

# Table of Contents

---

<b>About the Author</b> .....	v
<b>Table of Chapters</b> .....	vii
<b>Preface</b> .....	xix
<b>Acknowledgments</b> .....	xxi
<b>Introduction</b> .....	xxiii

## **Chapter 1 History and Effective Date of the CCPA**

§ 1:1	Enactment of CCPA .....	1-2
§ 1:2	Amendments .....	1-4
§ 1:2.1	First Set of Amendments: SB 1121 .....	1-4
[A]	Overview .....	1-4
[B]	New Enforcement Date.....	1-4
[C]	Clarified Deletion Right.....	1-4
[D]	Clarified Exceptions to the CCPA.....	1-4
[E]	Clarified Private Right of Action Requirements.....	1-5
[F]	Clarified Enforcement by Attorney General .....	1-5
[G]	Clarified Categories of Personal Information .....	1-5
[H]	Preemption of Local Laws .....	1-5
§ 1:2.2	Second Set of Amendments .....	1-6
[A]	Overview .....	1-6
[B]	Temporary Exception for Employees and Contractors.....	1-6
[C]	Exemption for Certain Business-to-Business Information .....	1-6
[D]	Authenticating the Identity of a Consumer.....	1-6
[E]	New Exclusions from Definition of Personal Information .....	1-7
[F]	Clarification of Definition of Personal Information .....	1-7
[G]	No Opt-Out Right or Deletion Right to Vehicle Recall or Warranty Repair Information .....	1-7
[H]	Differential Treatment of Consumers .....	1-8
[I]	Clarification of Collection and Retention Requirements.....	1-8

[J]	Clarification of FCRA Exemption .....	1-8
[K]	Clarification Regarding the Right to Access .....	1-8
[L]	Information Requests from an Exclusively Online Business.....	1-8
[M]	“Data Broker” Registry with the California Attorney General .....	1-9
§ 1:3	Legislative Intent .....	1-9
§ 1:4	Attorney General Regulations.....	1-10
§ 1:5	Ballot Measure on the Horizon.....	1-15
§ 1:5.1	Overview .....	1-15
§ 1:5.2	New Agency to Enforce CCPA .....	1-15
§ 1:5.3	Sensitive Information .....	1-15
§ 1:5.4	Cross-Contextual Advertising.....	1-16
§ 1:5.5	Greater Protection of Minors .....	1-16
§ 1:5.6	Transparency Regarding Automated Decision-Making and Profiling .....	1-16
§ 1:5.7	New Right of Rectification.....	1-16
§ 1:5.8	Amendments .....	1-16
§ 1:5.9	Other Key Provisions .....	1-16
§ 1:6	Effective Date .....	1-17

## **Chapter 2 Who Must Comply with the CCPA?**

§ 2:1	Definition of a “Business” .....	2-2
§ 2:2	Type of Business: Profit Versus Non-Profit.....	2-2
§ 2:3	Business As a Controller of Personal Information .....	2-3
§ 2:4	Definition of “Doing Business”.....	2-5
§ 2:5	Treatment of Controlled or Controlling Entities .....	2-7
§ 2:5.1	Overview .....	2-7
§ 2:5.2	Franchise Systems .....	2-7
§ 2:6	Meeting the Three Thresholds .....	2-8
§ 2:6.1	Overview .....	2-8
§ 2:6.2	Determining a Business’s Annual Gross Revenues.....	2-9
[A]	Overview .....	2-9
[B]	Worldwide Revenue Versus Revenue from California Operations .....	2-10
[C]	Multiple Businesses .....	2-10
§ 2:6.3	Determining Whether a Business Has Collected Personal Information from 50,000 or More Consumers, Households, or Devices .....	2-10
§ 2:6.4	Determining Whether a Business Derives Revenue from the Sale of Personal Information .....	2-12
§ 2:7	Treatment of Service Providers.....	2-12
§ 2:7.1	For-Profit Entity.....	2-12
§ 2:7.2	Processor Role.....	2-13

