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Legislative Update 245

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<u>Highlights this issue:</u>

- On July 11, the Senate Committee on Commerce, Science, and Transportation convened a hearing entitled, "The Need to Protect Americans' Privacy and the AI Accelerant." The Committee and witnesses discussed the Senate version of the discussion draft of the American Privacy Rights Act ("APRA") of 2024 and the intersection of AI and data privacy.
- On July 12, Senator Ron Wyden (D-OR), along with Senators Peter Welch (D-VT) and Elizabeth Warren (D-MA), sent a letter to Federal Trade Commission ("FTC") Chair Lina Khan and Department of Justice Assistant Attorney General Jonathan Kanter encouraging them to address consolidation among large software companies regarding generative artificial intelligence. The letter argues that the consolidation of AI firms will result in limited innovation, less competition, and potential national security risks.
- On July 23, the House Committee on Financial Services convened a hearing entitled, "AI Innovation Explored: Insights into AI Applications in Financial Services and Housing."
- On July 16, the California Consumer Protection Agency ("CCPA") held a Board meeting to discuss, among other topics, draft regulations for automated decision-making technology, risk assessments, and cybersecurity audits. During the meeting, the Board declined to advance the drafts to a formal rulemaking in part because of disagreements about the broad scope of the risk assessment and automated decision-making technology regulations.

FEDERAL UPDATE

Senate Commerce, Science, and Transportation's hearing on "the need to protect Americans' privacy and the AI accelerant"
On July 11, the Senate Committee on Commerce, Science, and Transportation convened a <u>hearing</u> entitled, "The Need to Protect Americans' Privacy and the AI Accelerant." The Committee and witnesses discussed the Senate version of the <u>discussion draft</u> of the American Privacy Rights Act ("APRA") of 2024 and the intersection of AI and data privacy. Committee Chairwoman Maria Cantwell (D-WA) noted that a strong privacy law was necessary to protect the public from the potential discrimination that can result from artificial intelligence and pointed to the need to advance the APRA. Ranking Committee Ted Cruz (R-TX) stated that the APRA was the

wrong approach and delegated too much authority to the Federal Trade Commission. Questions focused on data privacy and minimization, how US data privacy laws interact with global privacy rules, and the impact of AI policy on small businesses. Throughout the hearing, the Committee and witnesses emphasized the importance of enacting a federal data privacy law, with a focus on mitigating risks associated with AI technologies.

Sens. Wyden, Welch, and Warren encourage the FTC and DOJ to address generative AI consolidation among "big tech" companies
On July 12, Senator Ron Wyden (D-OR), along with Senators Peter Welch (D-VT) and Elizabeth Warren (D-MA), sent a letter to Federal Trade Commission ("FTC") Chair Lina Khan and Department of Justice Assistant Attorney General Jonathan Kanter encouraging them to address consolidation among large software companies regarding generative artificial intelligence. The letter argues that the consolidation of AI firms will result in limited innovation, less competition, and potential national security risks. In the letter the Senators expressed concern about large tech companies "entrenching" themselves in the generative AI industry through partnerships, equity deals, acquisitions, cloud computing credits, and other business arrangements. The letter also said that consolidation in the AI sector could hinder competition as well as take place in a manner that "skirts regulatory scrutiny." The Senators called for an investigation to address deals between tech companies and AI startups, which the letter stated have "avoided" oversight from the DOJ and the FTC.

House Financial Services Committee hearing on "AI innovation explored: insights into AI applications in financial services and housing"
On July 23, the House Committee on Financial Services convened a hearing entitled, "AI Innovation Explored: Insights into AI Applications in Financial Services and Housing." The hearing featured witness testimony from executives at Scale AI, Zillow, Great Lakes Credit Union ("GLCU"), FIS, and NASDAQ. Following opening statements, the Committee and witnesses discussed the benefits and risk associated with artificial intelligence, and regulatory recommendations for the safe and responsible implementation of AI systems. Committee members and witnesses described benefits of using AI tools in the finance and housing sectors and emphasized the importance of mitigating potential biases and discrimination derived from the use of AI tools.

