

Summary of California Consumer Privacy Act of 2018

On June 28, 2018, California (“CA”) Governor Edmund G. (“Jerry”) Brown Jr. signed into law AB 375, which will enact the “California Consumer Privacy Act of 2018” (“CCPA” or the “law”) on January 1, 2020. The CCPA was introduced in the California legislature by Assembly member Ed Chau (D) to address provisions set forth in a ballot initiative that would have enacted a different and distinct “California Consumer Privacy Act.” Among other provisions, the law sets forth the following key rules. Note that the follow does not summarize all provisions in the CCPA.

I. Definitions

The CCPA expands the scope of what is generally considered "personal information" in the United States. Additionally, the law's scope sweeps in a large swath of companies that operate in California that engage in data-driven advertising and marketing activities.

A. Broad Definition of Personal Information. The CCPA broadly defines the term "personal information" as information that identifies, relates to, describes, is capable of being associated with, or could reasonably be linked, directly or indirectly, with a particular consumer or household. Some examples of personal information provided in the CCPA are: account name; unique identifier (e.g., pixel and cookies IDs, probabilistic identifiers); IP address; email address; commercial information, including records of property; biometric data; Internet activity, including browsing history, search history, and information regarding interactions with websites, applications, or advertisements; professional or employment-related information; and inferences drawn from any of the above listed information to create consumer profiles. Cal. Civ. Code § 1798.140(o)(1). Personal information under the law does not include publicly available information. Cal. Civ. Code § 1798.140(o)(2).

B. Broad Scope of the CCPA. The CCPA applies its requirements to any "business," which it defines as any company that does business in California for a profit that collects personal information from a California resident; and that either: (i) has annual gross revenue over \$25 million; (ii) annually buys, sells, receives, or shares for a commercial purpose the personal information of 50,000 or more consumers, households, or devices; or (iii) derives 50% or more of its annual revenues from selling consumer's personal information. Cal. Civ. Code § 1798.140(c). Additionally, the law states that it is not limited to information collected electronically or over the Internet, but applies to the collection and sale of all personal information. Cal. Civ. Code § 1798.175

C. Broad Definition of Sale. The CCPA defines "sell, selling, sale, or sold" broadly to include selling, renting, releasing, disclosing, disseminating, making available, transferring, or otherwise communicating personal information to another business or third party for monetary or other valuable consideration. Cal. Civ. Code § 1798.140(t)(1).

II. Transparency & Control

The CCPA creates new access and opt-out rights for California consumers. When responding to consumer requests, businesses could not rely exclusively on general statements of applicability like those made in current privacy notices. The specific rights and obligations that the law creates are described below.

B. New Right to Data Access. The CCPA provides consumers with the right to request the categories of personal information, and the specific pieces of personal information, that the business has collected about the specific consumer, and a business must notify consumers of this fact. Cal. Civ. Code § 1798.140(t)(1). Upon receipt of a verifiable consumer request, the law states that a business shall

promptly provide this data, and that the data can be delivered free of charge electronically or by mail, and if provided electronically in a portable form if technically feasible. Cal. Civ. Code § 1798.140(t)(1). Businesses are required to provide this data no more than twice in a twelve-month period. Cal. Civ. Code § 1798.140(t)(1). The law does not require businesses to retain information used only for a one-time transaction if the personal information is not linked to other personal information, sold or retained, or reidentify data that would not ordinarily be considered personal information in the normal course of business. Cal. Civ. Code § 1798.140(t)(1).

C. New Right to Deletion. The CCPA creates a right for consumers to request that a business delete any personal information about the consumer that the business collected from the consumer, and businesses must provide notice of this right in their online privacy notice. Cal. Civ. Code § 1798.105. The law also requires a business that receives a verifiable consumer request to delete the personal information and direct service providers to delete the personal information from their records. Cal. Civ. Code § 1798.105. Data does not need to be deleted if it is necessary to maintain the personal information for certain purposes, including, but not limited to: completing the transaction, detecting security incidents and preventing fraud, or for internal uses reasonably aligned with consumer expectations.

