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Government Affairs Newsletter GUARANTEED ASSET PROTECTION

November 2023

Legislative & Regulatory Updates

The newsletters provide insight into newly introduced and updated legislation during the month. You should review each bill in its entirety to determine the impact and what actions are required, if any, to comply with states laws/regulations. Please note that not all the bills that are being actively pursued are represented in the newsletters.

Michigan SB 659: Data Privacy Act

Legislative Updates -This bill has been introduced and referred to the Senate Committee on Finance, Insurance and Consumer Protection.

This bill creates the Consumer Data Privacy Act, which establishes standards and practices regarding the collection, processing, sale, sharing, and retention of personal data and requires certain companies that process personal data to register with the state as a data broker. The Act applies to companies that (1) conduct business in the state or produce products or services that are targeted to consumers in the state; and (2) control or process the personal data of at least 100,000 consumers or control or process the personal data of at least 25,000 consumers and derive over 50 percent of gross revenue from the sale of personal data.

This Act does not apply to:

- A state agency or any other political subdivision of the state
- A financial institution or its affiliates that is subject to title V of the Gramm-Leach Bliley act, 15 USC 6801 to 6827, and the regulations promulgated under that act;
- An entity that is subject to or regulated under the insurance code;
- A third-party administrator as defined in section 2 of Michigan's third-party administrator Act.

Ohio SB157: GAP Revised Model Act

Legislative Update: Referred to the Senate Insurance Committee for a hearing on November 15

This is a Revised Model Act. This bill adds section 1310.251 to the Ohio Revised Code and sits under the Title 13 "Commercial Transactions". This bill would enact the GAPA Revised Model including regulatory framework for GAP, EWU, and Vehicle Value Protection Products.

The bill amends the existing GAP Waiver ("debt cancellation or debt suspension product") statute Sec. 1317.05 to incorporate GAP Plus and clearly state that a GAP Waiver shall not be considered a finance charge or interest. Basic statutory requirements and definition of EWU are added to Title 13 and Vehicle Value Protection Agreements are added to the existing framework for ancillary product protection contracts under the Insurance Code Sec. 3905.426. Third-party obligor EWU is also incorporated into the ancillary product protection contracts section.

The bill specifically references the inclusion of vehicle value protection products, indicating that these products will be subject to regulation. The specific regulations for these products will be outlined within the bill itself, ensuring that proper oversight and consumer protection measures are in place for individuals purchasing or utilizing these products.

United States HR 906: Right to Equitable and Professional Auto Industry Repair (REPAIR) Act
Legislative Update: The House Energy and Commerce Subcommittee on Innovation, Data, and Commerce approved the REPAIR Act by voice vote.

This bill is a Right to Equitable and Professional Auto Industry Repair Act aimed to ensure consumers have access to data relating to their motor vehicles, critical repair information, and tools, and to provide them choices for the maintenance, service, and repair of their motor vehicles, and for other purposes.

The Repair Act will do the following:

- Prohibit manufacturers from imposing technological or legal barriers that block aftermarket replacement part manufacturers from accessing critical information and tools necessary to develop interoperable products with emerging vehicle technology.
- Establish the right for replacement part manufacturers and independent repair shops to access critical information, tools, and equipment needed to maintain vehicles.
- Require companies producing vehicles equipped with telematics to make any critical repair information and tools available to replacement part manufacturers and repair facilities at a fair and reasonable cost.
- Provide vehicle owners with data and information wirelessly generated by their vehicles.
- Establish a right for vehicle owners to securely share their vehicle's repair and maintenance data with their repairer of choice.

Wisconsin AB 466/SB 642:Data Privacy

Legislative Updates - This bill has been introduced and referred to the Senate Committee on Shared Revenue, Elections and Consumer Protection.

This bill creates the Consumer Data Privacy Act, which establishes requirements for companies that control and process the personal data of consumers. The Act applies to companies that (1) conduct business in the state or that produce products or services that are targeted to residents in the state; and (2) control or process the personal data of at least 100,000 consumers or that control or process the personal data of at least 25,000 consumers and derive over 50 percent of gross revenue from the sale of personal data.

