

# Virginia's New Consumer Data Protection Act

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Virginia recently adopted a GDPR-inspired comprehensive data protection law for Virginia residents.

## What are the main points covered by Virginia's Consumer Data Protection Act ("CDPA")?

Like Europe's GDPR and California's CCPA, the CDPA **expands consumer rights** to access, correct, delete, and obtain a copy of personal data provided to or collected by a company, and to opt out of processing of the personal data for purposes of targeted advertising, sale, or profiling of the personal data.

The CDPA also **expands Virginia's definition of personal data, to include "sensitive data,"** which includes, among other categories, race, religion, sexual orientation, mental or physical health diagnosis, biometric data, personal data collected from a known child, and precise geolocation.

The CDPA also defines expectations and **requirements for controllers**, to limit the use of the personal data to the purpose for which it was collected, implement reasonable data protection safeguards, process data only with consent of the consumer, establish a clear privacy policy, disclose sale of personal data for advertising purposes to consumers and provide a simple mechanism to opt out of the sale, and provide a secure and reliable way for consumers to exercise these rights. As with GDPR, controllers will also be required to conduct and document **data protection assessments** of processing activities created or generated after the CDPA goes into effect, and the documentation could be requested by the Virginia Attorney General. Further, the CDPA defines **requirements that govern the controller-processor relationship**, including, that the processor must adhere to instructions of the controller, and controllers and processors must have a data processing agreement in place.

## Who does the CDPA apply to?

The CPDA applies to businesses that conduct business in Virginia, or produce products or services that target Virginia residents, and that (1) during a calendar year, control or process personal data of at least 100,000 "consumers" or (2) control or process personal data of at least 25,000 "consumers" *and* derive over 50% of gross revenue from the sale of personal data. "Consumer" is

defined as a natural person who is a resident of Virginia, acting only in an individual or household context. It does not include an individual acting in a commercial or employment context.

As with CCPA, there are broad exemptions for financial institutions subject to the Gramm-Leach-Bliley Act (“GLBA”) and covered entities and business associates governed by HIPAA or HITECH. Other exemptions include non-profit organizations and higher education institutions.

### **What is the current status of CDPA and when will it take effect?**

The CDPA was passed in March 2021. The CDPA will take effect in January 2023, at the same time as California’s new California Privacy Rights Act (CPRA).

### **What happens if companies don’t comply with the CDPA?**

Unlike the CPRA, there is no private right of action for consumers. Instead, the Virginia Attorney General will have exclusive authority to enforce violations. Violators will have a 30-day period to cure infractions, after which the Attorney General can seek damages of up to \$7,500 per violation.

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