



PAI

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State Privacy Developments

Privacy Law Committee of IT Law Section, State Bar of Michigan

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Purpose of Session

- Review at a high level some significant state legislative developments in Privacy
- General discussion of what are some of the key elements being included in recent bills
- Discussion of the Nevada surprise and potential consequences to our companies and clients
- CCPA speculation
- Other privacy topics on the minds of participants

State Privacy Legislation

Hodge Podge Approach Continues

- After adoption of the CCPA, multiple states introduced bills with varying approaches to the protection of consumer privacy
- The number and variation within the bills present a challenge to complying with potentially conflicting requirements
- The IAPP created a US state comprehensive privacy law comparison chart using what it has determined to be the 16 most commonly addressed matters to facilitate review of proposed legislation*
- Although useful it is somewhat limited in coverage
- Are the elements selected and shown on the next slides correct?

*<https://iapp.org/news/a/us-state-comprehensive-privacy-law-comparison/>

16 Common Privacy Provisions

- **The right of access to personal information collected** — The right for a consumer to access from a business/data controller the information collected or categories of information collected about the consumer; right may only exist if a business sells information to a third party.
- **The right of access to personal information shared with a third party** — The right for a consumer to access personal information shared with third parties.
- **The right to rectification** — The right for a consumer to request that incorrect or outdated personal information be corrected but not deleted.
- **The right to deletion** — The right for a consumer to request deletion of personal information about the consumer under certain conditions.

16 Common Privacy Provisions – cont'd

- **The right to restriction of processing** — The right for a consumer to restrict a business' ability to process personal information about the consumer.
- **The right to data portability** — The right for a consumer to request personal information about the consumer be disclosed in a common file format.
- **The right to opt out of the sale of personal information**— The right for a consumer to opt out of the sale of personal information about the consumer to third parties.
- **The right against solely automated decision making** — A prohibition against a business making decisions about a consumer based solely on an automated process without human input.

16 Common Privacy Provisions – cont'd

- **A consumer private right of action** — The right for a consumer to seek civil damages from a business for violations of a statute.
- **A strict opt-in for the sale of personal information of a consumer less than a certain age** — A restriction placed on a business to treat consumers under a certain age with an opt-in default for the sale of their personal information.
- **Notice/transparency requirements** — An obligation placed on a business to provide notice to consumers about certain data practices, privacy operations, and/or privacy programs.
- **Data breach notification** — An obligation placed on a business to notify consumers and/or enforcement authorities about a privacy or security breach.

16 Common Privacy Provisions – cont'd

- **Mandated risk assessment** — An obligation placed on a business to conduct formal risk assessments of privacy and/or security projects or procedures.
- **A prohibition on discrimination against a consumer for exercising a right** — A prohibition against a business treating a consumer who exercises a consumer right differently than a consumer who does not exercise a right.
- **A purpose limitation** — An EU General Data Protection Regulation–style restrictive structure that prohibits the collection of personal information except for a specific purpose.
- **A processing limitation** — A GDPR-style restrictive structure that prohibits the processing of personal information except for a specific purpose.

State Comprehensive-Privacy Law Comparison

Index to Following Chart

Consumer Rights

- A.** To Access to Collected
- B.** To Access to Shared
- C.** To Rectification
- D.** To Deletion
- E.** To Restriction
- F.** To Portability
- G.** To Opt-Out
- H.** Against Solely Automated Decision Making
- I.** Private Right of Action

Business Obligations

- J.** Strict Age-based Opt-In
- K.** Notice/Transparency Requirement
- L.** Data Breach Notification
- M.** Risk Assessment
- N.** Prohibition on Discrimination
- O.** Purpose Limitation
- P.** Processing Limitation
- Q.** Fiduciary Duty

Chart at: https://iapp.org/media/pdf/State_Comp_Privacy_Law.pdf

A B C D E F G H I J K L M N O P Q

California	Ca. Civ. Code §§ 1798.100 - .199	California Consumer Privacy Act	x	x		x		x	x		s	16	x			x		
Connecticut	RB 1108		x	x		x		x	x		s	16	x			x		
Hawaii	SB 418		x	x		x		x	x			16	x			x		
Illinois	HB 3358	Data Transparency and Privacy Act		x					x				x					
Louisiana	HB 465 I	Internet and Social Media Privacy and Protection Act							in		x		x			x		
Maryland	SB 613	Online Consumer Protection Act	x	x		x		x	x				x			x		
Massachusetts	SD 341/S 120		x	x		x		x	x		x	18	x			x		
Minnesota	HF 2917/SF 2912		x	x	x	x	x	x	x	x			x		x			x

