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## Privacy and Data Security Alert

### While Congressional Action Stalls, States Continue To Advance Privacy Legislation

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Since our reports on [February 20, 2019](#) and [April 30, 2019](#), no states have followed California in adopting comprehensive privacy legislation but three states have enacted targeted privacy laws. In May Nevada enacted a law giving consumers the right to opt out of the sale of their personal information. Maine put on its books a law restricting Internet service providers' use of subscribers' personal information. And Montana limited the use of data collected from sites designed, marketed, and used for K-12 school purposes.

As many state legislatures conclude their sessions for 2019, it is unclear whether any state will enact a comprehensive privacy law akin to the California Consumer Privacy Act (CCPA). Five bills based on the CCPA are still pending in states where the legislature remains in session—one each in Massachusetts, Pennsylvania, and Rhode Island, and two in New York—and it is possible that one of these could gain legislative traction.

In Section A, we describe the laws noted above that were adopted in Nevada, Maine, and Montana.

In Section B, we provide brief updates on the CCPA-like bills described in our previous reports and in Section C on one CCPA copycat recently introduced in New York.

In Section D, we provide updates on the status of the substantial privacy bills not modeled on the CCPA that we reviewed in our prior reports. Section E describes one newer bill not based on the CCPA, also recently introduced in New York.

Section F provides updates on the status of the more targeted privacy bills that we summarized in our prior reports. Section G describes three newer more limited privacy bills. These relate to targeted advertising aimed at children, minors' use of social media, and registration of data brokers.

Finally, Section H reviews the status of bills seeking to amend the CCPA that the California legislature has under consideration. All nine of these bills that are active are currently pending in

the California Senate's Judiciary Committee, and all of them are intended to limit the scope of the CCPA to some degree. Hearings on all of them are expected on July 2 and 9.

## **Section A. Laws Enacted in Nevada, Maine, and Montana**

**Nevada:** [S.B. 220](#), signed into law by the governor on May 29, has the following key provisions:

- Creates a right for consumers to opt out of the sale by operators of websites or online services of their “covered information,” including names, addresses, emails, Social Security numbers, unique identifiers, and “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.”
- “Operator” is defined as a person that:“(a) owns or operates an Internet website or online service for commercial purposes; (b) collects and maintains covered information from consumers who reside in [Nevada] and use or visit the Internet website or online service; and (c) purposefully directs its activities toward [Nevada], consummates some transaction with [Nevada] or a resident thereof, [or] purposefully avails itself of the privilege of conducting activities in [Nevada] or otherwise engages in any activity that constitutes sufficient nexus with [Nevada] to satisfy the requirements of the US Constitution.”
- Excluded from covered “operators” are:
  - “A third party that operates, hosts or manages an Internet website or online service on behalf of its owner or processes information on behalf of the owner of an Internet website or online service;”
  - “A financial institution or an affiliate of a financial institution that is subject to the provisions of the Gramm-Leach-Bliley Act . . . and the regulations adopted pursuant thereto;”
  - “An entity that is subject to the provisions of the Health Insurance Portability and Accountability Act of 1996, as amended, and the regulations adopted pursuant thereto;” and
  - “A manufacturer of a motor vehicle or a person who repairs or services a motor vehicle who collects, generates, records or stores covered information that is: (1) Retrieved from a motor vehicle in connection with a technology or service related to the motor vehicle; or (2) Provided by a consumer in connection with a subscription or registration for a technology or service related to the automobile.”
- Operators are required to provide a “designated request address”—an email address, toll-free telephone number, or website—consumers can use to submit opt-out requests.
- Operators are required to respond to verified requests within 60 days, or within 90 days if the extension is reasonably necessary.

