

California Consumer Privacy Law 6/28/18

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| | AB 375 (Passed by California lawmakers and signed into law by Gov. Jerry Brown as the California Consumer Privacy Act of 2018 on June 28, 2018) |
| Who Regulated | “Business” = for-profit entity <ul style="list-style-type: none"> - Gross revenue in excess of \$25 million; or - Annually buys, receives for the business’ commercial purposes, sells, or shares for commercial purposes the personal information of 50,000 or more consumers, households, or devices; or - Derives 50 percent or more of its annual revenues from selling consumers’ personal information |
| What Data Subjects | “Consumers” = natural persons who are California residents under state tax regulations |
| What Data | “Personal Info” (PI) broadly defined to include identification of or association with a consumer or household , including demographics, usage, transactions and inquiries, preferences, predictions, inferences drawn to create a profile about a consumer, and education information, but excluding info from public government records, and it would appear also de-identified data and aggregate consumer information (but unclear as currently worded). |
| What Data Subject Notice | <ul style="list-style-type: none"> • Privacy policy, consumer notices, home page link • Home page, privacy policy and California notices must have a “Do Not Sell My Personal Info” link to the opt-out mechanism • Categories of PI collected • Categories of PI sold or disclosed for a business purpose • Right to opt out of sale (which requires consideration) of PI • Categories of sources from which PI is collected • Business or commercial purpose for collecting or selling PI • Categories of third parties with whom the business shares PI • Specific pieces of PI the business collected • Right to request deletion of PI |

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| | <ul style="list-style-type: none"> • For youth under age 16, opt-in consent is required for sale of PI • Business must, at or before the point of collection, inform consumers as to the categories of PI collected and its intended use of the PI |
| What Data Subject Choice | <p><u>Information:</u></p> <ul style="list-style-type: none"> • Right to request info on categories of PI collected • Right to request info on categories of PI sold or disclosed, including disclosures for legitimate business purposes • Right to request info on specific pieces of PI collected • Right to request info on business or commercial purpose for selling PI • Right to request info on the categories of sources from which PI is collected <p><u>Deletion:</u></p> <ul style="list-style-type: none"> • Right to request that a business delete PI collected (subject to exceptions) <p><u>Choice:</u></p> <ul style="list-style-type: none"> • Right to opt out of sale (which requires consideration) of PI • For youth under age 16, opt-in consent is required for sale of PI • Can't seek opt-in for 12 months from opt-out • Opt-out perpetual until opt-in <p><u>Business' Response:</u></p> <ul style="list-style-type: none"> • Responses to info requests must be free and within 45 days and must cover the 12-month period preceding the request • Consumer right to equal service and price, except if difference is reasonably related to the value provided to the consumer by the consumer's data |
| What Security | A business' violation of its duty to implement and maintain reasonable security measures to protect personal information (as defined under 1798.81.5(d)(1)(A)) that results in unauthorized access is a violation of AB 375 and subject to its additional remedies. |
| What Remedies | Private action by consumers in connection with a business' violation of its duty to implement and maintain reasonable security measures to protect personal information (as defined under 1798.81.5(d)(1)(A)) that results in unauthorized access, for any of the following: (a) damages |

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| | <p>not less than \$100 and not greater than \$750 per consumer per incident or actual damages, whichever is greater, (b) injunctive or declaratory relief, and (c) any other relief the court deems proper, IF:</p> <ul style="list-style-type: none"> - (1) Before initiating any action on an individual or classwide basis, consumer provides business 30 days' written notice identifying the specific provisions that are violated and a 30-day opportunity to cure; - (2) The consumer notifies the attorney general within 30 days that the action has been filed; <u>and</u> - (3) The AG, upon receiving such notice, shall, within 30 days, do one of the following: <ul style="list-style-type: none"> • Notify consumer bringing the action of the AG's intent to prosecute an action. If the AG does not prosecute within six months, the consumer may proceed with the action. • Refrain from acting within the 30 days, allowing the consumer bringing the action to proceed. • Notify the consumer bringing the action that the consumer shall not proceed with the action. <p>The June 25 amendment to AB 375 clarified that nothing in the act could be the basis for a private right of action under any other law, apparently intending to preclude having a breach of the act serve as a basis for a claim under California Business and Professions Code 17200 that permits a private right of action for claims based on unlawful acts.</p> |
| Basis to Amend | No limitation on legislature's ability to amend. |
| When Effective | Effective date will be January 1, 2020. |