D. New Right to Know Where Data is Collected From and to Whom it is Sold. The CCPA requires, upon receipt of a verifiable consumer request, that a business that collects personal information about the consumer disclose the following: (1) the categories of personal information collected about the consumer; (2) the categories of sources from which personal information is collected; (3) the business or commercial purposes for collecting or selling the personal information; (4) the categories of third parties with which the personal information is shared; and (5) the specific pieces of personal information collected about that consumer.

The CCPA also requires a business that sells personal information, or discloses it for a business purposes, to provide the following upon receipt of a verifiable consumer request: (1) the categories of personal information collected about the consumer; (2) the categories of personal information sold about the consumer matched with the categories of third parties to which each category of personal information was sold; and (3) the categories of personal information disclosed for a business purpose. Cal. Civ. Code § 1798.115.

The CCPA will also prohibit third parties from selling a consumer's personal information which has been sold to the third party by a business unless the consumer has received explicit notice and an opportunity to opt out. Cal. Civ. Code § 1798.115.

E. New Right to Opt-Out. The CCPA provides consumers with the right, at any time, to opt out of a business's sale of a consumer's personal information to third parties. Cal. Civ. Code § 1798.120. Businesses that sell personal information to third parties are required to provide notice that personal information may be sold and that consumers have the right to opt out. Cal. Civ. Code § 1798.120. The business are prohibited from selling the data to third parties absent subsequent express authorization to do so. Cal. Civ. Code § 1798.120.

F. New Requirements on Children's and Teens' Data. The CCPA prohibits businesses from selling data of consumers that they have actual knowledge are under 16, unless they have received opt-in consent (i.e., affirmative authorization) for such sale from: (1) for consumers under 13, the consumer's parent or guardian; or (2) for consumers aged 13-16, the consent of the consumer. Cal. Civ. Code § 1798.120. A business that willfully disregards the consumer's age is deemed to have actual knowledge of the consumer's age. Cal. Civ. Code § 1798.120.

G. Non-discrimination. The CCPA prohibits businesses from discriminating against consumers for exercising any of their rights created by the law. This includes: (1) denying goods or services; (2) charging different prices, including via benefits or penalties; (3) providing a different level of quality; or (4) suggesting that the consumer will receive a different price or quality. Cal. Civ. Code § 1798.125. The law allows differential pricing or quality where it is reasonably related to the value provided to the consumer by the consumer's data. Cal. Civ. Code § 1798.125. It also allows businesses to offer financial incentives for the collection, sale, or deletion of personal information, provided the incentives are not unreasonable, coercive, or usurious in nature. Cal. Civ. Code § 1798.125. If such incentives are offered, the business must provide notice to the consumer, and a consumer can only be enrolled in a financial incentive program if they provide opt-in consent that can be revoked at any time. Cal. Civ. Code § 1798.125.

III. Requirements for Businesses

The CCPA sets forth specific steps that businesses are required to take to provide consumers with notice of their rights through new privacy policy requirements, and for how to respond to those rights requests. Of note, the law requires that companies respond to consumer rights requests within 45 days of receipt (subject to limited extensions). Additionally, companies that sell consumer personal information are required to inform consumers about their opt-out rights by including a link on their homepages titled "Do Not Sell My Personal Information."

A. Facilitation of Rights Requests. The CCPA requires businesses to make at least two methods available for exercising their access rights (see Section II.B.), including, at a minimum, a toll-free telephone number and a website (if the business maintains an Internet Web site). Cal. Civ. Code § 1798.130. Businesses are required to disclose requested information, free of charge, to the consumer within 45 days of receipt of the consumer's verifiable request. Cal. Civ. Code § 1798.130. The law states that time to verify a consumer's request does not extend the 45-day time period, but businesses may extend the time period by an additional 45 days when reasonably necessary and with notice to the consumer. Cal. Civ. Code § 1798.130.

