CALIFORNIA CONSUMER PRIVACY ACT

A. PRELIMINARY CONSIDERATIONS

1. [3:1] **Legislative Background:** The California Consumer Privacy Act (CCPA, Civ.C. §1798.100 et seq.) was passed by the Legislature and signed into law on June 28, 2018. It was enacted in response to a voter initiative entitled the "California Consumer Personal Information Disclosure and Sale Initiative." This initiative, advocated by a consumer privacy group, amassed more than 600,000 signatures and was scheduled to appear on the November 6, 2018 ballot. Following negotiations between the initiative's official proponent and the Legislature, however, the Legislature passed the CCPA and the official proponent withdrew the initiative. [See *California Privacy Protection Agency v. Sup.Ct. (Calif. Chamber of Commerce)* (2024) 99 CA5th 705, 712, 318 CR3d 90, 94, fn. 3 (citing text)]

   The purpose of the CCPA "was to protect consumers' privacy rights by providing them meaningful control over how their personal information is collected, used and disclosed by a covered business." [*California Privacy Protection Agency v. Sup.Ct. (Calif. Chamber of Commerce)*, supra, 99 CA5th at 712, 318 CR3d at 94, fn. 3 (quoting text)]

   The CCPA was amended several times after it passed. In response to efforts they viewed as trying to weaken the CCPA, the original initiative's official proponent introduced another ballot initiative, the California Privacy Rights Act of 2020 (CPRA), which voters approved in November 2020. [See 2020 Cal. Legis. Serv. Prop. 24; *California Privacy Protection Agency v. Sup.Ct.* (*Calif. Chamber of Commerce*), supra, 99 CA5th at 714, 318 CR3d at 96, fn. 5; *and* ¶*3:2 ff.*]

   a. [3:2] **California Privacy Rights Act of 2020 (CPRA):** The CPRA reenacted, amended and expanded the CCPA (see 2020 Cal. Legis. Serv. Prop. 24 (11/3/20)). Its purpose was to "further protect consumers' rights regarding the collection and use (including sale) of personal information by a covered business." [*California Privacy Protection Agency v. Sup.Ct. (Calif. Chamber of Commerce)* (2024) 99 CA5th 705, 714, 318 CR3d 90, 96]

      The CPRA incorporated several provisions of the European Union's data privacy and security law, the General Data Protection Regulation (GDPR), including the GDPR's restrictions on automated decisionmaking and profiling (¶*3:232*), consumers' right to correct inaccurate personal information (¶*3:159.36 ff.*), and time limits on retaining personal information (¶*3:231*).

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[See Regulation (EU) 2016/679, Art. 16, 22, 30(1)(f) (4/27/16), *available at www.gdpr.eu; California Privacy Protection Agency v. Sup.Ct. (Calif. Chamber of Commerce)*, supra, 99 CA5th at 714, 318 CR3d at 96 (citing text)]

(1) [3:2.1] **Comment—"CCPA" remains proper name:** The CPRA did not replace the CCPA. Accordingly, the proper name of California's primary consumer privacy law remains the "California Consumer Privacy Act" (or CCPA), notwithstanding the CPRA's amendments. [*California Privacy Protection Agency v. Sup.Ct. (Calif. Chamber of Commerce)* (2024) 99 CA5th 705, 714, 318 CR3d 90, 96 & fn. 5 (citing text)]

[3:2.2-2.5] *Reserved.*

b. [3:2.6] **California Privacy Protection Agency:** Along with the Attorney General's Office, the California Privacy Protection Agency (CPPA) is the agency responsible for implementing and enforcing the CCPA. [Civ.C. §1798.199.10(a); *California Privacy Protection Agency v. Sup.Ct. (Calif. Chamber of Commerce)* (2024) 99 CA5th 705, 715, 318 CR3d 90, 96; *see* ¶*3:5*]

