

# ALERT

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## Colorado Becomes The Third State To Pass Comprehensive Privacy Law

By: **Terese L. Arent**

On July 7, 2021, the Colorado Privacy Act (CPA) was signed into law, joining California and Virginia as the only states to have passed comprehensive privacy legislation. The CPA goes into effect on July 1, 2023, which will be only six months after the January 1, 2023 effective date of both the California Privacy Rights Act (CPRA) (an update to the CCPA) and the Virginia Consumer Data Protection Act (VCDPA).

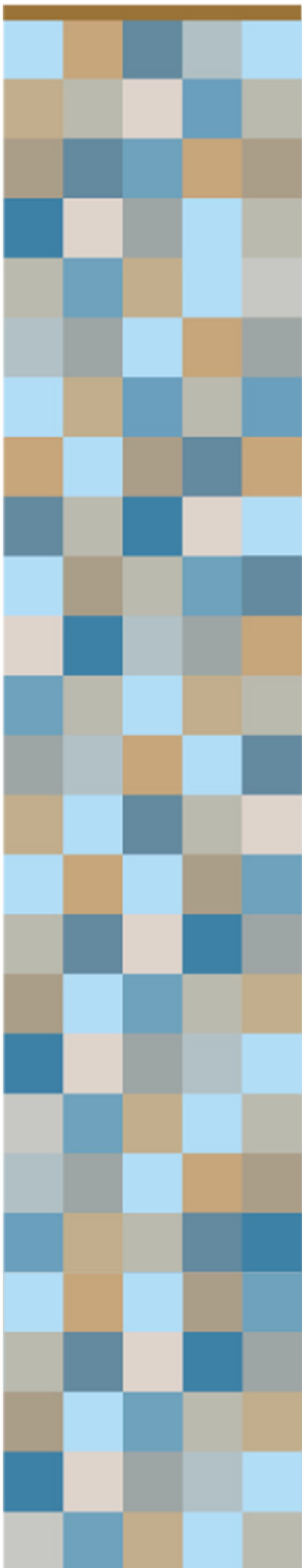
Although the CPA does have some of its own unique aspects, the good news is that it generally does not impose significant new requirements that are not already addressed under CCPA or VCDPA. For example, the CPA has data subject rights that are similar to the CCPA and VCDPA, which include the right to access, correct, delete, and opt out of the processing of personal data for targeted advertising and the sale of personal data. Consistent with the CCPA and VCDPA, under the CPA, controllers have 45 days to respond to consumer requests.

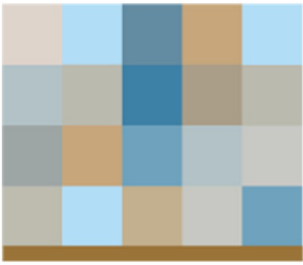
That said, a few distinctions of note in the CPA are as follows:

- The applicability of the CPA is more limited than either the CCPA or VCDPA. The CPA only applies to entities that conduct business in Colorado or target goods or services to Colorado residents; and
  - control or process the personal data of at least 100,000 Colorado consumers during a calendar year; and/or
  - derive revenue or receive a discount on the price of goods or services from the sale of personal data and process or control the personal data of at least 25,000 Colorado consumers.

Unlike the CCPA and VCDPA, the CPA does not have a revenue-based applicability threshold. In addition, unlike the CCPA and VCDPA, the CPA applies to non-profit entities that meet its applicability criteria.

- Unlike the CCPA's broad definition of "consumer", the CPA defines "consumers" as Colorado residents acting in an individual or household context. The CPA definition also expressly excludes an individual acting in a commercial or employment context and does not apply to "data maintained for employment records purposes". Thus, the CPA does not apply to the processing of data in an employment or B2B context (similar to the VCDPA and, generally speaking, the CCPA, although the CCPA's exemption expires in 2023).





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- The CPA requires opt-in consent for the processing of sensitive personal data. However, unlike the CPRA and VCDPA, “sensitive data” does not include precise geolocation information.
- The CPA allows consumers to authorize another person, acting on their behalf, to opt out of the processing of the consumer’s personal data, including through a technology indicating the consumer’s intent to opt out such as a web link indicating a preference or browser setting, browser extension or global device setting.
- The CPA is unique from its California and Virginia counterparts in that the Attorney General is required to adopt rules detailing specifications for a universal opt-out mechanism for sales of personal data or use for targeted advertising, which must be implemented by July 1, 2023.
- The CPA will be enforced by the Colorado Attorney General and local district attorneys. There is no private right of action. Effective until January 11, 2025, prior to any enforcement action, the Attorney General or district attorney must first issue a notice of violation to the controller if a cure is possible. If the controller fails to cure the violation within 60 days after receipt of the violation notice, an action may be brought (in contrast with the 30 day cure period under the CCPA and VCDPA and the CPRA’s elimination of any cure period). Violations of the CPA are considered a deceptive trade practice, which under Colorado law can result in fines up to \$20,000 for each violation.

Companies already subject to the California and/or Virginia privacy laws should have a leg up on preparation for compliance with the Colorado law. However, while the Colorado law is not significantly different from its California and Virginia counterparts, attention must still be paid to its unique nuances and devising a plan by which to efficiently integrate existing business operations with a comprehensive privacy compliance plan.

If you have any questions regarding the matter raised in this Alert, please feel free to contact Terese Arenth at [tarenth@moritthock.com](mailto:tarenth@moritthock.com) or (516) 880-7235.



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