

## **TEXT OF MODIFIED REGULATIONS**

The Department first published and noticed the California Consumer Privacy Act (CCPA) regulations for public comment on October 11, 2019. On February 10, 2020 and March 11, 2020, the Department gave notice of modifications to the CCPA regulations. After submitting the CCPA regulations for review by the Office of Administrative Law (OAL), the Department withdrew certain provisions for further consideration. OAL approved the remainder of the CCPA regulations, which became effective August 14, 2020. The Department now proposes additional modifications to certain provisions of the approved CCPA regulations.

Changes to the CCPA regulations that became effective on August 14, 2020 are illustrated in **blue bold underline** for proposed additions and by ~~red-strikeout~~ for proposed deletions.

### **TITLE 11. LAW**

#### **DIVISION 1. ATTORNEY GENERAL**

#### **CHAPTER 20. CALIFORNIA CONSUMER PRIVACY ACT REGULATIONS**

##### **§ 999.306. Notice of Right to Opt-Out of Sale of Personal Information.**

###### **(a) Purpose and General Principles**

- (1) The purpose of the notice of right to opt-out is to inform consumers of their right to direct a business that sells their personal information to stop selling their personal information.
- (2) The notice of right to opt-out shall be designed and presented in a way that is easy to read and understandable to consumers. The notice shall:
  - a. Use plain, straightforward language and avoid technical or legal jargon.
  - b. Use a format that draws the consumer's attention to the notice and makes the notice readable, including on smaller screens, if applicable.
  - c. Be available in the languages in which the business in its ordinary course provides contracts, disclaimers, sale announcements, and other information to consumers in California.
  - d. Be reasonably accessible to consumers with disabilities. For notices provided online, the business shall follow generally recognized industry standards, such as the Web Content Accessibility Guidelines, version 2.1 of June 5, 2018, from the World Wide Web Consortium, incorporated herein by reference. In other contexts, the business shall provide information on how a consumer with a disability may access the notice in an alternative format.

- (b) A business that sells the personal information of consumers shall provide the notice of right to opt-out to consumers as follows:
- (1) A business shall post the notice of right to opt-out on the Internet webpage to which the consumer is directed after clicking on the “Do Not Sell My Personal Information” link on the website homepage or the download or landing page of a mobile application. In addition, a business that collects personal information through a mobile application may provide a link to the notice within the application, such as through the application’s settings menu. The notice shall include the information specified in subsection (c) or link to the section of the business’s privacy policy that contains the same information.
  - (2) A business that does not operate a website shall establish, document, and comply with another method by which it informs consumers of their right to opt-out. That method shall comply with the requirements set forth in subsection (a)(2).
  - (3) A business that collects personal information in the course of interacting with consumers offline shall also provide notice by an offline method that facilitates consumers’ awareness of their right to opt-out. Illustrative examples follow:**
    - a. A business that collects personal information from consumers in a brick-and-mortar store may provide notice by printing the notice on the paper forms that collect the personal information or by posting signage in the area where the personal information is collected directing consumers to where the notice can be found online.**
    - b. A business that collects personal information over the phone may provide the notice orally during the call where the information is collected.**
- (c) A business shall include the following in its notice of right to opt-out:
- (1) A description of the consumer’s right to opt-out of the sale of their personal information by the business;
  - (2) The interactive form by which the consumer can submit their request to opt-out online, as required by section 999.315, subsection (a), or if the business does not operate a website, the offline method by which the consumer can submit their request to opt-out; and
  - (3) Instructions for any other method by which the consumer may submit their request to opt-out.
- (d) A business does not need to provide a notice of right to opt-out if:
- (1) It does not sell personal information; and
  - (2) It states in its privacy policy that it does not sell personal information.
- (e) A business shall not sell the personal information it collected during the time the business did not have a notice of right to opt-out posted unless it obtains the affirmative authorization of the consumer.

*Note: Authority cited: Section 1798.185, Civil Code. Reference: Sections 1798.120, 1798.135 and 1798.185, Civil Code.*

**§ 999.315 Requests to Opt-Out.**

- (a) A business shall provide two or more designated methods for submitting requests to opt-out, including an interactive form accessible via a clear and conspicuous link titled “Do Not Sell My Personal Information,” on the business’s website or mobile application. Other acceptable methods for submitting these requests include, but are not limited to, a toll-free phone number, a designated email address, a form submitted in person, a form submitted through the mail, and user-enabled global privacy controls, such as a browser plug-in or privacy setting, device setting, or other mechanism, that communicate or signal the consumer’s choice to opt-out of the sale of their personal information.
- (b) A business shall consider the methods by which it interacts with consumers, the manner in which the business sells personal information to third parties, available technology, and ease of use by the consumer when determining which methods consumers may use to submit requests to opt-out. At least one method offered shall reflect the manner in which the business primarily interacts with the consumer.
- (c) If a business collects personal information from consumers online, the business shall treat user-enabled global privacy controls, such as a browser plug-in or privacy setting, device setting, or other mechanism, that communicate or signal the consumer’s choice to opt-out of the sale of their personal information as a valid request submitted pursuant to Civil Code section 1798.120 for that browser or device, or, if known, for the consumer.
  - (1) Any privacy control developed in accordance with these regulations shall clearly communicate or signal that a consumer intends to opt-out of the sale of personal information.
  - (2) If a global privacy control conflicts with a consumer’s existing business-specific privacy setting or their participation in a business’s financial incentive program, the business shall respect the global privacy control but may notify the consumer of the conflict and give the consumer the choice to confirm the business-specific privacy setting or participation in the financial incentive program.
- (d) In responding to a request to opt-out, a business may present the consumer with the choice to opt-out of sale for certain uses of personal information as long as a global option to opt-out of the sale of all personal information is more prominently presented than the other choices.
- (e) A business shall comply with a request to opt-out as soon as feasibly possible, but no later than 15 business days from the date the business receives the request. If a business sells a consumer’s personal information to any third parties after the consumer submits their request but before the business complies with that request, it shall notify those third parties that the consumer has exercised their right to opt-out and shall direct those third parties not to sell that consumer’s information.

