CONTRIBUTOR

Katten

Jnited States: California Passes Two Climate Disclosure Laws That Will Require Unique, Public Reporting Of Carbon Emissions And Climate Risk

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y Christopher A. Cole , Farzad Damania and Alexa K. Rollins

atten Muchin Rosenman LLP

alifornia's Legislature has passed two new climate disclosure bills, SB 253, the Climate Corporate Data ccountability Act (CCDAA), and SB 261, the Climate-Related Financial Risk Act (CRFRA), which together will equire a wide array of entities doing business in the state to calculate and disclose their carbon footprint and imate risk. The Governor has announced his intention to sign both SB 253 and SB 261. These new legal equirements, which will go into effect beginning in 2025 if not challenged successfully in court, will add to and, in ome ways surpass, a growing array of disclosure requirements and could, as we have seen many times, expose ntities to a new set of consumer class action risks. These laws, which govern both public and private entities ith revenues exceeding certain thresholds (enumerated below), are expected to impact over 5,000 businesses.

B 253, Climate Corporate Data Accountability Act

CDAA applies to US entities "doing business in California" with annual revenues exceeding $1 billion (calculated n a global basis, based on the prior fiscal year). The law will require covered entities annually to disclose Scopes , 2 and 3 greenhouse gas (GHG) emissions for the prior fiscal year in conformance with the Greenhouse Gas rotocol standards and guidance. The reporting obligations begin in 2026 for Scope 1 and 2 and in 2027 for cope 3.

/hat is truly unique about this requirement is that entities will for the first time have mandatory requirements in ne United States to estimate and report on so-called "Scope 3 emissions," which include emissions from the ompany's "full value chain," including from entities that the company does not own or directly control, such as ustomers who buy and use the company's products. Considering that a successful company seeks to sell more roducts to more consumers, these emissions may appear to grow over time, creating tension between orporate commitments to "net zero," for example, and reports that this law will require. Considering that the cience and implementation of measuring Scope 3 emissions is lacking at present, covered entities will have to stimate such emissions at first, and likely refine their methods over time. Estimating Scope 3 emissions is likely y definition to be inexact, so plaintiffs' attorneys may seek to exploit these reports in litigation. Moreover, ntities subject to these requirements also will have to solicit data from suppliers and vendors in order to meet neir own reporting obligations.

he law will require entities to obtain third-party assurance for their emissions reporting at a so-called "limited ssurance level," beginning in 2026 for Scopes 1 and 2 emissions, and at a more stringent, "reasonable assurance evel" in 2030. The third-party assurance for Scope 3 emissions shall be performed at a limited assurance level eginning in 2030. Practically speaking, many entities may choose to engage consultants for this work as early as 024, leading to a GHG consulting firm bonanza. If these laws remain in effect, some private entities that do not ave disclosure obligations right now will have to start disclosing their emissions in the near future.

ntities will be allowed to submit reports prepared to meet other national and international reporting equirements, including any reports required by the federal government, as long as those reports satisfy all of ie requirements of this law.

hese requirements are to be overseen by the California Air Resources Board (CARB), which is expected to ublish implementing regulations.

B 261, Climate-Related Financial Risk Act

RFRA also applies to US public and private entities (other than insurance businesses) "doing business in alifornia" but covers those with annual revenues exceeding $500 million (calculated on a global basis based on evenue for the prior fiscal year). Covered entities will have to publish on its own website a biannual climate-elated financial risk reports that disclose (i) their "climate-related financial risk" in accordance with the ecommended framework and disclosures of the Task Force on Climate-Related Financial Disclosures; and (ii) ieasures adopted to mitigate and adapt to that climate-related financial risk.

Climate-related financial risk," as defined in the bill, includes all material risk of harm to immediate and long-erm financial outcomes due to physical and transitional risks, such as risks to operations, provision of goods and ervices, supply chains, employee health and safety, capital and financial investments, institutional investments, nancial standing of loan recipients and borrowers, shareholder value, consumer demand, and financial markets nd economic health. The bill provides that entities may satisfy this biannual reporting requirement by complying ith a comparable climate-related financial risk reporting framework, such as the International Sustainability tandards Board (ISSB) scheme. Thus, even if the company's own emissions are low, the law will require a robing analysis of the susceptibility of the business to climate-change driven risk. As such, this law could impact wide variety of entities, including, for example, financial institutions.

elationship to other laws

here is a possibility that these new California requirements will leapfrog the Securities and Exchange ommission's (SEC) climate rule, which, if adopted in 2023, will probably have a long phase-in period. The alifornia requirements would likely impact more entities, as it covers both private and public entities exceeding ertain revenue thresholds.

lany of these same entities will also be required to comply with the Corporate Sustainability Reporting Directive CSRD), which was adopted by the EU. The CSRD imposes reporting obligations on non-EU parent entities and

ARB's implementing rules, that entities complying with CSRD will be able automatically to satisfy the California iws.

nplications

s noted above, these laws pose imminent data challenges to covered entities. While many large entities have valuated their GHG emissions, this will require public disclosure. The laws also will create new legal risks for rivate and public entities.

his will likely be the first legal requirement for many entities to gather and report on Scope 3 emissions, which icludes emissions from third-parties such as vendors, suppliers and customers. The potential enormity of the ata gathering exercise suggests that retaining a good consultant and advance planning will be required.

inally, the litigation that could ensue must be considered. There, of course, may be cases brought against ntities that do not comply, and civil penalties for noncompliance will be steep. However, there also could be tigation filed against entities that comply with the laws perfectly but publish previously confidential emissions iformation deemed to be at odds with their own prior advertisements and public GHG commitments. Moreover, ctivists and plaintiffs will almost certainly be reviewing initial and subsequent reports for evidence of acksliding. All of this increases legal risk.

he content of this article is intended to provide a general guide to the subject matter. Specialist advice should e sought about your specific circumstances.

AUTHOR(S)

Christopher A. Cole
Katten Muchin Rosenman LLP

Farzad Damania
Katten Muchin Rosenman LLP

Alexa K. Rollins
Katten Muchin Rosenman LLP