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April 23, 2015

Assemblymember Mark Stone
Chair, Assembly Judiciary Committee
State Capitol, Room 5155
Sacramento, CA 95814

RE: Assembly Bill 739 (Irwin) Civil law: liability: communication of cyber security: threat information – Oppose Unless Amended

As amended, April 16, 2015

Assembly Judiciary Committee - April 28, 2015

Dear Assemblymember Stone:

The Consumer Federation of California (CFC) must oppose Assembly Bill 739 unless amended. The bill is set to be heard in the Assembly Judiciary Committee on April 28, 2015.

While we appreciate the commendable goal of AB 739 to encourage corporations to share information about data breach or cyber security threats with other private entities or state law enforcement agencies, we are concerned with the sweeping immunities granted by this bill. We do not think the scale of this immunity is necessary to accomplish AB 739's goals.

Despite the fact that many industries have been sharing data breach and cyber security threat information for years, we are aware of no litigation arising from these activities. Accordingly, CFC does not believe that is necessary to provide immunity to liabilities that have not been demonstrated. The information shared can oftentimes include sensitive consumer details, and to deny legal recourse is a drastic step to take in the absence of a demonstrable problem.

The current language of the bill grants immunity from both criminal and civil liability if certain standards are met. For example, the information sharing would be protected as long as it was made "without the intent to injure, defraud, or to otherwise endanger "someone, even if the company was negligent. Usually, a company is never intentionally injuring to injure someone, but it may very well be negligent. Also, in subsection (b), the company "shall, in good faith" make reasonable efforts to safeguard personal information. Again, "good faith" has to do with the intentions of the company. One may have a "good faith" intention and yet fail to protect personal information, and it is difficult to prove or disprove the "good faith" of a corporation.

We are also concerned about unintended consequences of this legislation and how it may adversely affect other statutory or common law privacy protections of Californians. We would be happy to discuss our concerns with you, and thank you very much for considering our views.

If you or your staff has any questions, please contact Aaron Lewis, CFC Legislative Advocate, at (916) 498-9616.

We urge your "No" vote on AB 739 in its current form.

Sincerely,

A handwritten signature in black ink that reads "Richard Holober". The signature is written in a cursive, flowing style.

Richard Holober
Executive Director

cc: Members and Staff, Assembly Judiciary Committee
Assemblymember Irwin