- (f) A consumer may use an authorized agent to submit a request to opt-out on the consumer's behalf if the consumer provides the authorized agent written permission signed by the consumer. A business may deny a request from an authorized agent if the agent cannot provide to the business the consumer's signed permission demonstrating that they have been authorized by the consumer to act on the consumer's behalf. User-enabled global privacy controls, such as a browser plugin or privacy setting, device setting, or other mechanism, that communicate or signal the consumer's choice to opt-out of the sale of their personal information shall be considered a request directly from the consumer, not through an authorized agent.
- (g) A request to opt-out need not be a verifiable consumer request. If a business, however, has a good-faith, reasonable, and documented belief that a request to opt-out is fraudulent, the business may deny the request. The business shall inform the requestor that it will not comply with the request and shall provide an explanation why it believes the request is fraudulent.
- (h) A business's methods for submitting requests to opt-out shall be easy for consumers to execute and shall require minimal steps to allow the consumer to opt-out. A business shall not use a method that is designed with the purpose or has the substantial effect of subverting or impairing a consumer's choice to opt-out. Illustrative examples follow:**
- (1) The business's process for submitting a request to opt-out shall not require more steps than that business's process for a consumer to opt-in to the sale of personal information after having previously opted out. The number of steps for submitting a request to opt-out is measured from when the consumer clicks on the "Do Not Sell My Personal Information" link to completion of the request. The number of steps for submitting a request to opt-in to the sale of personal information is measured from the first indication by the consumer to the business of their interest to opt-in to completion of the request.**
- (2) A business shall not use confusing language, such as double-negatives (e.g., "Don't Not Sell My Personal Information"), when providing consumers the choice to opt-out.**
- (3) Except as permitted by these regulations, a business shall not require consumers to click through or listen to reasons why they should not submit a request to opt-out before confirming their request.**
- (4) The business's process for submitting a request to opt-out shall not require the consumer to provide personal information that is not necessary to implement the request.**
- (5) Upon clicking the "Do Not Sell My Personal Information" link, the business shall not require the consumer to search or scroll through the text of a privacy policy or similar document or webpage to locate the mechanism for submitting a request to opt-out.**

*Note: Authority cited: Section 1798.185, Civil Code. Reference: Sections 1798.120, 1798.135, 1798.140 and 1798.185, Civil Code.*

**§ 999.326 Authorized Agent.**

- (a) When a consumer uses an authorized agent to submit a request to know or a request to delete, a business may require ~~that the consumer~~ authorized agent to provide proof that the consumer gave the agent signed permission to submit the request. The business may also require the consumer to do either of ~~do~~ the following:
- ~~(1) Provide the authorized agent signed permission to do so.~~
  - ~~(2)~~(1) Verify their own identity directly with the business.
  - ~~(3)~~(2) Directly confirm with the business that they provided the authorized agent permission to submit the request.
- (b) Subsection (a) does not apply when a consumer has provided the authorized agent with power of attorney pursuant to Probate Code sections 4121 to 4130.
- (c) An authorized agent shall implement and maintain reasonable security procedures and practices to protect the consumer's information.
- (d) An authorized agent shall not use a consumer's personal information, or any information collected from or about the consumer, for any purposes other than to fulfill the consumer's requests, verification, or fraud prevention.

*Note: Authority cited: Section 1798.185, Civil Code. Reference: Sections 1798.100, 1798.110, 1798.115, 1798.130, and 1798.185, Civil Code.*

**§ 999.332. Notices to Consumers Under 16 Years of Age.**

- (a) A business subject to sections 999.330 and or 999.331 shall include a description of the processes set forth in those sections in its privacy policy.
- (b) A business that exclusively targets offers of goods or services directly to consumers under 16 years of age and does not sell the personal information without the affirmative authorization of consumers at least 13 years of age and less than 16 years of age, or the affirmative authorization of their parent or guardian for consumers under 13 years of age, is not required to provide the notice of right to opt-out.

*Note: Authority cited: Section 1798.185, Civil Code. Reference: Sections 1798.120, 1798.135 and 1798.185, Civil Code.*