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PRACTICE BRIEF · CORPORATE GOVERNANCE

SB 253 and SB 261: California's Mandatory Climate Disclosure Laws and the Litigation Risk They Create

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California enacted two landmark climate disclosure statutes in 2023 that together impose the most extensive mandatory corporate climate reporting obligations in U.S. history. The **Climate Corporate Data Accountability Act** (SB 253) requires large companies doing business in California to publicly disclose their greenhouse gas emissions across all three Scopes annually. The **Climate-Related Financial Risk Act** (SB 261) requires biennial disclosure of climate-related financial risks and the steps taken to manage them.

Both statutes are now operative, and the first wave of enforcement — and related litigation — is beginning to take shape.

I. Who Must Comply

SB 253 — Greenhouse Gas Emissions Reporting

SB 253 applies to any "reporting entity" that (1) does business in California and (2) has total annual revenues exceeding $1 billion. Both public and private companies are covered. "Doing business in California" tracks the Franchise Tax Board definition — which is broad and includes companies with only minimal California nexus.

Covered companies must disclose:

- **Scope 1 emissions:** Direct emissions from operations the company owns or controls (beginning 2026 reporting year)

- **Scope 2 emissions:** Indirect emissions from purchased electricity, steam, heat, or cooling (beginning 2026)
- **Scope 3 emissions:** All other indirect emissions from the company's value chain — supply chain, employee commuting, product use and disposal (beginning 2027)

Scope 3 is the most significant compliance challenge. For most large companies, Scope 3 represents the majority of total emissions — and it requires data from suppliers, customers, and business partners who may not themselves be subject to disclosure requirements.

> *"Scope 3 disclosure is not just a reporting obligation. It is an audit of your entire commercial ecosystem. Companies that lack contractual rights to demand emissions data from suppliers will be at a serious disadvantage."*

SB 261 — Climate-Related Financial Risk Disclosure

SB 261 applies to companies doing business in California with annual revenues exceeding $500 million. Covered companies must biennially publish a report aligned with the Task Force on Climate-related Financial Disclosures (TCFD) framework, covering physical climate risks and transition risks — including regulatory, market, technological, and reputational risks from the low-carbon transition.

II. Enforcement

Both statutes delegate enforcement to the California Air Resources Board (CARB). CARB has authority to adopt implementing regulations (final rules are expected in late 2026) and to levy civil penalties of up to $500,000 per reporting year for SB 253 violations. SB 261 penalties for violations range up to $50,000 per reporting year.

Critically, neither statute provides a private right of action on its face. Civil litigation exposure arises primarily through three indirect channels:

- **Derivative suits** alleging that directors and officers failed to oversee the company's compliance program, causing reputational and financial harm
- **Securities fraud claims** where SEC-reporting companies make disclosure statements inconsistent with their California CARB filings
- **Consumer protection claims** under the UCL or CLRA where companies make greenwashing representations inconsistent with their mandatory disclosures

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BOARD AND MANAGEMENT OBLIGATIONS

- Establish board-level oversight of SB 253 and SB 261 compliance — derivative plaintiffs will argue that absence of board oversight is itself a Caremark failure
- Engage supply chain counsel to assess contractual rights to demand Scope 3 data from key suppliers; where rights don't exist, renegotiate or restructure
- Coordinate California climate disclosures with SEC climate disclosure obligations; inconsistencies between state and federal filings create securities exposure
- Engage a third-party GHG verifier before the first reporting deadline — SB 253 requires third-party assurance, and unverified disclosures create additional CARB enforcement risk
- Review marketing and ESG communications for consistency with disclosure data — greenwashing exposure runs in both directions from the disclosure

California's climate disclosure framework is the most demanding in the nation, and it applies to virtually any company of significant size with California operations. The compliance obligation is not optional, and the litigation risk attached to noncompliance — or inconsistent compliance — is already materializing.

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