

A.B. 375, CALIFORNIA CONSUMER PRIVACY ACT OF 2018

(AS AMENDED JUNE 25, 2018)

Executive Summary

[A.B. 375, as amended June 25, 2018](#), would enact the California Consumer Privacy Act of 2018, which would take effect on January 1, 2020. The Act would condition its operation on the withdrawal of the [“Consumer Right to Privacy Act of 2018” ballot initiative](#) from the November 2018 ballot in California. A.B. 375 would grant a consumer a right to request a business to disclose: the categories and specific pieces of personal information that it collects about the consumer; the categories of sources from which that information is collected; the business purposes for collecting or selling the information; and the categories of third parties to whom the information is sold or disclosed. The Act would also grant consumers the right to opt out of a business sale of their information, which is broadly defined to include sharing personal information with a third party for “monetary or other valuable consideration.” Furthermore, the Act prohibits any business from providing a different price or quality of goods or services to a customer who opts out compared to customers who do not opt out. Lastly, the Act would provide a private right of action in connection with unauthorized access and exfiltration, theft, or disclosure of a consumer’s nonencrypted or nonredacted personal information.

Summary of A.B. 375’s Most Significant Provisions

Intent: The Act’s Section 2(i) states that it is the “intent of the Legislature to further Californians’ right to privacy by giving consumers an effective way to control their personal information, by ensuring the following rights:

- (1) The right of Californians to know what personal information is being collected about them.
- (2) The right of Californians to know whether their personal information is sold or disclosed and to whom.
- (3) The right of Californians to say no to the sale of personal information.
- (4) The right of Californians to access their personal information.
- (5) The right of Californians to equal service and price, even if they exercise their privacy rights.”

Scope: The scope of the Act’s application rests on the definitions of certain entities as well as several specific exemptions for information subject to certain other regulations, including:

- Defines a “business” subject to this Act as one satisfying one or more of the following thresholds (*see p.14 of the Act for definition of “business”*):
 - A. Has annual gross revenues in excess of twenty-five million dollars (\$25,000,000), as adjusted pursuant to paragraph (5) of subdivision (a) of Section 1798.185.
 - B. Alone or in combination, annually buys, receives for the business’ commercial purposes, sells, or shares for commercial purposes, alone or in combination, the personal information of 50,000 or more consumers, households, or devices.
 - C. Derives 50 percent or more of its annual revenues from selling consumers’ personal information.
- Significant sections of the Act that apply to a business would not apply to a service provider, as defined (*see p. 21 of the Act for definition of “service provider”*).
- The Act would not apply to data covered by HIPAA, FCRA, GLBA, DPPA or certain other specified regulations (*see pp. 24-25 of the Act for complete list of exemptions*).

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Requirements: The Act's principal obligations include the following legal requirements:

- Requires a business to make disclosures about the information and the purposes for which it is used.
- Grants consumers the right to request deletion of personal information and requires the business to delete upon receipt of a verified request.
- Grants consumers the right to request that a business that sells the consumer's personal information, or discloses it for a business purpose, disclose the categories of information that it collects and categories of information and the categories of third parties to whom the information was sold or disclosed. A business would be required to provide this information in response to a verifiable consumer request.
- Authorizes a consumer to opt out of the sale of personal information by a business and would prohibit the business from discriminating against the consumer for exercising this right, including by charging the consumer who opts out a different price or providing the consumer a different quality of goods or services, except if the difference is reasonably related to value provided by the consumer's data (*see section 1798.125(a) on pp. 9-10*).
- Authorizes businesses to offer financial incentives for collection of personal information.
- Prohibits a business from selling the personal information of a consumer under 16 years of age, unless affirmatively authorized (to be referred to as the right to opt in).
- Prescribes requirements for receiving, processing, and satisfying these requests from consumers.
- Prescribes various definitions for its purposes and would define "personal information" with reference to a broad list of characteristics and behaviors, personal and commercial, as well as inferences drawn from this information.
- Prohibits the provisions described above from restricting the ability of a business to comply with federal, state, or local laws.

Enforcement: The Act's enforcement provisions include the following:

- The Act provides for its enforcement by the Attorney General, as specified.
- The Act also provides a private action in connection with "an unauthorized access and exfiltration, theft, or disclosure" of a consumer's "nonencrypted or nonredacted personal information" resulting from "the business' violation of the duty to implement and maintain reasonable security procedures and practices appropriate to the nature of the information."
- The private right of action entitles plaintiffs to recover damages between \$100 and \$750 "per consumer per incident or actual damage, whichever is greater," but prohibits any provision of the Act from being "interpreted to serve as the basis for a private right of action under any other law" (*see text of section 1798.150 on pp. 26-27 of the Act*).
- Creates the Consumer Privacy Fund in the General Fund with the moneys in the fund to be applied to support the purposes of the Act and its enforcement. The Act would provide for the deposit of penalty money into the fund.
- Requires Attorney General to solicit public participation before adopting regulations.
- Authorizes a business, service provider, or third party to seek the Attorney General's opinion on how to comply with its provisions.
- Voids a waiver of a consumer's rights under any of the Act's provisions.