Assemblymember Tom Daly, Chair   March 25, 2019
Assembly Insurance Committee
1020 N St., Room 369
Sacramento, CA 95814

RE: AB 981 (DALY): OPPOSE – Protect California's Privacy Protections in Financial Services

Consumer Watchdog must **OPPOSE AB 981 (Daly)**, an unnecessary and disingenuous attempt to carve-out the entire insurance and financial services industries from the protections of the California Consumer Privacy Act (CCPA). Should AB 981 succeed, the privacy protections that apply in other areas under the CCPA beginning in 2020 will not apply to our insurance, credit cards, lending, investing, securities or any other financial transactions. All consumers' personal financial data will remain vulnerable to outdated security procedures and hacking. Consumers will be denied meaningful control over their own information and a private right of action to recover damages from a data breach related to their finances.

This bill ensures that **every California consumers' entire financial security remains at risk with no remedy**. In a deception of Orwellian proportions, this measure, billed as the Insurance Information Privacy Act, is simply a get out of jail free card to the entire insurance and financial services industry. Where the CCPA makes clear what any business **must do** to protect consumers, pre-existing law states what insurance and financial services businesses **may do**.

AB 981 shields insurance institutions, agents, or insurance-support organizations from any real or enforceable duties, responsibilities, or incentives to protect the personal, private information of Californians. So, all our personal private information will remain vulnerable in our financial documents and transactions from lending to insurance to investment to economic advisory services.

With AB 981, the insurance and financial services industries seek to undermine honest discourse on important public policy and are obfuscating facts by arguing that the CCPA takes away regulatory authority from the California Insurance Commissioner. It does not. The CCPA and the pre-existing law governing insurance institutions, agents, or insurance-support organizations are not mutually exclusive and are not in conflict. Any minor differences in terminology can be reconciled through clean-up regulations, while continuing to effectively protect consumers' private information in the business of insurance and financial services.

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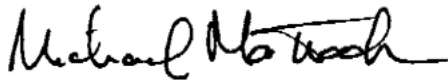EXPOSE. CONFRONT. CHANGE.
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The CCPA is clear and easy to navigate for today's consumers. Pre-existing law is cumbersome, confusing, not consumer friendly, and was written for yesterday's financial services business environment. The CCPA focuses on consumers' private rights. Pre-existing law may be updated to reflect consistent terminology with the CCPA and the realities of our evolving global economic environment, while still focusing on the regulation of insurance institutions, agents, and insurance-support organizations.

AB 981 ensures that consumers have no right of action, no right of portability, no absolute right of deletion and no protection against discrimination for opting-out regarding personal information relating to their entire financial existence. This measure exempts insurance institutions, agents, or insurance-support organizations from liability for data breaches and treats all personal information issues from the perspective of the business, not the consumer.

We ask that you withdraw this deceptive measure, which is an attempt by insurance institutions, agents, and insurance-support organizations to avoid the requirements, duties, responsibilities and consumer protections of California's landmark Consumer Protection Act of 2018. Attached is a thorough comparison of the CCPA and pre-existing law. All members of the California Legislature should vote "NO" on AB 981 (DALY) This measure does not deserve a hearing.

Best regards,

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Cc: Catalina Hayes-Bautista, Chief Deputy Commissioner
    Michael Martinez, Senior Deputy Commissioner, Legislative Director
    Mark Rakich, Chief Consultant, Assembly Insurance Committee
    David Miller, Legislative Director, Assemblymember Daly

COMPARISON & ANALYSIS OF CCPA TO PRE-EXISTING LAW

The CCPA provides **a right to know and have access to all personal data** collected by any business **twice a year** at **no cost to consumers**.

Pre-existing law (Ins. Code Sec. 791.04) provides that an insurance institution or agent is required to **provide notice of information practices** to all applicants or policyholders. Information required:

- types of personal information collected;
- sources and techniques used to collect information;
- parties to whom information may be disclosed; and
- **right to request correction, amendment or deletion of information.**

Under Pre-existing law, an individual consumer **may make a request to** a business to **delete** certain information (Ins. Code Sec. 791.09(a)(1)). That **business may simply decline** to do so (Ins. Code Sec. 791.09(a).

