

UPDATED INFORMATIVE DIGEST

Since the filing of the Notice of Proposed Rulemaking Action on October 11, 2019, several bills were passed during the 2019 legislative session and signed by the Governor that modify the CCPA or otherwise impact these regulations. The impact of each bill, if any, on the Attorney General's proposed regulations is included in the summary of changes made to the proposed regulations.

Stats. 2019, ch. 763; AB 25 (Assem. Bill No. 25, approved by Governor, Oct. 11, 2019 (2019-2020 Reg. Sess.)). This bill, which became effective on January 1, 2020, amended Civil Code sections 1798.130 and 1798.145. First, this bill exempted from the CCPA personal information collected by a business in certain employment-related situations until January 1, 2021. The bill concerned personal information collected by a business about: (1) a natural person acting as a job applicant to, employee of, owner of, officer of, medical staff member of, or contractor of the business; (2) emergency contact information for such a natural person; and (3) another person relating to such a natural person necessary to administer benefits. To the extent such personal information is collected and used solely in those contexts, the bill exempted such personal information from the CCPA. Second, this bill clarified that a business must require reasonable verification of consumers in connection to their CCPA requests and may require a consumer to use their existing account (if they have one) to make consumer requests. A business still may not ask a consumer to create an account simply in order to make the request.

Stats. 2019, ch. 757; AB 1355 (Assem. Bill No. 1355, approved by Governor, Oct. 11, 2019 (2019-2020 Reg. Sess.)). This bill, which became effective on January 1, 2020, amended Civil Code sections 1798.100, 1798.110, 1798.115, 1798.120, 1798.125, 1798.130, 1798.140, 1798.145, 1798.150, and 1798.185. The bill exempted from the CCPA business-to-business service-related (B2B) communications or transactions until January 1, 2021. B2B communications or transactions are exempt in instances in which the consumer is a natural person who is an employee, owner, director, officer, or contractor of a government agency or business whose communications or transactions 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 that government agency or business. This bill also: (1) clarified the Fair Credit Reporting Act (FCRA) (15 U.S.C. § 1681 et seq.) exemption; (2) specified that businesses do not need to collect personal information that they would not normally collect or retain personal information for longer than they otherwise would retain it; (3) provided additional rulemaking authority to the Attorney General regarding compliance with verifiable consumer requests; (4) clarified that a consumer's private right of action is for data breaches of non-encrypted and non-redacted personal information; and (5) clarified that minors aged 13 to less than 16 must have parental consent for opt-in to the sale of their personal information.

Stats. 2019, ch. 759; AB 1564 (Assem. Bill No. 1564, approved by Governor, Oct. 11, 2019 (2019-2020 Reg. Sess.)). This bill, which became effective on January 1, 2020, amended Civil Code section 1798.130. Before this bill, the CCPA required businesses to have two or more designated methods for consumers to contact a business to make requests under the law, including a toll-free number and an internet website address. This bill removed the requirement

to have a toll-free number for a business that operates exclusively online and has a direct relationship with a consumer. In that instance, a business is only required to provide an email address for consumers to submit their requests.

Stats. 2019, ch. 748; AB 874 (Assem. Bill No. 874, approved by Governor, Oct. 11, 2019 (2019-2020 Reg. Sess.)). This bill, which became effective on January 1, 2020, amended Civil Code section 1798.140. The bill clarified the definition of “personal information” and what is “publicly available” information. This bill removed potentially ambiguous language in the existing CCPA regarding what constituted publicly available information. The bill defined publicly available information as information that is lawfully made available from government records, removing the language specifying the conditions in which such information is not “publicly available.” This bill also clarified that personal information does not include consumer information that is deidentified and aggregate consumer information. The bill also added that personal information includes information that is “reasonably” capable of being associated with a particular consumer or household, as opposed to “capable” of being associated.

Stats. 2019, ch. 751, AB 1146 (Assem. Bill No. 1146, approved by Governor, Oct. 11, 2019 (2019-2020 Reg. Sess.)). This bill, which became effective on January 1, 2020, amended Civil Code sections 1798.105 and 1798.145. The bill exempted a consumer’s personal information if it is necessary for the business to retain for vehicle warranty or recall in accordance with federal law. This bill also provided an exemption from the consumer’s right to opt-out of the sale of their personal information with respect to vehicle ownership information shared between a new car dealer and the vehicle manufacturer for repairs covered under warranty or recall, provided that the dealer or manufacturer with which the information is shared does not sell, share, or use that information for any other purpose.

Stats. 2019, ch. 750; AB 1130 (Assem. Bill No. 1130, approved by Governor, Oct. 11, 2019 (2019-2020 Reg. Sess.)). This bill, which became effective on January 1, 2020, amended Civil Code sections 1798.29, 1798.81.5, and 1798.82. The bill revised the definition of personal information, as used in those sections, to also include “[u]nique biometric data generated from measurements or technical analysis of human body characteristics, such as a fingerprint, retina, or iris image, used to authenticate a specific individual.” The bill further states that “[u]nique biometric data does not include a physical or digital photograph, unless used or stored for facial recognition purposes.”

