

California Business Groups Warn Lawmakers About 'Untenable' Privacy Law

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SACRAMENTO — Business interest groups and legal experts cautioned California lawmakers on Wednesday that a new privacy law could stymie commerce.

The law empowers consumers to see what data is being collected on them online, demand that it be deleted and opt out of having their personal information vacuumed up. It is the focus of an intense lobbying effort as business groups seek changes to what they call an unworkable law passed in an eleventh-hour rush last year.

In the first formal legislative hearing on the law since its passage, representatives of groups that will be under the gun to comply registered concerns about what they considered overly broad or ambiguous provisions and urged lawmakers to resist opening the door to private lawsuits for violations.

The California Department of Justice, which is tasked with enforcing the law, has called for more funding coupled with an expanded private right of action, which deputy attorney general Stacey Schesser described to lawmakers as a "critical adjunct" to the department's efforts.

But opponents predicted that would uncork an unmanageable flood of lawsuits. Sarah Boot of the California Chamber of Commerce warned that "it would be a class-action bonanza."

"The idea that we would add a (private right of action) to this incredibly confusing, complex law is frightening," Boot said.

Similarly, Tanya Forsheit, an attorney specializing in privacy and data security, said penalties for data breaches would hammer businesses given that those lapses are nearly inevitable even for companies that do their due diligence.

"The net result is the trial attorneys win but the consumers will not be any more protected than they are today," she said.

The law's definition of "consumer" is also problematic because it could encompass a universe beyond customers of a given company, Forsheit said, including employees. That echoed a warning from Santa Clara University School of Law internet expert Eric Goldman about the overly broad definition of "personal information" that would be regulated.

An expansive definition of personal information "jeopardizes the underpinnings of the internet" by upending the ability of advertisers to target customers, Kevin McKinley of the Internet Association said. "Mischaracterizing advertising as a sale of data" would "endanger a business model fundamental to the internet," he said.

The law could also undermine privacy by allowing members of a household or users of a device to request and delete data from other members or users, critics warned. Veronica Abreu, chief privacy officer for Square, articulated her fear that "data rights would be an attack vector" for people who impersonate others and request their data.

Lawmakers were receptive to some of those points. Assemblyman Ed Chau (D-Monterey Park), who shepherded the privacy law, said "many of the issues we have heard today are on our radar." He noted that the list of legitimate concerns "keeps growing a bit as we go."

But others pushed back. Assemblyman James Gallagher (R-Nicolaus) said while potential fraud was worthy of discussion, "the bigger concern and threat for the public is their data is being used in ways they never gave permission for and monetized."

"All of these companies are going to do just fine. They're going to make a lot of money," said Alastair Mactaggart, a developer behind the ballot initiative that laid the law's foundation.

Nicole Ozer of the California ACLU rejected calls to restrict the law's scope. She argued that given the increasingly complex ways companies share data and the fact that most consumers don't understand how it is being used, "covering just sale is obsolete out of the gate."

"We are at a critical juncture for personal privacy in California and the nation," Ozer said.