The CCPA gives consumers the **right to say "no"** to the sale of their information.

Pre-existing law (CCR Title 10, Sec. 2689.8) gives the consumer a **right to "opt-out"**, at any time, of the disclosure of nonpublic personal financial information to **nonaffiliated third parties** for **marketing purposes**.

Pre-existing law (Ins. Code Sec. 791.13(k) stipulates that an insurance institution or agent **may not disclose** personal or privileged information to a person whose only use of the information will be in connection with the marketing of a product or service to the consumer.

- *EXCEPTION - Pre-existing law* **does not prohibit** the release of nonpublic personal information by a financial institution with whom the consumer has a relationship to a **nonaffiliated financial institution** for purposes of **jointly offering** a financial product or financial service pursuant to a written agreement with the financial institution that receives the nonpublic personal information provided (Fin. Code Sec 4053(b)(2)). Consumers have **no recourse if their data is sold, lost or stolen, by or from, any of the affiliated, or nonaffiliated entities**.

The CCPA gives the **right to sue companies** who collected a consumer's data, where it was **stolen or disclosed through a data breach**, if the company was careless or negligent about protecting the data.

Pre-existing law (Ins. Code Secs 791.15, 791.19, 791.20) empowers the **Insurance Commissioner** to **penalize an insurance institution or agent** with:

- a fine of not more than $10,000 for each violation;
- a fine of not more than $50,000, if the Commissioner determines that violations have occurred with such frequency as to constitute a general business practice;
- suspend or revoke an insurance institution's or agent's license if the insurance institution or agent knew or reasonably should have known it was in violation of the law; and
- a **consumer may seek equitable relief** if his or her rights of disclosure, correction, amendment, or deletion violated the law.

Under Pre-existing law, **consumers have no right to a private action** for data breach.

The CCPA gives consumers the **right to delete data**.

Pre-existing law (Ins. Code Sec 791.09) provides that a consumer **may make a request** to an insurance institution, agent, or insurance-support organization to delete personal information about the consumer.

- *Under Pre-existing law,* that business **may simply decline** to do so (Ins. Code Sec. 791.09(a).

The CCPA gives consumers the **right not to be discriminated** against if the consumer instructs a business not to sell his or her personal information.

Pre-existing law (CCR – Title 10, Sec. 2689.22) A licensed insurance entity **shall not discriminate** against any consumer because that consumer has "opted-out" from the disclosure of his or her nonpublic personal information.

- EXCEPTION – *Pre-existing law* (Fin Code Sec. 4053(a)(1)) sets forth that a financial institution **shall not be liable for failing to offer products and services to a consumer solely because that consumer has failed to provide consen**t.

The CCPA requires an "opt-in" before sale of information of a minor under the age of 16.

Pre-existing law does not allow minors under the age of 16 to enter into an insurance contract.

The CCPA gives consumers the **right to know** the categories of third parties with whom the consumer's data is shared and the categories of sources of information from whom the data was acquired.

Pre-existing law (Ins. Code Sec. 791.08) stipulates that a consumer, after being properly identified, shall have the **right to request** and receive access to the following information from an insurance institution, agent, or insurance-support organization:

(1) The identity of persons to whom the insurance institution, agent, or insurance-support organization has disclosed such personal information within two years prior to such request; and

(2) If the identity is not recorded, the names of those insurance institutions, agents, insurance-support organizations or other persons to whom such information is normally disclosed.

Pre-existing law (Ins. Code Sec. 791.08) provides that an insurance institution or agent shall **provide the individual with a summary of the procedures by which he or she may request** correction, amendment or deletion of recorded personal information.

Pre-existing law states that businesses **may provide merely the summary** of the procedures which a consumer may request correction, amendment or deletion of personal information. **It's may not must.**

Under pre-existing law there is **no incentive or penalty for not acting upon a consumer's request, even when such a request is submitted in the time, form and manner that the insurance institutions, agents, or insurance-support organizations have demanded**. Each insurance institution, agent, or insurance-support organization may impose their own requirements and costs.

