



State Privacy and Security Coalition, Inc.

July 7, 2021

TO: Members, Senate Health Committee

**SUBJECT: AB 1436 (CHAU) INFORMATION PRIVACY: DIGITAL HEALTH FEEDBACK SYSTEMS
OPPOSE – AS AMENDED JUNE 21, 2021
SCHEDULED FOR HEARING – JULY 14, 2021**

The California Chamber of Commerce and the listed organizations must respectfully **OPPOSE AB 1436 (Chau)** as amended June 21, 2021, which deems every business offering a website, online service, or product designed to collect identifiable information about an individual’s physical or mental condition to be a “provider of healthcare” under the California Confidentiality of Medical Information Act (CMIA). The CMIA is a complicated statute written to apply primarily to doctors and hospitals — not to digital scales, heartbeat monitors, and gymnasiums. The CMIA contains extremely high penalties for noncompliance, even if that noncompliance is innocent and does not result in any harm to any person. **AB 1436** as drafted will drastically expand the number and types of businesses and products subject to the CMIA’s onerous requirements and penalties, significantly disrupting the market, availability, and cost of everyday health products for Californians.

AB 1436 is overbroad, turning commonplace fitness trackers, basic household devices, and social media websites into medical devices. **AB 1436** as drafted will affect products ranging from fitness wearables to insulin glucose monitors for people with diabetes and will have a disruptive impact on the current market for these products by drastically expanding the scope of businesses that are subject to penalties and prosecution under the Confidentiality of Medical Information Act (CMIA). This bill applies to every website, online service, or product (whether software or hardware) designed to maintain individually identifiable information about an individual’s mental or physical condition. Accordingly, this definition includes virtually every digital health device or service, including digital scales, fitness wearables, blood sugar monitors, thermometers, fitness tracking tools, and wearable fitness devices. This definition is so broad that it also includes any website where individuals can post information about their health, such as their weight, or information about their mental condition, such as an online happiness/mood diary. It would also include gyms that track a client’s heart rate, body fat, or measurements online, and even connected home treadmills and workout equipment. A company that helps consumers track their heart rate while exercising should not be subject to this complicated set of laws meant to govern health care providers who record information about abortions, sexually transmitted diseases, and psychiatric disorders. The same level of regulation is simply not warranted.

AB 1436 will be costly for California. The Assembly Appropriations Committee analysis of the prior version of this bill, AB 1252 (Chau) indicated that there will be hundreds of thousands in increased staff costs to the Department of Justice, Public Rights Division, for anticipated increase in enforcement actions against violators. It is possible that this cost will be even greater because CMIA is ill-equipped to deal with

these technologies and devices, as noted above, and will likely require additional enforcement costs as it relates to prosecuting violators, which would also increase the costs to the judiciary. Further, because this bill is broad enough to apply to virtually every device that uses this information, including fitness trackers and over the counter health devices, there is a possibility that enforcement costs will be much greater, taking into account the sheer volume of devices and companies to which this bill expands CMIA's application.

AB 1436 is unnecessary and imposes inconsistent requirements on businesses. The California Consumer Privacy Act of 2018 (CCPA) already regulates the use, disclosure, and sale of personal information. Enacting **AB 1436** on top of the CCPA would create inconsistent compliance schemes for many businesses.

AB 1436 will increase the costs of developing, producing, and maintaining health-related products, which will eliminate smaller businesses from the market and increase the price to the consumer.

AB 1436 would require businesses that offer these products and services to spend additional resources on legal compliance under the CMIA. Many of these businesses will be unable to afford these costs and will therefore be forced to cease offering their products or services. Further, increasing the barriers to entry for these businesses will reduce competition, which will, in turn, increase the price to the consumer or user. The net result of these increased costs and prices for products and services that help people maintain their health and fitness will be to harm consumers.

For these reasons, we respectfully **OPPOSE AB 1436 (Chau)**.

Sincerely,



Shoeb Mohammed
Policy Advocate
California Chamber of Commerce
on behalf of

Advanced Medical Technology Association
California Chamber of Commerce
California Life Sciences
California Manufacturers & Technology Association
Civil Justice Association of California
Entertainment Software Association
Insights Association
Internet Association
Masimo Corporation
National Payroll Reporting Consortium
Silicon Valley Leadership Group
State Privacy and Security Coalition, Inc.
TechNet

cc: Legislative Affairs, Office of the Governor
Garret Bazurto, Office of Assemblymember Chau
Consultant, Senate Health Committee
Joe Parra and Tim Conaghan, Senate Republican Caucus

SM:ldl