October 5, 2020

California Governor Signs Bill Extending the CCPA's Personnel and Business Communications Exceptions

by Jon Neiditz

On Tuesday September 29, 2020, the California Governor signed AB 1281, which extends the CCPA's personnel and "business communications" exceptions' effective period for one additional year. Those exceptions were set to sunset on January 1, 2021, but AB 1281 moves that date to January 1, 2022.

(a) Personnel Exception

The CCPA defines consumers, the persons who have privacy rights under the law, to include any natural person who is a California resident (as determined by the California tax code). However, "personnel" personal information remains mostly excluded from the CCPA's substantive requirements. Specifically, the exception applies to a consumer's personal information that is used by a business within the context of the consumer acting within his/her/their role as an employee or contractor of that business. However, the personnel exception does not entirely relieve employers from all CCPA compliance obligations, as employers must provide a privacy disclosure to personnel who are California residents.

(b) Business Communications Exception

AB 1281 also extended the CCPA's "business communications" exception. That exception, contained in Section 1798.145(o) of the CCPA, applies to personal information that relates to a consumer who acts for an organization to provide or receive products or services, or who conducts related due diligence.

Unlike many other exceptions in the privacy world (e.g., marketing consent requirements in Europe), the CCPA's business communications exception does not remove all business contact information from the law's scope since the CCPA exception applies only if the personal information to be collected is collected pursuant to the delivery or due diligence of products or services. The exception's relative narrowness, therefore, ensures that certain aspects of almost every business's operations remain subject to the CCPA, such as business contact leads and website visitors, even for businesses whose operations are entirely B2B.

(c) AB 1281 is Just Insurance

AB 1281 is conditional, however, and does not take effect unless the California Privacy Rights Act ("CPRA") does not pass a voter referendum in November 2020. If passed, the CPRA would extend the personnel and business communications exceptions' sunset one year further, to January 1, 2023.