*Table of Contents*

§ 2:7.3 Written Contract..... 2-14  
§ 2:7.4 Attorney General Regulations ..... 2-14  
    [A] Provides Services to an Entity That Is Not a  
        Business/Directed by a Business to Collect  
        Personal Information Directly from  
        the Consumer..... 2-15  
    [B] Consumer Request to Know or Request to Delete.... 2-16  
    [C] Consumer Request to Opt Out ..... 2-16  
    [D] Collecting Information Outside Its Role As a  
        Service Provider ..... 2-16  
§ 2:7.5 Business Liability for Service Provider CCPA  
    Violations ..... 2-16

**Chapter 3 Persons Protected by the CCPA**

§ 3:1 Overview ..... 3-1  
§ 3:2 Definition of “Consumer” ..... 3-1  
    § 3:2.1 Definition of “California Resident” ..... 3-2  
    § 3:2.2 What Is a Unique Identifier?..... 3-3  
    § 3:2.3 Persons Exempted from the CCPA..... 3-4  
        [A] Employees/Contractors ..... 3-4  
        [B] Business Transaction Related Information..... 3-7  
§ 3:3 What Is a Household?..... 3-8  
§ 3:4 What Is a Device?..... 3-9

**Chapter 4 Information Covered by the CCPA**

§ 4:1 Definition of Personal Information..... 4-2  
    § 4:1.1 Overview ..... 4-2  
    § 4:1.2 “Identifies” ..... 4-2  
    § 4:1.3 “Relates To” ..... 4-3  
    § 4:1.4 “Reasonably Capable of Being Associated With” ..... 4-3  
    § 4:1.5 “Could Reasonably Be Linked” ..... 4-3  
§ 4:2 Specific Categories Listed in the CCPA..... 4-4  
    § 4:2.1 Overview ..... 4-4  
    § 4:2.2 Identifiers ..... 4-4  
    § 4:2.3 Personal Information Governed by Customer  
        Records Provisions ..... 4-5  
    § 4:2.4 Characteristics of Protected Classifications  
        Under California or Federal Law ..... 4-6  
    § 4:2.5 Commercial Information..... 4-7  
    § 4:2.6 Biometric Information ..... 4-7  
    § 4:2.7 Internet or Other Electronic Network Activity..... 4-7  
    § 4:2.8 Geolocation Data..... 4-8

§ 4:2.9	Sensory Information .....	4-8
§ 4:2.10	Professional or Employment-Related Information ....	4-9
§ 4:2.11	Education Information.....	4-9
§ 4:2.12	Inferences .....	4-10
§ 4:3	Information Exempted from the Scope of the CCPA ....	4-11
§ 4:3.1	Publicly Available Information.....	4-11
§ 4:3.2	Aggregate Information .....	4-11
§ 4:3.3	De-Identified Information and Pseudonymized Information .....	4-12
§ 4:3.4	Other Exemptions.....	4-13
[A]	Medical and Protected Health Information .....	4-14
[B]	Clinical Trials .....	4-16
[C]	Fair Credit Reporting Act Exemption .....	4-17
[D]	Financial Privacy.....	4-18
[E]	Driver Privacy .....	4-20
[F]	Vehicle Information .....	4-21

**Chapter 5 Activities Covered by the CCPA**

§ 5:1	Collection of Personal Information.....	5-2
§ 5:1.1	Buying .....	5-2
§ 5:1.2	Renting .....	5-2
§ 5:1.3	Gathering .....	5-2
§ 5:1.4	Obtaining .....	5-3
§ 5:1.5	Receiving .....	5-3
§ 5:1.6	Accessing.....	5-3
§ 5:1.7	By Any Means .....	5-3
§ 5:1.8	Actively or Passively.....	5-3
§ 5:1.9	By Observing the Consumer’s Behavior.....	5-3
§ 5:1.10	Collection Outside of California .....	5-4
§ 5:2	Sale of Personal Information.....	5-4
§ 5:2.1	Overview .....	5-4
§ 5:2.2	Exceptions to the Sale Requirement.....	5-6
[A]	Disclosures at the Direction of Consumers and Intentional Interactions .....	5-6
[B]	Notifying Third Parties of an Opt-Out by a Consumer .....	5-7
[C]	Disclosure to Service Providers .....	5-7
[C][1]	Definition of Service Provider and Services .....	5-8
[C][1][a]	Business Purposes .....	5-8
[C][1][b]	Contract Requirements for Retaining Service Providers Under the CCPA.....	5-11
§ 5:2.3	Exemption for Mergers and Acquisitions .....	5-13

