employee data, the CCPA is ill-equipped to handle employee data and how that relates to workplace data. This includes issues as far reaching as employment harassment investigations and wrongful termination suits. Accordingly, this extension is necessary for three reasons:

Operationalizing CCPA for employees and job applicants would sink thousands of already struggling businesses. The costs to businesses of all sizes to operationalize CCPA for employees and job applicants would be crippling. Businesses were expecting a solution for employee data under CCPA by late 2020, but because of the strains that COVID-19 has placed on stakeholders across the spectrum, reaching such a solution in time is no longer practicable. But with no solution in place and a looming CCPA sunset date, California's business owners face the possibility that, amid this pandemic, CCPA compliance costs will unexpectedly grow to include employee and job applicant data compliance. For example, imagine a family-owned restaurant struggling to serve 150 customers per day– without this fix, that restaurant may have to spend money that was earmarked for COVID safety compliance on legal fees and operationalizing the CCPA for its kitchen and wait staff, in addition to anyone who has applied for a job there.

The legal consequences of failing to refine CCPA before it inadvertently applies to such data are too significant to bear. Were CCPA employee and job applicant data exemption to sunset, if an employee asks their employer to delete accusations of sexual harassment before a lawsuit is filed, including emails of inappropriate images sent to a coworker, the business will have to comply. Also, under CCPA, if a separated spouse who is part of a household wanted to gain access to an employee's payroll records, the business will have to comply. Demonstrably, CCPA is not designed to handle employee or job applicant data, and extending the CCPA sunset as provided under **AB 1281** allows stakeholders to work together on developing a framework for handling these complex issues.

CCPA was not drafted for, and is incompatible with, employee and job applicant data. Imagine an employee making an access request for "specific pieces of information" under the CCPA. The definition of "personal information" is so broad that it includes all data "capable of being associated with" someone. This means that amid the COVID-19 pandemic, in response to an employee's access request, a business would have to reassign valuable resources and human talent towards responding to that request by the letter of

the law, which would include going into an employee's office and scanning every paper document; gathering all of the employee's internet search history; producing all of the employee's email archives; producing any documentation from a working group that the employee might have been associated with; and potentially more – even if the business is not using the information or aware it exists.

In addition to extending the time to remedy the above-described employment issues, **AB 1281** makes allowances for the possibility that CPRA passes in the November election. **AB 1281** will, by its own terms, take effect only if the CPRA does not pass. Additionally, **AB 1281** is mindful of privacy rights by ensuring that someone who is both an employee and a consumer of a business will continue to retain all of their CCPA rights as a consumer. Finally, this bill strongly encourages businesses **not** to use employment data beyond the employment context – because the exemption only applies when employment data is collected and used **solely** for employment purposes.

For these reasons, CalChamber and the listed organizations **SUPPORT AB 1281 (Chau)**.

Sincerely,



Shoeb Mohammed
Policy Advocate
California Chamber of Commerce

Advanced Medical Technology Association – Maureen Higgins
Agricultural Council of California – Tricia Geringer
Alliance for Automotive Innovation – Curt Augustine
American Benefits Council – Katie Johnson
American Council of Life Insurers – Dennis Loper
American Property Casualty Insurance Association – Jeremy Merz
American Staffing Association – Bridget McGowan
Association of California Life & Health Insurance Companies – Matt Powers
Association of National Advertisers – Christopher Oswald
BIOCOM – Maureen Higgins
BSA – The Software Alliance – Tom Foulkes
California Apartment Association – Debra Carlton
California Association of Collectors – Cliff Berg
California Association of Health Facilities – Amy Blumberg
California Association of Licensed Investigators – Francie Koehler
California Association of Realtors – Anna Buck
California Bankers Association – Kevin Gould
California Beer & Beverage Distributors – Dennis Loper
California Building Industry Association – Nick Cammarota
California Business Properties Association – Matthew Hargrove
California Cable & Telecommunications Association – Bernie Orozco
California Credit Union League – Robert Wilson
California Hospital Association – Lois Richardson
California Hotel & Lodging Association – Alexander Rossitto
California Land Title Association – Anthony Helton
California League of Food Producers – Trudi Hughes
California Life Sciences Association – Lindsay Gullahorn
California Manufacturers & Technology Association – Nicole Rice
California New Car Dealers Association – Breanna Pineda
California Professional Association of Specialty Contractors – Bruce Wick
California Restaurant Association – Madison Burton
California Retailers Association – Rachel Michelin
California Trucking Association – Taylor Collison
Cemetery and Mortuary Association of California – Jerry Desmond

Civil Justice Association of California – Jaime Huff
CompTIA – Laura Curtis
Consumer Technology Association – Stephanie Morwell
CTIA – Steve Carlson
Entertainment Software Association – Kathryn Gunter
Email Sender & Provider Coalition – Reed Freeman
Equifax- Vanessa Lugo
Honda North America, Inc.– Craig Orlan
Insights Association – Howard Fienberg
Interactive Advertising Bureau – Alex Propes
Internet Association – Dylan Hoffman
Internet Coalition – Tammy Cota
Motion Picture Association – America – Melissa Patack
MPA – The Association of Magazine Media – Emily Emery
National Advertising Initiative – David LeDuc
National Association of Mutual Insurance Companies – Seren Taylor
National Federation of Independent Business – Kevin Pedrotti
National Payroll Reporting Consortium – Ben Ebbink
Orange County Business Council – Connor Medina
Personal Insurance Federation of California – Seren Taylor
Plumbing Manufacturers International – Kerry Stackpole
Securities Industry and Financial Markets Association – Joanne Bettencourt
Sempra Energy Utilities/SDG&E/SoCal Gas - Nicolina Hernandez
Silicon Valley Leadership Group – Justin Hyer
State Privacy and Security Coalition – Andrew Kingman
TechNet – Cameron Demetre
The Association of Magazine Media – Emily Emery
The Toy Association – Larisa Cespedes

Cc: Legislative Affairs, Office of the Governor
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SM:ldl