(1) [3:2.7] **CPPA board:** The CPPA is governed by a five-member board appointed by the Governor (who appoints the chairperson and one other member) and the Attorney General, Senate Rules Committee, and Assembly Speaker (who each appoint one member). [Civ.C. §1798.199.10(a)—board member appointments should be made from among "Californians with expertise in the areas of privacy, technology, and consumer rights"]

(a) [3:2.8] **Qualifications and conduct:** CPPA board members must have qualifications, experience and skills "in the areas of privacy and technology," and also must comply with confidentiality and conflict of interest requirements. [Civ.C. §1798.199.15]

(b) [3:2.9] **Term limits:** CPPA board members "serve at the pleasure of their appointing authority," but cannot serve for longer than eight consecutive years. [Civ.C. §1798.199.20]

(c) [3:2.9a] **Current members:** Currently, the CPPA board consists of chairwoman Jennifer M. Urban, Jill Hamer, Alastair Mactaggart, Drew Liebert, and Nicole Ozer. [*https://cppa.ca.gov/about_us/*]

(2) [3:2.10] **Executive director:** The CPPA board is required to appoint an executive director (currently Tom Kemp) for the agency (Civ.C. §1798.199.30), and the board may delegate its authority to the executive director, except with respect to the resolution of enforcement actions and rulemaking authority (Civ.C. §1798.199.35).

(3) [3:2.11] **CPPA's authority:** The CCPA authorizes the CPPA to:

- Administer, implement and enforce the CCPA through administrative actions;
- Adopt, amend and rescind regulations to carry out the CCPA;
- Through its implementation of the CCPA, "protect the fundamental privacy rights of natural persons with respect to the use of their personal information";
- Generally promote public awareness and understanding of the risks, rules, responsibilities, safeguards, and rights relating to the collection, use, sale and disclosure of personal information;
- Provide a public report summarizing the risk assessments certain businesses will be required to submit about "their processing of personal information" pursuant to any forthcoming regulations (see Civ.C. §1798.185(a)(14)(B); *and* ¶*3:253 ff.*);
- Provide guidance to consumers about their CCPA rights;
- Provide guidance to businesses about their duties and responsibilities under the CCPA;
- Appoint a "Chief Privacy Auditor" to audit businesses pursuant to the regulations (see Civ.C. §1798.185(a)(17); *and* ¶*3:253 ff.*) and ensure compliance with the CCPA;
- Provide technical assistance and advice to the Legislature about privacy-related legislation (when requested);
- Monitor relevant developments regarding the protection of personal information;
- Cooperate with other agencies with jurisdiction over other privacy laws and with data processing authorities in California, other states, territories, and countries to ensure consistent application of privacy protections;
- Establish a mechanism for businesses to voluntarily certify compliance with the CCPA if they do not fall within the statute's definition of a "business" (see Civ.C. §1798.140(d); *and* ¶*3:41*);
- Approve grants funded by the "Consumer Privacy Fund" (see Civ.C. §1798.160(d); *and* ¶*3:284*); and
- "Perform all other acts necessary or appropriate in the exercise of its power, authority, and jurisdiction

and seek to balance the goals of strengthening consumer privacy while giving attention to the impact on businesses." [Civ.C. §1798.199.40]

c. [3:2.12] **CCPA regulations:** The CPPA proposed new CCPA regulations on July 8, 2022. The proposed regulations became effective on March 29, 2023. CPPA enforcement began on July 1, 2023. [See CPPA, 11 CCR §7000 et seq., available at *cppa.ca.gov*]