**Maine: S.B. 946**, signed into law on June 6, contains the following key provisions:

- Requires providers of “broadband Internet access services” to obtain “express, affirmative consent” before using, disclosing, selling, or permitting access to “customer personal information.”
- “Broadband Internet access service” means “a mass-market retail service by wire or radio that provides the capability to transmit data to and receive data from all or substantially all Internet endpoints, including any capabilities that are incidental to and enable the operation of the service, excluding dial-up Internet access service.”
- Requires Internet service providers to take reasonable measures to protect the security of customer personal information.
- “Customer personal information” means:
  - Personally identifying information about a customer, including but not limited to the customer’s name, billing information, Social Security number, billing address and demographic data; and
  - Information from a customer’s use of broadband Internet access service, including but not limited to:
    - (a) The customer’s web browsing history;
    - (b) The customer’s application usage history;
    - (c) The customer’s precise geolocation information;
    - (d) The customer’s financial information;
    - (e) The customer’s health information;
    - (f) Information pertaining to the customer’s children;
    - (g) The customer’s device identifier, such as a media access control address, international mobile equipment identity or Internet protocol address;
    - (h) The content of the customer’s communications; and
    - (i) The origin and destination Internet protocol addresses.

**Montana: H.B. 745**, signed into law as the Montana Pupil Online Personal Information Protection Act on May 7, has the following key provisions:

- Operators of “K-12 online applications,” defined as “an internet website[s], online service[s], cloud computing service[s], online application[s], or mobile application[s] that [are] used primarily for K-12 school purposes and that w[ere] designed and [are] marketed for K-12 school purposes,” are prohibited from knowingly engaging in targeted advertising, profiling, selling a pupil’s information, and disclosing protected information except for limited purposes.
- Operators are required to provide reasonable security for such information.

- Operators must delete a pupil's protected information if the school or district requests the deletion of data under the school's or district's control.

## **Second B. Status of Bills Similar to the CCPA Summarized in Prior Reports**

### **1. Hawaii—S.B. 418**

**Current status:** The legislature adjourned without passing the bill.

### **2. Massachusetts—S.B. 120**

**Current status:** Introduced in January 2019, the bill was referred to the Joint Committee on Consumer Protection and Professional Licensure.

### **3. New York—S.B. 4411/A.B. 6351**

**Current status:** Both versions (which are identical) were introduced in March 2019 and referred to their respective chambers' Consumer Affairs and Protection Committees.

### **4. Pennsylvania—H.B. 1049**

**Current status:** The bill was introduced in April 2019 and referred to the Consumer Affairs Committee.

### **5. Rhode Island—Consumer Privacy Protection Act (S.B. 234/H.B. 5930)**

**Current status:** Both versions of the bill remain in committee. The House version was withdrawn from a scheduled hearing on April 2. The Senate version was held for further study on April 30.

### **6. Texas—Texas Consumer Privacy Act (H.B. 4518)**

**Current status:** The legislature adjourned without passing the bill.

## **Section C. Newly Introduced Bill Similar to the CCPA**

### **7. New York—It's Your Data Act (A.B. 7736)**

**Current status:** The bill was introduced in May 2019 and referred to the Consumer Affairs and Protection Committee.

#### **Key provisions:**

- In the definition of covered businesses, the revenue threshold is \$50 million (instead of the \$25 million in the CCPA).

- The bill would require covered businesses to limit their collection and sharing of personal information to what is “reasonably necessary to provide a service or conduct an activity that a consumer has requested or is reasonably necessary for security or fraud prevention” unless the consumer provides opt-in consent.
- Covered businesses would be required to disclose, upon a verifiable request, the “specific sources” from which it collected a consumer’s personal information.
- The broad exceptions to the right to delete in the CCPA are omitted
- The bill would create a private right of action for any violation, with damages of \$750 per person per violation or actual damages, whichever is greater.

#### **Section D. Status of Bills Not Modeled on the CCPA Summarized in Our Prior Reports**

##### **8. Illinois—The Right to Know Act (S.B. 2149/H.B. 2736)**

**Current status:** The assigned committees failed to act on both versions of the bill before a deadline, and the bills were re-referred to the assigning committees.

##### **9. Illinois—Geolocation Privacy Protection Act (H.B. 2785)**

**Current status:** The committee failed to act on the bill before a deadline, and it was re-referred to the assigning committee.

