

# California Consumer Privacy Act

Current as of March 22, 2019 (subject to amendment)



Does it apply?

Are you a for-profit entity doing business in California?

Do you determine processing of personal information of California residents?

If yes, then you must meet one of these:

Annual gross revenues >\$25 million

Buy, receive for commercial purposes, sell, or share for commercial purposes personal information relating to 50,000 or more consumers, households, or devices

50% or more of annual revenue is derived from selling consumer personal information

What is “collecting” and “selling”?

Collecting = buying, renting, gathering, obtaining, receiving, or accessing any personal information about a consumer by any means

Selling = disclosing personal information to another business or third party for monetary or other valuable consideration

Who is a “consumer”?

Any California resident, including a natural person: (i) in California for "other than a temporary or transitory purpose"; or (ii) domiciled in California but outside of California for a temporary or transitory purpose.

“Consumers” will include customers, employees, individuals associated with commercial customers (e.g., business contact information), independent contractors, and visitors to company premises.

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## Overview

### What is “Personal Information”?

Any information that “identifies, relates to, describes, references, is capable of being associated with, or could reasonably be linked, directly or indirectly with a particular consumer or household.”

Some examples:

- **Identifiers** = name, contact information, ID number, IP address
- **Personal Information under California’s Records Disposal Law** = name, signature, social security number, physical characteristics or description, address, telephone number, passport number, driver’s license or state identification card number, insurance policy number, education, employment, employment history, bank account number, credit card number, debit card number, or any other financial information, medical information, or health insurance information
- **Protected classifications under California and federal law** = race, gender
- **Commercial information** = purchasing histories, purchasing tendencies, account information, records of personal property
- **Biometric data**
- **Internet or other electronic activity information** = browsing and search history, interactions with websites, apps, and digital advertising
- **Geolocation data**
- **Audio, electronic, visual, thermal, olfactory, or similar information**
- **Professional or employment-related information**
- **Education information** = as defined in the federal Family Educational Rights and Privacy Act
- **“Inferences” drawn from any of the above** = anything that is used to create a profile about a consumer reflecting the consumer’s preferences, characteristics, psychological trends, predispositions, behavior, attitudes, intelligence, abilities, and aptitudes.

Excludes: Information lawfully made available from federal, state, or local government records (so long as its use is compatible with the reasons for which it is maintained), as well as de-identified or aggregate information.

### Exceptions from the CCPA

- Protected health information under HIPAA, including covered entities and business associates, and health information under the California Confidentiality of Medical Information Act
- Clinical trial information
- Compliance with law or legal process, including where compliance with the CCPA would violate an evidentiary privilege
- Information subject to the Gramm-Leach-Bliley Act
- Information subject to the Driver’s Privacy Protection Act
- Right to opt out does not apply to the sale of personal information to or from a consumer reporting agency

## Right to Know/Access

- Consumers have a right to request individual disclosures, including:
  - categories and specific pieces of personal information collected about the consumer
  - categories of sources from which the personal information is collected
  - the business or commercial purpose for collecting or selling the personal information
  - categories of third parties with whom the business shares the personal information
- Businesses must designate two or more methods for consumers to request this information and provide it within 45 days, free of charge and in a portable format.
- Consumers may request twice a year, and the request covers the one-year period preceding the request.

## Right to Deletion

- Consumers have the right to request deletion of any personal information that the business has collected “from the consumer” if an exception to deletion does not apply. Businesses must also direct their service providers to delete the personal information from their records.

## Right to Opt Out of Sale

- Consumers age 16 and older may opt out of the “sale” of their personal information to third parties. Businesses cannot “sell” personal information of consumers under 16 without express authorization.
- Clear and conspicuous “Do Not Sell My Personal Information” link must be included on website.

## Right to Be Free from Discrimination

- Businesses may not charge different prices or rates, provide different services, or deny goods or services to consumers who exercise rights under the CCPA.
- Businesses may incentivize the collection, sale, or deletion of personal information.

## Right to Sue

- If business fails to implement and maintain reasonable security measures and that results in the unauthorized access and exfiltration, theft, or disclosure of non-redacted or non-encrypted personal information then:
  - Businesses have 30 days’ opportunity to cure
  - Statutory damages of \$100–\$750 “per consumer per incident” or actual damages, whichever is greater.