



POLICY & ACTION FROM CONSUMER REPORTS



The Honorable Ed Chau
Chairman, Assembly Committee on Privacy and Consumer Protection
California State Capitol, Room 5016
Sacramento, CA 95814

June 19, 2017

Dear Assemblymember Chau,

We applaud your leadership in stepping up to protect Californians' broadband privacy in the wake of the shameful dismantling of the Federal Communication Commission's (FCC) broadband privacy rule perpetrated by Congress and President Trump. We write in strong support of AB 375 (Chau) - the California Broadband Internet Privacy Act. The bill would give Californians' the critical control they need to protect the personal information they share with internet service providers.

Providers of broadband internet service have a unique and powerful role in today's online ecosystem. Their position as internet gatekeepers gives them a comprehensive view of individual consumer behavior, one that consumers cannot readily avoid or shield themselves from when they use necessary internet services. The power of the internet service provider is further enhanced by the lack of competition that presently exists for high-speed access. According the latest FCC data, 41 percent of Americans have only one company offering high-speed broadband access in their community.

As the role of the internet in the daily lives of consumers increases, this means an increased potential for data collection of personal information and sensitive facts about ones daily life. The shadow of surveillance can create a chilling effect on speech, association, and online commerce, and even increase the potential for data-driven discrimination, governmental overreach, and the theft of highly personal information. By contrast, strong protections that enhance Californians' confidence would encourage greater adoption and use of the internet, as individual comfort and trust leads individuals to conduct even more of their everyday business online.

AB 375 would provide Californians' with increased choice, transparency, and security, thereby enhancing their privacy and autonomy. The California Broadband Internet Privacy Act would require that internet service providers get opt-in consent from customers before sharing customer personal information with third-parties or using it for non-service-related purposes, like advertising. It would prohibit pay-for-privacy schemes, where internet service providers penalize customers for not providing such consent. Furthermore, it would also require that internet service providers maintain reasonable security procedures and practices to protect collected data.

This bill would ensure that Californians have the freedom to make informed choices about the use and sharing of their and their families' personal information online,

including: financial, health, demographics, geolocation, children and teens' information, device identifiers, and web browsing history and app usage.

Your legislation generally mirrors the repealed FCC broadband privacy rules in order to close the gap in consumer protection that Congress created when it invoked the Congressional Review Act to repeal the rules in April of this year.¹ Those FCC rules established clear guidelines for the cable and telephone industry to secure the consent of their users before being allowed to resell their personal data such as the websites they visit, the applications they use, and other details an individual reveals about themselves when using the Internet. These rules enjoyed broad bipartisan support from voters across the country.² And not only did Congress' repeal eliminate the updated privacy rules for broadband providers, it placed a prohibition on the FCC from reviving identical or “substantially similar” rules in the future – leaving open the question of whether the FCC can even enforce an individual’s legal right to communications privacy under Section 222 of the Telecommunications Act of 1996.

These actions represent a rank betrayal by Washington of the desires and expectations of the vast majority of the American public.

In response, AB 375 allows California to step into the vacuum and provide a level of consumer privacy protection comparable to the original FCC broadband privacy rules while being narrowly tailored to avoid federal preemption issues..

Californians deserve a say in how their online information is used and shared. While much remains to be done to protect consumers in the overall online ecosystem, this is an excellent first step towards better protecting the privacy of millions of Californians and their families on broadband networks. It comes as no surprise that super majorities of Democratic, Republican, and independent voters believed President Trump should have vetoed the broadband privacy repeal.³ In the face of retreat by the federal government and the robust demands of voters, California must respond to the will of the public and restore the protections created by the FCC in 2016 that Congress and the President so thoughtlessly stripped away.

Thank you again for your leadership on this issue, and we stand ready to support you in seeing AB 375 passed into law.

¹ *Protecting the Privacy of Customers of Broadband and Other Telecommunications Services*, 47 CFR 64, available at <https://www.federalregister.gov/documents/2016/12/02/2016-28006/protecting-the-privacy-of-customers-of-broadband-and-other-telecommunications-services>.

² Ariel Edwards-Levy, Dana Liebelson, *Even Trump Voters Hate This Bill He Just Signed*, April 3, 2017, available at: http://www.huffingtonpost.com/entry/trump-online-privacy-poll_us_58e295e7e4b0f4a923b0d94a

³ Karl Bode, *Trump Signs Hugely Unpopular Repeal of Broadband Privacy Rules*, DSLReports, Apr. 4, 2017, available at <http://www.dslreports.com/shownews/Trump-Signs-Hugely-Unpopular-Repeal-of-Broadband-Privacy-Rules-139286>.

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Consumers Union
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Privacy Rights Clearinghouse
Public Law Center
Scott Jordan - Past Chief Technologist of the Federal Communications Commission
The Utilities Reform Network (TURN)