



November 4, 2020

CALIFORNIANS PASS NEW PRIVACY INITIATIVE

On Election Day, Californians voted in favor of Proposition 24, the California Privacy Rights and Enforcement Act of 2020 ("CPRA", a/k/a "CCPA 2.0"). See our prior ALERTS of July 7, 2020, May 6, 2020 and September 26, 2019. The CPRA amends and expands the current California Consumer Privacy Act ("CCPA") in many ways, as highlighted below.

- New "Sensitive Personal Information" Subcategory: The CPRA amends the CCPA to provide expanded protections for "sensitive personal information" ("SPI"). If a business collects SPI, the business must inform consumers (i) the categories of SPI to be collected, (ii) the purpose for which the categories are collected or used and (iii) whether the SPI is sold or shared. Consumers also have the right to direct a business that collects SPI to limit its use of the consumer's SPI to that use which is necessary to perform the services or provide the goods reasonably expected by an average consumer who requests those goods or services, to perform the services as authorized by the CCPA and as authorized by the CCPA regulations. "Sensitive personal information" includes information such as a consumer's social security, driver's license, state identification card, passport number, account log-in, financial account, debit card or credit card number in combination with any required security or access code, password or credentials allowing access to an account.
- Revises the Scope of "Businesses" Subject to CCPA: The CPRA revises the threshold requirements of a "business" subject to the CCPA by (i) requiring that the business, alone or in combination, annually buys, sells or shares the personal information of *100,000 or more consumers or households*, and (ii) expanding the requirement that a business derives 50% or more of its annual revenues from selling *or sharing* consumers' personal information. The definition of "business" is also revised to include (i) a joint venture or partnership composed of businesses in which each business has at least a 40% interest.
- Revises Current Notice and Disclosure Requirements: Businesses must inform consumers the length of time the business intends to retain each category of personal information. The CPRA also amends the CCPA to provide an

alternate disclosure to the "Do Not Sell or Share My Personal Information" link or "Limit the Use of My Sensitive Personal Information" link.

- New Provisions Related to Third Parties, Service Providers and Contractors: The CPRA requires that a business that, acting as a third party, controls the collection of personal information about a consumer must comply with the CCPA notification requirements. The CPRA also sets forth specific agreement requirements for a business that collects a consumer's personal information and sells that personal information to, or shares it with, a third party or that discloses it to a service provider or contractor for a business purpose.

The CPRA also:

- Expands current CCPA requirements that apply to "sales" to apply to "sharing" of personal information;
- Defines and establishes "consent" criteria;
- Revises definition of "business purpose" to include advertising and marketing services;
- Creates right to correct inaccurate personal information; and
- Establishes California Privacy Protection Agency to enforce and implement the CCPA, as well as investigate possible violations of the CCPA.

Most of the CPRA's substantive provisions will not take effect until January 1, 2023. However, the CPRA's amendments apply to personal information collected on or after January 1, 2022. The California Attorney General will continue to have oversight authority until the California Privacy Protection Agency is established on January 1, 2023. In October 2020, the California Attorney General's Office released a set of proposed modifications to amend the CCPA regulations that went into effect August 14, 2020. We will monitor and keep you updated on how the California Attorney General's Office responds to the passage of the CPRA. If you have any questions please let us know. ☐

✧ *Elizabeth Anstaett and Lindsay Valentine.*

Darrell L. Dreher
ddreher@dtlaw.com

Elizabeth L. Anstaett
eanstaett@dtlaw.com

Emily C. Cellier
ecellier@dtlaw.com

Susan L. Ostrander
sostrander@dtlaw.com

2750 HUNTINGTON CENTER
41 S. HIGH STREET
COLUMBUS, OHIO 43215
TELEPHONE: (614) 628-8000 FACSIMILE: (614) 628-1600
WWW.DTLAW.COM

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Michael C. Tomkies
mtomkies@dtlaw.com

Susan M. Seaman
sseaman@dtlaw.com

Lindsay P. Valentine
lvalentine@dtlaw.com

Judith M. Scheiderer
jscheiderer@dtlaw.com

Robin R. De Leo
robin@deher-la.com