



June 9, 2021

COLORADO LEGISLATURE PASSES CONSUMER DATA PRIVACY ACT

On June 8, 2021, the Colorado legislature passed the Colorado Privacy Act ("CPA"), a comprehensive consumer privacy bill that closely resembles the California Consumer Privacy Act ("CCPA") and Virginia Consumer Data Protection Act ("VCDPA"). The legislation is now headed to the Governor for his signature.

The CPA applies to "controllers" (i.e., a person that, alone or jointly with others, determines the purpose for and means of processing personal data) that (i) conduct business in Colorado or produce or deliver commercial products or services that are intentionally targeted to residents of Colorado and (ii) satisfies one or both of the following thresholds: (a) controls or processes the personal data of 100,000 consumers or more during a calendar year or (b) derives revenue or receives a discount on the price of goods or services from the sale of personal data and processes or controls the personal data of 25,000 consumer or more.

The CPA gives consumers many of the same rights as those found in the VCDPA, including the following rights:

- To confirm whether or not a controller is processing the consumer's personal data and to access to such personal data;
- To correct inaccuracies in the consumer's personal data;
- To delete personal data provided by or obtained about the consumer;
- To obtain a copy of the consumer's personal data in a portable and readily usable format; and
- To opt out of the processing of the personal data for purposes of (i) targeted advertising, (ii) the sale of personal data or (iii) profiling in furtherance of decisions that produce legal or similarly significant effects concerning the consumer.

Controllers must provide the opt-out method clearly and conspicuously in the privacy notice required to be provided to consumers under the VCDPA and in a clear, conspicuous and readily accessible location outside the privacy notice. Controllers must also provide a user-selected universal opt-out mechanism for consumers to exercise the right to opt out of the processing of personal data concerning the consumer for purposes of targeted advertising or the sale of personal data.

The CPA also requires that controllers and data processor subcontractors must enter into a written contract that sets out specific provisions related to processing consumers' personal data.

The CPA mirrors the VCDPA as the CPA expressly exempts a financial institution or an affiliate of a financial institution, or data subject to the federal Gramm Leach Bliley Act ("GLBA"). This exemption differs from the CCPA exemption that only exempts data subject to the GLBA. The CPA also expressly provides that there is no private right of action for a violation of the CPA. The Colorado Attorney General is tasked with promulgating rules to carry out and enforce the provisions of the CPA.

If the CPA is signed into law by the Governor, Colorado will become the third state to enact a comprehensive consumer data privacy law. The CPA takes effect on July 1, 2023. As we previously reported, Virginia enacted the VCDPA in March of 2021, with an effective date of January 1, 2023. See our prior ALERTS dated March 3, 2021 and February 8, 2021. Please let us know if you have any questions or need assistance with complying with these state consumer data privacy law requirements. □

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