

# California's New Privacy Law--2018

# The California Consumer Privacy Act of 2018

# Key Definitions

- “Personal Information” 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. Personal information includes, but is not limited to, the following:
  - Identifiers such as a real name, alias, postal address, unique personal identifier, online identifier Internet Protocol address, email address, account name, social security number, driver’s license number, passport number, or other similar identifiers.
  - Any categories of personal information described in subdivision (e) of Section 1798.80.
  - Characteristics of protected classifications under California or federal law.
  - Commercial information, including records of personal property, products or services purchased, obtained, or considered, or other purchasing or consuming histories or tendencies.
  - Biometric information.
  - Internet or other electronic network activity information, including, but not limited to, browsing history, search history, and information regarding a consumer’s interaction with an Internet Web site, application, or advertisement.
  - Geolocation data.
  - Audio, electronic, visual, thermal, olfactory, or similar information.
  - Professional or employment-related information.
  - Education information, defined as information that is not publicly available, personally identifiable information as defined in the Family Educational Rights and Privacy Act.
  - Inferences drawn from any of the information identified in this subdivision to create a profile about a consumer reflecting the consumer’s preferences, characteristics, psychological trends, preferences, predispositions, behavior, attitudes, intelligence, abilities, and aptitudes.

# Key Definitions--Continued

- “Personal Information” does not include publicly available information. For these purposes, “publicly available” means information that is lawfully made available from federal, state, or local government records, if any conditions associated with such information. “Publicly available” does not mean biometric information collected by a business about a consumer without the consumer’s knowledge. Information is not “publicly available” if that data is used for a purpose that is not compatible with the purpose for which the data is maintained and made available in the government records or for which it is publicly maintained. “Publicly available” does not include consumer information that is deidentified or aggregate consumer information.

# Key Definitions--Continued

- For certain remedies there is a different definition of personal information that is picked up from existing California law. Personal information means either of the following:
    - an individual's first name or first initial and his or her last name in combination with any one or more of the following data elements, when either the name or the data elements are not encrypted or redacted: Social Security number; Driver's license number or California identification card number; 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; Medical information; or Health insurance information; or
    - a username or email address in combination with a password or security question and answer that would permit access to an online account.
- “Personal information” does not include publicly available information that is lawfully made available to the general public from federal, state, or local government records.

# Key Requirements

- Different obligations are placed on companies that collect information versus those that sell information.
- The law extends the existing right of privacy in the California Constitution and provides new rights for consumers.

# Key Requirements

- Gives consumers the right to request (meaning that the consumer has to take affirmative verifiable action to request this) not more than twice in a 12-month period, that a business that collects their personal information disclose to that consumer the categories and specific pieces of personal information the business has collected, which includes:
  - The categories of personal information it has collected about that consumer;
  - The categories of sources from which the personal information is collected;
  - The business or commercial purpose for collecting or selling personal information;
  - The categories of third parties with whom the business shares personal information;
  - The specific pieces of personal information it has collected about that consumer.

# Key Requirements

- Gives consumers certain rights to request the deletion of their data from the business and any of the businesses service providers, and requires businesses to disclose this right to consumers. There are certain exceptions to this deletion right, including completing certain transactions, meeting legal obligations, detecting security incidents, as well as other exceptions;
- Grants consumers the right to request that a business that sells the consumer's personal information, or that discloses it for a business purpose, disclose to that consumer:
  - The categories of personal information that the business collected about the consumer;
  - The categories of personal information that the business sold about the consumer and the categories of third parties to whom the personal information was sold, by category or categories of personal information for each third party to whom the personal information was sold;
  - The categories of personal information that the business disclosed about the consumer for a business purpose;
- Gives consumers the right to “opt out” of sale of their information to third parties.



# Key Requirements

- Requires that the business provide two or more designated methods for submitting these requests, including at a minimum, a toll-free number, and if the business has a website, a Web address;
- Requires that, if such a request is made, the business disclose this information for the 12-month preceding period, and it must be disclosed in certain formats, free of charge and within 45 days of the consumer's request. The time can be extended once for an additional 45 days with notice to the consumer. If the information is delivered electronically then the information must be in a portable format. The business must disclose:
  - The categories of personal information it has collected about that consumer;
  - The categories of sources from which the personal information is collected;
  - The business or commercial purpose for collecting or selling personal information;
  - The categories of third parties with whom the business shares personal information;
  - The specific pieces of personal information the business has collected about that consumer.

# Key Requirements

- Mandates that businesses that collect personal information shall, at or before the point of collection, inform consumers as to the categories of personal information to be collected and the purposes for which the categories of personal information shall be used. If collection beyond the disclosed categories is to occur, the business must provide the consumer with notice consistent with this section. This includes by:
  - a clear and conspicuous link on the business' Internet homepage, titled "Do Not Sell My Personal Information," to an Internet Web page that enables a consumer, or a person authorized by the consumer, to opt out of the sale of the consumer's personal information. A business shall not require a consumer to create an account in order to direct the business not to sell the consumer's personal information;
  - a description of a consumer's rights pursuant to Section 1798.120, along with a separate link to the "Do Not Sell My Personal Information" Internet Web page ;
  - its online privacy policy or policies if the business has an online privacy policy or policies;
  - any California-specific description of consumers' privacy rights.

# Key Requirements

- Requires that the business, if it has an online privacy policy, make certain disclosures in its policy, or in other forms if it does not have an online privacy policy (and these disclosures must be updated at least once every 12 months), including:
  - A description of a consumer's rights pursuant to Sections 1798.110, 1798.115, and 1798.125 and one or more designated methods for submitting requests;
  - For purposes of subdivision (c) of Section 1798.110, a list of the categories of personal information it has collected about consumers in the preceding 12 months by reference to the enumerated category or categories in subdivision (c) that most closely describe the personal information collected;
  - For purposes of paragraphs (1) and (2) of subdivision (c) of Section 1798.115, two separate lists:
    - A list of the categories of personal information it has sold about consumers in the preceding 12 months by reference to the enumerated category or categories in subdivision (c) that most closely describe the personal information sold, or if the business has not sold consumers' personal information in the preceding 12 months, the business shall disclose that fact;
  - A list of the categories of personal information it has disclosed about consumers for a business purpose in the preceding 12 months by reference to the enumerated category in subdivision (c) that most closely describe the personal information disclosed, or if the business has not disclosed consumers' personal information for a business purpose in the preceding 12 months, the business shall disclose that fact.

# Key Requirements

- Requires training of certain employees regarding consumer's rights under this law;
- Requires businesses that sell personal information to third parties to inform consumers of the opt out right, and to honor it, though a business can ask a consumer to authorize the sale of personal information after 12 months;
- Requires businesses to impose additional restrictions regarding the sale of information if a consumer is under certain ages;
- Limits discrimination against consumers for exercising their rights, but does permit businesses to offer financial incentives, with notice and opt in consent, to permit the collection, sale and deletion of the consumer's data; and
- Does not require businesses to retain information for "one-time transactions" if the PI isn't retained to try and reidentify the consumer, or is sold;

# Remedies

- A somewhat complex picture that in part relies on existing law, including Section 1798.81.5, which has a narrower definition of personal information than this law does.

# Key Next Steps