This Act does not apply to:

- A nonprofit organization
- A financial institution or its affiliates that is subject to title V of the Gramm-Leach Bliley act, 15 USC 6801 et seq
- The entity under contract under s. 153.05 (2m) (a) and its contractors.

REGULATORY UPDATES

Federal Trade Commission Safeguards Rule

On October 27, the FTC approved an amendment to the Safeguards Rule requiring non-banking financial institutions, such as motor vehicle dealers, to report data breaches involving 500 or more people. Significant amendments to the Rule were finalized December of 2021 and went into effect earlier this year. However, when the rule was finalized, the FTC also proposed a supplemental notice of proposed rulemaking adding this requirement. The amendment will become effective 180 days after publication in the Federal Register.

The notice to the Commission must include:

- (1) the name and contact information of the reporting financial institution;

- (2) a description of the types of information that were involved in the notification event;
- (3) if the information is possible to determine, the date or date range of the notification event;
- (4) the number of consumers affected;
- (5) a general description of the notification event; and, if applicable, whether any law enforcement official has provided the financial institution with a written determination that notifying the public of the breach would impede a criminal investigation or cause damage to national security, and a means for the Federal Trade Commission to contact the law enforcement official.

Federal Trade Commission's Action on Charging Unlawful Junk Fees

The FTC proposed the Rule on Unfair or Deceptive Fees, which seeks "to improve pricing transparency" by broadly prohibiting so-called "junk fees" – hidden or misleading charges tacked on to a purchase that can significantly raise the price of goods or services. The proposed rule seeks to prohibit two practices that the FTC believes are unfair and deceptive:

1. practices that misrepresent the total costs by omitting mandatory fees from advertised prices (i.e., "bait-and-switch" tactics)
2. practices that misrepresent the nature and purpose of fees or charges

The proposed rule is the most recent addition to the FTC's consumer protection initiative targeting hidden and misleading fees. The rule would:

- Apply mainly to businesses offering goods and services;
- Prohibits businesses from having hidden fees;
- Prohibits businesses from having misleading fees.

Lastly, the proposed rule would also require businesses to revisit the consumer-facing aspects of their sales processes to ensure compliance with the rule's expanded disclosure requirements. Businesses should continue to monitor developments on this proposed rule and begin reviewing their existing advertising practices and consumer transaction processes. The FTC will accept public comments on the proposed rule by January 8, 2024.

NY Department of Financial Services Cybersecurity Regulation

The New York Department of Financial Services adopted amendments to its Cybersecurity Regulation, 23 NYCRR Part 500. The amended regulation incorporates current industry practices to better protect businesses and consumers from cyber threats and further tailors the requirements based on businesses' risks and resources. To enable businesses to prepare for compliance, the new requirements will take effect in phases. Initial updates to existing reporting requirements will go into effect on December 1, 2023, but changes to required policies and procedures will not begin to take effect until April 2024 and rolling thereafter. Among the changes in the amended regulation are requirements for regulated entities to report cyber ransom payments, implement multifactor authentication technology to better safeguard sensitive data, and enhance cyber governance by adopting new policies and specifying responsibilities for boards and executive management to oversee and manage cyber programs specifically tailored to the risk profile of regulated entities.

Texas Proposed Rule Amendments

The Texas Office of Consumer Credit Commissioner (the OCC) has proposed amendments in response to HB 2746 which was signed by the Governor in June of this year. This would change rules for recordkeeping in motor vehicle retail installment transactions. Under the amendments, dealers would have to keep refund documents for

debt cancellation agreements and lenders would have to keep the notices they send to dealers and administrators to make refunds. The OCCC is accepting comments on the proposed rules until December 10, 2023.

