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NEW YEAR – NEW PRIVACY LEGISLATION

The beginning of a new year means the introduction of new legislation. In 2020 privacy legislation was introduced by a number of states, but other than the voter enacted California Proposition 24 (California Privacy Rights and Enforcement Act of 2020) and two bills that slightly modified the California Consumer Privacy Act (“CCPA”), no other state passed significant consumer privacy legislation. The federal government also failed to enact new privacy legislation. Although no new federal privacy legislation has been introduced yet, this year could be the year for federal privacy regulation as the House of Representatives, Senate and Presidency are controlled by Democrats that have national privacy rules on their agenda.

This year could also be the year states follow California’s lead and enact similar consumer friendly privacy legislation giving consumers more privacy rights. This ALERT provides a high level summary of state privacy legislation that has already been introduced this year.

A number of states have introduced legislation that includes substantially the same consumer rights and requirements as found in the CCPA. See below for a brief description of each bill and any material differences from the CCPA.

- Minnesota HF 36: This legislation is almost identical to the provisions of the CCPA, as it has the same scope, consumer rights and requirements for businesses. However, HF 36 does not require that a business develop a Minnesota specific privacy policy for Minnesota residents. HF 36 also does not provide exemptions for personal information subject to the Fair Credit Reporting Act (“FCRA”) or the Gramm Leach Bliley Act (“GLBA”).
- New York AB 680: AB 680 establishes the New York Privacy Act. The New York Privacy Act is similar to the CCPA as it gives consumers the right to know what data is being collected and sold, as well as the right to request deletion and correction of such data. The New York Privacy Act also creates a fiduciary duty for all entities that collect, sell or license a consumer’s personal information. The New York Privacy Act does not provide an exemption for information subject to the FCRA.
- New York SB 567: SB 567 contains substantially the same consumer rights and requirements as the CCPA. Unlike the CCPA, SB 567 does not provide an exemption for personal information subject to the GLBA.

- Virginia SB 1392: This legislation gives consumers substantially the same rights as the CCPA. SB 1392 has the most generous exemption found in current privacy legislation as it exempts data or financial institutions subject to the GLBA. SB 1392 also expressly states that there is no private right of action for failure to comply with the bill.
- Washington SB 5062: This is the third year in a row that the Washington Privacy Act (“WPA”) has been introduced. Last year, the WPA failed to pass after the two chambers could not reach a compromise on the bill’s enforcement provision. See our prior ALERTS dated Mar. 13, 2020, Mar. 10, 2020 and Jan. 15, 2020. The WPA has substantially similar definitions and requirements to the CCPA. Notably, the WPA (i) defines “consumer” to exclude a natural person acting in a commercial context and (ii) expressly states that there is no private right of action for failure to comply with the WPA.

In addition to the CCPA “copycat” legislation, a few states have introduced privacy bills that are more limited in scope:

- New York AB 400: This legislation requires that businesses must disclose (i) all of the customer’s personal information retained by the business and (ii) all of the categories of personal information shared with parties and the identity of such third parties. AB 400 does not include any exemptions.
- Oklahoma HB 1130: HB 1130 requires that any business or website that operates an online business or webpage in Oklahoma that collects a consumer’s personal digital information or data must conspicuously post on its website homepage the categories of personal information to be collected and the purposes for which such categories will be used. The business must also inform the consumer if it sells the consumer’s personal information. HB 1130 does not include any exemptions.

As these bills progress, we will provide more detailed analysis of the specific bill’s requirements. As a reminder, the CCPA requires covered businesses to update their privacy policies annually. Businesses subject to the CCPA should ensure that their current CCPA privacy policies have been updated appropriately. If you have any questions, please let us know. ☐

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