Senate approves children's privacy bills – KOSA and COPPA 2.0
On July 30, the Senate passed an amendment in the nature of a substitute ("AINS") to S. 2073, the Eliminate Useless Reports Act of 2024, which includes S. 1409, the Kids Online Safety Act ("KOSA") and S. 1418, the Children and Teens' Online Privacy Protection Act ("COPPA 2.0"), collectively referred to as the Kids Online Safety and Privacy Act ("KOSPA").   KOSPA would prohibit advertisements targeted at children and mandate that social media platforms offer minors options to protect their information, disable addictive features, and opt out of algorithm recommendations. Additionally, the bill would require social media platforms to set the highest privacy settings by default for accounts created by minors, establish a dedicated channel for parents and children to report harms to the platform, and impose a responsibility on social media platforms to prevent and address harms to minors. The bill was widely lauded upon passage,

including statements of support from President Biden and Senators from both sides of the aisle. The bill will now head to the House.

California privacy agency defers privacy rulemaking to September
On July 16, the California Consumer Protection Agency ("CCPA") held a <u>Board</u> meeting to discuss, among other topics, draft regulations for automated decision-making technology, risk assessments, and cybersecurity audits. During the meeting, the Board declined to advance the drafts to a formal rulemaking in part because of disagreements about the broad scope of the risk assessment and automated decision-making technology regulations. The Agency has released a <u>preliminary</u> economic analysis that suggested the current scope could cost California businesses several trillions in compliance costs. The Board tasked agency staff with revising the draft regulations to narrow the scope of the proposed regulations. The Board is expected to revisit the draft regulations during its September meeting.

Additionally, the Board heard a presentation from the Deputy Director of Enforcement, who highlighted the agency's enforcement priorities. The Agency's current enforcement priorities include investigations into businesses that unnecessarily request information from consumers to verify opt-out requests, sell personal information without providing consumers proper notice and opt-out mechanisms, use dark patterns to prevent consumers from asserting their privacy rights, and violate the CPPA in a way that harms vulnerable populations.

New Hampshire amends comprehensive privacy law to strike rulemaking
On July 19, New Hampshire Governor Chris Sununu signed legislation that would remove certain rulemakings from the state's recently passed comprehensive privacy law. <u>HB 1120</u> removes the regulatory authority of the Secretary of State to establish standards for privacy policies and methods for submitting consumer rights requests. The law now requires a controller to provide consumers with a meaningful privacy notice in a reasonably accessible format. The law also added that privacy notices must include the date the notice was last updated. The New Hampshire Privacy Act is set to go into effect on January 1, 2025.
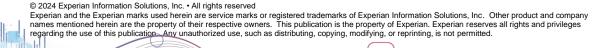
California legislature considers privacy and artificial intelligence bills
The California legislature is on a summer recess and is set to return in early August to consider several artificial intelligence and privacy bills. Experian is working directly and along with our trade associations, including the Cal Chamber, Cal Retailers, ANA, and CDIA, to educate lawmakers about the impact of the proposals and seek changes.

California Artificial Intelligence Legislation

<u>AB 2930</u> – Algorithmic discrimination
AB 2903 is intended to protect individuals from algorithmic discrimination by requiring developers and users of automated decision tools (ADTs) designed to make consequential decisions to mitigate any known discrimination. The bill would require deployers and developers of ADTs to perform impact assessments, not use any decision

tool which is found to be discriminatory, and, if technologically feasible, permit consumers to opt-out of ADTs. The bill defines an ADT as any automated tool that is used to make, or be a controlling factor in making, a consequential decision, including use in financial services, healthcare, or housing. The bill was earlier approved by the Assembly and by the Senate Judiciary Committee on July 2 and has now advanced to the Senate Appropriations Committee.

