

California Privacy Rights Act of 2020 (CPRA)

(Effective January 1, 2023)

Does CPRA apply to your business?

Effective January 1, 2023, CPRA applies to “businesses,” which are for-profit entities doing business in California that control the processing of personal information (PI) and meet any of the following thresholds:

- Have more than \$25 million in annual gross revenues in the preceding calendar year.
- Buy, “sell” or “share” PI of 100,000 or more Californians annually.
- Derive at least 50% of annual revenues from “sale” or “sharing” of PI.

CPRA also imposes obligations on service providers, contractors and third parties that handle a business’s PI.

What information does CPRA cover?

Personal information (PI): Any information that identifies, relates to, or is reasonably capable of being associated with, or could reasonably be linked to, directly or indirectly, a consumer or household. PI examples:

- Identifiers (name, contact details, government-issued IDs, IP addresses, other device or online identifiers)
- Protected class characteristics (e.g., race, gender)
- Purchase or transaction history
- Online behavior data
- Geolocation data
- Audio, electronic, visual, thermal or olfactory data
- Professional or employment information
- Education information
- Inferences derived from any of the above

Sensitive personal information (SPI)

- Social Security number and driver’s license
- Online or financial account credentials
- Precise geolocation
- Racial or ethnic origin, religious or philosophical beliefs, or union membership
- Contents of a consumer’s mail, email or text messages (unless the business is the intended recipient)
- Genetic data

- Biometric information used to uniquely identify a consumer
- Information collected and analyzed concerning a consumer’s health, sex life or sexual orientation

Whose personal information is covered?

CPRA covers the PI of a “consumer,” which is defined as any California resident. Unlike other state privacy laws, CPRA does not exempt PI of employees, job applicants or business contacts.

What activities does CPRA regulate?

Selling: Disclosing PI or making it available to a third party for monetary or other valuable consideration; includes a wide range of activities not conventionally thought of as “sales.”

Sharing: Disclosing PI or making it available to a third party for cross-context behavioral advertising (i.e., targeted ads based on consumer interaction with different businesses, sites or apps).

Collection: Buying, renting, gathering, obtaining, receiving or accessing any PI by any means, whether actively or passively (e.g., via online tracking).

What rights does CPRA give Californians?

Right to know/access: Consumers have the right to a copy of their PI and specific disclosures about how the business handles their PI.

Right to deletion: Consumers may request deletion of PI collected from them, subject to certain exceptions.

Right to opt out of “sale” and “sharing” of PI: Consumers may opt out of any sales or sharing of their PI.

Right to non-discrimination: Consumers exercising rights may not be denied goods or services, or charged different prices or rates, but may be offered incentives to provide or allow sale or sharing of their PI.

Right to correct: Consumers may request correction of inaccurate PI.

Right to limit use and disclosure of SPI: Consumers may request that the business limit use and disclosure of SPI to that which is necessary for certain specified purposes (but this right does not extend to SPI not collected for the purpose of inferring characteristics).

What steps must businesses take to comply?

Notice and transparency

- Update website privacy policy to include specific disclosures and give privacy notices at or before point of collection of PI (online and offline).
- Place **Do Not Sell or Share My Personal Information** or other specified links on websites/apps to enable consumers to opt out of sale or sharing of PI.
- Place **Limit the Use of My Sensitive Personal Information** link on homepage to enable consumers to limit use and disclosure of SPI to that which is necessary for certain specified purposes.

Individual rights

- Honor requests to exercise CPRA rights.
- Build mechanisms to submit requests and verify requester identities.
- Train relevant personnel on CPRA requirements.

Consent: Obtain consent to sell or share PI of children under 16 (from parent if under 13), or to exchange PI for financial incentives.

Contracting: Ensure contracts with service providers, contractors and third parties include terms specified by CPRA.

Data protection assessments: Conduct cyber audits and data protection assessments when required for activities involving significant risk.

Data protection principles: Use PI in a manner that is transparent, minimizes collection to what is necessary, limits use to purposes for which PI was collected, limits retention of PI, and employs reasonable security procedures and practices.

What are CPRA's exemptions?

- Certain publicly available information
- Deidentified data, subject to certain conditions and commitments
- Aggregate consumer information
- Activity governed by certain sectoral privacy laws (e.g., HIPAA, Fair Credit Reporting Act, Gramm-Leach-Bliley Act, Driver's Privacy Protection Act)
- Certain clinical trials information

How is CPRA enforced?

Private plaintiffs: If affected by certain security incidents, private plaintiffs may seek the greater of actual damages or up to \$750 per affected consumer per incident, as well as injunctive or declaratory relief. CPRA does not provide a private right of action for other CPRA violations.

California attorney general: The AG has the authority to impose civil penalties of up to \$2,500 for each violation and \$7,500 for intentional violations and violations involving PI of children under 16, as well as seek injunctive relief.

California Privacy Protection Agency: This new privacy regulator created by CPRA has the authority to impose administrative fines equivalent to the civil penalties that the AG can impose. It may (but is not obligated to) provide time to cure violations.

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