April 24, 2017

The Honorable Hannah-Beth Jackson
California State Senate
State Capitol, Room 2032
Sacramento, CA 95814

SUBJECT: SB 327 (JACKSON) INFORMATION PRIVACY: CONNECTED DEVICES
OPPOSE – AS AMENDED MARCH 20, 2017

Dear Senator Jackson,

The California Chamber of Commerce and the organizations listed below must respectfully OPPOSE your SB 327, which imposes onerous, duplicative and premature data security and notification mandates on manufacturers and retailers of devices which connect to the Internet. If enacted, SB 327 would be difficult to implement and impracticable for many devices, while requiring over-notification that would ultimately confuse California consumers.

Duplicative data security requirements
SB 327 would require connected devices to be equipped with “reasonable security features appropriate to the nature of the device.” Existing law already requires manufacturers to implement reasonable privacy protections. Civil Code Sec. 1798.81.5(b) requires businesses that own, license or maintain personal information about California residents to “implement and maintain reasonable security procedures and practices appropriate to the nature of the information, to protect the personal information from unauthorized access, destruction, use, modification, or disclosure.” It is unnecessary to have a separate section of law that imposes these requirements on connected devices.
**Conflicting federal preemption**

SB 327 would be federally preempted in applicable cases by the Children’s Online Privacy Protection Act (COPPA), which gives parents control over what information can be collected from their children. COPPA covers a broad range of personal information, including first and last name, online contact information, geolocation information, photos, videos and audio files that contain children’s images or voices, as well as any persistent identifiers that can be used to recognize a user over time. While there are certain interactions that are permitted under COPPA, operators cannot share a child’s personal information with third parties without obtaining parental consent. COPPA preempts state laws that are inconsistent with its provision, but allows for enforcement by state Attorneys General.

**Problematic notification and consent provisions**

The bill requires connected devices to inform consumers when information is being collected and to obtain consumer consent before collecting information “beyond what is necessary” to complete a transaction or for the device to function as stated. In many cases, this is impractical and antithetical. For instance, medical device manufacturers require patient information for complaint handling and malfunction reporting and mitigation. Requiring consumer consent before information about adverse events can be relayed would seriously jeopardize the integrity of many devices and services.

Vehicles collect information to make sure safety features engage properly, as well as for navigation and other purposes. Continuous notice of the collection of data would be distracting for drivers. Similarly, there are numerous other devices and tools that customers utilize, such as heart rate monitors or leak detection devices, because they are continuously collecting information and connected to the internet. These ongoing notifications would be annoying at best and may interfere with the operation of the device.

In addition to implementation concerns, the notice and consent requirements in SB 327 would be unnecessary because the privacy policies of covered devices already disclose data collection use and practices. Further, should a company violate its privacy policy, it would be subject to enforcement by the Federal Trade Commission that has authority to challenge unfair or deceptive acts or practices, as well as by states with similar authority.

**Ambiguous point of sale requirements and increased litigation risk**

Requiring point of sale notice of the information collection features of every connected device – which, as defined by the bill, includes a near limitless range of products – is excessive and unfairly cumbersome to retailers. Consumers would be confused and overwhelmed by the myriad of notices. Retailers would be totally dependent on connected device manufacturers for the information required to be made available at the point of sale. If that information is inaccurate or outdated, it’s unclear how that would impact the retailer.

**Implementation complications and uncertainty across multiple industries**

The language in SB 327 brings in an array of devices and the language is ambiguous as to whether it would apply to those that have already been purchased or deployed. For example, millions of California residents have been upgraded by utilities to “smart meters” over the past several years, which use radio frequencies to report customer energy usage back to a centralized system. It is unclear whether smart meters would be impacted by SB 327.

Connected devices are utilized by many California consumers on a daily basis and the services and benefits of these products will only increase as technological advances continue to be made. Any proposed policy must be carefully considered to ensure that consumers are able to continue to take advantage of devices that connect to the Internet.

**Runs Counter with the Federal Government’s IoT Initiatives**

SB 327 regulatory requirements directly conflicts with the objectives cited in the U.S. Department of Commerce’s Green Paper entitled, Fostering the Advancement of the Internet of Things. Prior to the Green Paper’s publication, the U.S. Department of Commerce requested public comment on what steps the U.S. government must take to enable IoT growth, such as convening private-public working groups, creating the necessary infrastructure that creates a robust IoT ecosystem, and promulgate industry-supported policies – not regulations. As noted in the Green Paper, due to the nascent stage of IoT technologies, legislation that creates premature regulations will undoubtedly hinder IoT growth and consequently stifle innovation.

For these reasons, we respectfully OPPOSE your SB 327.
Sincerely,

California Chamber of Commerce
Association of Home Appliance Manufacturers
Association of National Advertisers
California Manufacturers and Technology Association
California Retailers Association
Computing Technology Industry Association - CompTIA
Consumer Technology Association
CTIA – The Wireless Association
Data and Marketing Association
Entertainment Software Association
Internet Coalition
Internet Association
National Electrical Manufacturers Association
Retail Industry Leaders Association
Security Industry Association
Self-Driving Coalition for Safer Streets
TechNet
Toy Association.

cc: Members, Senate Judiciary Committee