

Date of Hearing: May 5, 2021

ASSEMBLY COMMITTEE ON APPROPRIATIONS

Lorena Gonzalez, Chair

AB 814 (Levine) – As Amended April 21, 2021

Policy Committee:	Privacy and Consumer Protection	Vote:	10 - 1
	Judiciary		8 - 2

Urgency: No      State Mandated Local Program: No      Reimbursable: No

**SUMMARY:**

This bill prohibits data collected, received or prepared for purposes of contact tracing from being used, maintained or disclosed for any purpose other than to facilitate contact tracing efforts. This bill also requires contact tracing data be deleted within 60 days, unless it is in the possession of a state or local health department. This bill also prohibits law enforcement from engaging in contact tracing. This bill also creates a new civil action for injunctive relief for any violation of the prohibitions in this bill.

**FISCAL EFFECT:**

Possible cost pressures (Trial Court Trust Fund) in the low hundreds of thousands of dollars in increased workload to the extent this bill creates a new civil action for injunctive relief. One hour of court time costs approximately \$956. If 20 requests for injunctive relief are filed statewide requiring an average of 12 hours of court time each, the cost to the courts would be \$229,440.

Although courts are not funded on the basis of workload, increased pressure on the Trial Court Trust Fund and staff workload may create a need for increased funding for courts from the General Fund (GF) to perform existing duties. This is particularly true given that courts have delayed hundreds of trials and civil motions during the COVID-19 pandemic resulting in a serious backlog that must be resolved. The Governor's 2021-22 budget proposes \$72.2 million dollars in ongoing GF revenue for trial courts to continue addressing the backlog of cases in order to provide timely access to justice.

**COMMENTS:**

1) **Purpose.** According to the author:

The bill protects personal privacy by requiring data collected for contact tracing to be deleted within 60 days except for use of a local or state health department. The bill allows a person to bring civil action for violation of this section for injunctive relief.

Together, this bill is essential to effective contact tracing and ensuring public confidence that their data will only be used in the interest of public health.

2) **Contact Tracing and Privacy.** Contact tracing typically entails interviewing people who are infected by a virus and asking them to identify everyone they had close contact with during

the time they may have been infectious; notifying contacts of their potential exposure; referring contacts for testing; monitoring contacts for signs and symptoms of infection; and connecting contacts with services they might need during the self-quarantine period. There are currently two forms of contact tracing being used. The first is contact tracing through technology-assisted applications, and the second is manual contact tracing.

Many privacy concerns were raised in response to the dramatic increase in technology-assisted contact tracing efforts. Officials using these methods have been forced to address serious complaints about certain applications' extensive user data-mining and poor security practices. There have also been privacy concerns with manual contact tracing. According to former Attorney General Xavier Becerra, scam artists pretended to be contact tracers to trick Californians into divulging their private personal information such as Social Security numbers, financial information or health insurance information. Finally, given that COVID-19 hit communities of color hardest, fear of law enforcement may have impeded effective contact tracing. It is arguable it would have been easier to gain community trust if law enforcement were legally prohibited from engaging in contact tracing.

3) **Argument in Support.** According to the Western Center on Law and Poverty:

Contact tracing is an important tool to limit the spread of COVID19 and is most effective when complete data is provided. Trusted community members, like public health officials or community workers, are the best collectors of this data, especially for communities that are already over-policed. Immigrant communities and communities of color – the very communities disproportionately impacted by the pandemic – are less likely to willingly interact with law enforcement officials.

4) **Argument in Opposition.** According to California Chamber of Commerce:

Unfortunately, AB 814 is drafted in such a way that it creates overbroad restrictions that will slow the use of contact tracing and prevent customary uses of non-contact tracing information. Additionally, the inclusion of a private right of action with attorney fees creates a strong deterrent from using or participating in contact tracing, one of the only tools we currently have to fight COVID-19.

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