



September 26, 2019

CALIFORNIA PRIVACY BALLOT INITIATIVE FILED WITH SECRETARY OF STATE

Consumer privacy advocates believing that the California Consumer Privacy Act (CCPA) does not go far enough, filed a ballot initiative with the California Secretary of State for the November 2020 ballot to adopt the California Privacy Rights and Enforcement Act amending the CCPA.

In June of 2018, California enacted the CCPA with a January 1, 2020 effective date. See Prior Alert dated July 18, 2018. This month the California legislature passed five bills amending the CCPA to clarify certain provisions and address industry concerns. See Alert dated September 19, 2019. The California Attorney General is in the process of adopting rules implementing the CCPA.

Although the CCPA is the most far reaching consumer privacy law in the United States, the promoters of the consumer privacy ballot initiative do not believe the CCPA goes far enough and have drafted amendments to the CCPA to provide expanded consumer protections, including a new category of protected information called "sensitive personal information" subject to increased protections. "Sensitive personal information" includes a consumer's social security number and a consumer's account log-in, financial account, debit card or credit card number in combination with any required security or access code, password or credentials allowing access to an account. The CCPA, as amended by the ballot initiative, would add obligations regarding inaccurate information, use of information for political purposes, opt-outs for use of sensitive personal information for advertising and marketing, opt-ins for sale of sensitive personal information, disclosure of all information collected regarding a consumer since enactment of the law to a consumer on request, restrictions on "profiling" and restrictions on "cross-context behavioral advertising," among other new and expanded obligations on businesses. The ballot initiative adds new enforcement powers and penalties, including civil penalties of \$2,500 to \$7,500 for each violation.

The ballot initiative is pending at the Secretary of State's office. Once the Secretary of State prepares and circulates the title and summary, proponents will be required to circulate petitions and obtain signatures. Signatures will be turned into county elections officials for verification and the ballot initiative will then be qualified or failed by the Secretary of State. If qualified for the ballot, the ballot

initiative will be approved or denied by the voters.

As businesses attempt to comply with the soon to be effective CCPA, while waiting to see the rules adopted by the Attorney General, the ballot initiative creates more uncertainty regarding obligations and requirements under California's consumer privacy law.

We will continue to monitor and report on the CCPA and related developments. Please do not hesitate to contact us with questions. □

✧ *Elizabeth Anstaett and Lindsay Valentine.*

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