



March 29, 2021

Assembly Member Marc Levine
State Capitol, Room 5135
Sacramento, CA 94249-0010

**Re: AB 814 – as introduced
Support**

Dear Assemblymember Levine:

We are eight organizations dedicated to protecting consumer privacy. We write to thank you for your leadership in authoring AB 814 and to express our support for the bill. This legislation would help protect the privacy of people in California whose personal information is obtained in the process of responding to the COVID-19 outbreak. Because protecting privacy is the key to the success of any contact tracing program, AB 814 will play a vital role in combatting the pandemic.

1. California needs COVID-19 privacy legislation.

Many government agencies and corporations are collecting our personal information during the COVID-19 crisis. States are conducting manual contact tracing, often contracting with businesses to build new data management systems.¹ States also have partnered with businesses to create websites where we provide our health and other information to obtain screening for COVID-19 testing and treatment.² The federal government has been sharing COVID-19 tracking data with its own corporate contractors, including TeleTracking Technologies³ and Palantir.⁴

There are many ways to misuse our COVID-related data. Some restaurants are collecting contact information from patrons, ostensibly to notify them later of any infection risk;⁵ disturbingly but

¹ <https://www.cnbc.com/2020/05/08/new-york-city-partners-with-salesforce-on-coronavirus-contact-tracing-program-mayor-says.html>.

² <https://www.eff.org/deeplinks/2020/03/verilys-covid-19-screening-website-leaves-privacy-questions-unanswered>; <https://pamplinmedia.com/pt/9-news/463149-375819-critics-oregon-covid-19-symptom-checker-raises-privacy-concerns-pwoff>.

³ <https://www.nytimes.com/aponline/2020/07/15/us/ap-us-virus-outbreak-health-data.html>.

⁴ <https://www.washingtonpost.com/technology/2020/07/01/warren-hhs-data-collection/>.

⁵ https://www.vice.com/en_us/article/g5ppa7/washington-restaurants-will-collect-diners-personal-info-for-coronavirus-tracking.

not surprisingly,⁶ in at least one reported case a restaurant employee used a patron's information to send them multiple harassing messages.⁷ Companies might divert our COVID data to use in targeted advertising.⁸ All this data might be stolen by identify thieves, stalkers, and foreign nations.⁹

Moreover, public health officials and their corporate contractors might share our COVID-related data with police and immigration officials.¹⁰ This would negatively impact public health goals because many people share less of their personal information if they fear the government will use it against them. Yet in some California communities, law enforcement officials themselves have been conducting contact tracing.¹¹ Likewise, in many communities, police have demanded access to public health data about the residences of people who have been infected.¹²

Unfortunately, existing data privacy laws do not adequately protect us from misuse of our COVID-related data. For example, federal HIPAA protections of health data apply only to narrowly defined healthcare providers and their business associations.¹³ This is just one of many illustrations of why we need comprehensive consumer data privacy legislation.¹⁴ Unfortunately, we do not have it.

Thus, to meet the ongoing public health crisis, we need COVID-specific data privacy legislation.

2. AB 814 would ensure that California's response to the pandemic does not sideline or harm vulnerable Californians.

First, this bill would prohibit the use, maintenance, or disclosure of data collected for purposes of contact tracing, except to facilitate contact tracing. *See* Sec. 601(a). This is an important privacy protection. If a company collects a person's personal data while acting as a government contractor for contact tracing purposes, AB 814 would stop that company from using it to target its own ads or selling it to a data aggregator. And if a public health agency collects the same data, AB 814 would stop them from transferring it to police or immigration officials. These protections support California's pandemic response by addressing real concerns that would prevent some Californians from being willing to speak to contact tracers.

⁶ <https://abcnews.go.com/Politics/att-employees-bribed-1m-unlock-phones-install-malware/story?id=64802367>; <https://www.washingtonpost.com/news/the-switch/wp/2013/08/24/loveint-when-nsa-officers-use-their-spying-power-on-love-interests/>.

⁷ https://www.nzherald.co.nz/nz/news/article.cfm?c_id=1&objectid=12332073.

⁸ <https://www.eff.org/deeplinks/2019/10/twitter-unintentionally-used-your-phone-number-targeted-advertising>; <https://www.eff.org/deeplinks/2019/03/facebook-doubles-down-misusing-your-phone-number>.

⁹ <https://www.nytimes.com/2017/09/07/business/equifax-cyberattack.html>; <https://www.wired.com/2016/10/inside-cyberattack-shocked-us-government/>.

¹⁰ <https://www.eff.org/deeplinks/2020/04/telling-police-where-people-covid-19-live-erodes-public-health>; <https://www.scientificamerican.com/article/confirmed-the-us-census-b/>

¹¹ <https://www.fresnobee.com/news/local/article243795537.html>.

¹² <https://www.eff.org/deeplinks/2020/04/telling-police-where-people-covid-19-live-erodes-public-health>.

¹³ <https://www.hhs.gov/hipaa/for-professionals/privacy/index.html>.

¹⁴ <https://www.eff.org/deeplinks/2019/06/effs-recommendations-consumer-data-privacy-laws>; <https://www.eff.org/deeplinks/2019/12/sen-cantwell-leads-new-consumer-data-privacy-bill>.

Second, this bill sets a 60-day deadline to purge data collected for purposes of contact tracing (with an exception for state and local health departments). *See* Sec. 601(b). COVID-19 has a 14-day incubation period,¹⁵ so older information will not aid in addressing the current crisis. But that stale information can still be stolen, misused, and harnessed for inappropriate purposes.

Third, the bill would prohibit law enforcement officials from engaging in contact tracing. *See* Sec. 602. Not only is contact tracing an inappropriate function for police, this bar on the entanglement of police with public health is necessary to ensure that people cooperate with contact tracing. There is a high degree of distrust for law enforcement in many communities – particularly those that have both a history of police abuse and a disproportionate rate of COVID-19 infections. Absent this safeguard, people are likely to withhold information that is necessary to contain the outbreak.

Lastly, the bill provides for appropriate enforcement rules. *See* Sec. 603.

Again, we thank you for your leadership in carrying AB 814 and are pleased to support the bill.

Sincerely,

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cc. Members and staff, Assembly Committee on Privacy and Consumer Protection

¹⁵ <https://www.cdc.gov/coronavirus/2019-ncov/hcp/clinical-guidance-management-patients.html>.