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Government Affairs Newsletter

CONSUMER GOODS/HOME SERVICE

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.

Massachusetts HB 83: Data Privacy Act

Legislative Update: This bill is with the Joint Advanced Information Technology, the Internet and Cybersecurity Committee.

This bill amends the General Laws by adding Chapter 93L which establishes the Massachusetts data privacy protection act. This bill establishes comprehensive consumer data privacy restrictions. It “[a]ppplies to entities that “determine the purposes and means of collecting, processing, or transferring covered data” and satisfy at least one of the following:

- (1) average annual gross revenues during the preceding three calendar years exceeded \$20 million;
- (2) collected or processed an annual average of more than 75,000 individuals’ covered data during the proceeding three calendar years; or
- (3) part of revenue derived from transferring covered data.

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.

Wisconsin AB 417: Automatic Renewals

Legislative Update: This bill is with the House Consumer Protection Committee

The bill adds a new section establishing rules for offering automatic renewal contracts. The bills including the following:

Online Activity:

- Consumers who enter auto renew contracts online must be able to cancel exclusively online.
- Imposes ongoing notice requirements for auto renew contracts with an initial term of one year or more.
- Requires clear and conspicuous disclosure of certain automatic renewal terms, including the cancellation method which can be via phone, email, regular mail or any other “cost-effective, timely, and easy-to-use” mechanism.

Notice:

- Companies must notify consumers 15-45 days before each auto renew date that the contract will automatically renew and how to cancel.
- If notice is sent via email, it must direct the consumer to an online cancellation process.

Penalties:

- State to recover \$500 for a single violation and not more than \$1,000 for multiple violations resulting from a single act or incident.
- Creates a private right of action and allows consumers to recover twice the amount of their pecuniary loss, or \$200 for each violation, whichever is greater, together with costs and attorney fees.

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 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.

Notice Of Effective Dates

Delaware SB 125: Automatic renewal

Effective Date: September 21, 2023

This bill makes technical corrections to various sections of the Delaware code including the automatic renewal law passed in 2021. The bill also adds that a contract offered online must include an online cancellation method. It also clarifies that a consumer may, but is not required, to void a contract in violation of this section.

Connecticut HB 5314: Automatic Renewal

Effective Date: October 1, 2023

This bill is intended to require businesses that enter consumer agreements that contain an automatic renewal provision or continuous service provisions to provide consumer specific disclosures before entering into the agreement and allow for online termination. The bill also requires notice before any material change to an automatic renewal or continuous service provision. No business may charge for an automatic renewal without obtaining the consumer's "affirmative consent to such renewal or continuous consumer service." Online cancellation must be provided without any additional offline action required if the agreement was entered into online. The bill states that a consumer may be required to login to an account or enter authenticating information. Email is also permitted. Additionally, the bill creates a new section that would require businesses that bill electronically to provide paper copies to any consumer that requests it at no cost.

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.

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

Nevada SB 436: Network Adequacy

Effective Date: October 1, 2023

This bill amends Chapter 690C of the Nevada Revised Statutes regarding Service Contracts, specifically the new section that reads:

1. A provider shall maintain or contract for an adequate network or workforce of employees or contractors that is sufficient to carry out its obligations to a holder under a service contract in a timely and reasonable manner, including, without limitation, the duty to repair, replace or perform maintenance on goods that are described in the service contract.
2. If a provider fails to comply with the provisions of subsection 1, in addition to any other remedy available to a holder, a holder is entitled to reimbursement from the provider for any reasonable and necessary costs incurred by the holder to repair, replace or perform maintenance on the goods.

New Hampshire SB 31: Service Contracts

Effective Date: October 1, 2023

The bill is a technical change to the laws administered by the insurance department and amends the current insurance law by adding to the section regarding third party administrators to include an alternative to providing a positive net worth. Additionally, it would still exempt licensed insurers from the various requirements to do business for service guarantee providers, but not registration.

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.

Georgia HB 528: Online Automatic Renewal Transparency

Effective Date: January 1, 2024

This bill is titled “Georgia Online Automatic Renewal Transparency Act” and is added to Article 15 of Chapter 1 of Title 10 relating to deceptive or unfair practices. This bill regulates certain acts and practices of businesses that offer paid subscriptions or purchasing agreements online subject to automatic renewals.

The bill requires a business to provide the option for online cancellations of a continuous service in the form of:

- Clear and conspicuous direct link or button which may be located either within a customer account or profile or within the device or user setting; or
- By an immediately accessible cancellation email formatted to not require additional steps or information.

Illinois SB 328: Service Contract Automatic Renewal

Effective Date: January 1, 2024

This bill amends the Automatic Contract Renewal Act and provides that the clear and conspicuous disclosure of an Reinserts the provisions of the introduced bill with the following changes:

Provides that any person, firm, partnership, association, or corporation that sells or offers to sell any products or services to a consumer pursuant to a contract, where such contract automatically renews unless the consumer cancels the contract, shall:

- Disclose the automatic renewal offer terms clearly and conspicuously in the contract before the subscription or purchasing agreement is fulfilled and in visual proximity, or in the case of an offer conveyed by voice, in temporal proximity, to the request for consent to the offer;
- Not charge the consumer's credit or debit card or other payment mechanism for an automatic renewal service without first obtaining the consumer's consent to the contract containing the automatic renewal offer terms;
- Provide an acknowledgment that includes the automatic renewal offer terms, cancellation policy, and information regarding how to cancel, which may be accomplished by linking to a resource that provides instructions that account for different platforms and services, in a manner that is capable of being retained by the consumer; and
- Disclose how to cancel the contract, which may be accomplished by linking to a resource that provides instructions that account for different platforms and services and allow the consumer to cancel before the consumer pays for the good or services, if the offer includes a free gift or trial.

