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Rhode Island enacts data privacy law as stakeholders look to future updates

On June 25, the Rhode Island Governor allowed comprehensive privacy legislation, H7787, to be enacted without his signature. The legislation largely follows the prevailing state privacy law model but diverges in several ways that will likely cause the legislature to consider clean-up legislation next year. The law contains a unique privacy notice obligation that requires a covered entity to disclose the specific third parties to whom they sell or may sell personally identifiable information. Existing state privacy laws only require the disclosure of the categories of third parties a business may sell information to, and a new obligation to disclose current and future third parties creates both compliance challenges and impacts expectations for business confidentiality. Additionally, the privacy statement provision applies to "personally identifiable information" which is undefined in the text, however the law itself applies privacy rights to "personal data." The law omits common elements found in other state data privacy laws, including a universal opt-out mechanism and a right to cure. In unchanged, the law will go into effect in January 2026. A coalition of business trade associations had requested that the Governor affirmatively veto the bill and are now expected to seek further amendments in next year's legislative session.

Vermont's Governor vetoes privacy legislation

The Vermont Governor vetoed comprehensive privacy legislation, H. 121, that would have made Vermont the first state to enact a private right of action (PRA) associated with data privacy. The bill would have also added new data breach notification obligations exclusively for data brokers. While the Vermont House sought to overturn the Governor's veto, the Senate did not. As a result, the bill will not be enacted this year. Experian worked directly and along with our trade associations, including the Vermont Retail Association, CDIA, and ANA, to oppose the legislation once crucial changes were not made in the legislature.

Pennsylvania advances a comprehensive privacy bill

On June 23, a Pennsylvania Senate committee advanced HB 1201, a comprehensive privacy law. The bill follows existing state law models to provide consumers with privacy rights to access, correct, delete personal information, or opt-out of the sale of information for targeted advertising. As drafted, the bill provides exceptions for data regulated by the FCRA, GLBA, HIPAA, and data used for fraud prevention. The proposal would be regulated by the Attorney General. The bill is now eligible for consideration by the full Senate.

California legislature advances artificial intelligence bills

California considered 32 pieces of legislation on AI this year, and a few bills remain active heading into the end of the legislative session on August 31. Experian is working directly and along with our trade associations, including CalChamber, CalRetailers, ANA, and CDIA, to educate lawmakers about the impact of the proposals and seek changes.

AB 2930

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. Impact assessments must include a description of the automated decision tool's outputs, a summary of the categories of information collected from natural persons, and each category of personal and sensitive information identified. The bill also includes legal recourse for use of a model that was found to be discriminatory with up to $25,000 per violation of algorithmic discrimination. The bill was earlier approved by the Assembly and will be considered in the Senate Judiciary Committee on July 2.

SB 1047
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. Under the Act, developers would also be required to implement a shutdown capability for AI models that have not obtained a safety determination and provide reporting of incidents to the Frontier Model Division. This bill was approved by the Senate and is pending in the Assembly Judiciary Committee.

SB 942
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. The disclosure must also include a unique identifier. Additionally, SB 942 would require an entity that develops an AI system that has over 1M 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. This bill has passed the Senate and is pending in the Assembly Judiciary Committee.

AB 2013
The legislation would require AI developers to post documentation on their website about the data used to train an AI system by 2026. The documentation must include a high-level summary of the datasets used in the development of the system. The bill provides an exception for an AI system used for fraud prevention purposes. The bill was approved by the Assembly in late May and was approved by the Senate Judiciary Committee on June 26. The bill is pending in the Senate Appropriations Committee.

AB 2877
The proposal would prohibit the use of data about a minor under the age of 16 to be used for training an AI system or service unless the developer receives consent. Consent could be provided by the minor if they are over 13 or otherwise by the parent or guardian. The bill would define "train" to mean exposing AI to data in order to alter the relationship between inputs and outputs. The bill passed the Assembly in late May and was approved by the Senate Judiciary Committee on June 17. It is now pending in the Senate Appropriations Committee.

