

Colorado Passes Privacy Bill: How Does it Stack Up Against California and Virginia?

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Update: Governor Polis signed SB 21-190 into law on July 7, 2021, see our updated blog post [here](#).

The Colorado Legislature recently passed the Colorado Privacy Act (“ColoPA”), joining [Virginia](#) and [California](#) as states with comprehensive privacy legislation. Assuming Colorado Governor Jared Polis signs the bill ([SB 21-190](#)) into law, ColoPA will go into effect on July 1, 2023.

How does the measure stack up against the VCDPA and the CCPA (as amended by CPRA)? The good news is that, in broad terms, ColoPA generally does not impose significant new requirements that aren’t addressed under the CCPA or VCDPA. Below, we compare key provisions of ColoPA against California’s and Virginia’s laws and call attention to a few areas where Colorado has struck out on its own.

- **Establishing consumer rights.** As with the VCDPA and the CCPA, ColoPA provides rights for access, deletion, correction, portability, and opt out for targeted advertising, sales, and certain profiling decisions that have legal or similar effects. Unlike CCPA, Colorado consumers can only use an authorized agent for sale opt-out requests.
- **Universal opt-out requests.** ColoPA also requires the Attorney General to establish technical specifications for a universal targeted advertising and sale opt-out (e.g., global privacy control) by July 1, 2023, which controllers must honor starting July 1, 2024. Note there also will be CPRA regulations on this point with compliance likely due by January 1, 2023. Unlike CPRA, which makes the global privacy control optional, controllers *must* comply with the universal opt-out under ColoPA.
- **Appealing consumer rights decisions.** Like Virginia, ColoPA requires controllers to set up mechanisms permitting consumers to appeal a controller’s decision not to comply with a consumer’s request. The controller must then inform the consumer of its reasons for rejecting the request and also inform the consumer of his or her ability to contact the Attorney General “if the consumer has concerns about the result of the appeal.”
- **Requiring data protection assessments.** Similar to GDPR, and consistent with the VCDPA, ColoPA requires data protection assessments (“DPAs”) for certain processing activities, namely, targeted advertising, sales, certain profiling, and processing of sensitive personal data. As with Virginia, the Colorado Attorney General has the right to request copies of a controller’s DPAs.
- **Consent for certain processing.** Again following Virginia’s lead, ColoPA requires opt-in consent for the processing of sensitive personal information, which covers categories such as

racial or ethnic origin, religious beliefs, citizenship, or genetic or biometric data used for uniquely identifying an individual. ColoPA also requires consent for processing children’s data, with a “child” being any individual under the age of 13. Unlike the VDCPA, ColoPA does not require COPPA-compliant consent for such processing, but ColoPA does exempt from the law personal data that is processed consistent with COPPA requirements.

- **Right to cure.** ColoPA allows controllers to cure violations and is unique by establishing the longest right to cure, at 60 days, and also because the statute repeals the provision on January 1, 2025. Thus, while the Attorney General initially must give a controller notice and an opportunity to cure any violation before taking enforcement action, the Attorney General will be able to act without such notice from January 1, 2025 onward.
- **Establishing controller duties.** ColoPA establishes certain duties for controllers, including the duties of transparency, purpose specification, data minimization, avoiding secondary use, care, avoiding unlawful discrimination, and duties regarding sensitive data. These duties create related obligations, such as providing a privacy policy, establishing security practices to secure personal data, and obtaining consent prior to processing sensitive data or children’s data.

	ColoPA	VCDPA	CCPA
Thresholds to Applicability	Conduct business in CO or produce products or services targeted to CO and (a) control or process personal data of at least 100,000 consumers; or (b) derive revenue or receive a discount on the price of goods or service from selling personal data or controls personal data of at least 25,000 consumers	Conduct business in or produce products or services targeted to VA and (a) control or process personal data of at least 100,000 consumers; or (b) derive over 50% of gross revenue from the sale of personal data and process or control personal data of at least 25,000 consumers	Conduct business in CA and collect personal information of CA residents and: (a) has \$25 million or more in annual revenue for preceding calendar year as of Jan. 1 of calendar year; (b) annually buys, sells, or shares personal data of more than 100,000 consumers or households; or (c) earns more than 50% of its annual revenue from selling or sharing consumer personal information
			Requires opt-in consent for sharing PI for cross-context behavioral advertising for children under 16, including parental
Consent	Requires opt-in consent for processing sensitive personal data, including	Requires opt-in consent for processing sensitive personal data, and COPPA-compliant consent for processing	

	children's data	children's data	consent for children under 13
Opt-Out	Required for targeted advertising, sales, and profiling for legal or similarly significant effects	Required for targeted advertising, sales, and profiling for legal or similarly significant effects	Required for profiling, cross-contextual advertising, and sale; right to limit use and disclosure of sensitive personal information
Other Consumer Rights	Access, Deletion, Correction, Portability	Access, Deletion, Correction, Portability	Access, Deletion, Correction, Portability
Authorized Agents	Permitted for opt-out requests	N/A	Permitted for all requests
Appeals	Must create process for consumers to appeal refusal to act on consumer rights	Must create process for consumers to appeal refusal to act on consumer rights	N/A
Private Cause of Action	No	No	Yes, related to security breaches
Cure Period?	60 days until provision expires on Jan. 1, 2025	30 days	No
Data Protection Assessments	Required for targeted advertising, sale, sensitive data, certain profiling	Required for targeted advertising, sale, sensitive data, certain profiling	Annual cybersecurity audit and risk assessment requirements to be determined through regulations

Given the significant overlap among the three privacy laws, companies subject to ColoPA should be able to leverage VCDPA and CCPA implementation efforts for ColoPA compliance. If ColoPA is any example, other state privacy efforts may not veer too far from the paths VCDPA and CCPA have forged. The key will be to closely monitor how [CalPPA](#) and the Colorado Attorney General address forthcoming regulations and whether they add new distinct approaches for each state. Check back on our blog for more privacy law updates.

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