

Table of Contents

About the Author	v
Table of Chapters	vii
Preface	xxiii
Acknowledgments	xxv
Introduction and Summary of October 2022 CPRA Revised Regulations	xxvii

Chapter 1 History and Effective Date of the CCPA and CPRA

§ 1:1	California Privacy Laws—A New Era.....	1-3
§ 1:2	Enactment of the CCPA	1-3
§ 1:3	Amendments to the CCPA	1-5
§ 1:3.1	First Set of Amendments: SB 1121	1-5
[A]	Overview	1-5
[B]	New Enforcement Date	1-5
[C]	Clarified Deletion Right.....	1-6
[D]	Clarified Exceptions to the CCPA	1-6
[E]	Clarified Private Right of Action Requirements	1-6
[F]	Clarified Enforcement by Attorney General	1-6
[G]	Clarified Categories of Personal Information	1-7
[H]	Preemption of Local Laws	1-7
§ 1:3.2	Second Set of Amendments	1-7
[A]	Overview	1-7
[B]	Temporary Exception for Employees and Contractors.....	1-7
[C]	Exemption for Certain Business-to-Business Information	1-8
[D]	Authenticating the Identity of a Consumer.....	1-8
[E]	New Exclusions from Definition of Personal Information	1-8
[F]	Clarification of Definition of Personal Information	1-8
[G]	No Opt-Out Right or Deletion Right to Vehicle Recall or Warranty Repair Information	1-9

[H]	Differential Treatment of Consumers	1-9
[I]	Clarification of Collection and Retention Requirements.....	1-9
[J]	Clarification of FCRA Exemption	1-9
[K]	Clarification Regarding the Right to Access	1-10
[L]	Information Requests from an Exclusively Online Business.....	1-10
[M]	“Data Broker” Registry with the California Attorney General	1-10
§ 1:3.3	Third Set of Amendments	1-10
[A]	Extension of Employee and Business-to- Business Exemptions	1-10
[B]	AB 713—Amending the CCPA’s Exemptions Regarding Medical Information and Health Privacy Laws	1-11
§ 1:4	Legislative Intent	1-13
§ 1:4.1	CCPA.....	1-13
§ 1:4.2	CPRA.....	1-15
§ 1:5	Attorney General Regulations.....	1-16
§ 1:6	California Privacy Rights Act.....	1-23
§ 1:6.1	Overview.....	1-23
§ 1:6.2	Effect of the CPRA.....	1-23
§ 1:6.3	Key Changes	1-24
[A]	Revised Definition of Covered Businesses.....	1-24
Figure 1-1	Covered Businesses: CCPA Versus CPRA	1-25
[B]	New Categories of Personal Information and Expanded Carve-Out for Publicly Available Information	1-26
[B][1]	Sensitive Personal Information.....	1-26
[B][2]	Expanded Definition of Publicly Available Information.....	1-27
[C]	New and Expanded Consumer Privacy Rights	1-27
[C][1]	Brand-New Rights	1-28
[C][2]	Modified Rights.....	1-28
Figure 1-2	Data Subject Rights: CCPA Versus CPRA.....	1-29
[D]	Opt-Out Right Applies to Sharing of Personal Information for Cross-Context Behavioral Advertising	1-29
Figure 1-3	Opt-Out Rights for Advertising: CCPA Versus CPRA	1-30
[E]	New Data Protection Agency	1-30
[F]	New Obligations of Businesses Regarding Data—Based on GDPR Principles.....	1-31
[G]	Service Providers and Contractors	1-32
[H]	Employee and B2B Exemptions.....	1-33

Table of Contents

[I]	New Consent Standard.....	1-33
[J]	Data Breaches and Private Right of Action.....	1-33
[K]	Other Key Provisions	1-34
§ 1:6.4	Anti-Avoidance	1-34
§ 1:6.5	No Waiver of Consumer Rights.....	1-34
§ 1:6.6	Preemption	1-35
§ 1:6.7	Savings Clause and Severability Clause	1-35
§ 1:6.8	Effective Dates	1-35

Chapter 2 Who Must Comply with the CCPA and CPRA?

