

Data Privacy and Cybersecurity

New Draft of California Privacy Ballot Initiative Released

By: [Kate T. Spelman](#), [David P. Saunders](#) and [Effiong K. Dampha](#)

[As previously reported](#), Alastair Mactaggart, backed by Californians for Consumer Privacy, filed a new ballot initiative — now named the California Privacy Rights Act of 2020 (CPRA) — on September 25, 2019 (the Initiative). The Initiative seeks to enact numerous amendments to the California Consumer Privacy Act of 2018 (CCPA), which is set to take effect on January 1, 2020. On November 13, 2019, the California Attorney General's office received a letter from Mactaggart enclosing amendments to the Initiative (the Amended Initiative), which is available [here](#).

A redline comparison of the Initiative and the Amended Initiative can be found [here](#). Some elements of the Amended Initiative are responsive to business concerns, while others strengthen protections for consumers.

Below are some of the more significant changes between the original and amended versions of the Initiative:

- **Operative date pushed back.** The Amended Initiative pushes back the operative date of the CPRA from January 1, 2021, to January 1, 2023, and applies only to personal information collected on or after January 1, 2022. (SEC. 31(a)).
- **Employee and Business-to-Business exemptions extended.** The CCPA provides for certain exemptions that were scheduled to sunset on January 1, 2021. Those exceptions included both an exemption for employee and contractor information (1798.145(m)(1)-(2)) and what is commonly referred to as the B2B (business-to-business) exemption (1798.145(n)(1)). The Amended Initiative extends these exemptions to January 1, 2023.
- **Optionality of honoring a browser's Do Not Track signal.** The attorney general's proposed regulations to the CCPA would *require* businesses to treat certain web browser settings, such as Do Not Track (DNT) signals, as synonymous with "opt-outs" under the CCPA. The Amended Initiative makes that treatment optional so long as businesses provide other methods for consumer opt-outs. (1798.135(b); 1798.185(a)(19)(A)).
- **From "sold" to "sold or shared."** In the Amended Initiative, the term "sold" has been broadened in numerous places to "sold or shared." This change is accompanied by a change in the definition of what it means to sell, which removes the carve-out for sharing personal information with a service provider. (1798.140(ad)). The Amended Initiative also adds a definition of "share," which includes the transfer of information even where no money is exchanged. (1798.140(ah)). As with CCPA and the initial Initiative, both the term "sell" and "share" have exceptions that permit businesses to use data for certain purposes without running afoul of any statutory requirements.
- **Removal of disclosure for political use.** One of the most controversial parts of the Initiative were those parts that required certain disclosures of information to be used for a political purpose. The Amended Initiative completely removes mention of any right to disclosure of political uses of personal information.
- **Clarification to enforcement mechanisms.** The Amended Initiative includes several important changes to the regulatory enforcement framework. First, the cost of the new proposed agency, the California Privacy Protection Agency, would no longer be directly funded by regulatory fines -- a structure that many businesses worried would create an incentive to impose large and numerous fines for even small infractions. Second, the Agency was given the right to elect to *not* investigate a consumer complaint, and to provide a business with a time to cure a violation of the CCPA. Third, the Amended Initiative expressly states that businesses shall not be ordered to pay both an administrative fine *and* a civil penalty for the same violation. (1798.199.100). Fourth, the Agency "and any court" would be required under the Amended Initiative to "consider the good faith and cooperation of" the business in determining the amount of any fine or penalty. (*Id.*)

- **Limitations on future amendments.** The Amended Initiative provides that what will become the CPRA can only be amended if those amendments are “consistent with and further the purpose and intent of th[e] Act.” This provision was put in place in an attempt to set the Amended Initiative as the privacy floor in California.

While there are many other changes between the initial draft of the Initiative and the Amended Initiative, these are some of the most significant changes of which businesses will likely take note. Now, with only a month-and-a-half until the CCPA goes into effect, businesses must balance their anticipatory efforts to comply with the current version of California’s privacy law, with the knowledge that they may be forced to revisit those efforts in the event the CPRA is ultimately enacted by the voters or is taken up by the California legislature as amendments to the CCPA. In short, it seems like the carousel of the CCPA has not yet come to a stop a mere several weeks before it is set to go into effect. Businesses should assume and anticipate that there will be additional changes to California’s trailblazing privacy law in 2020.

Contact Us



Kate T. Spelman

kspelman@jenner.com | [Download V-Card](#)



David P. Saunders

dsaunders@jenner.com | [Download V-Card](#)



Effiong K. Dampha

edampha@jenner.com | [Download V-Card](#)

© 2019 Jenner & Block LLP. **Attorney Advertising.** Jenner & Block is an Illinois Limited Liability Partnership including professional corporations. This publication is not intended to provide legal advice but to provide information on legal matters and firm news of interest to our clients and colleagues. Readers should seek specific legal advice before taking any action with respect to matters mentioned in this publication. The attorney responsible for this publication is Brent E. Kidwell, Jenner & Block LLP, 353 N. Clark Street, Chicago, IL 60654-3456. Prior results do not guarantee a similar outcome.