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BUSINESS

Businesses Blast California's New Data-Privacy Law

Among other things, legislation allows Californians the right to prohibit the sale of their personal data



Critics say the bill will affect everything from retailers' customer-loyalty programs to data gathering by Silicon Valley tech giants like Google and Facebook. PHOTO: DAVID PAUL MORRIS/BLOOMBERG NEWS

By Marc Vartabedian, Georgia Wells and Lara O'Reilly

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Businesses across the U.S. panned California's new consumer-privacy legislation, saying it risked far-reaching damage to everything from retailers' customer-loyalty programs to data gathering by Silicon Valley tech giants.

The bill, which was introduced one week before it was passed and was largely sold as a way to rein in big tech firms, sweeps up a range of businesses. It requires them to offer consumers options to opt out of sharing personal information, and it gives Californians the right to prohibit the sale of their personal data.

Companies late last week were working out what they now may need to do to strengthen their privacy practices, or, in the case of some Silicon Valley firms, preparing to lobby hard for changes to the law before it takes effect in 2020. One attorney said many law firms see the new bill as generating a "bonanza" in fees as companies rush to either comply or push for changes.

"This is the broadest, [most] sweeping piece of privacy legislation in the nation now, without question, so we are doing our due diligence as to what it means," said Brad Weltman, vice president of public policy at the Interactive Advertising Bureau, an internet advertising trade body that counts as members technology companies such as Alphabet Inc.'s Google, Facebook Inc. and Microsoft Corp.

Because the law prohibits retailers from treating customers who opt out of data sharing any differently from those who don't, the provision could put an end to loyalty programs that offer

discounts to members, said David French, senior vice president of government relations at the National Retail Federation. "It really will interfere with a retailer's ability to treat VIP customers like VIP customers," he said.

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He said other services such as personalized marketing campaigns and location-based apps could be at risk. "The consumer will actually be the big loser," he said.

Alastair Mactaggart, the real-estate developer-turned privacy advocate who led the creation of the legislation, was motivated to give consumers more control over how their information is collected; he once said that a Google engineer at a cocktail party had told him if people were aware of what Google knew about them, they would be shocked.

The law broadens the definition of what constitutes personal information and gives enforcement power to the California attorney general. It has some similarities with Europe's General Data Protection Regulation law, which went into effect last month, and experts called it the first of its kind in the U.S.

The law potentially could establish a privacy template for the rest of the U.S., and several companies said they hoped Congress will step in to create a federal standard.

"We firmly believe the best approach is for congress to take action sooner than later on privacy," said a spokesman for Verizon Communications Inc. "The right approach is not to do this state by state, but through a national framework."

Tech companies view the new law as a knee-jerk response to a series of revelations over the past year, such as Facebook's handling of user data, that shook consumer confidence. The companies are frustrated they weren't consulted about how to implement the law.

Still, the legislation was considered a better alternative than a more restrictive ballot initiative that recently qualified to appear before California voters in November. The initiative, which now won't go forward, was strongly opposed by most of the tech industry.

While the law "marks some improvements to an overly vague and broad ballot measure, it came together under extreme time pressure, and imposes sweeping novel obligations on thousands of large and small businesses around the world," said a Google spokeswoman.

Facebook, meanwhile, may already be compliant. Executives at the social network believe the changes to the platform in recent months to be more transparent about user data mean the company won't need to make major additional adjustments as a result of the new law, according to a person familiar with the matter. Facebook Chief Operating Officer Sheryl Sandberg said Thursday that the company supported the bill.

Beyond Silicon Valley, most companies said they didn't yet know what they would need to do to comply with the new law, and are waiting for the attorney general to hammer out enforcement details.

Alexander Urbelis, a partner at Blackstone Law Group LLP, said the law looked hastily assembled in some places, making it difficult to understand what falls under the scope of personal information. It also says companies must only disclose the category of entities they sell data to, not specific firm names, he added. "It doesn't necessarily give the consumer the necessary amount of information to take back their data or understand whose hands it's in,"

said Mr. Urbelis, who specializes in compliance and privacy issues.

As it stands, the legislation looks tricky for data brokers—companies such as Acxiom Corp. , Experian PLC and Oracle Corp.'s Data Cloud that gather and buy shopping and other information on consumers—according to Johnny Ryan, chief policy and industry relations officer at web browser company Brave.

One of the rights California consumers now get is the ability to ask data brokers: “Do you have data about me? Have you been selling it? And you can stop them from doing that,” Mr. Ryan said.

Representatives for Acxiom and Oracle didn't immediately respond to requests for comment. A spokesman for Experian said the company is reviewing the new law.

One of the points of contention is likely to fall around the legislation's definition of “personal data,” which includes broad categories such as biometric data, psychometric information, browsing and search history and geolocation data. The act's current version states that personal information doesn't include information that is publicly available or general enough to not identify an individual, a broad definition technology companies may lean on heavily to argue their collection of such data is justified.

—Keach Hagey, Sarah Krouse and Khadeeja Safdar contributed to this article.

Write to Georgia Wells at Georgia.Wells@wsj.com and Lara O'Reilly at lara.o'reilly@wsj.com

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