



August 13, 2020

The Honorable Hannah-Beth Jackson
California Senate Judiciary Committee
State Capitol Room 2187
Sacramento, CA 95814

Re: AB 1782 (Chau)—SUPPORT as amended August 11, 2020

Dear Senator Jackson,

Consumer Reports¹ writes in support of AB 1782, to protect the privacy of information collected pursuant to “technology-assisted” contact-tracing (TACT) apps. This bill will help ensure that these apps, if they are introduced in California, will be safer and more effective. For example, unless a majority of consumers use these apps, they will be much less useful in helping to contain COVID-19.² If rolled out now, survey data suggests that too many consumers would be concerned about potential privacy harms to participate. About half of Americans with smartphones “probably or definitely would not” use these apps, in large part due to the potential threats posed to consumer privacy.³

A number of apps are in development to help public health agencies and consumers engage in accelerated contact-tracing, based on Apple and Google’s proposed Bluetooth-based API,⁴ and

¹ Consumer Reports is an independent, nonprofit membership organization that works side by side with consumers to create a fairer, safer, and healthier world. For over 80 years, CR has provided evidence-based product testing and ratings, rigorous research, hard-hitting investigative journalism, public education, and steadfast policy action on behalf of consumers’ interests. Unconstrained by advertising, CR has exposed landmark public health and safety issues and strives to be a catalyst for pro-consumer changes in the marketplace.

² Sarah Kreps, Baobao Zhang, and Nina McMurry, *Contact-Tracing Apps Face Serious Adoption Obstacles*, BROOKINGS (May 20, 2020), <https://www.brookings.edu/techstream/contact-tracing-apps-face-serious-adoption-obstacles/>.

³ Craig Timberg, *Most Americans Are Not Willing or Able to Use an App Tracking Coronavirus Infections. That’s a Problem for Big Tech’s Plan to Slow the Pandemic*, WASH. POST (Apr. 29, 2020), <https://www.washingtonpost.com/technology/2020/04/29/most-americans-are-not-willing-or-able-use-an-app-tracking-coronavirus-infections-thats-problem-big-techs-plan-slow-pandemic/>.

⁴ Kaveh Waddell, *Tracking Everyone With Coronavirus Is a Huge Task. These Systems Could Help*, CONSUMER REPORTS (Apr. 24, 2020), <https://www.consumerreports.org/public-health/tracking-coronavirus-is-a-huge-task-these-systems-could-help/>.

one is now available in Virginia.⁵ If a consumer has opted in, their phone will be able to anonymously track his or her proximity to other users. If a user tests positive for COVID, the app will enable users to notify others who may have been infected.⁶ Though there are valid concerns about whether or not they will be effective in determining who might have been infected, they have been used by several other countries as part of the COVID-19 response,⁷ and it seems likely that other states will join Virginia in pursuing this approach.

While it remains to be seen whether the state of California will follow, consumers need to have privacy and security requirements in place so that there is no gap in protections if it is rolled out quickly. Already, in other countries, the information collected through exposure notification apps is used in coercive ways, such as to limit users' access to transportation, despite the threat of false positives.⁸ Further, location-tracking apps could reveal whether or not a consumer had attended a political protest.⁹ That information could be shared with authorities that aren't involved in the public health response,¹⁰ which would likely have a chilling effect on political expression. Additionally, without appropriate protections, by default, information collected by these apps could be monetized for advertising purposes.

This bill will help ensure that any technology-assisted contact-tracing app developed and brought to market in California will be privacy-protective. It establishes a strong standard of data minimization: limiting collection, sharing, maintenance, and disclosure of data to what is reasonably necessary to operate the service requested by the consumer. This means that consumer privacy is ensured by default, rather than leaving it to the consumer to figure out how to exercise their privacy preferences. Of course, not every consumer would want to subject themselves to this data collection in the first place, so appropriately, consent for use is required, and there is a strong non-discrimination provision that ensures that consumers have a meaningful choice as to whether or not to participate.

⁵ Sarah McCammon, *Virginia Unveils App to Aid Contact Tracing*, NPR.ORG (Aug. 5, 2020), <https://www.npr.org/sections/coronavirus-live-updates/2020/08/05/899414953/virginia-unveils-app-to-aid-contact-tracing>.

⁶ Kaveh Wad.dell, *COVID-19 Apps Could Slow the Pandemic. Here's Why They Still Haven't Been Released*, CONSUMER REPORTS (Jul 14, 2020), <https://www.consumerreports.org/coronavirus/covid-19-contact-tracing-apps-could-slow-pandemic-but-delayed-release/>.

⁷ Jason Horowitz and Adam Satariano, *Europe Rolls Out Contact Tracing Apps, With Hope and Trepidation*, N.Y. TIMES (June 23, 2020), <https://www.nytimes.com/2020/06/16/world/europe/contact-tracing-apps-europe-coronavirus.html>.

⁸ Ashkan Soltani, Ryan Calo, and Carl Bergstrom, *Contact-Tracing Apps Are Not a Solution to the COVID-19 Crisis*, BROOKINGS (April 27, 2020), <https://www.brookings.edu/techstream/inaccurate-and-insecure-why-contact-tracing-apps-could-be-a-disaster/>; Shirin Ghaffary, *What the US Can Learn from Other Countries Using Phones to Track Covid-19*, VOX (April 22, 2020), <https://www.vox.com/recode/2020/4/18/21224178/covid-19-tech-tracking-phones-china-singapore-taiwan-korea-google-apple-contact-tracing-digital>.

⁹ Thomas Germain, *How to Protect Phone Privacy and Security during a Protest*, CONSUMER REPORTS (June 3, 2020), <https://www.consumerreports.org/privacy/protect-phone-privacy-security-during-a-protest/>.

¹⁰ Cal Civ. Code §1798.145(a)(2).

Additionally, we appreciate the work that your committee and the author have done to strengthen protections included in the bill. Notably, the recent amendments prohibit public entities from deploying TACT apps that use location data, to ensure that entities aren't allowed to collect logs of consumers' movements. New data deletion requirements mean that information would be less likely to be misused or to fall into the wrong hands in the event of a data breach. And the new, strong enforcement provisions will ensure that companies have appropriate incentives to comply—an issue brought into relief by widespread non-compliance with respect to the CCPA, which lacks strong enforcement.¹¹ While we, along with other privacy groups, continue to urge the author to consider further refinements such as adding similar privacy protections to data collected by manual contact tracing, the substantial improvements to the bill have led us to move our position from “support if amended” to full support.

This bill provides consumers important privacy protections in this time of unprecedented data collection. We urge your AYE vote.

Respectfully submitted,



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Cc: The Honorable Ed Chau
Members, California Senate Judiciary Committee
Christian Kurpiewski, Counsel

¹¹ Maureen Mahoney, *Many Companies Are Not Taking the California Consumer Privacy Act Seriously—The Attorney General Needs to Act*, (Jan. 9, 2020), <https://medium.com/cr-digital-lab/companies-are-not-taking-the-california-consumer-privacy-act-seriously-dcb1d06128bb>.