CCPA requires businesses to **update their privacy policies** (Fin. Code Sec. 4053(b)(2); Fin. Code Secs. 1798.130(a)(4)-(5);1798.135(a)(2))

The CCPA requires businesses to update their privacy policies to ensure:

- California-specific **descriptions of consumers' rights online, or on their websites, and general information to help consumers understand and exercise their rights**, including a description of consumer's rights under the CCPA;

- consumers **know that they have a right to request information** as to what personal information has been collected, sold or disclosed about them, and to **have such information deleted, or to opt-out** of the sale of their information;

- consumers **know how to submit related requests**, and lists of the categories of personal information the business has collected, sold and disclosed about consumers generally in the prior 12-month period; and

- businesses that own, license or maintain non-encrypted or non-redacted personal information about consumers shall **provide reasonable security procedures to protect consumers' personal information.**

Pre-existing law contains **no such provisions**.

BACKGROUND INFORMATION RELATED TO CCPA AND PRE-EXISTING LAW.

<u>The CCPA is written from the perspective, and **for the benefit of, consumers**</u>.

Under the CCPA, the consumer has an individual right to their privacy. Consumers are protected under, and subject to, laws that ensure that businesses that have access, use, and profit from a consumer's private information to **have qualified individuals handling such information**, and to **keep it safe**. The CCPA requires businesses to **follow the direction of the individual consumer.**

The CCPA is clear, easy to understand, **requires businesses to train and educate individuals handling consumer information; ensures that a consumer's private information is encrypted, or that otherwise reasonable security procedures are in place; is portable for the benefit of the consumer; and that the consumer has a right to an actual, individual legal remedy**.

Pre-existing laws are written **from the perspective, and for the benefit of, insurance institutions**, agents and insurance-support organizations.

<u>CCPA requires business to protect and respond to the requests of consumers.</u>

It is **simple and updated to address modern privacy-related issues** in our current and rapidly evolving information-centric and social media realities.

Pre-existing law is confusing, cumbersome, inconvenient, and **places the burden on consumers to try to navigate the complicated and arcane financial privacy regulations that were designed for the simple economic and financial environment of 15 years ago**. The privacy protection mechanisms, and the regulatory and enforcement scheme are outdated and **does not adequately protect consumers in our rapidly evolving global economic realities**.

Under Pre-existing law, the **consumer must find out how** to contact their insurance institution, agent and insurance-support organization; and **to know how**, and **under what conditions** and **to what extent they may** opt-out; and **what exclusions apply**, as well as, **what costs** they will incur **when asking to see, review, access, and copy their information** - if the insurance institution, agent or insurance-support organizations allows them to do so.

<u>The CCPA requires that businesses **must delete** information on request of consumers (Civil Code Sec. 1798.105(a)</u>

Under Pre-existing law, an individual consumer **may make a request to** a business to **delete** certain information (Ins. Code Sec. 791.09(a)(1)). That **business may simply decline** to do so (Ins. Code Sec. 791.09(a).

Under Pre-existing law, while an insurance institution, agent or insurance-support organizations may refuse a consumer's request, an individual consumer does have the **right to file a statement if the consumer disagrees with an insurance institution's, agent's, or insurance-support organization's refusal to delete** personal information (Ins. Code Sec. 791.09(c)). A rather specious remedy.

The CCPA provides for a **private right of action**.

Pre-existing law only allows the **Insurance Commissioner to levy civil fines** (Ins. Code Secs. 791.19(a), 791.19(b); Fin. Code Secs. 4057(a)-(d)), and **take administrative actions** on the regulated insurers and agents, and suspend or revoke their licenses to conduct business in California (something that is rarely if ever done); and allows a **consumer to seek equitable relief** (Ins. Code Sec. 791.20). In essence, **an injunction to do or not to do something**.

- Equitable relief is a **court-granted remedy** that requires a party to act or refrain from performing a particular act in cases where legal remedies are not considered to provide sufficient restitution for harm or damage incurred.

- A consumer would **have to sue an insurance company, agent, or insurance-support organizations and win an equity judgement**. The effective result would be that the insurance company, agent or insurance-support organization would be enjoined from doing, or be required to do, **what it was that they were already required not to do**, or required to do, under law, **without any other consequences**.