Comment: The CPPA was instructed to adopt final regulations by July 1, 2022, and its enforcement was to commence July 1, 2023 with respect to any later occurring violations (Civ.C. §1798.185(d)). However, the CPPA did not meet the foregoing deadline. Instead, the CPPA's proposed regulations became effective on March 29, 2023. This resulted in a lawsuit in which a California superior court stayed enforcement of any regulation under Civ.C. §1798.185(d) for one year after the regulation became final (*California Privacy Protection Agency v. Sup.Ct. (Calif. Chamber of Commerce)* (2024) 99 CA5th 705, 718, 318 CR3d 90, 99). The CPPA appealed, however, and the California Court of Appeal held that enforcement of the CPPA's regulations could begin on July 1, 2023 despite their late adoption. [See *California Privacy Protection Agency v. Sup.Ct. (Calif. Chamber of Commerce*), supra, 99 CA5th at 725-726, 318 CR3d at 104-105]

On July 24, 2025, the CPPA adopted proposed regulations regarding the CCPA's cybersecurity audits, risk assessments, and automated decisionmaking technology (ADMT).

(1) [3:2.13] **Violation of regulations constitutes CCPA violation:** A violation of the CPPA's regulations is a violation of the CCPA and subject to the same remedies provided in the CCPA. [11 CCR §7000(b)]

d. [3:3] **Comment—push for federal privacy regulation:** In response to the adoption of the CCPA, and the fact that numerous other states have followed California's lead (creating a patchwork of state privacy regulation), many business leaders and interest groups have advocated for a national privacy law that would preempt state laws such as the CCPA.

2. [3:4] **CCPA's Effective Date:** The CCPA took effect on January 1, 2020. The CPRA amendments to the CCPA took effect on January 1, 2023. [See Civ.C. §1798.198(a); *California Privacy Protection Agency v. Sup.Ct. (Calif. Chamber of Commerce)* (2024) 99 CA5th 705, 713-714, 318 CR3d 90, 95-96; *see* ¶*3:2* (provisions added or amended by CPRA)]

a. [3:5] **Enforcement:** The California Attorney General's Office and CPPA (i.e., the "Agency") share authority to enforce the CCPA. [See Civ.C. §§1798.185(c), 1798.199.45]

Cross-refer: Attorney General and CPPA enforcement is discussed at ¶*3:280 ff.*

3. [3:6] **Consumers' Rights under CCPA:** The CCPA, as amended and reenacted by the CPRA, provides consumers with various rights to limit how businesses collect and use their personal information. These rights are discussed below (¶*3:7 ff.*).

   a. [3:7] **Right to know:** Consumers may require a business to reveal various details regarding the personal information about them that the business has collected, sold to third parties or disclosed for a business purpose. [Civ.C. §§1798.100, 1798.110, 1798.115; 11 CCR §7024]

      Cross-refer: The right to know is discussed at ¶*3:120 ff.*

   b. [3:8] **Right to opt out of sales or sharing:** Consumers also may require a business to refrain from selling or sharing their personal information. [Civ.C. §§1798.115, 1798.120; 11 CCR §7026]

      Cross-refer: The right to opt out is discussed at ¶*3:194 ff.*

   c. [3:9] **Right to deletion:** Consumers may require a business to delete their personal information. [Civ.C. §1798.105; 11 CCR §7022]

      Cross-refer: The right to deletion is discussed at ¶*3:159.1 ff.*

   d. [3:10] **Right to nondiscrimination:** Consumers have the right to be free from discrimination by a business when they exercise any of their CCPA rights. [Civ.C. §1798.125; 11 CCR §7080]

      Cross-refer: The right to nondiscrimination is discussed at ¶*3:240 ff.*

   e. [3:11] **Right to limit use:** Consumers have the right, at any time, to direct a business (¶3:*41*) to limit its use or disclosure of the consumer's sensitive personal information (¶*3:51.1 ff.*). [Civ.C. §1798.121(a); 11 CCR §7027]

      Cross-refer: Consumers' right to limit how businesses use their sensitive personal information is discussed at ¶*3:228 ff.*

   f. [3:12] **Right to correct:** Consumers may require businesses to correct inaccurate personal information that the businesses maintain about them. [Civ.C. §1798.106; 11 CCR §7023]

