

# THE CALIFORNIA CONSUMER PRIVACY ACT (CCPA)

Title 1.81.5 (commencing with Section 1798.100) is added to Part 4 of Division 3 of the Civil Code, amended Sept. 23, 2018.

## Brief Summary of the CCPA

In June 2018, the California legislature passed a sweeping privacy law that grants consumers rights relating to their personal information. These include the right to request a business to disclose certain information collected and the right to ask the business to delete and stop sharing such information. The CCPA, which was drafted and passed hastily in just seven days, has already been amended once and has a good chance of being revised again prior to its targeted effective date of January 1, 2020.

## To Whom Does the CCPA Apply?

The CCPA applies to any for profit, legal entity doing business in California that collects consumers' [personal information](#) (or has it collected on its behalf), and that meets *any of* the following conditions (hereinafter, a "business"):

- ▷ Has annual gross revenues of more than \$25 million (subject to biennial adjustments).
- ▷ Alone, or in combination, annually *buys, receives for commercial purposes, sells, or shares for commercial purposes* the [personal information](#) of 50,000 or more consumers, households or devices.
- ▷ Derives 50 percent or more of annual revenues from selling consumers' [personal information](#).

**Note:** The CCPA also applies to any business that *controls or is controlled by* such a business and shares common branding with the business.

**Exemptions:** The CCPA does not apply to clinical trials or health care companies subject to HIPAA or the California Confidentiality of Medical Information Act. It also does not apply to consumer reporting agencies under the Fair Credit Reporting Act (FCRA). A partial exemption also extends to companies engaged in activities covered by the Gramm-Leach-Bliley Act (GLBA), the California Financial Privacy Act or the federal Driver's Privacy Protection Act. However, these latter companies will be subject to the CCPA for non-exempt activities (e.g., online monitoring) and will still be subject to *private class actions* described below.

## If CCPA Were Implemented Today, What Would It Mean?

If the CCPA were implemented today, consumers would have rights to request certain data and actions from covered businesses. Businesses would need to police data sharing and use among their partners. Additionally, businesses would need to update their websites and privacy policies.

### 1. Consumer's Right to Request (up to two times per year):

- ▷ If business *collected* a consumer's [personal information](#) in the previous 12 months, pursuant to specific request requirements, the consumer may ask the business to provide:
  1. The *categories* of [personal information](#) collected about that consumer.
  2. The *categories* of *sources* providing [personal information](#).
  3. The *categories* of *third parties* with whom it has shared [personal information](#).
  4. The business purpose for collecting or selling the [personal information](#).
  5. The specific pieces of information it has collected about that consumer.

- ▷ If the business *sold* or *disclosed for a business purpose* the consumer's [personal information](#) to a third party in the previous 12 months, the consumer may ask the business to provide:
  1. The *categories* of [personal information](#) that the business collected about the consumer.
  2. The *categories* of [personal information](#) sold.
  3. The *categories* of third parties to whom the [personal information](#) was sold (by *categories* of [personal information](#) for each third party to whom the information was sold).
  4. The *categories* of [personal information](#) that the business disclosed.

## 2. Consumer's Right to Delete:

- ▷ If the business *collected* the consumer's [personal information](#), the consumer may **request deletion** of their [personal information](#) from the business's records (unless an [exception](#) applies).

## 3. Consumer's Right to Ask Not to Sell:

- ▷ If the business *sells* [personal information](#), the consumer may request **not to sell** the consumer's [personal information](#) to third parties (i.e., the right to opt out).

## 4. Business Obligations:

- ▷ **Inform the consumers** of (1) the *categories* of [personal information](#) to be collected and (2) the purposes for which the *categories* of [personal information](#) will be used, *at or before the point of collection*.

- ▷ **Responding to requests for information:**

1. Information must be provided free of charge.
2. Required information must be delivered within 45 days of receiving the verifiable request, or businesses must inform the consumer of the need to delay up to 90 days.
3. Information must be delivered through mail or electronic means (but it must be in a readily usable format that allows the consumer to easily *transmit* to another).
4. Businesses must notify the consumer of the right to request a deletion of their personal information.
5. Businesses must provide two or more ways for the consumer to submit the requests for information, including **at a minimum**:

- ▷ A toll-free telephone number; and
- ▷ A web site address (if the business has a website).

- ▷ **Amend service provider contracts, requiring service provider to:**

- ▶ **Delete** a consumer's [personal information](#) upon the company's request.
- ▶ **Prohibit** service provider from selling any of a consumer's [personal information](#) except to perform the services.
- ▶ **Prohibit** service provider from retaining, using or disclosing any of consumer's [personal information](#) except to perform the services and.
- ▶ **Certify** that service provider understands and will comply with the prohibitions.

- ▷ Refrain from selling information of a person **under 16 years old** (unless persons between the ages of 13 and 16 years old or their guardians have affirmatively authorized the sale) (i.e., the right to opt in).
- ▷ **Do not discriminate** against a consumer who has exercised his or her rights (including by providing a different level of service, denying goods or services).
  - ▶ Note that a business can offer financial incentives, including payments to consumers as compensation, for the collection of [personal information](#), but (a) the consumer must give prior opt-in consent, which can be revoked at any time, and (b) the material terms of the financial incentive program must be clearly described.
- ▷ If a consumer opts out of the sale of their [personal information](#), then the business must give them at least 12 months prior to asking again if the business can sell their [personal information](#).

