

The CCPA Progeny: Facing Customers

April 28, 2021, 1:00pm ET

Presented by

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About the presenters



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Poll Question 1

(polls are anonymous)

State Privacy Laws: Where are we now?

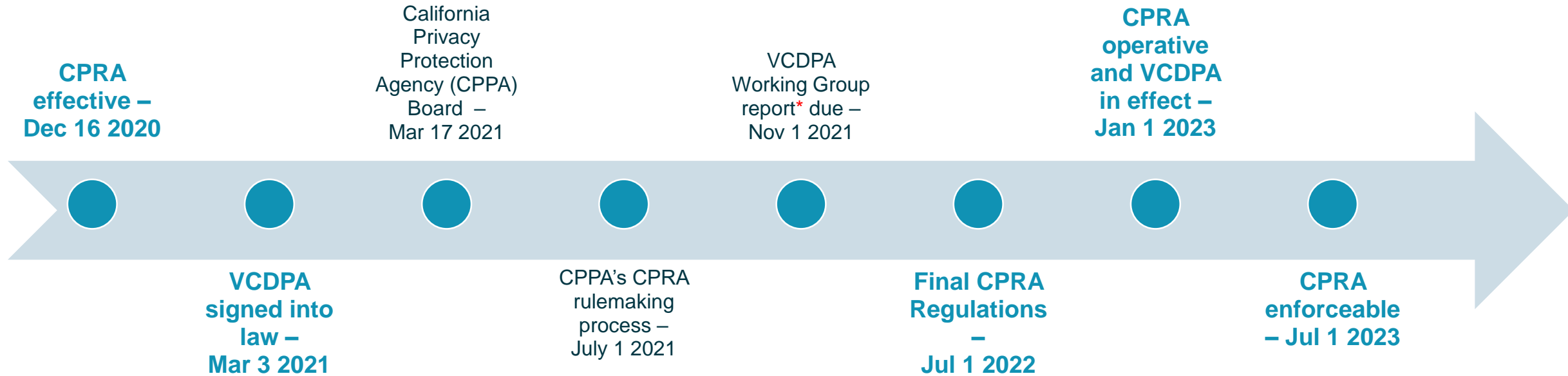
Amended: California Consumer Privacy Act (CCPA) and Consumer Privacy Rights and Enforcement Act (CPRA)

New: Virginia Consumer Data Protection Act (VCDPA)

Under consideration (*not inclusive*):

- Alabama
- ~~○ Arizona~~
- Colorado
- Connecticut
- Florida
- Illinois
- ~~○ Kentucky~~
- ~~○ Maryland~~
- Minnesota
- New Jersey
- New York
- ~~○ Oklahoma~~
- Rhode Island
- South Carolina
- Texas
- Vermont
- ~~○ Washington~~
- ~~○ West Virginia~~

CPRA / VCDPA – Brief Chronology



* VCDPA §59.1-581(2): working group tasked with reviewing implementation issues and reporting on findings, best practices and recommendations

Key Considerations for Customer Privacy Practices

1. Who are the customers?
 - Businesses, individuals, customer's customers
 - What is your organization's role with respect to those customers - controller/business, processor/service provider, etc.?
2. Does your organization have and maintain a data inventory?
 - What personal information/data do you collect from or about those customers and what do you do with it?
 - Do you collect and/or process sensitive personal information?
3. Does/will your organization follow a regional vs. national vs. global compliance structure?

Poll Question 2

Business to Consumer (B2C) Customers

Who are “**consumers**”?