A B C D E F G H I J K L M N O P Q

Nevada	Chapter 603A												X	X							
Nevada	SB 220		X																		
New Jersey	S2834			X					X				X				X				
New Mexico	SB 176	Consumer Information Privacy Act	X	X		X		X	X		S	1	X				X				
New Mexico												8									
New York	SB S224	Right to Know Act of 2019	X	X				?						?							
New York	SB S8641 II		S																		
New York	SB S5642 III	New York Privacy Act	X	X	X	X	X	X	X	X	X	X	X	X	X					X	X
North Dakota	HB 1485 IV		X																		



A B C D E F G H I J K L M N O P Q

Pennsylvania	HB 1049	Consumer Data Privacy Act	x	x		x			x		s	1 6	x			x		
Rhode Island	S0234	Consumer Privacy Protection Act	x	x		x		x	x		x	1 6	x			x		
Texas	HB 4518	Texas Consumer Privacy Act	x	x		x		x	x			1 6	x			x		
Texas	HB 4390 V	Texas Privacy Protection Act	x										x		x		x	x
Washington	SB 5376	Washington Privacy Act	x	x	x	x	x	x	x	x			x	x	x			

Bold - Passed law

Italics - Proposed bill, not passed

s - private right of action for security violations only

? - provision not clear

in - opt-in consent requirement

I Louisiana HB 465 applies only to internet service providers, internet service operators, and social media companies.

II New York SB S8641 adds a private right of action to security violations of S224.

III New York SB S5642 information.

IV North Dakota HB 148 includes a broad consumer right to opt-out of any processing, not just the sale of personal 5 is a broad prohibition on disclosure of personal information except upon explicit consent.

V Texas HB 4390 is a GDPR-style restriction-based bill that prohibits a business from collecting or processing information except under certain circumstances

Nevada's Soon to be Effective Privacy Legislation

Nevada SB 220

- Signed by governor May 29, 2019, becomes effective October 1, 2019
- Amends Nevada's 2017 online privacy law which applies to:
 - "Operators" of websites and online services that collect certain personal information from Nevada consumers.

Nevada SB 220

- “Covered Information,” defined as
 - A first and last name
 - A home or other physical address which includes the name of a street and city or town
 - An electronic mail address
 - A telephone number
 - A social security number
 - An identifier that allows a specific person to be contacted either physically or online
 - Any other information concerning a person collected from the person through the Internet website or online service of the operator and maintained by the operator in combination with an identifier in a form that makes the information personally identifiable

Nevada SB 220

- The existing Nevada law requires Operators to provide an online notice disclosing:
 - Categories of covered information it collects
 - Categories of third parties with whom it shares covered information
 - The process for consumers to review and request changes to their covered information
 - The process for notification of material changes to the notice
 - Whether the Operator collects covered information about an individual consumer's online activities

Nevada SB 220

- SB-220 requires businesses subject to the law to allow consumers to opt-out of the *sale* of their covered information
 - The business must provide consumers a designated request address
 - The authenticity of the consumer opt-out request must be able to be reasonably verified by the business
 - Business must respond to the request within 60 days (with a possible 30 day extension with notice to the consumer)
 - Definition of “sale” limited to the exchange of covered information for monetary consideration in situations where the purchaser will license or sell the information to additional persons
 - Sale specifically does not include data transfers to third parties:

Nevada SB 220

- Who process data for the operator or are affiliates of the operator
 - Who have a direct product or service business relationship with the consumer
 - Where the transfer would be consistent with the consumer's "reasonable expectations" in the context the information was provided
 - In the context of certain M&A and bankruptcy situations
- Excluded from the definition of Operator (and therefor the law) are:
 - A third party that operates or manages a website or online service
 - A financial service entity subject to GLBA
 - An entity subject to HIPAA
- A motor vehicle manufacturer or dealer in limited circumstances

Some Differences With the CCPA

- Unlike the CCPA (which applies to both online and offline business operations), SB 220 applies only to operators of Internet websites and online services
- In Nevada a “consumer” is “a person who seeks or acquires, by purchase or lease, any good, service, money or credit for personal, family or household purposes from an operator’s Internet website or online service.” The CCPA has a more expansive definition of “consumer” that includes any California resident.
- Unlike the CCPA, SB 220 does not require a “Do Not Sell” button
- Nevada’s definition of “sale” is more operational. The CCPA’s definition of “sale” is ambiguous: it includes a business’s disclosure of personal information for monetary or “other valuable consideration.”

Some Differences With the CCPA

- Nevada has no **opt-in** requirements. The CCPA requires consumers between the ages of 13 and 16 to opt-in to the sale of their data, and parental consent for consumers under 13.
- Nevada's opt-out applies to a narrower scope of information. The CCPA also enumerates categories of personal information, but under the CCPA, personal information includes any information that is "capable of being associated with... a particular consumer or household."
- Nevada provides operators 60 days to respond to consumers' requests vs. CCPA's 45 days (both extendable in certain circumstances)
- Unlike the CCPA, SB 220 does not include rights of access, portability, deletion, or non-discrimination.