D. Website Notice. Additionally, the CCPA requires businesses to disclose the following information for the previous twelve-month period on the business's website, including, where applicable, in the privacy policy and any California-specific description of privacy rights: (1) a description of the consumer's rights and methods for submitting requests for information; (2) a list of the categories of personal information the business has collected in the past twelve months; (3) a list of the categories of personal information the business has sold in the past twelve months, or, if the business has not sold personal information, that fact; and (4) a list of the categories of personal information the business has disclosed for a business purpose in the past twelve months, or, if the business has not disclosed personal information for a business purpose, that fact. Cal. Civ. Code § 1798.130. The law states that the list of categories of third parties to which the consumer's personal information was sold must be a separate list from the list of categories of third parties to which the personal information was disclosed. Cal. Civ. Code § 1798.130.

E. Employee Training. Businesses are also required to ensure that individuals who are responsible for handling consumer inquiries are informed of consumers' rights and how to direct consumers to exercise those rights, and to use personal information collected from a consumer in a request for information solely to verify the consumer's request. Cal. Civ. Code § 1798.130.

F. Do Not Sell My Personal Information. To facilitate opt-outs, the CCPA requires businesses that sell personal information to third parties to place on their website homepages a clear and conspicuous link that is entitled "Do Not Sell My Personal Information." Cal. Civ. Code § 1798.135. The law requires

the link to direct consumers to a webpage that enables a consumer to opt out of the sale of the consumer's personal information without requiring the creation of an account. Cal. Civ. Code § 1798.135.

G. Additional Notice of and Effectuation of Opt-out Rights. Business are also required by the CCPA to: (1) include a description of the consumer's right to opt out along with the link described above in the business's privacy policy and any California-specific description of privacy rights; (2) honor consumer opt outs for at least one year before requesting that the consumer authorize the sale of the consumer's personal information; (3) ensure that individuals who are responsible for handling consumer inquiries are informed of consumers' rights and how to direct consumers to exercise those rights; and (4) use personal information collected from a consumer in an opt-out request solely to comply with the request. Cal. Civ. Code § 1798.135.

IV. Exceptions

The CCPA provides certain exceptions to its requirements. As explained below, these exceptions include allowances for sharing with law enforcement, service providers, and for activity taken wholly outside of California. Additionally, the law provides exceptions for compliance with sector specific laws such as health and banking regulations. Finally, there are exceptions in the CCPA for delaying responses to consumers for good reason and after a consumer is provided notice of the delay and the reason for it.

A. General Exceptions. The CCPA does not restrict the ability of a business to: (1) comply with federal, state, or local laws; (2) comply with a civil, criminal, or regulatory investigation; (3) cooperate with law enforcement where there is a reasonable good faith belief that activity may violate the law; (4) exercise or defend legal claims; (5) collect, use, retain, sell, or disclose personal information that is deidentified or in the aggregate; or (6) collect or sell personal information if all conduct takes place wholly outside California. Cal. Civ. Code § 1798.145.

B. Section & Industry Specific Exceptions. Additionally, Sections 1798.110 to .135 do not apply if the business would violate an evidentiary privilege under California law. Cal. Civ. Code § 1798.145. The law also does not apply to: (1) protected or health information by a covered entity covered by the Confidentiality of Medical Information Act or subject to Health Insurance Portability and Accountability Act; (2) to the sale of personal information to or from a consumer reporting agency that is used to create a consumer report; (3) to personal information collected, processed, sold, or disclosed pursuant to the Gramm-Leach-Bliley Act and its implementing regulations if it is in conflict with that law or regulation; or (4) to personal information collected or sold pursuant to the Driver's Privacy Protection Act. Cal. Civ. Code § 1798.145.