Provides that the Act does not apply to a contract for the sale of any product or service by a provider that is subject to Article XXII of the Public Utilities Act.

Provides that the Act does not apply to a party regulated by the Director of the Department of Insurance or an affiliate of such party. Provides that the Act does not apply to a party, or an affiliate of the party, regulated by the Director of the Department of Insurance. Defines "automatic renewal offer terms".

Kentucky SB 30: Automatic Renewals

Effective Date: January 1, 2024

This bill creates new sections of KRS Chapter 365 to define "automatic renewal," "automatic renewal offer terms," "clear and conspicuous," "consumer," and "continuous service,". Additionally, the bill:

- Require businesses to present automatic renewal or continuous service offer terms clearly and conspicuously to consumers before purchase;
- Require businesses to obtain the consumer's consent before charging the consumer;
- Require businesses to provide an acknowledgment that includes the terms, the cancellation policy, and information regarding how to cancel in a manner that can be retained by the consumer;
- Require businesses to provide consumers with an easy-to-use mechanism for cancellation;
- Require businesses to provide users who purchase in one medium the opportunity to terminate in the same medium, including online termination; require businesses to provide a notice regarding material term changes prior to implementation;

Lastly, the bill exempts certain businesses and services and allows the Attorney General to bring an action for injunctive and monetary relief. Contracts entered into prior to the effective date are exempt.

Tennessee HB 136/SB 1449: Automatic Renewal Exemptions

Effective Date: January 1, 2024

This bill amends the existing automatic renewal law TC § 47-18-133 by adding exemptions for affiliates of a business licensed under state insurance laws and a person or entity providing certain service contracts as defined in § 56-2-126, or an affiliate of the person or entity. As introduced, exempts an affiliate of a business licensed under

state insurance laws and a person or entity providing certain service contracts, or an affiliate of the person or entity, from requirements governing businesses that make automatic renewal offers or continuous service offers to consumers.

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 SB 814: Household Goods and Services

Effective Date: January 1, 2024

This bill amends Sections 9812, 9814, and 9814.5 of the Business and Professions Code. This bill adds that spot check investigations of service dealers shall occur no less than twice a year. Additionally, the bill adds that the director has the option to make available on their website the copies of these provisions and regulations adopted.

This bill was amended in the Senate on April 27th. The addition of Section 4 of this bill adds that a registration that is not renewed within six years of its expiration shall be canceled. If the holder of the registration submits a

new application and meets all of the requirements, the registration may be reissued or reinstated. Additionally, the bureau may impose conditions on a registration.

On June 27, this bill was amended, adding to the definition of an “electronic set” to include cellular devices or any other device that for its functioning on digital electronics, as specified.

Existing law prohibits acting as a service dealer repairing, servicing, or maintaining an electronic set normally used or sold for personal, family, household, or home office use without obtaining registration under the law.

The recommendation for a new fingerprinting requirement of service dealers in the BHGS Sunset Report is not included in this legislation.

California SB 244: Express Warranties Act, Right to Repair Act

Effective Date: January 1, 2024

This bill would enact the Right to Repair Act and require manufacturers to make available, on fair and reasonable terms, the means to affect the diagnosis, maintenance, or repair of the product, as provided. The bill requires manufacturers to make available, on fair and reasonable terms, to product owners, service and repair facilities, and service dealers, the means to effect the diagnosis, maintenance, or repair of the product, as provided.

The bill requires an unauthorized facility or dealer of a manufacturer to provide a written notice containing specified information related to warranties to any customer seeking repairs before repairing the product.

The bill would also authorize a city, a county, a city and county, or the state to bring an action in superior court to impose civil penalties on a person or entity for violating the Right to Repair Act, as provided. The bill would make these requirements and enforcement provisions operative on July 1, 2024.

Colorado HB 1134: Home Warranty Service Contracts

Effective Date: July 1, 2024

The bill requires that, on and after January 1, 2024, every home warranty service contract that provides coverage for the replacement of any of certain gas-fueled appliances must include terms:

- Allowing the homeowner to replace the gas-fueled appliance with a similar device of the homeowner's choosing that operates on electricity rather than gas;
- Describing minimum efficiency and performance standards for each gas-fueled appliance and for electric replacements; and
- Allowing the homeowner to receive an equivalent cash value of a gas-fueled appliance in lieu of a replacement appliance.

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 or not 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; North Carolina; Ohio; Pennsylvania

States In Recess:

New Jersey

States Upcoming Session Dates:

November 15: Massachusetts - Adjourn

December 21: Michigan - Adjourn

December 31: Ohio – Adjourn

December 31: Ohio – Pennsylvania

In Special Session

Oklahoma, Texas, Wisconsin