CCPA/CPRA

“a natural person who is a California resident ... however identified, including by any unique identifier”

VCDPA

resident of Virginia “acting only in an individual or household context” and not “in a commercial or employment context”

Business to Business (B2B) Customer Exemption

CCPA/CPRA - until 1 Jan 2023

Exemption applies to personal information about a California resident “who acted or is acting as an employee, owner, director, officer, or independent contractor of a company, partnership, sole proprietorship, non-profit, or government agency and **whose communications or transaction with the business occur solely within the context of the business conducting due diligence regarding, or providing or receiving a product or service to or from such company, partnership, sole proprietorship, non-profit, or government agency.**” (Cal Civ Code 1798.145(n))

B2B Exemption – CCPA/CPRA

Business is exempt from obligations under Cal Civ Code Sections:

- 1798.100 - Disclosure of “specific pieces” of personal information about consumer
- 1798.105 - Deletion requests
- 1798.106 - Correction requests (effective Jan 1 2023)
- 1798.110 - Access requests
- 1798.115 - Disclosure of personal information sale
- 1798.121 - Sensitive personal information processing (effective Jan 1 2023)
- 1798.130 - Methods to submit privacy rights requests
- 1798.135 - Do Not Sell link/button requirement

Key Considerations for Customer Privacy Practices

4. What privacy rights are available to customers and how do/will your organization handle them?
 - Technology is a tool not per se compliance
5. Is that privacy policy up to date?
 - What other privacy related disclosures are out there?
6. Do you have a training program and related procedures and are they relevant and up to date?
 - Who needs to know what?
 - Customer service, sales, marketing, contracting, IT
 - CAN SPAM suppression list coordination

Consumer Right	CCPA	CPRA	VCDPA
Right to know/access	+	+	+
Right to deletion	+	+	+
Right to opt out of “sale”	+	+	+
Right to equal service and price	+	+	+
Right to reasonable security	+	+	+
Right to correct inaccurate personal information	X	+	+
Right to opt out of “sharing”	X	+	+
Right to limit use/disclosure of sensitive personal information	X	+	<i>Process only after obtaining consumer consent*</i>
Right to opt-out of “profiling”	X	+	+

Core Principles: Transparency and Minimization

VCDPA (§59.1-574)

- Provide “accessible, clear and meaningful” disclosures in privacy policy/notices
- Limit collection of personal data to “what is adequate, relevant and reasonably necessary” in relation to disclosed purposes

CCPA

- Privacy policy/notice is “easy to read and understandable” (CCPA Reg. §999.305, 308)
- Processing only as “reasonably necessary and proportionate to achieve the purposes for which the personal information was collected or processed (Cal Civ Code §1798.100(c))

POLL QUESTION 3

Marketing Related Practices

- Limits on “**sale**” of personal information/data
 - CCPA/CPRA - monetary or other valuable consideration
 - VCDPA – monetary consideration
- Right to opt out of:
 - “**sharing**”, which means disclosure by a business to a third party for “cross-context behavioral advertising” for the benefit of a business *whether or not for consideration* (CPRA) or
 - “**targeted advertising**” (VCDPA)
- Limits on processing of **sensitive personal information** (CPRA) / **sensitive data** (VCDPA)

Marketing Related Practices

- Opt out of “**profiling**”
 - CPRA: “any form of automated processing of personal information ... to evaluate certain personal aspects relating to a natural person and in particular to analyze or predict aspects concerning that natural person’s performance at work, economic situation, health, personal preferences, interests, reliability, behavior”
 - Issue to be further addressed in CPRA Regulations (per Cal Civ Code 1798.145(q))
 - VCDPA: opt out of “any form of automated processing” that results in “decisions that produce legal or similarly significant effects concerning a consumer,” i.e., relates to provision or denial by the controller of financial and lending services, housing, insurance, education enrollment, criminal justice, employment opportunities, health care services, or access to basic necessities, such as food and water)

POLL QUESTION 4

Which state is next?

Florida...?

- House passed a bill (HB969) but Senate has not.
- Senate bill (SB1734) has one important difference: no private right of action

House Bill: <https://www.myfloridahouse.gov/Sections/Bills/billsdetail.aspx?BillId=72062&>

Questions?

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Save the Date

The CCPA Progeny, *Part III*: Data Ethics

Tuesday, May 25, 2021, 1:00 – 2:00 pm ET

The CCPA Progeny, *Part IV*: Cybersecurity Considerations

TBD

Thank you for joining us!