      Cross-refer: Consumers' right to correct inaccurate personal information is discussed at ¶*3:159.36 ff.*

      [3:13-20] *Reserved.*

4. [3:21] **Contractual Waivers:** Any contractual provision that purports to waive or limit in any way a consumer's CCPA rights (including, but not limited to, class action waivers, statutorily prescribed remedies and enforcement methods) is deemed contrary to public policy and therefore void. [Civ.C. §1798.192]

a. [3:21.1] ***Caution*—potential federal preemption:** The ban on class action waivers in arbitration is likely preempted by the Federal Arbitration Act (FAA) and, therefore, unenforceable. [See *AT&T Mobility LLC v. Concepcion* (2011) 563 US 333, 337-338, 346-348, 131 S.Ct. 1740, 1744-1745, 1750-1751—FAA preempted California precedent holding arbitration agreement unconscionable if it prohibits class arbitration (abrogating *Discover Bank v. Sup.Ct. (Boehr)* (2005) 36 C4th 148, 30 CR3d 76); *and* ¶*3:286 ff.*]

5. [3:22] **Liberal Construction; Harmonization With Other Consumer Laws:** Courts must liberally construe the CCPA (including the CPRA amendments). [Civ.C. §1798.194; see also 2020 Cal. Legis. Serv. Prop. 24 §29]

Moreover, wherever possible, other laws relating to consumer personal information should be construed to harmonize with the CCPA. In the event of a conflict, however, the provisions of the law that "afford the greatest protection" for a consumer's right to privacy "shall control." [Civ.C. §1798.175]

a. [3:23] **Compare—local laws preempted:** The CCPA preempts all rules, regulations, codes, ordinances and other laws adopted by a city, county, city and county, municipality or local agency regarding the collection and sale of consumer personal information by businesses. [Civ.C. §1798.180]

6. [3:24] **No Effect on Other Consumers' Rights:** The rights afforded consumers and obligations imposed on businesses under the CCPA may not "adversely affect the rights and freedoms of other natural persons." [Civ.C. §1798.145(k)]

a. [3:24.1] **Personal information belonging to other natural persons:** A verifiable consumer request for specific pieces of personal information (Civ.C. §1798.110; ¶*3:120 ff.*), to delete personal information (Civ.C. §1798.105; ¶*3:159.1 ff.*), or to correct inaccurate personal information (Civ.C. §1798.106; ¶*3:159.36 ff.*) does not extend to personal information that (1) belongs to another natural person, or (2) the business maintains on behalf of another natural person. [Civ.C. §1798.145(k)]

b. [3:24.2] **Businesses may rely on consumers' representations:** A business may rely on a verifiable consumer request's representations about who has rights to the personal information. A business is not obligated to seek out other persons who may have (or claim to have) rights to the personal information. Nor is a business obligated to take any action if there is a dispute between persons claiming to have rights to personal information in the business's possession. [Civ.C. §1798.145(k)]

7. [3:25] **No Infringement on Noncommercial Press Activity:** The rights provided to consumers and obligations imposed on businesses under the CCPA do not apply to the extent they infringe upon the noncommercial activities of a publisher, editor, reporter or other person connected with or employed by a newspaper,

magazine or other periodical publication, or by a press association or wire service, or any person who has been so connected or employed. [Civ.C. §1798.145(*l*); Cal.Const. Art. I, §2(b)]

8. [3:26] **No Reidentification, Retention or Maintenance Requirements:** The CCPA generally does not require businesses, service providers or contractors to reidentify nonpersonal information (¶*3:26.1*), retain personal information (¶*3:26.2*), or maintain information in a certain way so they can link or associate verifiable consumer requests with personal information (¶*3:26.3*). [Civ.C. §1798.145(j)]

   a. [3:26.1] **Not required to reidentify nonpersonal information:** Businesses, service providers and contractors are not required to reidentify or otherwise link information that would not be considered personal information based on how the information is maintained "in the ordinary course of business." [Civ.C. §1798.145(j)(1)]