- An insurance company, agent, or insurance-support organizations would **not have to pay the injured consumer any other restitution or compensation**. All attorney's fees and costs would have to be bourn by the injured consumer. **How many consumers have the financial wherewithal to be able to sue an insurance company on principle?** Insurance companies know this.

Under pre-existing law, there is absolutely **no relief for consumers for a data breach**, or otherwise **use, abuse, and unauthorized disclosure of personal information** from unlicensed third-parties who may have access to a consumer's personal information, because pre-existing law only applies to:

(1) IIPPA (Ins. Code Sec. 791 et seq.) – insurance institutions, which includes any corporation, association, partnership, reciprocal exchange, interinsurer, Lloyd's insurer, fraternal benefit society, or other person engaged in the business of insurance (Ins. Code Sec. 791.02(k)).

(2) Insurance Regulations (CCR – Title 10, Sec 2689.1 et seq.) – all licensees of the California Department of Insurance, such as insurance institutions, agents, and insurance support organizations who are subject to Ins. Code Secs. 791 et seq. (CCR – Title 10 Sec. 2689.2).

(3) CFIPA (Financial Code Sec 4050 et seq.) – financial institutions, such as any institution engaging in financial activities as set forth in USC - Title 12 Sec. 1843(K) and doing business in California (Fin. Code Sec. 4052(c)). (i.e., lending, exchanging, transferring, investing for others, or safeguarding money or securities, insuring, guaranteeing, or indemnifying against loss, harm, damage, illness, disability, or death, or providing and issuing annuities, and acting as principal, agent, or broker for purposes of the foregoing, in any state, providing financial, investment, or economic advisory services, including advising an investment company (as defined in section 3 of the Investment Company Act of 1940 [15 U.S.C. 80a–3]), issuing or selling instruments representing interests in pools of assets permissible for a bank to hold directly, underwriting, dealing in, or making a market in securities.)

Consumers have no right of action, no right of portability, no absolute right of deletion related to any of a consumer's personal information regarding their entire financial existence.

So, as to any insurance company, agent, or insurance-support organizations financial institution, such as any financial advisor, agency, or financial or economic advisory service, where a consumer's money, insurance, stocks, bonds, investments, real property-related financial transactions, loans, and annuities, there is **no real financial remedy for potentially the greatest harm to a consumer's financial security** – a breach related to a consumer's financial security.

CCPA mandates **security measures that were not contemplated under pre-existing law enacted 15 years ago.**

- CCPA requires businesses that own, license or maintain non-encrypted or non-redacted personal information about California consumers to **provide reasonable security procedure to protect the consumer's personal information**.

Pre-existing law has **no updated privacy policies, no mandatory, or updated security measures** for our current informational evolution, and **no necessary education of all individuals responsible for handling consumer inquiries about the business's privacy practice or compliance with CCPA's requirements and how to assist consumers**.

Facebook, Instagram, Amazon, the instantaneous and mass monetization of information from yet uncontemplated platforms - or simply the encryption of personal information - was **not even a consideration** when the pre-existing laws were enacted.

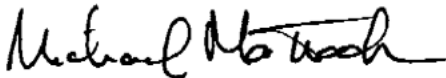CCPA provides a **right to receive information** collected, or a right of **portability**.

- Portability refers to the concept that the consumer's information is the property of the consumer, not the insurance institution, agent, or insurance-support organization. The consumer has the right to ask for and receive a copy of his or her personal information in a readily usable format that can be easily transferred to another entity.

Pre-existing law **does not** require insurance institutions, agents, or insurance-support organizations to provide consumers with the information that has been collected on them. Pre-existing law does not recognize a consumer's right to their own information, so portability is not a consideration.

The CCPA gives the **right to sue companies** who collected a consumer's data, where it was stolen or disclosed through a **data breach**, if the company did not take reasonable security measures to protect the data.

Pre-existing law contains absolutely **no provision** requiring any insurance institution, agent, insurance-support organizations, or financial institutions of any kind to take reasonable security measures to protect a consumer's data. **No responsibility equals no liability**. Simply put, they don't have to take even reasonable steps to protect a consumer's personal data – in the sensitive and **critical area of a consumer's financial security**.

If you have any questions or require further information, please contact me at your convenience.

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