

## California Passes Final 2019 Amendments to CCPA before It Becomes Law

Friday, September 13th marked the last day that the California state legislature could make changes to the California Consumer Privacy Act (“**CCPA**” or the “**Act**”) before it takes full effect on January 1, 2020. In the days prior, the legislature met regularly in efforts to reach consensus over the shape of the much-anticipated privacy legislation. After multiple marathon hearings in July,<sup>1</sup> mid-August and early September, California lawmakers finally passed five amendments to the Act that, if signed into law by California Governor Gavin Newsom, will leave intact the Act’s fundamental consumer protections regarding transparency over data collection and dissemination, while making significant changes to certain key definitions and exemptions.

While these amendments paint a clearer picture of the CCPA to take effect in January 2020 if signed into law, the CCPA could still undergo significant changes. Businesses should closely watch the California Attorney General as he readies to issue the Act’s implementing regulations, and even after the Act enters into force, the California State legislature could reconvene in January 2020 to seek to pass further amendments.

The CCPA, as discussed in prior publications,<sup>2</sup> is often compared to the comprehensive General Data Protection Regulation (“**GDPR**”), in that it applies extraterritorially and gives consumers both the right to know what type of consumer personal information businesses collect about them and the right to request that such data be deleted. Importantly for California consumers, their right to know what information is collected about them remains strong after this latest round of amendments: consumers can still request to learn the categories of personal information collected, the specific pieces of information collected, as well as the categories sold to third parties or otherwise disclosed to third parties for a business purpose.<sup>3</sup>

Below is an overview of the bills recently passed, all of which must be signed by Governor Newsom by October 13, 2019 to become law on January 1, 2020, the CCPA’s effective date:

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<sup>1</sup> See our update on the California legislature’s prior amendments: “California – Update on the latest amendments to the CCPA,” Linklaters (July 2019), available [here](#).

<sup>2</sup> “The California Consumer Privacy Act: Is my business caught?” Linklaters Primer (July 2019), available [here](#).

<sup>3</sup> See Cal. Civ. Code §§ 1798.110, 1798.115.

## One-Year Exemption for Employee Information (Assembly Bill 25)<sup>4</sup>

This amendment would change the CCPA so that the Act would not cover the collection of personal information from job applicants, employees, business owners, directors, officers, medical staff, or contractors of a business for one year. In practice, this would mean that if an employee asks their employer what personal information is collected about them, the employer will not be obliged under the CCPA to share any information. Moreover, employees would not be able to exercise any of the rights otherwise afforded under the CCPA, such as the right to opt out of the sale of their personal information and the right to request that their personal information be deleted. This exemption, however, would sunset January 1, 2021, and unless amended further by the State legislature, such employee information would revert to being covered under the CCPA.

## Amendments to the Definition of Personal Information (Assembly Bill 874)<sup>5</sup>

This bill would change the definition of personal information by inserting additional qualifications using the word “reasonably.” If signed into law, the definition of “Personal information” would be “information that identifies, relates to, describes, is *reasonably* capable of being associated with, or could *reasonably* be linked, directly or indirectly, with a particular consumer or household.” In addition, the amendment would clarify that “Personal information” does not include consumer information that is “deidentified”<sup>6</sup> or is considered “aggregate consumer information.”<sup>7</sup> Notably, “household” was not omitted from the definition of personal information, which is a key distinction in how the CCPA and the GDPR each defines personal data. Whether the definition continues to include “consumer or household” is likely to see more debate once the State legislature reconvenes in January 2020.

## Amendments to the Definition of Data Broker (Assembly Bill 1202)<sup>8</sup>

This bill would require “data brokers” to register with the California Attorney General’s Office on an annual basis. Under the amendment, a “data broker” is

<sup>4</sup> AB 25, 2019-20 Leg. Assemb. Reg. Sess. (Cal. 2019), available [here](#).

<sup>5</sup> AB 874, 2019-20 Leg. Assemb. Reg. Sess. (Cal. 2019), available [here](#).

<sup>6</sup> Deidentified means “information that cannot reasonably identify, relate to, describe, be capable of being associated with, or be linked, directly or indirectly, to a particular consumer, provided that a business that uses deidentified information:

(1) Has implemented technical safeguards that prohibit reidentification of the consumer to whom the information may pertain.

(2) Has implemented business processes that specifically prohibit reidentification of the information.

(3) Has implemented business processes to prevent inadvertent release of deidentified information.

(4) Makes no attempt to reidentify the information.” Cal. Civ. Code § 1798.140(h).

<sup>7</sup> Aggregate consumer information means “information that relates to a group or category of consumers, from which individual consumer identities have been removed, that is not linked or reasonably linkable to any consumer or household, including via a device.” Cal. Civ. Code § 1798.140(a).