California, New Jersey, and Rhode Island advance medical debt bills

California

On June 25, the California Assembly Health 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 Banking and Finance Committee.

New Jersey
On June 13, the New Jersey Assembly advanced a bill, A3861, to regulate the collection of medical debt. The bill includes a provision prohibiting a medical creditor or collector from reporting a patient's medical debts to a consumer reporting agency after the effective date of the bill. The bill would retain an existing provision in statute that prohibits a CRA from including paid medical debt under $500 from a consumer report. The bill does not include a broader prohibition for CRAs. Identical legislation was introduced in the Senate but has not yet been considered. As drafted, the effective date of A3861 would be effective immediately once signed.

Rhode Island
On June 24, the Rhode Island Governor signed HB 7103 to prohibit the furnishing of medical debt to a consumer reporting agency and its inclusion on a consumer report. The bill would prevent a healthcare provider, a healthcare facility, or an emergency medical transportation service, from furnishing information regarding any portion of a medical debt to a consumer reporting agency. Further, in any contract entered into with a collection entity or debt collector for the purchase or collection of medical debt, a provision must be included that prohibits the reporting of any portion of medical debt to a consumer reporting agency. If signed, the bill takes effect on January 1, 2025.

California considers expansion on auto renewal contract disclosures

On June 15, 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 foster youth freeze

On June 18, a California Senate committee passed AB 2935, regulating how a foster youth agency can request a security freezes for foster youth. The legislation would provide that a verifiable request from a foster agency is sufficient authority to act on behalf of the minor in requesting a freeze. Additionally, the bill would require a dispute from a foster youth agency to be treated the same if was an identity theft report. The bill also requires a consumer reporting agency to automatically remove a freeze once a foster youth turns 18 years of age. The bill previously passed the Assembly and is now eligible to be heard in the Senate Judiciary Committee. Experian is working directly and along with CDIA to educate policymakers about the operation of security freezes and the availability of other protective credit measures.

Federal

CFPB proposes rule to prohibit medical collections on credit reports

On June 11, the Consumer Financial Protection Bureau (CFPB) released a proposed rule to remove medical collections from credit reports. The proposed rule would prevent credit reporting companies from sending medical debt information on credit reports to lenders for use in underwriting as well as ban lenders from making lending decisions based on medical information. CFPB Director Rohit Chopra stated that the CFPB is seeking to stop the credit reporting system from "coercing" patients to pay medical bills that he says they do not owe. The announcement explained that, despite industry changes, the complex nature of medical billing has resulted in medical debt remaining on credit reports and the CFPB made the assertion that it is often inaccurate. Comments are due by August 12, 2024.

SCOTUS releases decision in Loper Bright Enterprises v. Raimondo overturning the Chevron Doctrine

On June 28, the U.S. Supreme Court issued a decision in *Loper Bright Enterprises v. Raimondo* ("*Loper Bright*") along with a similar case, *Relentless, Inc. v. Department of Commerce* ("*Relentless"*). Both cases considered whether to overturn *Chevron U.S.A., Inc. v. Natural Resources Defense Council, Inc.* ("*Chevron*"). SCOTUS, in a 6-3 decision, held that the Administrative Procedure Act requires courts to exercise independent judgment in deciding whether an agency acted within its statutory authority and courts may not defer to an agency's interpretation of the law if there is ambiguity in the statute. The Court's ruling overturned *Chevron*. Chief Justice John Roberts delivered the majority opinion, which was joined with Justices Clarence Thomas, Samuel Alito, Neil Gorsuch, Brett Kavanaugh, and Amy Coney Barrett, with Justices Thomas and Gorsuch filing concurring opinions. Justice Elena Kagan filed a dissenting opinion joined by Justices Sonia Sotomayor and Ketanji Brown Jackson. The Court vacated and remanded *Loper Bright* to the U.S. Court of Appeals for the District Court of Columbia Circuit and *Relentless* to the U.S. Court of Appeals for the First Circuit for further proceedings consistent with the opinion.

