

SB 178 (LENO and ANDERSON)

Co- authors: Senators Canella, Gaines, Hertzberg, McGuire, Nielsen and Roth
Assemblymembers Chiu, Dahle, Gordon, Maienschein, Quirk, Steinorth and Ting

ELECTRONIC COMMUNICATIONS PRIVACY ACT

Safeguard Californians, Spur Innovation, Support Public Safety

SUMMARY

SB 178 would safeguard Californians' electronic information and support innovation and the digital economy by updating California privacy law to match the modern digital world.

California has long been a leader in protecting individual privacy. Unfortunately, the emergence of new technology has left California's protections behind. This bill will provide needed protection against warrantless government access to mobile devices, sensitive emails, text messages, digital documents, metadata, and location information.

BACKGROUND

Californians use technology every day to connect, communicate, work and learn. And the state's leading technology companies rely on consumer confidence in these services to help power the California economy.

But consumers are increasingly concerned about warrantless government access to their digital information, and for good reason. While technology has advanced exponentially, California privacy law is still in the digital dark ages. Law enforcement is increasingly taking advantage of outdated privacy laws to turn mobile phones into tracking devices and access sensitive emails, digital documents, and text messages without proper judicial oversight.ⁱ

As a result, public confidence in technology has been badly damaged. Polls consistently show that consumers believe that their electronic information is sensitive – and that current laws provide inadequate protection from government monitoring.ⁱⁱ Companies in turn are increasingly concerned about loss of consumer trust and its business impact.

Courts and legislatures around the country are recognizing the need to update privacy laws for the modern digital age. In two recent decisions, *United States v. Jones* and *Riley v. California*, the U.S. Supreme Court upheld Fourth Amendment privacy rights against warrantless government surveillance. Justice Alito in *Jones* also prompted lawmakers to take action, noting that in circumstances involving dramatic technological change “a legislative body is well suited to gauge changing public attitudes, to draw detailed lines, and to balance privacy and public safety in a comprehensive way.”

15 state legislatures throughout the country have already heeded Justice Alito's call and enacted new legislation, with 9 states safeguarding location informationⁱⁱⁱ and 5 states protecting electronic communications content.^{iv} The White House has called on lawmakers to update the law to “ensure the standard of protection for online, digital content is consistent with that afforded in the physical world.” And a federal bill garnered over 270 bipartisan co-sponsors in the United States Congress.

California has fallen behind states as diverse as Texas, Maine, and Utah which have already enacted legislation to safeguard rights, spur innovation, and support public safety.

SOLUTION

SB 178 heeds the call in *Jones* for the legislature to act and to safeguard Californians, spur innovation, and support public safety by updating privacy law to match the modern world.

- **Appropriate Warrant Protection for Digital Information**
- **Proper Transparency & Oversight**

- **Appropriate Exceptions for Public Safety**

The bill will make sure that the police go to a judge and get a warrant before they can access sensitive information, including data from personal electronic devices, emails, digital documents, text messages, and location information under normal circumstances. The bill also includes thoughtful exceptions to ensure that they can continue to effectively and efficiently protect public safety.

The bill's notice, reporting, and enforcement provisions make sure that there is proper transparency and oversight and mechanisms to ensure that the law is followed.

Californians should not have to choose between using new technology and keeping their personal lives private and California's technology companies shouldn't be burdened with privacy laws stuck in the digital dark ages.

SUPPORT

CalECPA is supported by the state's leading technology companies and organizations:

Adobe Inc.
American Civil Liberties Union of California
American Library Association
Apple Inc.
Asian Americans Advancing Justice (AAAJ)
California Newspaper Publishers Association
Center for Democracy and Technology

Center for Media Justice
Centro Legal de la Raza
Color of Change
Consumer Action
Consumer Federation
Council on American-Islamic Relations (CAIR)
Dropbox
Electronic Frontier Foundation
Engine
Facebook
First Amendment Coalition
Foursquare
Google
Internet Archive
LinkedIn
Media Alliance
Microsoft
Mozilla
NameCheap
National Center for Lesbian Rights (NCLR)
New America: Open Technology Institute
Privacy Rights Clearinghouse
Reddit
Restore the 4th
Techfreedom
The Internet Association
The Utility Reform Network (TURN)
Twitter
World Privacy Forum

CONTACT

Daniel Seeman, 916-651-4011
Version: February 9, 2015

ⁱ For example, Google's transparency report shows a 250% jump demands from U.S. law enforcement in just the past five years, including 32,000 requests in the first 6 months of 2014 alone.

ⁱⁱ According to a recent Pew Internet & Society survey, 80% of adults feel that Americans are rightly concerned about government monitoring of internet communications, 70% of social networking site users express concern about government access, and 75% or more believe that their email messages, text messages, and location information are sensitive.

ⁱⁱⁱ IN H.B. 1009 (2014); IL S.B. 2808 (2013); MD S.B. 698 (2013); ME S.P. 157 (2013); MN S.F. 2466 (2014); MT H.B. 603 (2013); TN S.B. 2087 (2013); UT H.B. 128 (2014); WI A.B. 536 (2013).

^{iv} HI H.B. 1641 (2013); MD S.B. 698 (2013); ME S.P. 484 (2013); TX H.B. 2268 (2013); UT H.B. 128 (2014).