



June 23, 2016

The Honorable Rich Gordon
Assemblymember, 24th District
State Capitol
P.O. Box 942849
Sacramento, CA 94249-0024

Assemblymember Gordon:

The below listed organizations must regretfully oppose AB 2688. Your staff has worked hard to negotiate among many interested parties and to make the bill significantly more workable for companies that are creating popular, consumer friendly products that are playing an important role in elevating health consciousness around the world.

Given the broad scope of health monitoring information as defined in 22596(c), which includes any information regarding a physical or mental condition, even those unrelated to a medical condition, there are a few outstanding concerns.

The first concern is the requirement that consent be obtained separately for health monitoring information. As written, the bill requires clear and conspicuous notice, affirmative consent, and separate notice. Linking these three requirements is both unnecessary and raises significant practical concerns.

Our coalition has proposed language that included a very high standard of clear and conspicuous notice, plus affirmative consent, which would set the bar across the country. While it is impossible to force a consumer to consider these issues, this standard would make sure that a consumer would be clearly presented with the information and would need to agree to the rules before sharing occurs.

Adding the requirement of separate consent immediately elevates the broadly defined category of health monitoring information above other types of information, and would likely create a race for each category of information to obtain its own separate consent.

The clear and conspicuous standard is in line with reasonable privacy standards and allows an operator to present all of the privacy issues to the consumer together.

The bill also requires a process to allow a consumer to withdraw consent, but fails to make clear that this could impact the rights and/or ability of the consumer to make use of the product or service covered by the bill. Data sharing is frequently integral to the working of the product and in other cases; the business model is based upon data sharing. These situations should be acknowledged in the bill.

There are also some remaining questions regarding how third parties are defined and what constitutes appropriate exemptions, and we hope to continue working with your office on these important issues.

CalChamber
CompTia
CTIA
DMA
ESA
Internet Association
TechNet