<sup>8</sup> AB 1202, 2019-20 Leg. Assemb. Reg. Sess. (Cal. 2019), available [here](#).

now 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.”<sup>9</sup> The bill exempts from the registration requirement consumer reporting agencies covered by the Fair Credit Reporting Act (“FCRA”),<sup>10</sup> financial institutions covered by the Gramm-Leach-Bliley Act (“GLBA”),<sup>11</sup> and entities covered by the Insurance Information and Privacy Protection Act (“IIPPA”).<sup>12</sup>

### **Omnibus amendment clarifying various exemptions and definitions and allowing financial incentive programs and tiered pricing tied to the collection, sale or deletion of personal information (Assembly Bill 1355)<sup>13</sup>**

#### *Omnibus amendment clarifying various exemptions and definitions*

This bill, if signed into law, would, on its own, implement many of the amendments provided for by the other bills described above, including changes to the definition of personal information, elimination of the toll-free number requirement, and exempting employee information for one year.<sup>14</sup>

#### *Financial incentive programs and tiered pricing tied to the collection, sale or deletion of personal information<sup>15</sup>*

A consumer still has the right to opt-out of the sale of their personal information and—subject to many exceptions—the right to delete their personal

<sup>9</sup> In an amendment to Assembly Bill 1202, the legislature seems to set out a new test in California to distinguish between a data broker and a business that has a “direct relationship” with a consumer. The new provision states that, “Consumers who have a direct relationship with traditional and e-commerce businesses, which could have formed in a variety of ways such as by visiting a business’ premises or internet website, or by affirmatively and intentionally interacting with a business’ online advertisements, may have some level of knowledge about and control over the collection of data by those businesses, including: the choice to use the business’ products or services, the ability to review and consider data collection policies, the ability to opt out of certain data collection practices, the ability to identify and contact customer representatives, and the knowledge necessary to complain to law enforcement.” AB 1202, 2019-20 Leg. Assemb. Reg. Sess. (Cal. 2019), available [here](#).

<sup>10</sup> The FCRA is a U.S. federal law passed in 1970 that regulates the collection and disclosure of consumer credit information and consumer credit reports to protect the privacy and accuracy of consumer personal information. See 15 U.S.C. § 1681, *et seq.*

<sup>11</sup> The GLBA is a U.S. federal law passed in 1999 that requires financial institutions, or companies that offer consumers financial products or services like loans, financial or investment advice, or insurance, to explain their information-sharing practices to their customers and to safeguard sensitive data. See 15 U.S.C. §§ 6801-6809.

<sup>12</sup> The IIPPA is a California state law passed in 1980 that provides protection for personally identifiable information which is generally provided to an agent, broker or insurance company in order to apply for insurance or to submit a claim. See Cal. Ins. Code § 791.

<sup>13</sup> AB 1355, 2019-20 Leg. Assemb. Reg. Sess. (Cal. 2019), available [here](#).

<sup>14</sup> Among other things, it would amend the CCPA to exempt “deidentified” or “aggregate consumer information” from the definition of personal information, eliminate the toll-free number requirement for businesses with an online presence, and create a one-year exemption from the CCPA’s notice and rights provisions for “personal information” obtained from representatives of one business who communicate with another business. This exemption would apply only when a consumer is a “natural person who is acting as an employee, owner, director, officer, or contractor of a company, partnership, sole proprietorship, nonprofit, or government agency.”

In addition, this amendment would broaden the existing exemption for compliance with the FCRA. Specifically, when a consumer reporting agency, furnisher of information, or user of a consumer report discloses or uses “personal information,” they will be exempt from the CCPA, as long as the underlying activity is regulated by the FCRA. Notably, this exemption does not apply if a data breach is actionable under the CCPA’s private right of action.

<sup>15</sup> AB 1355, 2019-20 Leg. Assemb. Reg. Sess. (Cal. 2019), available [here](#).

information. Further, a business is prohibited from discriminating against consumers for exercising their rights. However, this bill clarifies that a business may offer a financial incentive program for the collection, sale or deletion of personal information based on the value of that information to the business. If a consumer does not opt-in to the financial incentive program, or requests that a business not sell or delete their personal information, a business “may also offer a different price, rate, level, or quality of goods or services to the consumer if that price or difference is directly related to the value provided to the business by the consumer’s data.”

### **Exemptions for Vehicle Information (Assembly Bill 1146)<sup>16</sup>**

This bill would add an exemption for certain vehicle information from the right to opt-out for information that is shared for “a vehicle repair covered by a vehicle warranty or a recall . . . provided that the new motor vehicle dealer or vehicle manufacturer with which that vehicle information or ownership information is shared does not sell, share, or use that information for any other purpose.” In practice, then, this amendment to the CCPA would allow auto dealers to use information about car warranties and recalls without facing the risk of consumers requesting that data to be deleted.

