



April 16, 2019

The Honorable Thomas Daly
Capitol Office, Room 3120
P.O. Box 942849
Sacramento, CA 94249

Re: A.B. 981 (Daly) – OPPOSE

Dear Assemblymember Daly:

The **American Civil Liberties Union of California, Common Sense Media, Electronic Frontier Foundation, and Privacy Rights Clearinghouse** write to express our concern about A.B. 981. We appreciate your willingness to have a dialogue with us about this bill and value the ongoing conversation. We still, however, have concerns about A.B. 981 and have to respectfully oppose this bill as amended in April.

Last year, the people of California made clear that privacy is important to them, resulting in the passage of the California Consumer Privacy Act (CCPA), which established important rights for people to know how businesses—from any industry—are collecting and sharing their personal information. And we’ve already seen [troubling signs of insurers](https://www.wsj.com/articles/new-york-insurers-can-evaluate-your-social-media-use-if-they-can-prove-why-its-needed-11548856802)¹ trying to use social-media posts to set rates, raising the possibility of unfair discrimination. We appreciate that the April 12 amendment to A.B. 981 begins to incorporate various provisions of the CCPA into the Insurance Code, such as the CCPA’s definition of “personal information.” Nevertheless, even as amended, this bill would significantly weaken that law and the protections that people of this state deserve.

The bill would eliminate a consumer’s private right of action in instances when companies fail to reasonably secure their sensitive personal information—one of the key protections of the CCPA—and remove the Attorney General’s ability to enforce privacy practices. The responsibility of ensuring that California consumers are treated fairly falls to the Insurance Commissioner, and without the “Privacy Fund” funding mechanism in the CCPA, there remains significant uncertainty as whether Californians will be as protected in the insurance market as they will be under the CCPA.

The fine system for insurance regulation in this bill hampers the accountability measures in the CCPA. It gives the insurance commissioner discretion to decide when the law has been violated, and then to issue a cease and desist order. Fines can only be assessed when that order is violated—giving companies a free pass— and are capped at \$50,000 total.

¹ <https://www.wsj.com/articles/new-york-insurers-can-evaluate-your-social-media-use-if-they-can-prove-why-its-needed-11548856802>

Privacy groups letter opposing A.B. 981
April 16, 2019
Page 2 of 2

Though proponents suggest that there are substantively equivalent privacy protections in the Insurance Information Privacy Protection Act (IIPPA), A.B. 981 would only serve to increase consumer confusion because those protections are not truly equivalent across the board. The mechanisms for exercising consumer disclosure rights, for example, differ significantly between the CCPA and IIPPA, with far less clarity provided in the IIPPA. The bill would exempt the insurance industry from following the standard for privacy notices established under the CCPA, causing consumers to see different kinds of notices across different kinds of services.

Finally, we are concerned that this approach could unnecessarily create divisions or disruption for enforcement between the insurance commissioner and the Attorney General.

For these reasons, we must respectfully oppose A.B. 981 as amended. We look forward to continuing this discussion with you to work toward a solution.

Sincerely,

American Civil Liberties Union of California
Common Sense Kids Action
Electronic Frontier Foundation
Privacy Rights Clearinghouse