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VIRGINIA IS ON THE VERGE OF ENACTING CONSUMER PRIVACY LEGISLATION

Virginia is on the verge of enacting consumer privacy legislation substantially similar to the California Consumer Privacy Act ("CCPA") as both the House of Representatives and Senate have passed companion bills. On January 29, 2021, the House passed HB 2307 and on February 3, 2021, the Senate passed SB 1392, each titled the Consumer Data Protection Act. Each bill has been continued to be considered during the first special legislative session that begins on February 10, 2021.

The Consumer Data Protection Act applies to persons that conduct business in Virginia and that (i) during a calendar year, control or process personal data of at least 100,000 consumers or (ii) control or process personal data of at least 25,000 consumers and derive over 50% of gross revenue from the sale of personal data. The requirements of the Act apply to "controllers," defined as the natural or legal person that, alone or jointly with others, determines the purpose and means of processing personal data. The Act gives consumers the right:

- To confirm whether or not a controller is processing the consumer's personal data and to access to such personal data;
- To correct inaccuracies in the consumer's personal data;
- To delete personal data provided by or obtained about the consumer;
- To obtain a copy of the consumer's personal data in a portable and readily usable format; and
- To opt out of the processing of the personal data for purposes of (i) targeted advertising, (ii) the sale of personal data or (iii) profiling in furtherance of decisions that produce legal or similarly significant effects concerning the consumer.

The Act restricts data controllers from processing and collecting personal data for purposes that are neither reasonably necessary to nor compatible with the disclosed purposes for which such personal data is processed, as disclosed to the consumer, unless the data controller obtains the consumer's consent. The Act also requires that data controllers must obtain consent to process sensitive consumer data.

Similar to the CCPA, the Act requires controllers to provide a

privacy notice with certain information about the personal data the controller collects and processes. The Act also sets forth certain restrictions and requirements that a controller's processor must comply with.

The Act requires that data controllers must establish, implement and maintain reasonable data security practices to protect the confidentiality, integrity and accessibility of personal data. A controller must conduct and document a data protection assessment of certain processing activities involving personal data, including the processing of personal data for purposes of targeted advertising and the sale of personal data. The data protection assessments must identify and weigh the benefits that flow, directly and indirectly, from the processing to the controller, the consumer, other stakeholders and the public against the potential risks to the rights of the consumer associated with such processing.

As we previously reported, the Act exempts financial institutions or data subject to the Gramm Leach Bliley Act. The Act also exempts information related to a consumer's credit worthiness by a consumer reporting agency, furnisher or user of a consumer report only to the extent that such activity is regulated and authorized by the Fair Credit Reporting Act.

The Attorney General has exclusive authority to enforce violations of the Act and expressly provides that nothing in the Act will be construed as providing the basis for a private right of action for any violation of the Act.

We will continue to monitor the status of the bill and provide an update if a version of the legislation passes both chambers. Please let us know if you have any questions.

✧ *Elizabeth Anstaett and Lindsay Valentine*

Darrell L. Dreher
ddreher@dtlaw.com

Elizabeth L. Anstaett
eanstaett@dtlaw.com

Emily C. Cellier
ecellier@dtlaw.com

Susan L. Ostrander
sostrander@dtlaw.com

2750 HUNTINGTON CENTER
41 S. HIGH STREET
COLUMBUS, OHIO 43215
TELEPHONE: (614) 628-8000 FACSIMILE: (614) 628-1600
WWW.DTLAW.COM

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Michael C. Tomkies
mtomkies@dtlaw.com

Susan M. Seaman
sseaman@dtlaw.com

Lindsay P. Valentine
lvalentine@dtlaw.com

Judith M. Scheiderer
jscheiderer@dtlaw.com

Robin R. De Leo
robin@deher-la.com