### **Elimination of the Toll-Free Number Requirement for Online Businesses (Assembly Bill 1564)<sup>17</sup>**

This amendment would eliminate the “toll-free number requirement” requirement for businesses that operate “exclusively online and have a direct relationship with a consumer.”<sup>18</sup> If the bill is signed into law, these businesses would need to only provide an email address for consumers to request information.

Also significant is what provisions the State legislature left unchanged. Specifically, the legislature either rejected or failed to act on several proposed amendments that many industry supporters and commercial businesses had been lobbying for—amendments that would have even further limited the consumer protections contained in the Act. For example, the legislature *rejected* the following proposals thus preventing:

- > businesses from collecting consumer data to use in targeted advertisements;
- > the expansion of the types of information that could be considered “deidentified”; and
- > the expansion of certain exemptions for the sale of information collected for purposes of detecting fraud.

However, because it is a two-year legislative calendar, the legislature could reconsider these bills when they reconvene in January.

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<sup>16</sup> AB 1146, 2019-20 Leg. Assemb. Reg. Sess. (Cal. 2019), available [here](#).

<sup>17</sup> AB 1564, 2019-20 Leg. Assemb. Reg. Sess. (Cal. 2019), available [here](#).

<sup>18</sup> Cal. Civ. Code § 1798.130.

The legislature also failed to act on the loyalty program provision (Assembly Bill 846<sup>19</sup>), shelving it until next year. That proposed bill would have created an exemption to the CCPA's notice and rights provisions for loyalty card programs and sought to limit businesses' ability to deny access to loyalty programs if a consumer opted out. Senate amendments to the bill effectively rendered it moot—they had clarified that a business that collects personal information as part of a loyalty program could sell that information if it obtains the opt-in consent of the consumer, but the consumer could withdraw such consent while continuing to enjoy the loyalty program's benefits.

While the CCPA will take full effect on January 1, 2020, its enforcement by the State Attorney General will not begin until either July 1, 2020 or six months after final regulations are issued by the attorney general—whichever comes first. California Attorney General Xavier Becerra is expected to issue preliminary guidance on compliance with the CCPA this fall. Additionally, Assembly Bill 1355 (amending section 1798.185 of the CCPA) authorizes Attorney General Becerra to issue additional regulations “to establish rules and procedures on how to process and comply with verifiable consumer requests for specific pieces of personal information relating to a household in order to address obstacles to implementation and privacy concerns.”

Certain more onerous compliance provisions in the CCPA were diluted with the passing of the recent amendments (assuming the Governor signs them into law)—but their key objectives to protect consumer privacy remain intact for now. How onerous the CCPA compliance is for companies doing business in California will depend on the implementing regulations and guidance from the Attorney General, whether the legislature can pass further amendments when it reconvenes, and ultimately, how the Attorney General approaches enforcement. Our firm will continue to monitor notable developments in the legislation and have compiled the below tracker of the final 2019 amendments.

For more information, reach out to one of our firm key contacts and check out [this podcast](#) with Mary Stone Ross, one of the co-authors of the CCPA and Principal at MSR Strategies. Mary recently collaborated with Linklaters in a webinar on the global reach of the CCPA, and what else businesses need to do to comply, considering their GDPR compliance, available [here](#).<sup>20</sup>

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<sup>19</sup> AB 846, 2019-20 Leg. Assemb. Reg. Sess. (Cal. 2019), available [here](#).

<sup>20</sup> “The Global Reach of the California Consumer Privacy Act – What to expect in 2020,” Linklaters Webinar (July 2019), available [here](#).

### Final Amendments to CCPA Tracker

Assembly Bill ("AB")	Summary	Status
<p><b>Passed</b></p> <p><i>Governor expected to sign into law before October 13, 2019 and would take effect January 1, 2020</i></p>		
<p>AB 25 <a href="#">(here)</a></p>	<p>&gt; Excludes from the Act information obtained regarding job applicants, employees, business owners, directors, officers, medical staff, or contractors for one year (until January 1, 2021), so long as the information is used in the employment context, but leaves in place the notice and rights provisions for data breaches</p>	<p>Passed September 12, 2019</p>
<p>AB 874 <a href="#">(here)</a></p>	<p>&gt; Amends the definition of "Personal information" by inserting "reasonably" qualifiers so that it covers information <i>reasonably</i> capable of being associated with a particular consumer or household</p> <p>&gt; Amends "publicly available" information to mean simply federal, state, and local government records (eliminating requirement that the record must be used for a purpose consistent with the reason it was originally gathered)</p> <p>&gt; Exempts deidentified and aggregate consumer information from the definition of "personal information"</p>	<p>Passed September 12, 2019</p>
<p>AB 1130 <a href="#">(here)</a></p>	<p>&gt; A non-CCPA amendment that would expand the types of personal information covered by California's breach notification statutes to add (1) additional specification of governmental identifiers, such as tax identification numbers, passport numbers, military identification numbers, or other unique identification numbers issued on government documents, and (2) unique 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</p>	<p>Passed September 6, 2019</p>
<p>AB 1146 <a href="#">(here)</a></p>	<p>&gt; Exempts information retained or exchanged between a dealer and a vehicle manufacturer regarding a</p>	<p>Passed September 12, 2019</p>