§ 2:1	Definition of a “Business”	2-2
§ 2:2	Type of Business: Profit Versus Non-Profit.....	2-4
§ 2:3	Business As a Controller of Personal Information	2-5
§ 2:4	Definition of “Doing Business”.....	2-6
§ 2:5	Treatment of Controlled or Controlling Entities	2-8
§ 2:5.1	Overview.....	2-8
§ 2:5.2	Franchise Systems.....	2-9
§ 2:6	Meeting the Three Thresholds	2-10
§ 2:6.1	Overview.....	2-10
§ 2:6.2	Determining a Business’s Annual Gross Revenues.....	2-11
[A]	Overview	2-11
[B]	Worldwide Revenue Versus Revenue from California Operations	2-12
[C]	Multiple Businesses	2-12
[D]	Joint Ventures	2-13
§ 2:6.3	Determining Whether a Business Has Collected Personal Information from 50,000 [100,000 effective January 1, 2023] or More Consumers, Households, or Devices.....	2-13
§ 2:6.4	Determining Whether a Business Derives Revenue from the Sale of Personal Information	2-15
§ 2:7	Treatment of Service Providers.....	2-15
§ 2:7.1	For-Profit Entity	2-16
§ 2:7.2	Processor Role.....	2-16
§ 2:7.3	Written Contract.....	2-19
[A]	Contract Provisions Under the CCPA.....	2-19
[B]	Contract Provisions Under the CPRA.....	2-20
§ 2:7.4	Attorney General Regulations	2-20
[A]	Provides Services to an Entity That Is Not a Business/Directed by a Business to Collect Personal Information Directly from the Consumer.....	2-21

[B]	Consumer Request to Know or Request to Delete.....	2-22
[C]	Consumer Request to Opt Out	2-22
[D]	Collecting Information Outside Its Role As a Service Provider	2-22
[E]	Service Providers Under the CPRA	2-22
[F]	Subprocessors	2-24
§ 2:7.5	Business Liability for Service Provider CCPA Violations	2-24
§ 2:8	Contractors Under the CPRA.....	2-24

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?	3-9
§ 3:4	What Is a Device?	3-10

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”	4-3
§ 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”	4-4
§ 4:2	Specific Categories Listed in the CCPA.....	4-5
§ 4:2.1	Overview.....	4-5
§ 4:2.2	Identifiers	4-5
§ 4:2.3	Personal Information Governed by Customer Records Provisions	4-6
§ 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.....	4-8
§ 4:2.8	Geolocation Data.....	4-8

Table of Contents

§ 4:2.9	Sensory Information	4-9
§ 4:2.10	Professional or Employment-Related Information	4-9
§ 4:2.11	Education Information.....	4-10
§ 4:2.12	Inferences	4-11
§ 4:2.13	Sensitive Personal Information (CPRA—Effective January 1, 2023).....	4-11
§ 4:3	Information Exempted from the Scope of the CCPA....	4-12
§ 4:3.1	Publicly Available Information.....	4-12
§ 4:3.2	Aggregate Information	4-13
§ 4:3.3	De-Identified Information and Pseudonymized Information	4-14
§ 4:3.4	Other Exemptions.....	4-18
[A]	Medical and Protected Health Information.....	4-18
[B]	Clinical Trials	4-21
[C]	Fair Credit Reporting Act Exemption	4-22
[D]	Business Controller Exemption (Effective January 1, 2023).....	4-24
[E]	Financial Privacy.....	4-25
[F]	Driver Privacy	4-27
[G]	Vehicle Information	4-28
[H]	Household Data (Effective January 1, 2023)	4-28

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	5-3
§ 5:1.3	Gathering.....	5-3
§ 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.....	5-4
§ 5:1.10	Collection Outside of California	5-4
§ 5:2	New Data Minimization Obligations Regarding Collection of Personal Information Under the CPRA	5-5
§ 5:3	Sale of Personal Information.....	5-6
§ 5:3.1	Overview.....	5-6
§ 5:3.2	Exceptions to the Sale Requirement.....	5-8
[A]	Disclosures at the Direction of Consumers and Intentional Interactions	5-8

[B]	Notifying Third Parties of an Opt-Out by a Consumer.....	5-9
[C]	Disclosure to Service Providers	5-9
[C][1]	Definition of Service Provider and Services	5-9
[C][1][a]	Business Purposes	5-10
[C][1][b]	Contract Requirements for Retaining Service Providers Under the CCPA.....	5-12
§ 5:3.3	Exemption for Mergers and Acquisitions	5-14
§ 5:3.4	Digital Advertising and the “Do Not Sell” Requirement	5-15
§ 5:3.5	Industry Response.....	5-20
§ 5:3.6	Changes to the Opt-Out Rights by the CPRA (Effective January 1, 2023)	5-22
[A]	Definition of Sale.....	5-23
[B]	Changes in Intentional Interaction Exception.....	5-23
[C]	Changes in Service Provider Exception	5-23
[D]	New Contractor Concept.....	5-26
[E]	New Definition of Sharing.....	5-27
[F]	New Contract Requirements for Service Providers and Contractors	5-28