Stats. 2019, ch. 753; AB 1202 (Assem. Bill No. 1202, approved by Governor, Oct. 11, 2019 (2019-2020 Reg. Sess.)). This bill, which became effective on January 1, 2020, added Civil Code sections 1798.99.80 through 1798.99.88. This statute requires data brokers to register with the Attorney General. This statute requires the Attorney General to create a publicly available registry of data brokers on its website. A data broker is defined as a business that knowingly collects and sells to third parties the personal information of a consumer with whom the business does not have a direct relationship. This statute, which expressly states that it shall not be construed to supersede or interfere with the operation of the CCPA, adds transparency for consumers to be able to understand how their data are used and who is collecting their data.

The following provides a general description of the changes made to the proposed regulations after publication of the Notice of Proposed Rulemaking Action.

Section 999.301 defines specific terms used in the CCPA and the regulations that could have multiple meanings depending on the context of their usage. Defining the terms clarifies the meaning of the regulations, and thus this section is necessary to further the implementation and purposes of the CCPA. (See Civ. Code, § 1798.185, subd. (b)(2).) The initial proposed text of section 999.301 has been modified to add, delete, and clarify terms. New definitions have been added to provide further guidance, to define terms used in regulations that were added or revised in response to amendments to the CCPA, and in response to comments reflecting confusion about certain terms or regulations. Terms that no longer appear in the regulations as a result of other modifications have been deleted. Definitions have also been modified for clarification and to provide further guidance in response to comments.

Section 999.304 has been added to provide clarity and guidance regarding the notices that businesses must provide to consumers. It provides a roadmap of the different notices to consumers required by the CCPA and clarify whether a business is required to provide these notices.

Section 999.305 implements the CCPA by setting forth requirements regarding when and how a business must provide a notice of collection to consumers, including requirements regarding the form, content, posting, and accessibility of the notice. (Civ. Code, § 1798.100, subd. (b); see also Civ. Code, § 1798.130, subd. (a)(5).) In general, the section has been modified to provide greater detail regarding the design and presentation of the notice to consumers, to address burdens and operational challenges raised by businesses in public comments, and to address amendments to the CCPA and other statutes affecting the CCPA and the regulations.

Section 999.306 implements the CCPA by setting forth requirements regarding when and how a business must provide a notice of right to opt-out of sale to consumers, including requirements regarding the form, content, posting, and accessibility of the notice. (Civ. Code, § 1798.120, subd. (b); see also Civ. Code, §§ 1798.130, subd. (a)(2), 1798.135, subd. (a)(5).) In general, the section has been modified to provide greater detail regarding the design and presentation of the notice to consumers in online and offline contexts, to address burdens and operational challenges raised by businesses in public comments, and to reinforce a consumer's opt-out right.

Section 999.307 implements the CCPA by setting forth requirements regarding when and how a business must provide a notice of financial incentive to consumers, including requirements regarding the form, content, posting, and accessibility of the notice. (Civ. Code, § 1798.125, subd. (b)(1); see also Civ. Code, § 1798.130, subd. (a)(5).) In general, the section has been modified to provide greater detail regarding what information must be included in the notice, when a business is required to provide the notice, the design and presentation of the notice to consumers, and to address burdens and operational challenges raised by businesses in public comments.

Section 999.308 implements the CCPA by setting forth requirements regarding when and how a business must provide its privacy policy, including requirements regarding the form, content,

posting, and accessibility. (Civ. Code, § 1798.130, subd. (a)(5).) In general, the section has been modified to provide greater detail regarding what information must be included in the privacy policy, the design and presentation of the notice to consumers, and to address amendments to the CCPA and burdens and operational challenges raised by businesses in public comments.

Section 999.312 implements the CCPA by setting forth the rules and procedures businesses must follow regarding how consumers are to submit requests to know and requests to delete. (Civ. Code, §§ 1798.100, 1798.105, 1798.110, 1798.115.) In general, the section has been modified to address burdens and operational challenges raised by businesses in public comments and to address amendments to the CCPA.

Section 999.313 implements the CCPA by setting forth the rules and procedures businesses must follow in responding to consumer requests to know and requests to delete (Civ. Code, §§ 1798.100, 1798.105, 1798.110, 1798.115.) As required by the CCPA, the rules and procedures regarding requests to know are meant to minimize the administrative burden on consumers, and take into account available technology, security concerns, and the burden on the business. (Civ. Code, § 1798.185, subd. (a)(7).) In general, the section has been modified to provide greater detail regarding how to respond to consumers' requests to know and delete, to address burdens and operational challenges raised by businesses in public comments, and to address amendments to the CCPA and other statutes affecting the CCPA and these regulations.

Section 999.314 implements the CCPA by setting forth rules and procedures regarding who constitutes a service provider and what obligations they have regarding consumers' personal information and consumer requests. (Civ. Code, § 1798.140, subd. (v).) The section has been modified extensively to respond to comments raised during the public comment period. In general, the modifications clarify who falls within the definition of a service provider, for what purposes a service provider is allowed to use personal information, and how service providers are to respond to consumer request made under the CCPA.

