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Two New Calif. Laws Require Increased Environmental Disclosures for Companies

California Gov. Newsom recently signed two bills into law that require larger companies doing business in the State to publicly disclose their greenhouse gas emissions and climate-related financial risks and risk mitigation measures starting in 2026. This applies to both public and private companies. The new bills are SB 253 (the California "Climate Corporate Data Accountability Act") and SB 261 (the "Climate-Related Financial Risk Act").

SB 253 adds a new Section 38532 to the California Health & Safety Code ("HSC"). It provides for the California Air Resources Board ("CARB") to develop regulations no later than January 1, 2025, regarding disclosure by "Reporting Entities" of their annual greenhouse gas emissions. Reporting Entities are U.S. companies with annual sales greater than $1 billion (globally) and that do business in California. While SB 253 does not specify what is considered as doing business in California, the CARB may well rely on the standards set forth in California Revenue & Taxation Code Section 23101. A Reporting Entity must annually disclose its "Scope 1" and "Scope 2" emissions starting in 2026, and its "Scope 3" emissions starting in 2027. Emissions are to be measured per the World Resources Institute Greenhouse Gas Protocol ("GHG"). Disclosure is to be made to an emissions registry approved by the CARB.

Scope 1 emissions are generated from sources the entity owns or directly controls, wherever located. Scope 2 emissions are generated through usage of electricity and other power purchased or acquired by the entity, wherever located. Scope 3 emissions are indirect "upstream and downstream" emissions from sources the entity does not own or directly control, such as purchased goods and travel. The reporting must include any fictitious names, trade names, and assumed names, as well as logos, used by the Reporting Entity. Additionally, a Reporting Entity must engage an independent firm to review its disclosures.

SB 253 does not provide that compliance with federal disclosure laws or rules (*e.g.,* the SEC rules that have been proposed and that are expected to be adopted in final form in the near future) will suffice for purposes of SB 253. Therefore, Reporting Entities will need to comply with both the federal and California rules (and potentially EU and other international ones).

The penalty for failure to comply with the regulations is a fine of up to $500,000 in a reporting year.

SB 261 adds a new Section 38533 to the HSC. It provides for biennial disclosure, starting in 2026, of the risks to a "Covered Entity" of climate-related risks, including to raw materials and supply chain. The disclosure must be made on the Covered Entity's website. Unlike SB 253, compliance with a similar law or regulation issued by a regulatory authority or exchange (*e.g.,* the SEC), or the IFRS Sustainability Disclosure Standards, will be deemed to comply with SB 261.

A Covered Entity is a U.S. company other than an insurance company with more than $500 million in annual sales (globally) that does business in California. (As with SB 253, doing business for purposes of the new law is not defined.) If a Covered Entity is part of a corporate group, the reporting can be done on a consolidated basis at the parent level. The penalty for noncompliance is a fine of up to $50,000 in a reporting year.

It is estimated that the bills will, together, affect more than 7,500 companies doing business in California. They will undoubtedly impose significant and costly compliance obligations on affected entities, regardless of compliance with the expected SEC regulations and other applicable authority.

For more information or assistance, contact Robert L. Handler or another member of Blank Rome's Corporate practice group.

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