## 5. Website Updates

- ▷ If the business *collects* [personal information](#), then the business must disclose, in a form that is reasonably accessible to consumers, that the consumer has the right to request deletion of the consumer's [personal information](#).
- ▷ If the business *sells* [personal information](#), then the business must put a clear and conspicuous link on the business' homepage, titled **“Do Not Sell My Personal Information,”** that allows the consumer to opt out of the sale. As an alternative to this homepage link, the business can direct California consumers to their own dedicated disclosure page. **Note:** The business cannot require the consumer to create an account to direct the business not to sell.
- ▷ **Privacy Policy Changes.** A business must disclose the following information on its online privacy policy or policies and in any California-specific description of a consumer's privacy rights:
  1. Description of consumers' rights under California law. Those are the consumers' rights:
    - a) To request information that the business collected.
    - b) To request information regarding the sale of the consumer's information.
    - c) To opt out of the sale of their personal data at any time, which includes access to a link to the “Do Not Sell My Personal Information” page.
    - d) To assurance that they will experience no discrimination for exercising these rights.
  2. A list of the *categories* of [personal information](#) it has collected about consumers in the preceding 12 months and reference to the following:
    - a) The specific pieces of [personal information](#) it has collected about consumers.
    - b) The *categories* of [personal information](#) collected about consumers.
    - c) The *categories* of *sources* providing [personal information](#).
    - d) The *categories* of *third parties* with whom it has shared [personal information](#).
    - e) The business purpose for collecting or selling the [personal information](#).
  3. A statement as to whether personal information has been **sold** in the past 12 months, and if it has, the *categories* of [personal information](#) that have been sold.

4. A statement as to whether personal information has been **disclosed** for a business purpose in the past 12 months, and if it has, the categories of personal information that have been disclosed.
5. Update policy every 12 months.

## Penalties

1. **A breach + violation of the CCPA = private class action.** If specific unredacted or unencrypted sensitive personal information of a consumer is *acquired without authorization* because the business failed to implement and maintain reasonable security procedures and practices, the consumer can sue after providing a *30-day written notice to cure* the violation. Then the consumer may institute an individual or *class action* for any of the following:
  - a. Statutory damages of \$100 to \$750 per consumer per incident *OR* actual damages, *whichever is greater*.
  - b. Injunctive or declaratory relief.
  - c. Any other relief the court deems proper.
2. **Violation of the CCPA alone = State-led action and statutory penalties.** If a business violates the CCPA or fails to cure any alleged violation within 30 days after being notified by a consumer, the California Attorney General (AG) may bring action for an injunction and civil penalties up to \$2,500 per violation, or up to \$7,500 for each *intentional* violation.

## Other Things to Note

- ▷ There is a grace period before AG enforcement. The AG can issue regulations under the CCPA until July 2, 2020 and may not enforce the law until six months after those regulations are in place.
- ▷ A business can seek advisory opinions from the Attorney General.
- ▷ A business cannot seek a waiver for the consumer's rights under the bill. Any such waiver would be deemed void.
- ▷ A business cannot resell purchased information without giving consumers explicit notice and the ability to opt out.
- ▷ The CCPA is not limited to digital information collected online. It applies to the collection and sale of all personal information collected by a business from consumers.

## Definition of Personal Information

**Personal Information** under the CCPA means 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*, and includes a real name, alias, postal address, unique personal identifier, IP address, email address, account name, social security number, driver's license number, passport number or other similar identifiers, as well as biometric information, purchasing history (products and property purchased), browsing history, search history, geolocation data, audio, electronic, visual, thermal, olfactory or similar information, education, and employment or professional information. Personal Information *does not include* publicly available information lawfully made available from government records (exception: biometric data collected without a consumer's knowledge).

## Exceptions to Requests to Delete

1. If it is necessary to complete the transaction for which the information was collected or otherwise perform a contract between the business and consumer.
2. Security purposes.
3. Identify and repair errors.

4. Exercise free speech.
5. Comply with the California Electronic Communications Privacy Act.
6. Scientific, historical or statistical research in the public interest that adheres to all other privacy laws, when the businesses' deletion of the information is likely to render impossible or seriously impair the achievement of such research, if the consumer has provided consent.
7. Enable solely internal uses that align with expectations of the customer.
8. Comply with a legal obligation.
9. Otherwise use internally in a lawful manner.

### Definition of Categories

1. Characteristics of protected classifications under California or federal law (e.g. race, ethnicity, sexual orientation).
2. Commercial information, including records of personal property, products or services purchased, obtained, or considered.
3. Biometric information.
4. Internet or other electronic network activity information, including, but not limited to browsing history, search history, and information regarding a consumer's interaction with a web site, advertisement, etc.
5. Geolocation data.
6. Audio, electronic, visual, thermal, olfactory, or similar information.
7. Professional or employment-related information.
8. Education information.
9. Inferences drawn from any of the information identified in the categories to create a profile about a consumer reflecting the consumer's preferences, characteristics, psychological trends, predispositions, behavior, attitudes, intelligence, abilities, and aptitudes.

### Sensitive Data Subject to Private/Class Actions

Consumers cannot bring a private right of action for the loss of broadly defined "personal data" under the CCPA. Instead, a consumer can only bring a private right of action if there is unauthorized acquisition of more sensitive data defined by the state's data breach notification law at Civ. Code § 1798.81.5 (d)(1)(A). This includes an individual's first name or first initial and his or her last name in combination with any one or more of the following:

1. Social security number.
2. Driver's license number or California identification card number.
3. Account number, credit or debit card number, in combination with any required security code, access code, or password that would permit access to an individual's financial account.
4. Medical information.
5. Health insurance information.