



August 13, 2019

Senator Anthony J. Portantino
Chairman of the Senate Appropriations Committee
State Capitol, Room 3086
Sacramento, CA 95814

Re: AB 25 (Chau) California Consumer Privacy Act of 2018

Dear Senator Portantino,

The SPARK Institute, Inc. is writing to express their support of AB 25 (Chau) to the California Consumer Privacy Act of 2018 (“CCPA”), as amended July 11, 2019. We support as amended, but would support more fully if expanded and amended to be made permanent.

The SPARK Institute represents the interests of a broad-based cross section of retirement plan service providers and investment managers, including banks, mutual fund companies, insurance companies, third party administrators, trade clearing firms, and benefits consultants. Collectively, our members serve approximately 95 million employer-sponsored plan participants. Our comments reflect our unique perspective and our goal of advancing critical issues that affect plan sponsors, participants, service providers, and investment providers.

EXECUTIVE SUMMARY

The SPARK Institute believes in the protection of consumer data and supports the goals of the CCPA. However, AB 25 is needed to fix the CCPA with respect to data collected by employers, plan sponsors and service providers from employees and job applicants. AB 25 has already passed in the Assembly with significant support, and has been reported out of the Senate Standing Committee on Judiciary. AB 25 should be expanded and amended to be made permanent in order to protect the retirement system.

- First, the SPARK Institute believes that AB 25 should be passed to clarify that employees and job applicants acting in their professional capacities are not “consumers” under the law, so that employees may continue to receive their essential benefits. It is important that CCPA does not interfere with the ability of employees to receive benefits from employer sponsored employee benefit plans and financial wellness programs.
- Second, the SPARK Institute believes that AB 25 should be expanded to be made permanent, rather than the proposed end date of January 2021. The sunset

provision is unhelpful as it creates uncertainty, which could interfere with and reduce access to plans.

COMMENTS FROM THE SPARK INSTITUTE

A vital mission of the SPARK Institute is the promotion of employer-sponsored retirement plans, because those plans play a critical role in helping every hardworking American retire with financial security. Should AB 25 not pass, the CCPA could interfere with an employer or service provider's ability to effectively provide employee benefits, which are already heavily regulated at the federal and state level through the Employee Retirement Income Security Act of 1974 ("ERISA") and other statutes. Private employers, schools and universities, and state and local governments all have benefit plans that could be jeopardized if AB 25 is not enacted. AB 25 should be expanded, made permanent, and passed, for the reasons below.

- First, CCPA is a law designed to address the privacy of consumers, as demonstrated by the language of the law.¹ The law protects California consumers by providing a right to request a business to disclose what personal information was gathered, and to have information held by that business deleted, as specified. The law, without AB 25, could interfere with the operation of retirement plans, and employee benefit plans are not what CCPA is trying to stop.
- Second, AB 25 is needed to allow employers to do the things that California should want them to do. Not only is AB 25 necessary to effectuate payroll, but it is also necessary so that employers can offer benefit plans, provide matching contributions, locate participants who are owed retirement benefits, provide tax return information to the state regarding distributions, and identify individuals who are most in need of additional help in meeting their savings goals to ensure a dignified retirement. These are all things that California should want to encourage, and AB 25 helps employers provide benefits to their employees.
- Third, if AB 25 is not passed and made permanent, businesses of all sizes would face increased costs in offering benefit plans to California employees. For example, service providers would be burdened by requests for information from employees at every level, as well as potential requests to delete essential information required for the administering of benefits. Ultimately, if AB 25 is not enacted, it will be California residents, as plan participants and beneficiaries, who are hurt.
- Fourth, there are existing laws to protect employees when they are accruing and receiving benefits related to retirement and healthcare. If AB 25 is not passed, there is likely tension between CCPA, federal laws, and even other California statutes that provide for or regulate employee benefits. Benefits are already highly regulated, and companies, schools, and local governments that offer them are already held to a high standard of care.

The SPARK Institute writes to the Senate Standing Committee on Appropriations in strong support of expanding, amending, and enacting AB 25. AB 25 provides critical clarification to ensure that the law is implemented as intended, protecting consumers while avoiding interference with retirement plans.

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¹ See, Assembly Bill No. 375

https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=201720180AB375

The SPARK Institute appreciates the opportunity to provide these comments to the Senate Standing Committee on Appropriations. If you have any questions or would like more information regarding this letter, please contact me or the SPARK Institute's outside counsel, David Levine, Groom Law Group, Chartered (dlevine@groom.com or 202-861-5436).

Sincerely,

Tim Rouse
Executive Director

cc: Legislative Affairs, Office of the Governor
The Honorable Ed Chao
Senator Anthony J. Portantino, Senate Standing Committee on Appropriations
(Chair)
Senator Patricia C. Bates, Senate Standing Committee on Appropriations (Vice
Chair)