Notice of Effective Dates

Missouri SB 398: Motor Vehicles

Effective Date: August 28, 2023 (Applies to MVFPPs that become effective after 2/23/2024)

This bill prohibits any manufacturer, importer, or distributor not licensed in the state of Missouri prior to January 1, 2023, from engaging in the business of selling motor vehicles to consumers, except as permitted by the MVFP act.

Texas HB 2746: Debt Cancellation Agreements

Effective Date: September 1, 2023

This bill amends Section 354.0007 of the Finance Code by adding a section regarding debt cancellation agreements. This bill would allow creditors to shift the refund burden to an administrator or retail seller by written notice within 30 days of termination.

The bill adds that a holder that is the retail seller shall provide a refund or credit within 60 days or provide written instructions to the administrator to cancel not later than the 30th day after the date the debt cancellation agreement terminates due to early termination of the contract. A holder other than a retail seller, shall not later than the 60th day after the date the debt cancellation agreement terminates refund or credit the appropriate amount of the debt cancellation agreement fee or provide written notice within 30 days to the administrator or retail seller to provide the refund.

This bill does not require the refile of forms to implement.

North Carolina SB356/HB447: Motor Vehicle Dealer Laws

Effective Date: September 1, 2023

This bill adds various motor vehicle dealer franchise laws primarily to increase the availability of electric vehicles to rural consumers.

This bill makes it unlawful for a manufacturer or distributor that has any franchised dealers to sell, lease, or otherwise distribute one or more series of motor vehicles that are primarily electric or hydrogen vehicles that utilize at least one advanced technology that are not available for purchase by all of its franchised dealers in the state.

The bill amends section 20-305.1 regarding dealer warranty and recall obligations, removing language pertaining to unfair and unreasonable retail rates charged for parts and labor.

Connecticut SB 1033: Revisions to Banking Statutes

Effective Date: October 1, 2023 (Applies to consumer contracts on or after January 1, 2024)

This bill makes various revisions to the Banking statutes of Connecticut. It amends the definition of “APR” and “small loan” to mean the loan calculated according to the provisions of the federal Military Lending Act and defines GAP Waiver to include EWU and GAP+. The bill states that if the borrower cancels such waiver then the administrator or authorized party shall provide a full refund of the purchase price of the GAP waiver entered into or after October 1, 2023. Additionally, it provides that certain small loan requirements apply to loans that are

between five thousand to fifty thousand dollars. It shall not provide for an advance exceeding unpaid principal of fifty thousand dollars. The bill adds the definition of “Finance charge” which includes a charge for any ancillary product, membership, or service sold in connection or concurrent with a small loan.

Connecticut SB 1058: Consumer Protection, Robocalls

Effective Date: October 1, 2023

This bill is a comprehensive consumer protection bill, that includes an expansive update to its telemarketing law. Telemarketers will be prohibited from calling consumers without express written consent (EWC), even those *not* on a Do-Not-Call (DNC) list. This bill has the following exemptions, including calls:

- In response to a request or inquiry (would revert to Federal standard of 3 months)
- To a consumer who has purchased from you during the previous 12 months
- To existing customers who have not previously opted out
- As part of a business-to-business contact
- Relative to debt collection
- From nonprofits to consumers if the consumer is a listed member of the organization

Montana HB 668: Service Contracts

Effective Date: October 1, 2023

This bill amends the Montana Code relating to service contracts by adding the MVPPA suite of products to the definition of service contract, including third-party EWU, and incorporates vehicle theft protection products to the current regulatory framework. Montana law currently requires service contracts providers comply with one of three financial assurance models: reimbursement insurance policy, funded reserve and security deposit, or parent company guarantee. The also contains some basic disclosure requirements consistent with the model act. There is no licensing or registration requirement in the statute and enforcement authority is granted to the Department of Justice.

Oklahoma SB 593: Automobile Franchise Laws

Effective Date: November 1, 2023

This bill prohibits manufacturers from denying a claim or implementing chargeback against auto dealer for failure of purchaser of new car to comply with title and registration law. This bill adds that a “factory shall not deny a claim or implement a chargeback against a new motor vehicle dealer after payment of a claim in the event a purchaser of a new vehicle is the subject of a claim fails to comply with titling or registration laws of this state and is not prevented compliance by any action of the dealer.” Lastly, it corrects “charge back” to read as “chargeback” throughout the statute.

