STATE PRIVACY & SECURITY COALITION

March 3, 2022

Chairman James J. Maroney
Chairman Michael D'Agostino
Ranking Member Kevin D. Witkos
Ranking Member David Rutigliano
Connecticut General Law Committee
Legislative Office Building, Room 3500
Hartford, CT 06106

Re: Proposed Amendments to Senate Bill 6

Dear Chairmen Maroney and D'Agostino, and Ranking Members Witkos and Rutigliano,

The State Privacy and Security Coalition (SPSC), a coalition of 32 companies in the telecom, tech, payment card, automobile, and retail sectors, as well as seven trade associations, writes with proposed amendments to Senate Bill 6. We commend Chairman Maroney's work over the past two years on this complex subject, and appreciate his collaborative approach with multiple stakeholders.

At this juncture, we believe that there are several issues that can be resolved with that same spirit of collaboration. While we believe SB 6 needs additional changes beyond these five, these are the most important issues to address before the bill leaves this committee. While some focus on alignment with other state and federal laws, we also believe there are improvements to be made that can help make Connecticut a model for state privacy legislation moving forward. Below, we set forth our proposed amendments. As always, we would welcome the opportunity to discuss any or all of these.

1. **Right to Cure Amendments**

SPSC strongly believes that the Right to Cure is an integral component to reasonable, balanced, and workable state privacy legislation. The California Attorney General's office has testified to its benefits in that state, reporting that 75% of businesses who have received a Notice of Cure have come into compliance, with the other 25% being either within the time to cure or under active investigation.[1] Moreover, the Attorney General's office has a released a tool that allows consumers to generate notices to cure for failure to post their opt-out of sale link.

Our members believe in privacy regimes that seek to ensure *compliance* for good-faith actors, not punishment, and we believe this approach is most beneficial to consumers. The Right to Cure allows the Attorney General's office to write a simple letter instead of launching a full-scale investigation or sending a CID; it allows businesses who may have a compliance gap to mitigate it in short order. It is a force amplifier for an Attorney General's office, not a hindrance.

We often hear fears of the Right to Cure being a loophole for bad actors, who will ignore the mandates of the statute until they receive a Right to Cure notice. In our experience, the requirements of these statutes are so extensive and technically complex, it would be literally impossible to construct a

[1] https://oag.ca.gov/news/press-releases/attorney-general-bonta-announces-first-year-enforcement-update-california

compliant program in 30 days. Additionally, the Attorney General would have a cause of action under the general UDAP statute for unfair business practices should these types of cases arise.

We believe that a compromise on this issue is possible, understanding that some limitation is important to the drafters of this legislation, but also seeking to ensure that businesses are able to retain this critical safe harbor for technical, but non-material, violations of the law. We are looking forward to discussing solutions that appropriately balance enforcement and compliance.

2. **Fully Align SB 6 with the Children's Online Privacy Protection Act (COPPA) and Align the Age Requirements with Other State Laws**

As drafted, the bill would only align with the consent provisions of COPPA – but it makes more sense to ensure that if a controller or processor is complying with COPPA, it is in compliance with a state law regulating the same area. This avoids potential preemption issues and provides certainty to both consumers and business entities. Additionally, our amendment recognizes that much of the work at the federal level is taking place at the rulemaking level, not the legislative arena. A fix to the definition of "COPPA" suffices:

> "COPPA" means the Children's Online Privacy Protection Act of 1998, 15 USC 6501 et seq., **including rules, regulations, and exemptions** thereto, as amended from time to time.

The bill would be the first to apply to 16- and 17-year-olds and would risk requiring companies to treat products and services intended for general audiences as if they are intended for use by teenagers. Aligning the standard with COPPA (*i.e.*, removing the "willful disregard" language and retaining the "actual knowledge" standard) would allow companies to appropriately protect the information of known children and adolescents without blurring the existing federal/state standards.

3. **Remove the Third Party Opt-Out In Order to Reduce Consumer Vulnerability**

Our members are extremely concerned about the Third Party Opt-Out provisions in SB 6. In addition to the operational issues raised by third parties acting on behalf of consumers to exercise their opt-out rights, we believe that this process will lead to increased consumer fraud by cybercriminals. Essentially, these provisions will create a market for bad actors seeking to obtain consumer information, with the promise of "stopping the sale of consumer data" or similar promises. Allowing third parties to obtain consumer information for the purpose of proving that consumer's identity is not a secure way to exercise the opt-out rights. Additionally, with the implementation of the Global Privacy Control in this bill, consumers should have easily accessible ways of exercising their opt-out rights.

We believe that these provisions will make consumers less safe and create unnecessary liability for businesses, and advocate striking these provisions.

4. **Further Clarify the Definition of "Profiling"**

Right now, nearly every business uses some degree of automated processing – whether that's to determine inventory in a store, shipping logistics, or shopping recommendations. However, the vast majority of profiling involves a level of human review. Artificial intelligence is only as "smart" as the data sets from which it learns.

As drafted, the definition will require controllers and processors to offer automation to some consumers and human review to others, because a consumer who opts out of a system with *any* level of automated processing is likely to end up with *only* human review, and there is no way to then treat them equally. These consumers may inadvertently receive fewer benefits and potentially a greater chance of disparate impact. Ideally, the same layer of automation would apply to all consumers, and those who opt out would have an added layer of human review, offering a check and balance on the automation. We propose simply adding the word "solely" to the definition, to read: "'Profiling means any form of **solely** automated processing performed on personal data…" This gets at the true intent of the definition, which is to allow consumers to opt-out of anything that *lacks* human review when dealing with sensitive and serious decision points in a consumer's life.

5. **Ensure that Proprietary Information Has Strong Protections**

SB 6 would also benefit from stronger protections for businesses so that they do not have to disclose proprietary information, or information that would put them at a competitive disadvantage. There are two additions that would make meaningful impacts in this area: 1) the right to portability, and 2) language safeguarding trade secrets.

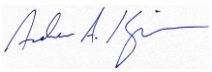
The portability right currently deviates from other state laws in important ways. First, it does not limit the information a controller is required to provide only that personal data **provided by the consumer**; when requested for the purpose of providing data to another company, we believe this right should align with other state laws and be confined only to the consumer-provided personal data. Providing all data to the consumer when the intent is to port the data to another company risks requiring companies to turn over proprietary data to their competitors.

Second, we believe Connecticut could align with California and institute protections for trade secrets, so that controllers do not have to provide trade secrets in response to consumer requests. We expect the first draft of the California Privacy Rights Act (CPRA) regulations to include protections for this type of information. Including protections in Connecticut as well would advance this concept, and help keep critical intellectual property safe.

While we believe SB 6 needs additional changes beyond these five, these are the most important issues to address before the bill leaves this committee. Our amendments are offered in the spirit of keeping consumers safe and in control of their data, ensuring that controllers and processors are not disproportionately at risk of enforcement, and of greater alignment with federal law.

We would be happy to discuss these issues further with you at your convenience.

Respectfully submitted,



Andrew A. Kingman
General Counsel
State Privacy and Security Coalition

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