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Insights

LOOKS LIKE PEN REGISTER CLAIMS ARE DEAD

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Just under the wire -- on the penultimate day of the 2025–26 Regular Session -- California Senate Bill 690 sailed unanimously through the State Assembly and Senate and is on to Governor Newsom's desk for signature.

SB 690 amends the private right of action in the California Invasion of Privacy Act ("CIPA"), eliminating private pen register and trap and trace claims under Penal Code § 638.51. As a very welcome bonus, the change in the law is retroactive and applies to any claim filed within the two years preceding the effective date of the amendments.

Those last two years have seen a deluge of abusive lawsuits and demand letters targeting companies big and small claiming that the use of routine data analytics and ad targeting tools on websites and mobile apps constitutes an unlawful wiretap or installation of a pen register or trap and trace device without a warrant. The claims have been a favorite of plaintiffs' lawyers, as CIPA includes a private right of action authorizing recovery of up to $5,000 per violation without any showing of actual harm.

As introduced, SB 690 would have also brought much needed reform to claims brought under Penal Code § 631(a) – the California equivalent of the federal Wiretap Act. The bill was narrowed significantly, however, in the face of coordinated opposition from plaintiffs' lawyers, labor and victims' rights groups, and others concerned that the bill went too far. Efforts to reform wiretap claims targeting websites and mobile apps will have to await the next legislative session.

Enactment of SB 690 will, however, provide much needed relief from the most frequently abused CIPA provision. It is plain from the text of the statute that it was intended merely to require law enforcement to obtain a warrant before asking the phone company to share information regarding incoming and outgoing telephone calls. But, as some judges have pointed out, it was poorly drafted and, taken to its logical extension, effectively criminalized the internet.

If you are currently on the receiving end of a pen register complaint or demand and have not yet signed a settlement agreement, now is the time to reevaluate your defense strategy.

Related Capabilities

- Data Privacy & Security
- Data Privacy, Telecommunications & Collections

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