

# ALERT

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## Virginia Becomes The Second State To Pass A Comprehensive Privacy Law

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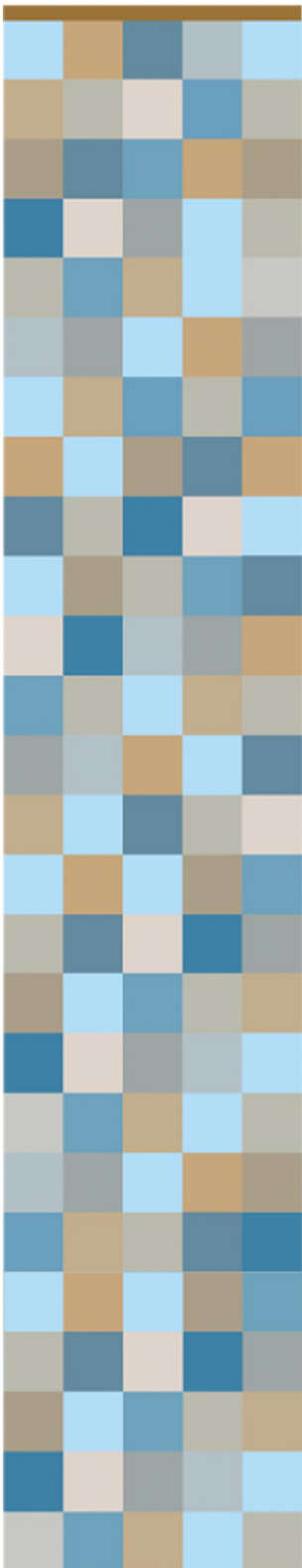
On March 2, 2021, the Virginia Consumer Data Protection Act (CDPA) was signed into law, joining California as the only states to have passed comprehensive privacy legislation to date. The CDPA goes into effect on January 1, 2023. Notably, this date coincides with the effective date of the new substantive obligations set forth in the California Privacy Rights Act (CPRA), the recently passed law that amends the California Consumer Privacy Act (CCPA).

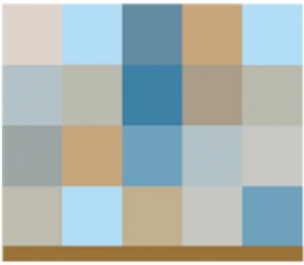
The new Virginia law bears many similarities to the CCPA and CPRA, as well as the EU's General Data Protection Regulation (GDPR), although it has enough differences to increase compliance challenges for affected businesses moving forward.

Among the similarities between the Virginia CDPA and the CCPA are the rights given to Virginia residents to access their personal data collected by the businesses, to amend or correct such personal data, to request deletion of the data and the right to data portability.

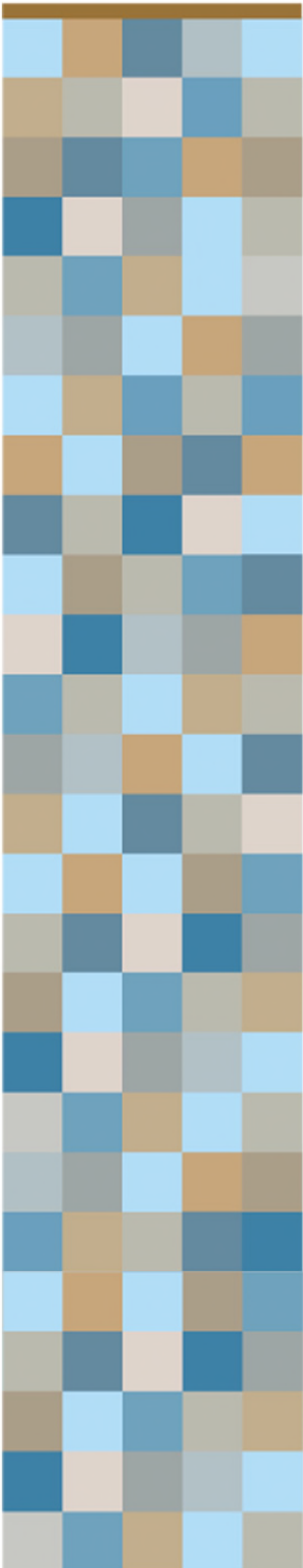
Despite similarities with the CCPA and CPRA, the Virginia CDPA does contain key differences, some of which are as follows:

- There is no minimum revenue requirement to determine the applicability of the CDPA. Under the CCPA, one criterion for determining if a business must comply with the CCPA is if the business earns gross revenues of \$25 million a year or more. The CDPA contains no minimum income requirement.
- The CDPA will apply to persons that conduct business in Virginia or produce products or services that are targeted to Virginia residents and that controls or processes personal data of at least: (i) 100,000 Virginia residents during a calendar year; or (ii) 25,000 Virginia residents and derives over 50% of gross revenue from the sale of personal data. Under the CCPA, the law applies to any business that: (a) controls or processes data of at least 50,000 California residents; or (b) earns 50% or more of its gross revenue from the sale of personal data.
- Under the CDPA, the definition of "consumer" means any natural person who is a Virginia resident but acting only in their capacity as an individual, and expressly





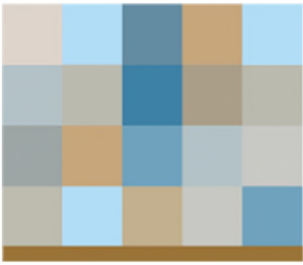
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excludes a person acting in an employment or commercial (B2B) capacity. The law also excludes GLBA-covered financial institutions and financial personal information, FCRA-covered information, HIPAA covered entities and their business associates, non-profits, and higher education.

- Personal data is defined as any information that is linked or reasonably associated to an identified or identifiable natural person. The definition does not reference information that is linkable to a household, as is the case in the CCPA/CPRA. The CDPA definition also excludes de-identified data or publicly available information. Under the CCPA, publicly available data means only data available from official public records. The definition of "publicly available" under the CDPA includes data available from public records but also includes "information that a business has a reasonable basis to believe is lawfully made available to the general public through widely distributed media, by the consumer, or by a person to whom the consumer has disclosed the information, unless the consumer has restricted the information to a specific audience."
- The CDPA will allow consumers to opt-out of not only the sale of personal data, but also the processing of the personal data for purposes of targeted advertising and profiling. The CCPA currently only provides for opt-out in relation to the sale of personal data.
- Unlike the broad definition of "sale" under the CCPA, the CDPA narrowly defines "sale" of personal data as "the exchange of personal data for monetary consideration by the controller to a third party". Among other things, the definition expressly excludes disclosures by the business to an affiliate of the business.
- The CDPA has no private right of action and will be enforced by the Virginia Attorney General, which can seek civil penalties after a 30-day opportunity to cure. In contrast, the CCPA provides for a private right of action in the event of a data breach and the CPRA will remove a similar cure period that is currently included in the CCPA. Violations that have not been cured within 30 days are subject to a fine of up to \$7,500 per violation.

This only highlights some of the Virginia law's differences from the CCPA/CPRA. Moreover, while Virginia is now the second state with a comprehensive privacy law, it certainly won't be the last. Multiple other states already have similar laws under consideration, some of which may have their own variations and nuances. This will only serve to further complicate the strategy of a business for devising a comprehensive compliance plan. Businesses are well-advised to start planning early on how best to update their privacy programs to ensure compliance with varying, and sometimes conflicting, standards.



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**Terese Arenth is a Partner with the firm and serves as Chair of its Promotional Marketing and Advertising Practice Group, as well as Co-Chair of its Cybersecurity, Privacy and Technology Practice Group, both of which are within the firm's Intellectual Property Department. Ms. Arenth concentrates her practice in promotional marketing, advertising and Internet/new media, as well as privacy and technology related matters. She also has significant involvement in the firm's intellectual property practice area and vast experience in commercial and corporate litigation.**

If you have any questions regarding how to navigate the CDPA regulatory requirements, please feel free to contact Terese Arenth at [tarenth@moritthock.com](mailto:tarenth@moritthock.com) or (516) 880-7235.



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