Assembly Bill ("AB")	Summary	Status
<p><b>Passed</b></p> <p><i>Governor expected to sign into law before October 13, 2019 and would take effect January 1, 2020</i></p>		
	<p>vehicle or its owner for warranty purposes and information necessary to fulfil warranty or product recall obligations</p>	
<p>AB 1202 <a href="#">(here)</a></p>	<ul style="list-style-type: none"> <li>&gt; Requires data brokers to register with the State Attorney General on an annual basis</li> <li>&gt; Exempts from the registration requirement reporting agencies covered by the Federal Credit Reporting Act, financial institutions covered by the Gramm-Leach-Bliley Act, and entities covered by the Insurance Information and Privacy Protection Act</li> </ul>	<p>Passed September 13, 2019</p>
<p>AB 1355 <a href="#">(here)</a></p>	<ul style="list-style-type: none"> <li>&gt; Exempts deidentified or aggregate consumer information from the definition of "Personal information"</li> <li>&gt; Eliminates the toll-free number requirement for businesses with an online presence</li> <li>&gt; Creates a one-year exemption from the CCPA's notice and rights provisions for "Personal information" obtained from representatives of one business who communicate with another business</li> <li>&gt; Exempts personal information from job applicants, employees, business owners, directors, officers, medical staff, or contractors for one year (until January 1, 2021), but leaves in place the notice and rights provisions for data breaches</li> <li>&gt; Incorporates by reference CCPA bills AB 25, AB 874, AB 1146 and AB 1564</li> </ul>	<p>Passed September 13, 2019</p>
<p>AB 1564 <a href="#">(here)</a></p>	<ul style="list-style-type: none"> <li>&gt; Eliminates "toll-free number requirement" for businesses that operate exclusively online and have direct relationships with consumers (these businesses need to provide only an email address for consumers looking to request information)</li> </ul>	<p>Passed September 12, 2019</p>
<p>AB 1790 <a href="#">(here)</a></p>	<ul style="list-style-type: none"> <li>&gt; A non-CCPA amendment that requires marketplaces to ensure that their terms and conditions regarding</li> </ul>	<p>Passed September 11, 2019</p>

Assembly Bill ("AB")	Summary	Status
<p><b>Passed</b></p> <p><i>Governor expected to sign into law before October 13, 2019 and would take effect January 1, 2020</i></p>		
	<p>commercial relationships with marketplace sellers meet specified requirements, including that the terms and conditions are drafted in plain and intelligible language</p>	
<p><b>Inactive / Postponed</b></p>		
<p>AB 846 (<a href="#">here</a>)</p>	<p>&gt; Amends the "non-discrimination" provisions of the CCPA for customer loyalty programs by clarifying that a business that collects personal information as part of a loyalty program can sell that information if it obtains the consent of the consumer</p>	<p>Ordered to inactive file on September 12, 2019</p>

Assembly Bill ("AB")	Summary	Status
<b><i>Inactive / Postponed</i></b>		
AB 873 <a href="#">(here)</a>	<ul style="list-style-type: none"> <li>&gt; Revises definition of "Personal information" as being "reasonably linkable" to a consumer</li> <li>&gt; Amends the definition of "deidentified" to mean information that does not identify, and is not reasonably linkable, directly or indirectly, to a particular consumer, provided that the business makes no attempt to reidentify the information and takes reasonable technical and administrative measures designed to                             <ul style="list-style-type: none"> <li>a) ensure that the data is deidentified,</li> <li>b) publicly commit to maintain and use the data in a deidentified form,</li> <li>and c) contractually prohibit the recipients of the data from trying to reidentify it</li> </ul> </li> </ul>	Failed on July 9, 2019, but granted motion of reconsideration
AB 1760 <a href="#">(here)</a>	<ul style="list-style-type: none"> <li>&gt; Requires opt-in consent for the sharing of personal information</li> </ul>	Hearing scheduled and canceled on April 23, 2019

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