*Table of Contents*

§ 5:2.4 Digital Advertising and the “Do Not Sell” Requirement ..... 5-13  
§ 5:2.5 Industry Response ..... 5-18

**Chapter 6 Notices and Privacy Policies**

§ 6:1 Overview ..... 6-2  
§ 6:2 Notice at Collection..... 6-4  
    § 6:2.1 When Must This Notice Be Provided? ..... 6-5  
    § 6:2.2 Information in the Notice at Collection ..... 6-5  
    § 6:2.3 Information in an Employee Notice at Collection .... 6-7  
    § 6:2.4 Other Requirements That Apply to the Notice ..... 6-7  
    § 6:2.5 Notice Requirements for Data Brokers..... 6-10  
§ 6:3 Other Notices ..... 6-11  
§ 6:4 Privacy Policy..... 6-11  
    § 6:4.1 Overview ..... 6-11  
    § 6:4.2 Disclosure..... 6-11  
        [A] Description of a Consumer’s Rights Under the CCPA..... 6-12  
        [B] List of Categories of Personal Information Collected About Consumers ..... 6-12  
        [C] List of Categories of Personal Information It Has Sold About Consumers ..... 6-12  
        [D] List of Categories of Personal Information It Has Disclosed About Consumers..... 6-12  
    § 6:4.3 Format, Language, and Accessibility ..... 6-13  
    § 6:4.4 Posting Requirements ..... 6-13  
    § 6:4.5 California Privacy Rights ..... 6-14  
        [A] Right to Know About Personal Information Collected, Disclosed, or Sold..... 6-14  
        [B] Disclosure or Sale of Information ..... 6-15  
        [C] Right to Request Deletion of Personal Information ..... 6-15  
        [D] Right to Opt Out of the Sale of Personal Information ..... 6-15  
        [E] Right to Non-Discrimination for the Exercise of a Consumer’s Privacy Rights ..... 6-16  
        [F] Authorized Agent..... 6-16  
        [G] Contact for More Information ..... 6-16  
        [H] Privacy Policy’s Last Updated Date..... 6-16  
        [I] Sale of Personal Information for Minors ..... 6-16  
    § 6:4.6 Published Metrics ..... 6-16

**Chapter 7 Consumer Rights Under the CCPA**

§ 7:1 Overview ..... 7-2

§ 7:2 Right to Know..... 7-2

    § 7:2.1 Right to Disclosures of Personal Information  
         Collected..... 7-2

    § 7:2.2 Right to Disclosures of Personal Information  
         Disclosed or Sold ..... 7-6

    § 7:2.3 Right of Access to Specific Pieces of Personal  
         Information ..... 7-8

    § 7:2.4 Right to Request Deletion of Personal  
         Information ..... 7-11

        [A] Exceptions to Deletion Requests ..... 7-13

            [A]|1| Completion of Transaction..... 7-13

            [A]|2| Security Incidents and Illegal Activity ..... 7-14

            [A]|3| Repair of Errors ..... 7-15

            [A]|4| Free Speech Exception ..... 7-15

            [A]|5| Government Warrants, Wiretaps,  
                 and Subpoenas ..... 7-16

            [A]|6| Research Information ..... 7-17

            [A]|7| Internal Uses..... 7-18

            [A]|8| Comply with a Legal Obligation ..... 7-18

            [A]|9| Compatible with Context in Which  
                 Information Provided ..... 7-18

