CALIFORNIA CONSUMER PRIVACY ACT

ISSUE BRIEF

On June 28, 2018, Democratic Governor Jerry Brown signed California AB 375/Chapter 55, The California Consumer Privacy Act (CCPA), into law. This new law will become effective on January 1, 2020 (with some aspects delayed until July 1, 2020. See below), and has provisions similar to the European Union's (EU) General Data Protection Regulation (GDPR). Unlike the GDPR, which was developed and refined over four years, AB 375 was drafted, amended, passed by the Senate, passed by the Assembly, sent to the governor and signed all within a seven-day period. The primary reason for the swift action taken on the bill was a looming deadline to pull a similar measure, in the form of an initiative, off the November 6 ballot. Although many in industry did not like the legislation, they were more concerned with the initiative, which would have required 70 percent of the vote by members of each chamber of the legislature and signature by the governor before it could be amended after adoption by voters. This obstacle to amending the law was such that industry and other opponents to the measure backed the hastily drafted CCPA, with full knowledge of its flaws, as it would only require a majority of each chamber to be amended.

The new law gives consumers the right to the right to know what personal data is being collected, to opt out of that collection, and to hold companies liable for data breaches. The law also limits consumer lawsuits to data breaches, with other violations subject to enforcement by the state. The Act applies to businesses that meet any of the following criteria:

- Have annual gross revenue over $25 million;
- Alone or in combination: annually buy, receive, sell or share for commercial purposes the personal information of 50,000 or more consumers, households, or devices;
- Derive 50 percent or more of annual revenues from selling consumers' personal information.

Although the bill was purportedly drafted with large tech companies like Google and Facebook in mind, these provisions make the bill much more far reaching, encompassing many smaller companies.

919 18th Street NW, Washington, DC, 20006 ▲ 202.296.5544 ▲ www.afsaonline.org ▲ @AFSA_DC

SB 1121 "CLEAN-UP BILL"

Because of the numerous drafting errors, controversial provisions and need for clarification of other provisions that have been acknowledged by both opponents and proponents of AB 375, a "clean-up bill" was quickly drafted and pushed through the legislature shortly after the CCPA was signed.

SB1121 was not allowed to make substantive changes to the CCPA and many of the broader changes proposed by the business community were rejected, but it did incorporate some implementation changes requested by the attorney general (AG), including a six-month delay in implementing the consumer information and use portions of the bill. The AG would be required to promulgate final regulations by July 1, 2020, rather than January 1, 2020, as originally enacted. Alongside various clarifications, the bill exempted from most CCPA provisions personal information collected pursuant to the federal Gramm-Leach-Bliley Act and the California Financial Information Privacy Act. It also eliminated the "gatekeeping" function of the AG. SB 1121 was signed by Governor Brown on September 23, 2018.

It is anticipated that the AG's rulemaking process will be the focus of a great deal of attention from businesses that operate in California for many months and possibly years to come.

AFSA'S POSITION

The American Financial Services Association (AFSA) welcomes the fact that the CCPA empowers the California AG to adopt regulations, after working with public stakeholders. It is critical that the state of California takes full advantage of the rulemaking timeframe and uses the opportunity presented by the process to work to correct the far-reaching policy and compliance ramifications of the CCPA. AFSA is committed to working with the wider business community to support sensible modifications to the CCPA to mitigate the possibility of negative consequences that affect its members and their customers in California.

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