The Consumer Financial Protection Bureau's Semi-Annual Report to Congress

On June 12 and 13th, the Senate Committee on Banking, Housing, and Urban Affairs and the House Committee on Financial Services convened semi-annual hearings with CFPB Director Rohit Chopra entitled, "The Consumer Financial Protection Bureau's Semi-Annual Report to Congress."

In the Senate, the hearing focused on the CFPB's funding mechanism, "data brokers," artificial intelligence, and "junk fees." Questions also touched on the Notice of Proposed Rulemaking on defining larger participants of markets for general-use digital consumer payment applications, the proposed rule to prohibit medical collections on credit reports, and an interpretive rule recognizing buy-now-pay-later ("BNPL") lenders as credit card providers. Chopra emphasized the need for CFPB to effectively supervise BNPL companies, ensuring the market grows without exploiting loopholes. He expressed his concerns about BNPL not reporting to credit bureaus, potential privacy issues, and the risk of consumers falling into debt traps, advocating for enhanced protections and ongoing oversight.

The House hearing covered the same topics, as well as mortgage trigger leads, the 1033 "Open Banking" rulemaking, CFPB oversight, and other CFPB initiatives. The CFPB's consideration of rulemaking on "data brokers" and credit reporting came up as well. Director Chopra highlighted that Section 1033 of the Dodd-Frank Act grants consumers greater control over their data and mentioned

that the CFPB aims to finalize the 1033 proposal by October. He emphasized the need for stricter rules on data minimization to disincentivize excessive data collection by companies. Additionally, Director Chopra made a statement in response to a question that some mortgage offers received because of mortgage triggers could be "sketchy," and that the Bureau was examining ways to ameliorate the issue.

Treasury Announces a request for information (RFI) on the uses, opportunities, and risks of AI in the financial services sector

On June 6, the Department of Treasury announced that it is launching a Request for Information ("RFI") on the Uses, Opportunities, and Risks of Artificial Intelligence ("AI") in the Financial Services Sector. The RFI seeks to bolster the Treasury's understanding of potential challenges within the financial services sector for using AI. The announcement added that the RFI aims to examine how AI tools could help enhance inclusivity and equitable access to financial services. Treasury Under Secretary for Domestic Finance Nellie Liang highlighted the Biden administration's commitment to facilitating innovation in the financial industry while helping to safeguard consumers, investors, and the U.S. financial system from risks posed by new technologies.

CFPB issues final rule on industry standard-setting to initiate recognition process for data sharing and open banking standards

On June 5, the Consumer Financial Protection Bureau (CFPB) announced a final rule detailing the qualifications required to become a recognized standard setting body under the upcoming Personal Financial Data Rights Rule implementing section 1033 of the Dodd-Frank Act. The final rule provides a step-by-step guide on how standard setting bodies could apply for recognition as well as how the CFPB will evaluate these applications. CFPB Director Rohit Chopra stated that the final rule will help prevent dominant firms from manipulating industry standards to their advantage by establishing the attributes the CFPB will use to recognize "standard setters." The announcement noted that "consensus standards" issued by recognized standard setting bodies will help companies comply with and facilitate the implementation of the CFPB's 1033 rule and expedite the financial system's transition towards "truly open banking." Standard setting bodies seeking recognition by the CFPB should demonstrate openness, balanced decision-making, and adherence to documented procedures with fair conflict resolution processes. The final rule includes mechanisms allowing the CFPB to revoke recognition of standard setting bodies and establishes a maximum recognition duration of five years before a standard setting body must reapply for recognition. The broader 1033 rule is expected to be finalized by the CFPB this fall.