   b. [3:26.2] **Not required to retain personal information:** Businesses, service providers and contractors are not required to retain personal information about a consumer if the information would not be retained "in the ordinary course of business." [Civ.C. §1798.145(j)(2); *see* ¶*3:231* (time limits on retaining personal information)]

   c. [3:26.3] **No specific maintenance requirements:** Businesses, service providers and contractors are not required to (1) "maintain information in identifiable, linkable, or associable form," or (2) "collect, obtain, retain, or access any data or technology," so that they can link or associate a verifiable consumer request with personal information. [Civ.C. §1798.145(j)(3)]

9. [3:27] **Efforts to Evade CCPA:** Courts and agencies must disregard any "intermediate steps or transactions" that were taken as part of "a single transaction intended from the beginning" to evade the CCPA. [Civ.C. §1798.190]

   a. [3:28] **Third-party disclosure:** Courts and agencies must disregard the disclosure of information by a business to a third party for the purpose of avoiding the "definition of sell or share." This includes "entering into contracts that do not include an exchange for monetary or other valuable consideration, but where a party is obtaining something of value or use." [See Civ.C. §1798.190(a), (b)]

   [3:29] *Reserved.*

   b. [3:30] **Data minimization:** Businesses must ensure that "collection, use, retention, and sharing of a consumer's personal information shall be reasonably necessary and proportionate to achieve the purposes for which the personal information was collected or processed," or for another purpose "compatible with the context in which the personal information was collected." [Civ.C. §1798.100(c)]

Comment: Businesses should take this principle seriously. In April 2024, the CPPA's Enforcement Division issued its first Enforcement Advisory on this principle, instructing businesses to "carefully review whether they are applying the data minimization principle in their collection, use, retention, and sharing of consumers' personal information." [California Privacy Protection Agency, Enforcement Division, Enforcement Advisory No. 2024-01, available at *https://cppa.ca.gov/pdf/enfadvisory202401.pdf*]

[3:31-39] *Reserved.*

B. CALIFORNIA CONSUMER PRIVACY ACT (CCPA, Civ.C. §1798.100 et seq.)

1. [3:40] **Application:** The CCPA applies to "businesses" that collect "personal information" about "consumers." Each of these terms is subject to complex and detailed definitions described at ¶*3:41 ff.*

   - Flowchart - Does the CCPA Apply to a Business? *See Appendix A.*

2. **Terminology**

   a. [3:41] **"Business":** There are four types of entities and persons that qualify as a "business" under the CCPA: (1) legal entities that collect consumers' personal information (¶*3:41.1 ff.*); (2) entities that share common control with a business (¶*3:48.1 ff.*); (3) joint ventures or partnerships composed of businesses (¶*3:48.3 ff.*); and (4) persons who voluntarily comply with the CCPA (¶*3:48.6*). [See Civ.C. §1798.140(d)(1)-(4)]

   (1) [3:41.1] **Legal entities:** The term "business" includes any sole proprietorship, partnership, limited liability company, corporation, association, or other legal entity that (i) is organized or operated for the profit or financial benefit of its shareholders or other owners, (ii) collects a consumer's personal information (or on whose behalf such information is collected), and (iii) alone, or jointly with others, determines the purposes and means of processing consumers' personal information. [Civ.C. §1798.140(d)(1); see also Civ.C. §1798.140(y)—"processing" means "any operation or set of operations that are performed on personal information or on sets of personal information, whether or not by automated means"; *In re Sequoia Benefits & Ins. Data Breach Litig.* (ND CA 2024) 2024 WL 1091195, *6 (unpub. opn.)—entity that collected plaintiffs' personally identifiable information ("PII") directly from them was a business, not a service provider]

   In addition, to qualify as a "business" under Civ.C. §1798.140(d)(1), the entity must do business in California and meets one or more of the following thresholds:

— as of January 1 of the calendar year, have annual gross revenues in excess of $26,625,000 *in the preceding calendar year*, as adjusted pursuant to Civ.C. §1798.199.95(d) (¶*3:42*);
— annually buy, sell or share, alone or in combination, the personal information of 100,000 or more consumers (¶*3:66*) or households (¶*3:52*); or
— derive 50% or more of its annual revenues from selling or sharing consumers' personal information. [Civ.C. §1798.140(d)(1)]

(a) [3:42] **"Adjustment for inflation":** The CPPA adjusted the annual gross revenue threshold numbers (¶*3:41.1*) for inflation on January 1, 2025, and will adjust these numbers on January 1 of every odd-numbered year thereafter, based on the Consumer Price Index—California, All Items, All Urban Consumers percentage change from the previous two years' reports, published by the Department of Industrial Relations. [Civ.C. §1798.199.95(d)(1), (2)]

Updated monetary thresholds can be found on the CPPA's website. [Civ.C. §1798.199.95(d)(3); *https://cppa.ca.gov*]

[3:43] *Reserved.*

(b) [3:44] **"Doing business in California":** The phrase "doing business in California" is not defined in the CCPA. The Franchise Tax Board (FTB) regulations, however, describe it as "actively engaging in any transaction for the purpose of financial or pecuniary gain or profit." [18 CCR §23101(a)]

Examples of "doing business in California" under the FTB regulations include (18 CCR §23101):
— Purchases and sales of stocks or bonds;
— Endorsements of subsidiary corporations' notes by their parent corporations;
— Real property leases granted to subsidiary corporations by their parent corporations;
— Liquidating activities (e.g., sales, rentals and note collections); *and*
— Transactions engaged in by foreign corporations for pecuniary gain or profit (¶*3:45*).

1) [3:45] **Foreign corporations:** Under the FTB regulations, a foreign corporation is deemed to be "doing business" in California if it *actively engages* "in any transaction for the purpose of financial or pecuniary gain or profit." This is so even when the transaction is engaged exclusively in interstate commerce. [18 CCR §23101(a)]

a) **Exemptions**

1/ [3:46] **Receiving dividends/interest:** A corporation's "mere" receipt of dividends and interest, and its distribution of that income to its shareholders, does not constitute "doing business" in California. This is so unless the income is from "California sources," in which case the corporation is subject to taxation. [See 18 CCR §23101(b)]

2/ [3:47] **Passively holding onto "minority investment" interest in California corporation:** The fact that a foreign corporation passively holds onto a minimal interest in a California corporation, without more, has been held insufficient to bring it within the FTB's definition of "doing business" in California. [See *Swart Enterprises, Inc. v. Franchise Tax Bd.* (2017) 7 CA5th 497, 503-504, 212 CR3d 670, 674—foreign corporation's mere 0.2% minority investment interest in California corporation not sufficient to constitute "doing business" for tax purposes]

b) [3:48] **Comment:** Although the CCPA specifically references FTB regulations in some areas, there is no guarantee the CPPA and courts will follow FTB regulations in determining what constitutes "doing business" in California for purposes of the CCPA. However, there does not appear to be any better guidance available at this time. Moreover, the CPPA's regulations do not contain a precise definition. [See 11 CCR §7001]

(2) [3:48a] **Determining "purposes and means of processing" consumer's personal information:** To qualify as a "business" under the CCPA, an entity must, among other things, determine "the *purposes and means* of processing" consumer personal information (Civ.C. §1798.140(d)(1); see also ¶*3:41.1*). One federal court dismissed a claim for violation of the CCPA because the customers, *not* the entity, made the decisions about the data transferred by the entity's file-sharing software. Thus, the plaintiffs' complaint was deemed insufficient because it lacked any allegations regarding the "determinations" made by the business with respect to why and how the consumers' personal information was processed. [See *In re Accellion, Inc. Data Breach Litig.* (ND CA 2024)