

How Do State Statutes Differ in Terms of Their ‘Targeted Advertising’ Exemptions?

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The term “targeted advertising” is defined relatively consistently between and among modern U.S. data privacy statutes with the notable exception of California which deviates somewhat in the California Privacy Rights Act’s (CPRA) definition of the similar term “cross-context behavioral advertising” by omitting any reference to tracking a person over time or making predictions about a person’s interests. As the following chart indicates, California also deviates in that it does not provide the same exemptions for the types of activities that constitute targeted advertising or cross-context behavioral advertising. Specifically, unlike the other state privacy statutes, the CPRA does not contain an express exemption for advertisements that are selected based upon search queries, contextual visits to a website, or requests for information. Nor does the CPRA contain an express exemption from its definition of “sharing” for data that is shared for the purpose of reporting advertising performance metrics.

It should be noted that these omissions may not lead to a substantive difference in terms of what activities constitute cross-context behavioral advertising or targeted advertising. For example, it is possible that while an activity, such as targeting an advertisement based upon a search query, may not fall under an express exemption within the CPRA, it may not satisfy the definition of cross-context behavioral advertising in the first place such that it would not necessitate an exemption.

Explicit Exemption from Definition of "Targeted Advertising"	California 2022 CCPA	California 2023 CPRA	Virginia 2023 VCDPA	Colorado 2023 CPA	Utah 2023 UCPA	Connecticut 2023 CTDPA	Montana 2024	Iowa 2025	Tennessee 2025 TIPA	Indiana 2026
Based on controller's properties. Ads selected based on activities within the controller's own websites or applications are not considered targeted advertising.	N/A	✓ ¹ (Implied in definition of cross-context behavioral advertising)	✓ ²	✓ ³	✓ ⁴	✓ ⁵	✓ ⁶	✓ ⁷	✓ ⁸	✓ ⁹
Based on controller-affiliates' properties. Ads selected based on activities within a controller-affiliate's websites or applications are not considered targeted advertising.	N/A	✓ ¹⁰ (Implied in definition of cross-context behavioral advertising)	✓ ¹¹ (Implied in definition of targeted advertising)	✓ ¹² (Implied in definition of targeted advertising)	✓ ¹³ (Explicit exemption)	✓ ¹⁴ (Implied in definition of targeted advertising)	✓ (Implied in definition of targeted advertising)	✓ ¹⁵ (Explicit exemption)	✓ (Implied in definition of targeted advertising)	✓ ¹⁶ (Explicit exemption)
Based on search query. Ads selected based on the context of a consumer's current search query are not considered targeted advertising.	N/A	✗	✓ ¹⁷	✓ ¹⁸	✓ ¹⁹	✓ ²⁰	✓ ²¹	✓ ²²	✓ ²³	✓ ²⁴
Based on visit to a website. Ads selected based on the context of a consumer's current visit to a website are not considered targeted advertising.	N/A	✗	✓ ²⁵	✓ ²⁶	✓ ²⁷	✓ ²⁸	✓ ²⁹	✓ ³⁰	✓ ³¹	✓ ³²
Based on request for information. Ads selected based on a consumer's request for information or feedback are not considered targeted advertising.	N/A	✗	✓ ³³	✓ ³⁴	✓ ³⁵	✓ ³⁶	✓ ³⁷	✓ ³⁸	✓ ³⁹	✓ ⁴⁰
Based on controller's properties. Ads selected based on activities within the controller's own websites or applications are not considered targeted advertising.	N/A	✗	✓ ⁴¹	✓ ⁴²	✓ ⁴³	✓ ⁴⁴	✓ ⁴⁵	✓ ⁴⁶	✓ ⁴⁷	✓ ⁴⁸
Based on controller-affiliates' properties. Ads selected based on activities within a controller-affiliate's websites or applications are not considered targeted advertising.	N/A	✓ ⁴⁹	✗	✗	✗	✗	✗	✗	✗	✗

[1] Cal. Civ. Code 1798.140(k) (West 2021) (relates to definition of cross-context behavioral advertising).

[2] Va. Code 59.1-571 (2022).