Senate releases new Kids Online Safety Act (KOSA) draft

On June 20, Senate Majority Leader Chuck Schumer (D-NY) and Senator Richard Blumenthal (D-CT) conducted a conversation on the Senate floor or "colloquy" to discuss the newest text of S. 1409, the Kids Online Safety Act (KOSA) on the Senate floor. The bill would stop children under the age of 13 from creating or operating social media accounts and ban social media companies from targeting content using algorithms to users under the age of 17. Additionally, the bill would authorize the Federal Trade Commission and state attorneys general to enforce the bill. During the colloquy, Sen. Blumenthal explained that the bill would establish a set of accountability measures to help protect children from potential harm created by social media and other online platforms. He noted Senate Majority Leader Schumer's efforts to move the bill forward and said that the bill is now closer to "ultimate" success. In the colloquy, Senate Majority Leader Schumer highlighted his and other Senators' efforts to pass the bill and resolve issues as well as mitigate unintended consequences of the bill, which he said helped reduce the bill's opposition. He noted that opposition and "holdouts" to the bill exist and highlighted significant progress in resolving outstanding issues. During the colloquy,

Senate Majority Leader Schumer also stated that if objectors to the bill refuse to come to a resolution, he and supporters of KOSA will pursue a different legislative path to pass the bill.

CFPB approves final rule on AI and algorithm usage in home appraisals

On June 24, the CFPB released a blog post announcing that the CFPB approved its final rule on quality control standards for automated valuation models. The rule aims to address present and future uses of complex algorithms and artificial intelligence in assessing home values. The final rule will direct companies utilizing algorithmic appraisal tools to implement safeguards designed to help ensure robust confidence in home value estimates, prevent data manipulation, and adhere to relevant nondiscrimination laws. The blog post explained that the final rule demonstrates the CFPB's commitment to leveraging existing laws to monitor potential risks associated with AI. According to the blog post, the final rule is expected to come into force a year after receiving final approval from all agencies involved in creating the regulation, including the Federal Housing Finance Agency, Federal Deposit Insurance Corporation, Federal Reserve Board of Governors, National Credit Union Administration, and Office of the Comptroller of the Currency.

Senate Banking Committee Republicans introduce bill to reform CFPB funding mechanism

On June 13, the Senate Committee on Banking, Housing, and Urban Affairs Ranking Member Tim Scott (R-SC) along with several Senate colleagues introduced S. 4521, the Consumer Financial Protection Bureau Accountability Act of 2024. The bill would direct Congress to annually appropriate the CFPB's funding. The CFPB is currently funded through the Federal Reserve, which provides funds at the agency's request. The current funding mechanism allows the CFPB to avoid fiscal accountability to Congress, according to the members. Committee Ranking Member Scott said that the CFPB has harmed consumers by not addressing congressional concerns, acting based on a political agenda, and pushing the boundaries of the agency's statutory authority.

With introduction of American Privacy Rights Act, Chairwoman cancels committee mark-up

On June 27, the House Energy and Commerce committee abruptly cancelled a hearing to vote on the American Privacy Rights Act (APRA) and Kids Online Safety Act (KOSA). Earlier in the week The APRA was officially introduced as HR 8818 and was met quickly with opposition from a broad spectrum of parties, including both the US Chamber of Commerce and the California Privacy Protection Agency, and also attracted concern from Republican leadership. As drafted, the bill would deviate from existing state privacy models by limiting the use of third-party data, establishing strict data minimalization standards, and setting new data deletion standards for data brokers. The bill would also establish a private right of action to provide for enforcement. Prior to the markup's cancellation, the Committee released a statement from Committee Chair Cathy McMorris Rodgers (R-WA) that described importance of advancing privacy legislation due to the current state of the online ecosystem and the "commercial surveillance of data." The committee has not announced plans for further consideration of the legislation. Experian continues to work with a broad business coalition to educate lawmakers about the importance of data services to the economy and our desire to see a workable national comprehensive privacy bill enacted.