##### **10. Louisiana—Internet and Social Media Privacy and Protection Act (H.B. 465)**

**Current status:** The legislature adjourned without passing the bill.

##### **11. New Jersey—A.B. 4640/S.B. 3153**

**Current status:** Both versions of the bill remain in committee.

##### **12. New York—Online Consumer Protection Act (S.B. 2323/A.B. 3818)**

**Current status:** Both versions of the bill remain in committee.

##### **13. New York—S.B. 1177: Removal of Online Content Posted by Minors**

**Current status:** The bill remains in committee.

##### **14. New York—Right to Know Act of 2019 (S.B. 224/A.B. 3739)**

**Current status:** Both versions of the bill remain in committee.

##### **15. Oregon—H.B. 2866**

**Current status:** The Judiciary Committee held hearings on March 12 and 13.

16. **Washington—Consumer Data Transparency Act (H.B. 2046)**

**Current status:** The legislature adjourned without passing the bill.

**Section E. Newly Introduced Bill Not Modeled on the CCPA**

17. **New York—New York Privacy Act (S.B. 5642)**

**Current status:** The bill was introduced in May 2019 and referred to the Consumer Affairs and Protection Committee.

**Key provisions:**

- Partially based on the European Union’s General Data Protection Regulation (GDPR), the bill would give consumers access, correction, deletion, and portability rights, including the right to know the third parties to whom their data is sold.
- Would apply to any legal entity that conducts business in New York or targets products or services to New York residents
- Would prohibit any use, processing, or transfer of personal data without express consent
- Would impose fiduciary duties of care, loyalty, and confidentiality on any entity that collects, sells, or licensing personal data
- “Personal data” is defined similarly to “personal information” under the CCPA and encompasses identifiers, including IP addresses, as well as “internet or other electronic network activity information,” “historical or real-time geolocation data,” and inferences drawn from other personal data.
- As under the GDPR, consumers could not be made subject to a decision based solely on “profiling,” that is, “automated processing of personal data consisting of the use of personal data to evaluate certain personal aspects relating to a natural person,” unless required by federal or state law.
- Covered businesses that engage in such profiling would be required to disclose their profiling to affected consumers at or before the time personal data is obtained, including meaningful information about the logic involved and the significance and envisaged consequences of the profiling.

**Section F. Status of Limited Privacy Bills Summarized in Our Prior Reports**

18. In **Connecticut**, the legislature adjourned without passing [H.B. 6601](#).

19. In **Illinois**, the committee failed to act on the [App Privacy Protection Act](#) (H.B. 3051) before a deadline, and it was re-referred to the assigning committee.
20. In **Minnesota**, the legislature adjourned without passing [S.F. 1553](#) or [H.B. 1030](#).
21. In **Montana**, the House passed the [Internet Access Service Customer Privacy Act](#) (H.B. 457), but the Senate adjourned without passing the bill.
22. In **New Jersey**, [S.B. 2634](#) remains in committee. The Assembly version, A.B. 3923, was reported out of the Science, Innovation and Technology Committee.
23. In **New York**, [S.B. 518](#), [S.B. 1180](#), and [A.B. 3612](#) remain in committee. [A.B. 2420](#) was reported out of committee and is awaiting a vote from the full Assembly.
24. In **Pennsylvania**, the [Internet Privacy and Consumer Protection Act](#) (H.B. 246) was introduced in January 2019 and referred to the Commerce Committee.
25. In **South Carolina**, the legislature adjourned without passing the [South Carolina Cellular Data Privacy Protection Act](#) (H.B. 3701).
26. In **Vermont**, the legislature adjourned without passing [S.B. 110](#).

#### **Section G. Additional Limited Privacy Bills**

27. In **California**, [A.B. 1202](#) was introduced in February 2019, passed by the Assembly, and referred to the Senate Judiciary Committee. It is scheduled for a hearing on July 2, 2019. It would require data brokers to pay a small fee and be listed on a public registry by the Attorney General.
28. In **Massachusetts**, [H.B. 1403](#) was introduced in January 2019 and referred to the Joint Committee on the Judiciary. The Committee held a hearing on June 17, 2019. The bill would require website operators to enable minors to request removal of content they posted.