Chapter 6 Notices and Privacy Policies

§ 6:1	Overview	6-2
§ 6:2	Requirements for All Disclosures.....	6-4
§ 6:3	Notice at Collection.....	6-6
§ 6:3.1	Changes to Notice at Collection Under the CPRA (Effective January 1, 2023)	6-7
§ 6:3.2	When Must This Notice Be Provided?	6-9
§ 6:3.3	Information in the Notice at Collection.....	6-9
§ 6:3.4	Information in an Employee Notice at Collection	6-12
§ 6:3.5	Other Requirements That Apply to the Notice	6-12
§ 6:3.6	Notice Requirements for Data Brokers.....	6-14
§ 6:4	Other Notices	6-15
§ 6:5	Privacy Policy.....	6-15
§ 6:5.1	Overview.....	6-15
§ 6:5.2	Disclosure.....	6-16
[A]	Description of a Consumer’s Rights Under the CCPA.....	6-16
[B]	List of Categories of Personal Information Collected About Consumers	6-16
[C]	List of Categories of Personal Information It Has Sold About Consumers.....	6-17

Table of Contents

[D]	List of Categories of Personal Information It Has Disclosed About Consumers	6-17
§ 6:5.3	Format, Language, and Accessibility	6-17
§ 6:5.4	Posting Requirements	6-18
§ 6:5.5	California Privacy Rights	6-19
[A]	Right to Know About Personal Information Collected, Disclosed, or Sold.....	6-19
[B]	Disclosure or Sale of Information	6-19
[C]	Right to Request Deletion of Personal Information	6-21
[D]	Right to Opt Out of the Sale and Sharing of Personal Information	6-21
[E]	Right to Non-Discrimination for the Exercise of a Consumer’s Privacy Rights	6-21
[F]	New Right of Correction (Effective January 1, 2023)	6-22
[G]	New Right to Limit Use of Sensitive Personal Information (Effective January 1, 2023)	6-22
[H]	Exercise of Right	6-22
[I]	Authorized Agent	6-23
[J]	Contact for More Information	6-23
[K]	Privacy Policy’s Last Updated Date.....	6-23
[L]	Sale of Personal Information for Minors	6-23
§ 6:5.6	Published Metrics	6-24

Chapter 7 Consumer Rights Under the CCPA

§ 7:1	Overview	7-2
§ 7:2	Right to Know.....	7-3
§ 7:2.1	Right to Disclosures of Personal Information Collected.....	7-3
§ 7:2.2	Right to Disclosures of Personal Information Disclosed or Sold	7-9
§ 7:2.3	Right of Access to Specific Pieces of Personal Information	7-11
§ 7:2.4	Right to Request Deletion of Personal Information	7-15
[A]	Exceptions to Deletion Requests	7-19
[A][1]	Completion of Transaction.....	7-19
[A][2]	Security Incidents and Illegal Activity	7-20
[A][3]	Repair of Errors	7-20
[A][4]	Free Speech Exception	7-20
[A][5]	Government Warrants, Wiretaps, and Subpoenas	7-22

[A][6]	Research Information	7-22
[A][7]	Internal Uses.....	7-24
[A][8]	Comply with a Legal Obligation	7-24
[A][9]	Compatible with Context in Which Information Provided	7-24
§ 7:2.5	Responding to Data Deletion Request.....	7-25
§ 7:2.6	Changes to Deletion Rights Under the CPRA (Effective January 1, 2023)	7-26
§ 7:2.7	New Right to Request Correction of Inaccurate Personal Information (Effective January 1, 2023)	7-27
[A]	Evaluation of Request	7-28
[B]	Response to Consumer Request.....	7-29
[C]	Reasons for Denial.....	7-30
[D]	Special Rules for Health Information.....	7-30
[E]	Compliance with Request to Correct	7-30
[F]	Supplementary Right to Know	7-31
§ 7:2.8	New Right to Limit Use or Disclosure of Sensitive Personal Information	7-32
§ 7:2.9	Protecting Other Person’s Personal Information in Responding to Requests (Effective January 1, 2023)	7-38
§ 7:2.10	Right to Opt Out of Sale of Personal Information	7-39
[A]	Right to Opt In for Minors.....	7-43
[B]	Notice of Opt-Out	7-43
[B][1]	General Requirements.....	7-43
[B][2]	Location of Notice.....	7-44
[B][2][a]	Online.....	7-44
[B][2][b]	Mobile Application.....	7-44
[B][2][c]	Offline.....	7-45
[B][2][d]	No Website.....	7-45
[B][2][e]	No Account Required	7-45
[B][3]	Authorized Agents.....	7-45
[B][4]	Content of Notice	7-45
[B][5]	No Sale If No Opt-Out.....	7-46
[B][6]	Exemptions	7-46
[C]	Responding to the Opt-Out Request	7-47
§ 7:2.11	Right to Opt Out of Sharing of Personal Information	7-48
§ 7:2.12	Non-Discrimination	7-48
[A]	Designing Financial Incentive Programs	7-51
[B]	Valuation of Data.....	7-53
[C]	Notice of Financial Incentive	7-54
[D]	Location of Notice of Financial Incentives	7-55