AB 2013 – AI training data transparency

The legislation would require developers of AI systems or services to post on their website documentation regarding the data used to train the system or service, including high level summaries of datasets used. The bill would provide an exception for AI systems whose sole purpose is to help ensure security and integrity. As drafted, the bill would have an effective date of January 1, 2026. The bill is pending in the Senate Appropriations Committee.

AB 3211 – AI Watermarking Standards

The legislation would require a generative AI developer to watermark synthetic content produced or significantly modified by GenAI. A developer would also be required to make available to the public a watermark decoder that is easy to use by an individual to quickly assess the provenance of a single piece of content and conduct AI red-teaming exercises to test whether watermarks can be easily removed from synthetic content. The bill is pending in the Senate Appropriations Committee.

SB 1047 – Frontier AI Models

SB 1047 seeks to regulate the development and use of advanced AI models. The bill would establish the Frontier Model Division within the California Department of Technology to oversee AI models. Developers of AI would be required to make safety determinations before training AI models to ensure the models do not pose a risk to public safety or welfare, such as the creation of chemical or biological weapons or result in a cyberattack on critical infrastructure. The bill is pending in the Assembly Appropriations Committee.

SB 942 – AI transparency

SB 942 would require developers of generative AI systems to make specific disclosures about AI generated content and verify its authenticity and origin. The information must include the name of the provider, the version of the AI system used, the date of creation, and which parts of the content were created or altered by the system. Additionally, SB 942 would require an entity that develops an AI system that has over 1 million monthly visitors (and is publicly accessible) to create an accessible AI detection tool that allows users to assess whether content has been created or altered by their AI system. The bill is pending in the Assembly Appropriations Committee.

California Privacy Legislation

AB 3048 - Opt-out preference signal
The legislation would require a browser or mobile operating system to include a setting to enable a consumer to send an opt-out preference signal to businesses with which the consumer interacts through the browser or operating system. The California Privacy Protection Agency (CPPA) must adopt regulations that outline the requirements and technical specifications. The bill is sponsored by the CPPA and is pending in the Senate Appropriations Committee.

AB 1949 – expands CPRA definition of minor to under 18
The legislation would amend the definition of a minor in the California Privacy Rights Act ("CPRA") to include kids from 13-17. A business would be prohibited from collecting or sharing personal information if the business has actual knowledge that the consumer is less than 18 years of age, unless the minor or their parent/guardian has authorized collection. A business that willfully disregards the consumer's age shall be deemed to have had actual knowledge of the age. A business must treat a consumer as under 18 if the consumer, through a platform, technology, or mechanism, transits a signal indicating the consumer is under 18.

California considers expansion of auto renewal contract disclosures
On June 27, the California Assembly advanced AB 2863 to update its automatic contract renewal law. The bill includes several new requirements for a business to automatically renew a contract, including that the business must obtain the consumer's affirmative consent for the automatic renewal of the contract separately from any other portion of the contract and maintain verification of that consent for at least 3 years. Additionally, if a business provides a mechanism for cancellation by toll-free number, the business must answer calls promptly during normal business hours and not obstruct or delay the ability to cancel. The legislation would also require a business to send an annual reminder to a consumer in the same medium that resulted in the activation, or in the manner a consumer is accustomed to interacting with the business. As drafted, the bill would apply to a contract entered into, amended, or extended under this article on or after January 1, 2025. Experian is working along a broad business coalition, which includes the CalChamber and ANA, to seek amendments to align the bill with other state laws and industry best practices.

California committee advances ban on medical debt
On July 2, the California Assembly Banking and Finance Committee passed SB 1061, a bill prohibiting consumer reports from containing information about medical debt. The bill prohibits a person from furnishing information regarding a medical debt to a consumer credit reporting agency and makes medical debt void and unenforceable if a person knowingly violates the prohibition. "Medical debt" is defined as a debt related to, in whole or in part, a transaction, account, or balance arising from a medical service, product, or device and does not include credit card debt. The bill will next be considered by the Assembly Appropriations Committee.