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2019 DATA SECURITY BILLS ALREADY BEING INTRODUCED ON STATE AND FEDERAL LEVEL

After the 2017 Equifax and 2018 Facebook data breaches, data security legislation has become popular among state and federal lawmakers. In June of 2018, California enacted the California Consumer Privacy Act of 2018 ("CCPA"), effective January 1, 2020. See our prior ALERT dated July 18, 2018. California's Office of the Attorney General is in the process of hosting six public forums to seek input on the CCPA. Several other bills have been introduced or discussed at the state and federal level.

New York Legislation

In New York, the "Right to Know Act of 2019" was introduced in the New York Senate on January 9, 2019. The bill requires that a business that retains and uses a customer's personal information must make the information available to the customer free of charge. The bill gives businesses options on how to comply with this requirement, including the option to include a description of the customer's rights in the business's online privacy policy. A similar version of this bill has been introduced in the past three legislative sessions, but with the recent enactment of the California CCPA, there is speculation that this bill will advance through the New York General Assembly.

Federal Legislation

On January 16, the American Data Dissemination Act of 2019 was introduced in the U.S. Senate. If enacted, this bill requires the Federal Trade Commission ("FTC") to submit detailed recommendations for privacy requirements that Congress can impose on "covered providers." The bill also requires the FTC to publish and submit proposed regulations to impose privacy requirements on "covered providers" that are substantially similar to the requirements applicable to agencies under the Privacy Act of 1974. The bill defines a "covered provider" as a person that provides a service that uses the internet and collects records using that service. "Records" is defined broadly to include information related to financial transactions and contains any name or number that may be used to identify a specific individual.

In December of 2018, the Data Care Act of 2018 was introduced into the U.S. Senate. This bill tasks the FTC with the responsibility to

establish and implement rules based upon three basic duties: (i) the duty of care, (ii) the duty of loyalty and (iii) the duty of confidentiality. Similar to the American Data Dissemination Act of 2019, the rules would apply to an "online service provider" which is defined as an entity that is engaged in interstate commerce over the internet or any other digital network and in the course of business, collects individual identifying data about the end users, including in a manner that is incidental to the business conducted. The bill was not enacted during the 115th Congress, therefore it must be reintroduced in the 116th Congress.

In November of 2018, Senator Ron Wyden released a discussion draft of legislation that would give consumers control over their personal information and create transparency into how corporations use and share consumer data. The draft legislation, titled the Consumer Data Protection Act, requires the FTC to (i) establish minimum privacy and cybersecurity standards, (ii) create a national Do Not Track system that lets consumers stop third-party companies from tracking them on the web by sharing data, selling data or targeting advertisements based on personal information and (iii) give consumers a way to review what personal information a company has about them, learn with whom it has been shared or sold and to challenge inaccuracies in it. This bill has not yet been introduced in the 116th Congress.

We will continue to track and provide updates on data privacy laws on both the state and federal level. Financial privacy laws are contained in our firm's Marketing and Privacy Digest discussed below. Please let us know if you have any questions. ☐

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LOOKING FOR A MARKETING AND PRIVACY COMPLIANCE RESOURCE? We publish an easy-to-use reference, our **MARKETING AND PRIVACY DIGEST** that compiles the state laws governing financial privacy, fair credit reporting, telemarketing /automatic dialing and announcing devices, telephone monitoring and recording, electronic signatures and restrictions on the use of social security numbers by financial service providers. Creditors, marketers and servicers should find this resource invaluable to marketing and privacy program development and regulatory compliance. **Contact us for details.**

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