[3] C.R.S. 6-1-1303(24)(b) (2022).

[4] Utah Code Ann. 13-61-101(34)(b)(i) (2022).

[5] Connecticut Substitute Bill No. 6, § 1(28)(A) (2022) (pending governor approval).

[6] Montana S.B. 384 at § 2(25)(b).

[7] Iowa S.F. 262 at Section 1(28) (2023).

[8] Tennessee Amd. No. 1 to H.B. 1181 at § 47-18-3201(28) (B) (2023).

[9] Indiana Senate Enrolled Act. No. 5, at IC 24-15 Chp. 2 § 1(30)(b) (2023).

[10] Cal. Civ. Code 1798.140(k) (West 2021) (relates to definition of cross-context behavioral advertising).

[11] Va. Code 59.1-571 (2022).

[12] C.R.S. 6-1-1303(24)(b) (2022).

[13] Utah Code Ann. 13-61-101(34)(b)(i) (2022).

[14] Connecticut Substitute Bill No. 6, § 1(28)(A) (2022) (pending governor approval).

[15] Iowa S.F. 262 at Section 1(28) (2023).

[16] Indiana Senate Enrolled Act. No. 5, at IC 24-15 Chp. 2 § 1(30)(b) (2023).

[17] Va. Code 59.1-571 (2022).

[18] C.R.S. 6-1-1303(24)(b) (2022).

[19] Utah Code Ann. 13-61-101(34)(b)(ii) (2022).

[20] Connecticut Substitute Bill No. 6, § 1(28)(B) (2022).

[21] Montana S.B. 384 at § 2(25)(b).

[22] Iowa S.F. 262 at Section 1(28) (2023).

[23] Tennessee Amd. No. 1 to H.B. 1181 at § 47-18-3201(28) (B) (2023).

[24] Indiana Senate Enrolled Act. No. 5, at IC 24-15 Chp. 2 § 1(30)(b) (2023).

[25] Va. Code 59.1-571 (2022).

[26] C.R.S. 6-1-1303(24)(b) (2022).

[27] Utah Code Ann. 13-61-101(34)(b)(ii) (2022).

[28] Connecticut Substitute Bill No. 6, § 1(28)(B) (2022).

[29] Montana S.B. 384 at § 2(25)(b).

[30] Iowa S.F. 262 at Section 1(28) (2023).

[31] Tennessee Amd. No. 1 to H.B. 1181 at § 47-18-3201(28) (B) (2023).

[32] Indiana Senate Enrolled Act. No. 5, at IC 24-15 Chp. 2 § 1(30)(b) (2023).

[33] Va. Code 59.1-571 (2022).

[34] C.R.S. 6-1-1303(24)(b) (2022).

[35] Utah Code Ann. 13-61-101(34)(b)(iii) (2022).

[36] Connecticut Substitute Bill No. 6, § 1(28)(C) (2022).

[37] Montana S.B. 384 at § 2(25)(b).

[38] Iowa S.F. 262 at Section 1(28) (2023).

[39] Tennessee Amd. No. 1 to H.B. 1181 at § 47-18-3201(28) (B) (2023).

[40] Indiana Senate Enrolled Act. No. 5, at IC 24-15 Chp. 2 § 1(30)(b) (2023).

[41] Va. Code 59.1-571 (2022).

[42] C.R.S. 6-1-1303(24)(b) (2022).

[43] Utah Code Ann. 13-61-101(34)(b)(iv) (2022).

[44] Connecticut Substitute Bill No. 6, § 1(28)(D) (2022).

[45] Montana S.B. 384 at § 2(25)(b).

[46] Iowa S.F. 262 at Section 1(28) (2023).

[47] Tennessee Amd. No. 1 to H.B. 1181 at § 47-18-3201(28) (B) (2023).

[48] Indiana Senate Enrolled Act. No. 5, at IC 24-15 Chp. 2 § 1(30)(b) (2023).

[49] Cal. Civ. Code 1798.140(ah)(1) (West 2021) (refers to sharing with “third parties”); Cal. Civ. Code 1798.140(ai) (West 2021) (definition of third parties excludes service providers).

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