Table of Contents

[E] Content of Notice of Financial Incentives..... 7-55
[F] Loyalty Programs 7-56
§ 7:3 Authorized Agents 7-57
§ 7:4 Other Exemptions 7-59
 § 7:4.1 New Exemptions Under the CPRA (Effective
 January 1, 2023) 7-62

Chapter 8 Procedures for Data Subject Requests

§ 8:1 Introduction 8-3
§ 8:2 Creating a Procedure for Submissions of
 Consumer Requests..... 8-3
 § 8:2.1 Requirements for All Consumer Requests..... 8-4
 [A] Easy to Understand..... 8-4
 [B] Symmetry in Choice 8-4
 [C] Avoid Confusing Language or Interactive
 Elements..... 8-5
 [D] Avoid Manipulative Language or Choice
 Architecture..... 8-5
 [E] Easy to Execute 8-6
 § 8:2.2 Requests to Know and Requests to Delete
 (Effective January 1, 2023) 8-6
 § 8:2.3 Requests to Correct Inaccurate Information
 (Effective January 1, 2023) 8-7
 § 8:2.4 Requests to Opt Out of Sale of Personal
 Information 8-7
 [A] New Opt-Out for Sharing Under the CPRA
 (Effective January 1, 2023) 8-10
 [B] Changes to Opt-Out of Sales and Sharing
 Under Proposed CPRA Regulations 8-11
 § 8:2.5 Right to Limit Use and Disclosure of
 Sensitive Personal Information
 (Effective January 1, 2023) 8-12
 § 8:2.6 Opt-Out Preference Signals
 (Effective January 1, 2023) 8-14
 § 8:2.7 Subsequent Requests to Opt In 8-20
 § 8:2.8 Automated Decisionmaking and Profiling
 (Effective January 1, 2023) 8-21
 § 8:2.9 Requests That Do Not Comply with
 Designated Methods 8-22
 § 8:2.10 Special Requirements for Minors 8-22
§ 8:3 Deadlines for Responding to CCPA Requests..... 8-26
 § 8:3.1 Requests to Know, Requests to Correct, and
 Requests to Delete 8-26

§ 8:3.2	Requests to Opt Out of Sale and Sharing of Personal Information or Limiting the Use of Sensitive Personal Information	8-27
§ 8:4	Verification of Consumer Requests	8-28
§ 8:4.1	Requests to Know, Correct, and Delete	8-28
[A]	Overview	8-28
[B]	Verification for Password-Protected Accounts and Non-Accountholders	8-31
[C]	Verification for Named and Unnamed Actual Persons	8-33
[D]	Changes by the CPRA	8-34
[E]	Identity Verification Services.....	8-35
§ 8:5	Requirements for Responding to Requests	8-35
§ 8:5.1	Overview.....	8-35
§ 8:5.2	Charging Fees	8-35
§ 8:5.3	Responding to Requests to Know	8-36
[A]	Overview	8-36
[B]	Requests for Specific Pieces of Information.....	8-36
[B][1]	Overview	8-36
[B][2]	Attorney General Regulations: Additional Requirements	8-37
[B][2][a]	Verification.....	8-37
[B][2][b]	Security for Transmission of Response	8-38
[B][2][c]	No Sensitive Information	8-38
[B][2][d]	Search Obligations	8-39
[B][2][e]	Denial of Request.....	8-39
[B][2][f]	Changes Under the CPRA (Effective January 1, 2023).....	8-40
[C]	Response to Requests for Categories of Personal Information	8-41
[C][1]	Overview	8-41
[C][2]	Categories of Personal Information	8-41
[C][3]	Categories of Sources.....	8-42
[C][4]	Categories of Third Parties	8-42
[C][5]	Responding to a Verified Request for Categories of Personal Information	8-43
[D]	Changes to Responding to Requests to Know Under the CPRA.....	8-45
§ 8:5.4	Responding to Requests to Delete	8-47
[A]	Changes Under the CPRA	8-50
§ 8:5.5	Responding to Requests to Correct	8-51
§ 8:5.6	Responding to Requests Relating to Households.....	8-54
[A]	Overview	8-54

