

THE CALIFORNIA PRIVACY RIGHTS ACT OF 2020 (CPRA)

MORRISON
FOERSTER


SEPTEMBER 2021

WHAT ARE THE KEY CHANGES THE CPRA MAKES TO THE CALIFORNIA CONSUMER PRIVACY ACT OF 2018 (CCPA)?





HOW DOES THE CPRA EXPAND INDIVIDUAL RIGHTS?

- 1** **NEW Right to Correction.** Grants consumers the right to request that a business correct inaccurate personal information (PI) it maintains about the consumer.
- 2** **NEW Right to Limit Use and Disclosure of Sensitive PI.** Requires certain businesses to post a “Limit the Use of My Sensitive PI” link or combined links by which consumers may simultaneously opt out of the sale/sharing of their PI (see #3 below) *and* request that the business limit certain uses and disclosure of the consumer’s sensitive PI.
- 3** **Right to Opt-Out of Sale *or* Sharing.** Expands the opt-out right to include not only “sales” of PI, but also the “sharing” of PI for cross-context behavioral advertising, regardless of whether payment or other consideration is involved.
- 4** **Right to Know / Access.** For PI collected on or after January 1, 2022, removes the 12-month lookback period on consumers’ right to know / access specific pieces of PI, and specifies format/portability requirements.
- 5** **Right to Deletion.** Requires businesses in receipt of verified deletion requests to comply with the request, instruct their service providers to delete the consumer’s PI, and *notify other businesses to whom they sold/shared consumer PI to delete that PI.* Alters scope of deletion exceptions.
- 6** **Right to Be Free from Discrimination.** Clarifies that businesses may offer loyalty, discount, or similar qualifying financial incentive programs. If a consumer refuses to provide opt-in consent to such a program, the business may not request consent again for 12 months.
- 7** **Right to Sue.** Expanded by adding login credentials to the list of PI to which the private right of action applies, following a data security incident.

ENHANCED NOTICE OBLIGATIONS

-  **Requires businesses to include additional information in privacy notices, including:**
 - Consumers’ new right to correct inaccurate PI;
 - Whether PI is “shared,” which means disclosed to third parties for cross-context behavioral advertising purposes;
 - Separate disclosures for sensitive PI (see next page for definition) collected, the purpose of its collection and use, and whether such PI is sold or shared; and
 - The length of time the business intends to retain each category of PI or the criteria used to determine this period.


OTHER ORGANIZATIONAL REQUIREMENTS

-  **Imposes purpose limitation and data minimization obligations,** requiring businesses to collect, use, retain, and share consumer PI only as “reasonably necessary and proportionate to achieve the purposes for which the PI was collected or processed, or for another disclosed purpose that is compatible with the context in which the PI was collected.”
-  **Specifies required contractual provisions for agreements** with the third parties with whom businesses share PI. Imposes direct obligations on service providers to assist businesses with complying with the CPRA.
-  **Requires businesses to implement reasonable security procedures and practices** appropriate to the nature of the PI that they handle.
-  Businesses whose processing poses “significant risk to consumers’ privacy or security” must perform an **annual, independent cybersecurity audit**, and submit **privacy risk assessments** to the newly-formed California Privacy Protection Agency (see flip side) on a regular basis.


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SCOPE AND DEFINITIONS


 **Creates a new category of “sensitive” PI** – Includes Social Security Number, driver’s license number, passport number, financial account information, precise geolocation, race, ethnicity, religion, union membership, private personal communications, genetic data, biometric or health information, and information about sex life or sexual orientation. Businesses must disclose details of their processing of sensitive PI, and individuals can request restrictions on certain uses and disclosures of sensitive PI.

Note: Sensitive PI that is collected or processed *without* the purpose of inferring characteristics about a consumer is *not* subject to these use/disclosure restrictions, subject to forthcoming regulations of the California Attorney General (AG).

 **Alters the small business “exception”** by increasing from 50,000 to 100,000 the number of consumers or households whose PI a business may buy, sell, or share while still benefiting from the exception.

 **Revises the definition of “de-identified” information** to require a business to publicly commit to de-identification practices.

 **Expands the definition of “publicly available,”** thereby exempting more information from the definition of PI.

 **Sunsets the CCPA’s partial employee and B2B exceptions.** The CPRA extends these exceptions through January 1, 2023, at which point those exceptions will expire just as the CPRA becomes operative.

NEW OR MODIFIED EXCEPTIONS

NEW Trade secret exception clarifies that businesses are not required to disclose trade secrets in their notice at collection or in response to a consumer requests.

NEW Household data exempted from consumer rights to know, correct, and delete PI.

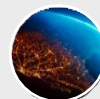
ENFORCEMENT

Establishes California Privacy Protection Agency to implement and enforce the CPRA. The CA AG retains rulemaking authority until the later of July 1, 2021 *or* six months after the Agency notifies the AG that it is ready to begin rulemaking.

Modifies the 30-day cure period to apply only to violations stemming from security incidents, rather than violations of other CPRA provisions.

Triple fines for violations involving the PI of consumers whom a business knows to be under 16 years of age.

FOR MORE, PLEASE VISIT:



[MoFo's CCPA/CPRA Resource Center](#)



[MoFo's Privacy Library](#)

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The CPRA will become operative on January 1, 2023.

