



February 8, 2022

**S.6701-A Thomas / A.680-B Rosenthal**

*The New York Privacy Act*

**The New York Credit Union Association OPPOSES** S.6701A/A.680B, which would create an extensive state-level framework for the processing of consumer information. Credit unions are already accountable for protecting the privacy and consumer choice of their members. The primary goals of data privacy and portability should not be to impose additional requirements on institutions that must already meet baseline information protection standards, but to ensure that all institutions must extend these protections to consumers with whom they interact. Furthermore, the legislation creates a needlessly complex framework for those entities ultimately subject to its provisions.

Most importantly, the bill should exempt *both* credit unions and the information they process because they are already subject to the federal Gramm-Leach-Bliley Act. Currently, the legislation only exempts information that is collected, processed, sold or disclosed pursuant to and in compliance with GLB (P.L. 106-102), and its implementing regulations. This partial exemption will not provide the certainty credit unions and other financial institutions in New York need when determining their obligations to comply with this complex and far-reaching measure. In fact, the existing partial exemption is an open invitation to litigation and regulatory interpretation as parties scramble to determine precisely what information does and does not fall under this exemption. And, with literally hundreds of pages of regulations, an argument can always be made that information has not been processed in conformity with the GLB.

This confusion is easily avoidable. Virginia and Colorado<sup>1</sup> are the second and third states to adopt legislation in this area. These states clearly and unambiguously exempt financial institutions and the information they processed from their measures. For example,

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<sup>1</sup> CO ST § 6-1-1304(2)

Virginia's Consumer Data Protection Act (VCDPA) provides that their data privacy legislation does not apply to a "financial institution or data subject to Title V of the federal Gramm-Leach-Bliley Act (15 U.S.C. § 6801 et seq.)".

A clear, unambiguous exemption is absolutely crucial for credit unions. Credit unions, and other depository financial institutions, are different than other businesses that may be subject to this act, in two respects. Credit unions are legally required to collect personal information and they have long been subject to laws mandating that they protect the privacy of this information. For example, the Home Mortgage Disclosure Act requires credit unions to collect and store up to forty-eight data points related to a mortgage applicant, and the Bank Secrecy Act requires credit unions to know their customers and to monitor their customers' account activities on an ongoing basis. In contrast, many of the largest companies today such as Google and Facebook choose to collect as much personal information as possible to maximize the amount of money they can make from third-parties.

For those institutions that are subject to its provisions, the legislation would arguably impose the most complex and far-reaching data protection framework in the country. For example, it imposes a vaguely defined "Duty of Loyalty" pursuant to which entities that process and control consumer information would have to "regularly conduct and document a data protection assessment for processing activities that present a heightened risk of harm to the consumer." Such an assessment must include a weighing of the risks and benefits to the consumer of processing information as well as providing notice that they "may be harmed" by consenting to having their information processed. Despite its complexity, the legislation authorizes lawsuits for violations in addition to extensive oversight by the Attorney General.

Credit unions have always been leading advocates of consumer choice and we share the commitment of the sponsors to protecting the personal information of our members. However, this current legislation imposes unnecessary obligations on the industry and does so in a way that would make it more difficult to cost effectively provide needed services.

If you have any questions, please contact Henry Meier, Senior Vice President and General Counsel at (518) 588-5601.

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<sup>2</sup> Va. Code Ann. § 59.1-576(B)