C. Delay in Responses. The CCPA allows a business responding to consumer rights request to: (1) have time extended by up to 90 additional days, taking into account the complexity and number of requests and provided that consumers are informed of the extension within 45 days of receipt along with the reason for the delay; (2) not take action on a request, and within the required time period, inform the consumer of that decision and the reasons behind it; and (3) charge a reasonable fee or refuse to act on repetitious, manifestly unfounded or excessive, requests. Cal. Civ. Code § 1798.145. Businesses must inform the consumer of that decision and bear the burden of proof. Cal. Civ. Code § 1798.145.

D. Service Providers and Reidentification. Under the CCPA, a business will not be liable for violations of its service providers if it did not have knowledge or reason to believe there was an intent to commit a violation. Cal. Civ. Code § 1798.145. A business is also not required to reidentify or otherwise link information that is not maintained in an identifiable manner, and the consumer rights should not adversely affect the rights and freedoms of another consumer. Cal. Civ. Code § 1798.145.

V. Private Right of Action

The CCPA contains a private right of action that allows consumers to recover statutory damages and injunctive relief if their personal information was subject to unauthorized access and exfiltration, theft, or disclosure if the business failed to maintain reasonable security protections. This private right of action is subject to a 30 day cure period, as well as oversight by the California Attorney General.

A. Private Actions. The CCPA creates a private right of action for consumers whose non-encrypted or non-redacted personal information as defined by subparagraph (A) of paragraph (1) of subdivision (d) of Section 1798.81.5 is subject to an unauthorized access and exfiltration, theft, or disclosure as a result of a failure to maintain reasonable security procedures and practices appropriate to the nature of the information to protect the personal information it maintains. Cal. Civ. Code § 1798.145. The law allows consumers to recover statutory damages of between \$100 and \$750 per consumer per incident or actual damages (whichever is higher), injunctive or declaratory relief, and any other relief the court deems proper. Cal. Civ. Code § 1798.150.

C. 30 Day Cure Period. Prior to initiating an action against a business for statutory damages under the CCPA, consumers are required by the law to provide a business 30 days' written notice identifying the specific provisions of the law that are allegedly violated. Cal. Civ. Code § 1798.150. If a cure is possible, and within 30 days of the notice the business cures the violation and provides express written statement of the cure to the consumer, no action would be initiated. Cal. Civ. Code § 1798.150.

D. Attorney General Notice. The CCPA requires consumers to notify the California Attorney General within 30 days of an action being filed, and the Attorney General would within 30 days: (1) notify the consumer that the Attorney General will prosecute the action, and if that prosecution does not begin within 6 months the consumer can bring their action; (2) refrain from acting within 30 days, allowing the consumer action to proceed; or (3) notify the consumer to not proceed. Cal. Civ. Code § 1798.150.

VI. CA Attorney General Enforcement

The California Attorney General will be able to recover civil penalties in the amount of up to \$7,500 for each violation. The CCPA also allows the Attorney General to enforce the law if a business fails to cure an alleged violation of the CCPA within 30 days of notification of alleged noncompliance and seek civil penalties. Cal. Civ. Code § 1798.150.

The CCPA creates the "Consumer Privacy Fund" within the General Fund of the State Treasury as a recipient of 20% of civil penalties, and such funds will be used by the Attorney General to offset costs incurred in connection with the law. Cal. Civ. Code § 1798.160. The remaining 80% is allocated to the jurisdiction on whose behalf the action leading to the civil penalty was brought. Cal. Civ. Code § 1798.155(c).

VII. Attorney General Rulemaking

On or before January 1, 2020, the CCPA requires the Attorney General to solicit public participation to adopt regulations to further the law. Cal. Civ. Code § 1798.185. The Attorney General is also authorized by the CCPA to adopt additional regulations as necessary to further the purposes of the law. Cal. Civ. Code § 1798.185.

Thank you to [Venable LLC](#) for this summary