#### **Section H. Bills That Would Amend the CCPA**

29. [S.B. 561](#)

**Current status:** After passing the Senate Judiciary Committee, the bill was held in the Senate Appropriations Committee and is not expected to advance further.

**Key provisions:** The bill would make authorize a private right of action for violations of any of the CCPA's requirements. It would remove businesses' ability to seek guidance from the attorney general and the 30-day right to cure violations.

30. [S.B. 753](#)

**Current status:** The bill was withdrawn from a scheduled hearing on April 23 and is not expected to advance further.

**Key provisions:** The bill would amend the definition of “sale” to allow businesses to disclose unique identifiers for the purpose of serving or auditing advertisements.

31. **A.B. 25**

**Current status:** The bill was passed by the Assembly and is pending before the Senate Judiciary Committee.

**Key provisions:** The bill would clarify that the CCPA does not apply to information collected from job applicants, employees, contractors, and agents in the context of those roles. The bill may (depending on the outcome of negotiations) make further changes regarding business-to-business interactions, specific pieces of information, and/or household and device information.

32. **A.B. 288**

**Current status:** The bill was withdrawn from a scheduled hearing on April 23 and is not expected to advance further.

**Key provisions:** Though not technically an amendment to the CCPA, the bill would add additional requirements for “social networking services” to delete consumer information upon request. It would create a private right of action for violations of these requirements.

33. **A.B. 846**

**Current status:** The bill was passed by the Assembly and is pending before the Senate Judiciary Committee.

**Key provisions:** This bill would amend the non-discrimination section of the CCPA to make clear that covered businesses may offer loyalty and rewards programs.

34. **A.B. 873**

**Current status:** The bill was passed by the Assembly and is pending before the Senate Judiciary Committee.

**Key provisions:** The bill would narrow the definition of “personal information” slightly and harmonize the definition of “deidentified” data with FTC guidance.

35. **A.B. 874**

**Current status:** The bill was passed by the Assembly and is pending before the Senate Judiciary Committee.



**Key provisions:** The bill would modify the definition of “publicly available” information to remove the requirement that businesses consider the context in which information in government records was collected.

36. [A.B. 981](#)

**Current status:** The bill was passed by the Assembly and is pending before the Senate Judiciary and Insurance Committees.

**Key provisions:** The bill would exempt from the CCPA individuals and entities subject to the Insurance Information and Privacy Protection Act.

37. [A.B. 1146](#)

**Current status:** The bill was passed by the Assembly and is pending before the Senate Judiciary Committee.

**Key provisions:** The bill would exempt from the CCPA’s deletion right information a business needs related to a product recall.

38. [A.B. 1355](#)

**Current status:** The bill was passed by the Assembly and is pending before the Senate Judiciary Committee.

**Key provisions:** The bill would make non-substantive and typographical changes to the CCPA, including to ensure that deidentified and aggregate information are excluded from the definition of “personal information.”

39. [A.B. 1416](#)

**Current status:** The bill was passed by the Assembly and is pending before the Senate Judiciary Committee.

**Key provisions:** The bill would add exceptions to the CCPA to allow businesses to protect against fraud, security incidents, and other “malicious, deceptive, or illegal activity.”

40. [A.B. 1564](#)

**Current status:** The bill was passed by the Assembly and is pending before the Senate Judiciary Committee.

**Key provisions:** The bill would allow a business to maintain an email address for consumers to submit requests for personal information instead of requiring them to have a toll-free telephone number.

41. **A.B. 1760**

**Current status:** The bill was withdrawn from a scheduled hearing on April 23 and is not expected to advance further.

**Key provisions:** The bill would make substantial changes to the CCPA, including providing a private right of action for violation of any of the CCPA's requirements, authorizing enforcement by city attorneys, requiring companies to name specific third parties with which they share data, and changing the CCPA's limitations on "selling" data to apply to "sharing" data.

For more information on this or other privacy and data security matters, contact:

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