Section 999.315 implements the CCPA by setting forth rules and procedures businesses must follow when a consumer requests that a business stop selling their personal information to third parties. (Civ. Code, §§ 1798.120, 1798.135.) In general, the section has been modified to clarify that methods for submitting requests to opt-out must be easy and require minimal steps for consumers to execute, to clarify and provide further guidance regarding user-enabled global privacy controls, and to respond to comments regarding a business's obligation to notify third parties of a consumer's opt-out request.

Section 999.316 implements the CCPA by setting forth rules and procedures businesses must follow when a consumer who has opted out of sale of their personal information seeks to opt back in. The section has been modified to clarify the circumstances in which a business may inform a consumer who has opted-out of sale that they can reverse that request and opt-in to consent to sell their personal information.

Section 999.317 implements the CCPA by setting forth rules and procedures regarding record-keeping, training, and compiling of metrics. (Civ. Code, §§ 1798.100, 1798.105, 1798.110,

1798.115, 1798.120, 1798.130, 1798.135.) The training provisions in section 999.317 clarify and provide guidance to businesses regarding their obligations to train their staff, and are necessary to ensure that businesses are able to adequately respond to consumer inquiries and requests and that consumers are able to effectively exercise their rights under the CCPA. The record-keeping and metrics provisions in section 999.317 clarify and provide guidance on how business can demonstrate compliance with the CCPA, and are necessary to further enforcement of the law and ensure compliance with the CCPA. In general, the section has been modified to provide clarification in response to confusion and concerns raised in public comments and to address burdens and operational concerns raised by businesses in public comments.

Section 999.318 implements the CCPA by setting forth rules and procedures regarding requests to access and requests to delete household information. This section is necessary because the CCPA defines personal information to include information that could reasonably be linked with a household but does not specify who may make requests regarding household information or how businesses should handle such requests. (Civ. Code, § 1798.140, subd. (o)(1).) In general, the section has been modified and re-organized to address three types of household requests, namely, those involving: (1) non-password-protected accounts; (2) password-protected accounts; and (3) minors under the age of 13. The section has also been modified to address amendments to the CCPA.

Section 999.323 implements the CCPA by setting forth requirements for businesses regarding verification of consumer requests to know and requests to delete. (Civ. Code, § 1798.185, subd. (a)(7).) In general, the section has been modified to correct grammatical and formatting errors and to prohibit businesses from requiring consumers to pay a fee for the verification of their request.

Section 999.324, which has not been modified from its original proposed text, implements the CCPA by setting forth requirements for businesses regarding verification of requests to know and requests to delete submitted by consumers who hold a password-protected account with the business.

Section 999.325 implements the CCPA by setting forth requirements for businesses regarding verification of requests to know and requests to delete submitted by consumers who do not have a password-protected account with the business. In general, the section has been modified to provide clarification, guidance, and examples in response to concerns raised by businesses in public comments.

Section 999.326 implements the CCPA by setting forth rules and procedures regarding how businesses must handle requests made by an authorized agent of the consumer. (Civ. Code, §§ 1798.135, subd. (a)(1), 1798.135, subd. (c), 1798.140, subd. (y).) In general, the section has been modified to provide further guidance on how to verify that a particular agent is authorized by a particular consumer, to address burdens and operational challenges raised by businesses in public comments, and to include additional responsibilities and limitations on authorized agents.

Section 999.330 implements the CCPA by setting forth the rules and procedures businesses must follow with regard to the personal information of minors under the age of 13. **Section 999.331**

implements the CCPA by setting forth the rules and procedures businesses must follow with regard to the personal information of minors who are at least 13 years old and less than 16 years old. **Section 999.332** implements the CCPA by setting forth the rules and procedures businesses must follow with regard to specific notices businesses shall include as it relates to minors under the age of 16 years old. In general, these sections have been modified to correct grammatical errors, to make the language of the regulation consistent with the CCPA and COPPA, and to clarify the regulations in responses to concerns raised by public comments. These sections also further the CCPA's purposes of providing special protections regarding the personal information of minors.

Section 999.336 implements the CCPA by setting forth rules and procedures regarding financial incentives. (Civ. Code, § 1798.125.) In general, the section has been modified to address grammatical errors, to provide guidance regarding the offering of financial incentives, to provide transparency so that consumers can be more informed in their control over their personal information, and to address concerns raised by businesses and consumers in public comments.

Section 999.337 establishes rules and procedures regarding the methods by which a business may calculate the value of consumer data in designing and disclosing financial incentive offerings that are not discriminatory. (Civ. Code, § 1798.125.) In general, the section has been modified to provide further clarity and guidance, to address burdens and operational challenges raised by businesses in public comments, and to address amendments to the CCPA.

Except as set forth above, there are no other substantial changes in applicable laws or to the effect of the proposed regulations apart from the laws and effects described in the Notice of Proposed Rulemaking Action.