    § 7:2.5 Responding to Data Deletion Request..... 7-19

        [A] Right to Opt Out of Sale of Personal  
             Information ..... 7-19

        [B] Right to Opt In for Minors..... 7-20

        [C] Notice of Opt-Out ..... 7-21

            [C]|1| General Requirements..... 7-21

            [C]|2| Location of Notice ..... 7-21

                [C]|2|[a] Online..... 7-21

                [C]|2|[b] Mobile Application..... 7-22

                [C]|2|[c] Offline..... 7-22

                [C]|2|[d] No Website..... 7-22

                [C]|2|[e] No Account Required ..... 7-22

            [C]|3| Authorized Agents..... 7-23

            [C]|4| Content of Notice ..... 7-23

            [C]|5| No Sale If No Opt-Out..... 7-23

            [C]|6| Exemptions ..... 7-24

    § 7:2.6 Responding to the Opt-Out Request ..... 7-25

    § 7:2.7 Non-Discrimination ..... 7-25

        [A] Designing Financial Incentive Programs ..... 7-27

        [B] Valuation of Data..... 7-29

*Table of Contents*

[C]	Notice of Financial Incentive .....	7-30
[D]	Location of Notice of Financial Incentives .....	7-31
[E]	Content of Notice of Financial Incentives.....	7-31
§ 7:3	Authorized Agents .....	7-32
§ 7:4	Other Exemptions .....	7-32

**Chapter 8      Procedures for Data Subject Requests**

§ 8:1	Introduction .....	8-2
§ 8:2	Creating a Procedure for Submissions of Consumer Requests .....	8-2
§ 8:2.1	Requests to Know and Requests to Delete.....	8-3
§ 8:2.2	Requests to Opt Out .....	8-4
§ 8:2.3	Subsequent Requests to Opt In.....	8-6
§ 8:2.4	Requests That Do Not Comply with Designated Methods .....	8-6
§ 8:2.5	Special Requirements for Minors .....	8-6
§ 8:3	Deadlines for Responding to CCPA Requests.....	8-9
§ 8:3.1	Requests to Know and Requests to Delete.....	8-9
§ 8:3.2	Requests to Opt Out .....	8-10
§ 8:4	Verification of Consumer Requests .....	8-11
§ 8:4.1	Requests to Know and Delete .....	8-11
[A]	Overview .....	8-11
[B]	Verification for Password-Protected Accounts and Non-Accountholders.....	8-13
[C]	Verification for Named and Unnamed Actual Persons .....	8-15
[D]	Identity Verification Services.....	8-17
§ 8:5	Requirements for Responding to Requests .....	8-17
§ 8:5.1	Overview .....	8-17
§ 8:5.2	Charging Fees .....	8-17
§ 8:5.3	Responding to Requests to Know .....	8-18
[A]	Overview .....	8-18
[B]	Requests for Specific Pieces of Information.....	8-18
[B][1]	Overview .....	8-18
[B][2]	Attorney General Regulations: Additional Requirements .....	8-19
[B][2][a]	Verification.....	8-19
[B][2][b]	Security for Transmission of Response .....	8-20
[B][2][c]	No Sensitive Information.....	8-20
[B][2][d]	Search Obligations .....	8-20
[B][2][e]	Denial of Request.....	8-21

[C]	Response to Requests for Categories of Personal Information .....	8-21
[C][1]	Overview .....	8-21
[C][2]	Categories of Personal Information .....	8-22
[C][3]	Categories of Sources.....	8-23
[C][4]	Categories of Third Parties .....	8-23
[C][5]	Responding to a Verified Request for Categories of Personal Information.....	8-23
§ 8:5.4	Responding to Requests to Delete .....	8-25
§ 8:5.5	Responding to Requests Relating to Households ....	8-27
[A]	Overview .....	8-27
[B]	Household Has a Minor Under the Age of Thirteen .....	8-28
[C]	Password-Protected Accounts.....	8-28
[D]	Non-Password-Protected Accounts.....	8-28
§ 8:6	Recordkeeping and Training.....	8-29
§ 8:6.1	Overview .....	8-29
§ 8:6.2	Training .....	8-29
§ 8:6.3	Recordkeeping.....	8-30
§ 8:6.4	No Other Retention Obligation .....	8-30
§ 8:6.5	Reporting Obligations .....	8-31

