



# The California Consumer Privacy Act

An Overview and What You Need to  
Know (Until It Changes)



# Legal Disclaimer

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# Agenda

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- 01** Rationale & Scope
- 02** Key Definitions
- 03** Consumer Rights
- 04** Business Obligations
- 05** Regulatory Process

# Speakers

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# RATIONALE & SCOPE

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- **RATIONALE:** To further the CA Constitution's 1972 amendment establishing the right to privacy as an “**inalienable right**”  
(But really to avoid a badly written ballot initiative which would take 75% vote to amend if passed)
- Why is this an Issue?
  - All businesses use personal data of some sort
  - Data, as a capital asset, is more difficult to use to drive growth the more it is regulated.
  - The Act furthers this right to privacy by giving the CA resident effective ways to **control** personal information by ensuring various rights
  - Consumer control by definition dilutes business control over data

# RATIONALE & SCOPE

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- **SCOPE:**
  - Key **Broad Stroke** Definitions
    - Business
    - Personal Information
    - Sell
    - Consumer
  - Extra-Territorial Application and ‘Doing Business’ in CA
  - Business Obligations
  - Regulatory Process
  - Conclusions

# Business

- A (1) for profit legal entity that (2) collects consumers' personal information and (3) determines the purposes and means of the processing of PI, that (4) does business in CA, and (5) that satisfies **one or more** of the following:
  - Has annual gross revenues in excess of \$25 million;
  - Alone or in combination, annually buys, **receives** for the business' commercial purposes, **sells**, or **shares** for commercial purposes, alone or in combination, the personal information of 50,000 or more **consumers**, households, or **devices**;
  - Derives 50% or more of its annual revenues from selling consumers' PI.

# Personal Information

Any Information that identifies, **relates to**, describes, is capable of being associated with, or could reasonably be linked, directly **or indirectly**, with a consumer, **device**, or **household** such as:

- Identifiers
- Certain categories
- Protected classification characteristics
- Commercial Information
- Biometric Information
- Internet Information
- Geolocation Data
- Audio, electronic, visual, thermal, olfactory
- Inferences based on behavior (OBA)

# Sale

- Means:
    - selling, renting, releasing, disclosing, disseminating, **making available**, transferring, or otherwise communicating;
    - orally, **in writing**, or by electronic or other means;
    - a consumer's PI by the business to another business or a 3rd Party;
    - for monetary or **other valuable consideration**.
  - Not limited to on-line data collection
- (Note: 3d Party does **not** include service providers – usually)

# Consumer

- A natural person who is a CA *resident* however identified, including by any *unique identifier*.
- Resident is defined by the tax code
  - *Resident* means (1) every individual who is in the State for other than a temporary or transitory purpose, and (2) every individual who is domiciled in the State who is *outside* the State for a temporary or transitory purpose. All other individuals are nonresidents.

Basically, if you pay CA taxes, you are a Consumer

# Parties

- **Business**
  - The entity that has the direct relationship with the Consumer
  - Generally has the most obligations under CCPA
- **Service Provider**
  - Provides services to the Business
  - value chain is just between Business and Service Provider
- **Third Party**
  - entity **not** providing a service to the Business
  - entity purchasing, or receiving for **their own** commercial purposes, Personal Information

# Consumer Privacy Rights

- The Right to Know what PI is being **collected** about them (and to request deletion).
- The Right to Know whether PI is **sold or disclosed** and to whom.
- The Right to Opt-Out to the **sale** of PI.
- The Right to Access PI.
- The Right to Equal Service and Price.

# Extra-Territorial Application & ‘Doing Business’ in CA

- The Act applies to **for-profit** entities doing **business** in CA (regardless of physical presence.) Data in the information age knows no borders
- “The provisions of this title are not limited to information collected electronically or over the Internet, but apply to the collection and sale of **all** personal information collected by a business from consumers.”

# Business Obligations

## Organized into 3 General Areas

1. Duty to Comply:
  - a. Post notice of Consumer Rights
  - b. Respond to Consumers' Exercising their Rights
2. Duty to Protect the Security of PI
3. Duty to
  - a. Train Employees
  - b. Contract as Required

# Enforcement Obligations

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- **Enforcement Authority vested in the CA Attorney General**
  - ‘Go Live’ date of 1/20/20 - BUT
  - AG must adopt regs by 1/1/20 and cannot bring action until 7/1/20.
  - AG is **only** enforcement authority for Consumer Rights
  - Enforcement tools include injunction and civil penalty not more than \$2500 per violation or not more than \$7500 per intentional violation but must give 30 day notice and opportunity to cure.
  - Private Right of Action **only** exists for security breaches (right now)

# Conclusions

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- The CCPA provides the CA Consumer with enforceable rights to privacy pertaining to their personal information and further requires impacted businesses to be responsible and transparent in regards to that personal information.
- The Act's key definitions, its written intention, a business's duty to protect personal information; coupled with the CA Attorney General's expansive authority to enforce this law, sets it apart from other state privacy laws to date.

# A Primer for our Second Webinar:

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- **Business Response to Consumer Inquiry:**
  - **ONLY** with a Verifiable Consumer Request.
  - Must respond, but Consumer Rights are **NOT** absolute. (e.g. Compliance with a Consumer Request to Delete PI is not mandatory; rather, there are many exceptions.)
  - Must **NOT** discriminate against the Consumer for the exercise of their Rights. (but May charge Consumer a different price or rate, or from providing a different level or quality of goods or services **IF** reasonably related to value provided for the data).
  - **ONLY** required to respond to the Verifiable Consumer Request twice a year.



**Thank You**