California AB 1756: GAP Refund Calculation

Effective Date: January 1, 2024

This bill amends Section 2982.12.(b)(2)(B) to calculate the refund based on the term of the GAP waiver rather than the finance agreement when the term of the finance agreement is longer than the GAP waiver. It reads “calculating a refund on a pro rata basis” shall require multiplying the total dollar amount of guaranteed asset protection waiver charges by the quotient of the number of calendar days from the termination date to the guaranteed asset protection waiver’s original full-term date, including the termination date as a full calendar day, divided by the total number of calendar days in the guaranteed asset protection waiver’s original term. This bill now reflects changes to the refund policy sought by GAPA and was signed into law on October 8, 2023.

Colorado HB 1181: Guaranteed Asset Protection Agreements

Effective Date: January 1, 2024

This bill is a GAP initiative and applies to GAP agreements entered on or after the effective date. The bill codifies UCCC Rule 8 and implements product and process enhancements. The act establishes requirements regarding guaranteed asset protection agreements (GAP agreement). A GAP agreement relieves a consumer of liability for all or part of the deficiency balance remaining after the payment of all insurance proceeds upon the total loss of the consumer's motor vehicle.

The act permits a creditor to collect additional charges for a GAP agreement as part of a consumer credit transaction. The act sets forth requirements related to GAP agreements, including:

- Setting conditions and provisions that must be a part of any GAP agreement in order for it to be valid;
- Establishing the method by which the deficiency balance is calculated and what the consumer will be owed pursuant to the GAP agreement in the event of a total loss;
- Detailing procedures for when a consumer files a claim under the consumer's GAP agreement after a total loss;
- Establishing procedures and methods for the cancellation or assignment of a GAP agreement;
- Establishing the maximum fee that may be charged for a GAP agreement, which must not exceed 4% of the total amount financed in the consumer credit transaction or \$600, whichever amount is greater; and
- Prohibiting the sale of a GAP agreement in specified circumstances, such as when the loan to value ratio in the GAP agreement exceeds 150%

California SB 793: Privacy Notice & Personal Information

Effective Date: January 1, 2024

Senate Bill 793 adds new section 791.045 to the insurance Code, which codifies the requirement to provide notices not less than annually for the duration of the insurer's and policyholder's relationship. The measure provides that "annually" means at least once in any period of 12 consecutive months during which that relationship exists.

The notice requirements of Section 791.04 (notice of information practices) and 791.045 may be combined into a single notice or provided as separate notices as long as all requirements are met. If the insurance institution or agent uses a separate, standard privacy notice in addition to the notices required by sections 791.04 and 791.045, the notices must clearly state that any rights a consumer, claimant, or beneficiary may have as described in these are not limited by the standard privacy notice that the insurance institution or agent also uses.

An insurance agent or broker is deemed to be in compliance with the notification requirements if the following conditions are met:

The insurer does not provide medical records, personal, or privileged information to a non-affiliated third party.

1. The insurer provides, as part of an abbreviated notice, the website for the insurer's privacy notice and information about the policyholder's rights regarding personal information about them maintained by the insurer, and informs the consumer of the following rights:
 - the right to submit a written request to access, correct, amend, or delete the consumer's personal information and the manner in which the right may be exercised, including the contact information and the mailing address, website address, or both, where the consumer may submit a request.
 - the right to receive a response within 30 business days of the consumer submitting a request to access, correct, amend, or delete their personal information.

- if the insurance institution refuses the consumer’s request, the right to file a statement regarding what the consumer believes to be accurate and fair information and why the consumer disagrees with the insurance institution’s refusal.
2. The insurer’s policies and practices about disclosing personal or privileged information have not changed from the previous notice provided.

The measure clarifies that an insurer or agent is not required to provide a notice to a former policyholder with whom it no longer has a continuing relationship.