## **Chapter 9 Security and Security Breaches**

§ 9:1	Overview .....	9-1
§ 9:2	Security Requirements Under California Law.....	9-2
§ 9:3	Security Breach Disclosure Requirements.....	9-4
§ 9:3.1	Definition of Security Breach.....	9-5
§ 9:3.2	Protected Information.....	9-5
§ 9:3.3	Notification Requirement .....	9-5
§ 9:3.4	Government Notification .....	9-6
§ 9:3.5	Timing of Notification.....	9-6
§ 9:3.6	Method of Notification .....	9-7
§ 9:4	Security Requirements Under the CCPA .....	9-7
§ 9:5	New Private Right of Action for Security Breaches.....	9-8
§ 9:5.1	Civil Code Section 1798.150 .....	9-8
§ 9:5.2	Remedies .....	9-8
[A]	Statutory Damages .....	9-9
[B]	Injunctive or Declaratory Relief .....	9-9
[C]	Court-Granted Relief.....	9-9
§ 9:5.3	Defenses for Breach .....	9-9
§ 9:5.4	Opportunity to Cure.....	9-10
§ 9:5.5	Applies Only to Security Breaches Due to a Failure to Maintain Reasonable Security.....	9-11



**Chapter 10 Attorney General Enforcement and Data Broker Registration**

§ 10:1 Overview ..... 10-1  
§ 10:2 Guidance from the Attorney General..... 10-2  
§ 10:3 Enforcement ..... 10-2  
    § 10:3.1 Overview ..... 10-2  
    § 10:3.2 Consumer Privacy Fund..... 10-3  
    § 10:3.3 Scope and Extent of Enforcement of the CCPA..... 10-3  
        [A] Scope and Extent of a Business’s Ability to  
            Cure a Violation ..... 10-3  
        [B] What Is a “Violation” Under the CCPA?..... 10-4  
        [C] Determining an “Intentional” Violation ..... 10-4  
§ 10:4 Effective Date of Enforcement ..... 10-4  
§ 10:5 Liability for Violations ..... 10-4  
§ 10:6 No Waiver of CCPA Rights Permitted..... 10-5  
§ 10:7 Data Broker Registration ..... 10-6

**Chapter 11 Planning a CCPA Compliant Privacy Program**

§ 11:1 Overview ..... 11-2  
§ 11:2 Does the CCPA Apply to the Business? ..... 11-2  
§ 11:3 Involve Stakeholders in the CCPA Compliance  
    Process..... 11-3  
§ 11:4 Conduct Data Mapping/Data Inventory ..... 11-3  
    § 11:4.1 Overview ..... 11-3  
    § 11:4.2 Source of the Information..... 11-4  
    § 11:4.3 Location of the Information..... 11-4  
    § 11:4.4 Listing the Categories of Personal Information  
        Collected..... 11-4  
    § 11:4.5 Data Types..... 11-4  
    § 11:4.6 Business or Commercial Purpose..... 11-5  
    § 11:4.7 Cross-Border Transfers..... 11-5  
    § 11:4.8 Third-Party Sharing/Disclosures ..... 11-5  
    § 11:4.9 Volume ..... 11-5  
    § 11:4.10 Status ..... 11-5  
    § 11:4.11 Business Owner ..... 11-6  
    § 11:4.12 Business Value ..... 11-6  
    § 11:4.13 Confidentiality Classification ..... 11-6  
    § 11:4.14 Security..... 11-6  
    § 11:4.15 Data Retention/Backups ..... 11-6  
§ 11:5 Determine Which Data Is in Scope ..... 11-7  
§ 11:6 Is Personal Information Being Sold? ..... 11-7  
§ 11:7 Create Financial Incentives..... 11-7

CALIFORNIA CONSUMER PRIVACY ACT ANNOTATED

§ 11:8 Create CCPA-Required Notices ..... 11-8  
§ 11:9 Update Privacy Policy ..... 11-9  
§ 11:10 Establish Procedures for Responding to Consumer  
Requests ..... 11-10  
§ 11:11 Enter CCPA Data Protection Addenda with Service  
Providers..... 11-10  
§ 11:12 Implement Training and Recordkeeping ..... 11-11  
§ 11:13 Regularly Review and Update Notices..... 11-11

**Appendix A Sample Service Provider Addendum** ..... App. A-1

**Appendix B Sample CCPA Notice**..... App. B-1

**Table of Authorities** ..... T-1

**Index**.....I-1