Table of Contents

[B]	Household Has a Minor Under the Age of Thirteen	8-55
[C]	Password-Protected Accounts.....	8-55
[D]	Non-Password-Protected Accounts.....	8-55
§ 8:6	Recordkeeping and Training.....	8-56
§ 8:6.1	Overview.....	8-56
§ 8:6.2	Training	8-56
§ 8:6.3	Recordkeeping.....	8-56
§ 8:6.4	No Other Retention Obligation.....	8-57
§ 8:6.5	Reporting Obligations	8-57
§ 8:6.6	Additional Considerations for Employee Requests.....	8-59

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.....	9-6
§ 9:3.1	Definition of Security Breach	9-6
§ 9:3.2	Protected Information	9-7
§ 9:3.3	Notification Requirement	9-7
§ 9:3.4	Government Notification.....	9-7
§ 9:3.5	Timing of Notification	9-8
§ 9:3.6	Method of Notification	9-9
§ 9:4	Security Requirements Under the CCPA	9-9
§ 9:5	New Private Right of Action for Security Breaches.....	9-10
§ 9:5.1	Civil Code Section 1798.150	9-10
§ 9:5.2	Remedies	9-11
[A]	Statutory Damages	9-11
[B]	Injunctive or Declaratory Relief	9-12
[C]	Court-Granted Relief	9-12
§ 9:5.3	Defenses for Breach	9-13
§ 9:5.4	Opportunity to Cure	9-13
§ 9:5.5	Applies Only to Security Breaches Due to a Failure to Maintain Reasonable Security	9-14

Chapter 10 Regulatory Enforcement, Private Actions, and Data Broker Registration

§ 10:1	Overview	10-2
§ 10:2	Guidance from the Attorney General.....	10-2
§ 10:3	California Privacy Protection Agency.....	10-3
§ 10:3.1	Education.....	10-5
§ 10:3.2	Rulemaking.....	10-5

§ 10:4 Enforcement 10-13

 § 10:4.1 Overview..... 10-13

 § 10:4.2 Consumer Privacy Fund..... 10-14

 § 10:4.3 Scope and Extent of Enforcement of the CCPA 10-15

 [A] Scope and Extent of a Business’s Ability to
 Cure a Violation 10-15

 [B] What Is a “Violation” Under the CCPA?..... 10-15

 [C] Determining an “Intentional” Violation 10-16

§ 10:5 Attorney General Enforcement Under the CCPA..... 10-16

§ 10:6 Liability for Violations 10-20

§ 10:7 Changes in Enforcement Under the CPRA
(Effective January 1, 2023)..... 10-21

 § 10:7.1 Proposed Regulations for CPPA Enforcement
 and Audits 10-25

 [A] Proceedings Based on a Formal Complaint 10-25

 [B] CPPA-Initiated Investigations..... 10-25

 [C] Probable Cause Proceedings..... 10-25

 [D] Stipulated Orders..... 10-26

 [E] CPPA Audits 10-26

§ 10:8 Private Right of Action Under the CCPA..... 10-27

 § 10:8.1 Actions Under Section 1798.150 10-27

 § 10:8.2 Claims for Other Violations of the CCPA 10-29

§ 10:9 No Waiver of CCPA Rights Permitted..... 10-35

§ 10:10 Data Broker Registration 10-35

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..... 11-5

 § 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

Table of Contents

§ 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..... 11-7
§ 11:5 Determine Which Data Is in Scope 11-7
§ 11:6 Is Personal Information Being Sold? 11-7
§ 11:7 Create Financial Incentives 11-8
§ 11:8 Create CCPA-Required Notices 11-8
§ 11:9 Update Privacy Policy 11-10
§ 11:10 Establish Procedures for Responding to
Consumer Requests..... 11-10
§ 11:11 Enter CCPA Data Protection Addenda with
Service Providers..... 11-11
§ 11:12 Implement Training and Recordkeeping 11-12
§ 11:13 Regularly Review and Update Notices..... 11-12
§ 11:14 Getting Ready for the CPRA 11-12

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

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

Table of Authorities T-1

Index.....I-1