California AB 473: Motor Vehicle Manufacturers, Distributors, and Dealers

Effective Date: January 1, 2024

This bill requires a franchiser to use the labor and time guide used by the franchisee for non-warranty work. This will be able to determine a reasonable time allowance for work and services that adds a licensee and adds that a license holder shall not offer a consumer a subscription service for motor vehicle features. They will utilize components and hardware already installed. This bill amends the current Vehicle Code relating to motor vehicle manufacturers, transporters, and dealers. It requires a franchisor to use the labor and time guide used by the franchisee for non-warranty work to determine a reasonable time allowance for work and services. It will allow a franchisee to file a protest with the board alleging that the franchisor's time allowances are not compliant, and the franchise shall have the burden of proof to demonstrate compliance.

The bill adds that a license holder shall not offer a consumer a subscription service for motor vehicle features that utilizes components and hardware already installed. Additionally, it adds the definitions of “motor vehicle feature” and “subscription service”.

The bill amends Section 11713.3 of the Vehicle Code by removing the language regarding franchisor notices, right of refusal, and reimbursement.

The bill amends Section 11713.13 of the Vehicle Code by adding language regarding incentive programs and defines “area of responsibility”.

Illinois SB 1440: Consumer Fraud-Mail Disclosure NEW

Effective Date: January 1, 2024

This bill amends the Consumer Fraud and Deceptive Business Practices Act. Provides that it is an unlawful practice under the Act to knowingly mail or send a postcard or letter to a recipient in the State if the postcard or letter does not disclose or disclaim any and all affiliations or lack thereof. Provides that all disclosures and disclaimers appearing on a postcard or letter must be conspicuously located at the top of the postcard or letter, be easily readable in clear and unambiguous language, and be printed in at least 14-point bold-face font in a black-outlined box. Prohibits mail that requests that the recipient contact the sender by mail, telephone, email, website, or other prescribed means without specified disclosure requirements.

Indiana SB 005: Consumer Data Protection

Effective Date: January 1, 2026

This bill amends the current Indiana code by adding Article 15: Consumer Data Protection. It adds the responsibilities of controllers of consumers’ personal data and the requirements for data protection assessments by controllers of consumers’ personal data. The bill additionally includes the exemptions from the bill’s requirements concerning the responsibilities of controllers of consumers’ personal data. The bill gives authority to the attorney general to investigate and enforce suspect or actual violations of the new article.

This bill establishes sets forth the following within the new article:

- Definitions of various terms that apply throughout the article.
- Exemptions from the bill's requirements concerning the responsibilities of controllers of consumers' personal data.
- The rights of an Indiana consumer to do the following:
 - a) Confirm whether a controller is processing the consumer's personal data.
 - b) Correct inaccuracies in the consumer's personal data that the consumer previously provided to a controller.
 - c) Delete the consumer's personal data held by a controller.
 - d) Obtain a copy or representative summary of the consumer's personal data that the consumer previously provided to the controller.
 - e) Opt out of the processing of the consumer's personal data for certain purposes.
- The responsibilities of controllers of consumers' personal data.
- The roles of controllers and processors with respect to a consumer's personal data.
- Requirements for data protection impact assessments by controllers of consumers' personal data.
- Requirements for processing de-identified data or pseudonymous data.
- Limitations as to the scope of the new article.
- The authority of the attorney general to investigate and enforce suspected or actual violations of the new article.

The preemption of local rules, regulations, and laws regarding the processing of personal data. Allows the attorney general to publish certain resources on the attorney general's website.

Legislative Session Status

States In Regular Session:

District of Columbia; Massachusetts; Michigan; Ohio; Pennsylvania

States In Recess:

New Jersey; North Carolina

States Upcoming Session Dates:

November 15: Massachusetts – Adjourn

November 16: Wisconsin – Adjourn

December 21: Michigan - Adjourn

December 31: Ohio – Adjourn

December 31: Pennsylvania - Adjourn