

THE DEVIL IS IN THE DETAILS - PART III: EXEMPTIONS WITHIN U.S. STATE DATA PRIVACY LAWS



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There's always a "but." There are very few absolutes in life and the U.S. Data Privacy Laws are no different. To date, five states have enacted comprehensive privacy laws: California, Colorado, Connecticut, Utah, and Virginia, **but** that doesn't mean the laws apply to all data or all entities doing business in those states. In [Part I](#) of this series, we discussed key differences in these laws. That article briefly touched on the myriad of exclusions under the laws, but deeper analysis is warranted. In [Part II](#), we addressed distinctions between consumer rights in each of the five state laws. Here, we analyze the various exemptions under each state's law, again underscoring the need for attention to detail when ensuring applicability and compliance with the new state consumer privacy laws going into effect in 2023.

The California Consumer Privacy Act (CCPA) has been in effect since 2020. The California Privacy Rights Act (CPRA), which amends and expands the CCPA, Colorado Privacy Act (CPA), Connecticut Data Privacy Act (CTDPA), Utah Consumer Privacy Act (UCPA), and Virginia Consumer Data Protection Act (VCDPA) will all take effect in 2023. **[NOTE:** Like the CCPA, the CPRA will have a one-year lookback adding urgency to ensuring compliance.]

The five state privacy laws apply to a broad number of businesses, covering nearly all commercial entities that do business in the respective state, regardless of whether the business has a physical location or employees in the state. However, there are some important exemptions. Generally, the exemptions are based on the types of information that a business collects (information-based exemption), or on the industry of the business collecting the information (entity-based exemption).

Specifically, excluded categories of personal information and entities include:

- **Employee Information:** The VCDPA, CPA, UCPA, and CTDPA do not apply to the personal information of individuals acting in a commercial or employment context, while the CCPA and CPRA provide a limited exemption for personal information collected in employment and business-to-business contexts that is set to expire on January 1, 2023.
- **Non-Profit and Government Entities:** The CPA is the only state that does not exempt non-profit or government entities. However, the CPA does exempt data collected by government entities.
- **Data Subject to Other US Laws:**
 - ◇ **Protected Health Information (PHI):** PHI collected by covered entities and

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business associates subject to the Health Insurance Portability and Accountability Act (“HIPAA”) and the State of California’s Confidentiality of Medical Information Act (“CMIA”),

- ◇ **Financial Information:** information processed pursuant to the Gramm-Leach-Bliley Act (“GLBA”), the Fair Credit Reporting Act (“FCRA”), and SEC-Regulated Securities Associations,
- ◇ **Driver Information:** information and data processed pursuant to the Driver’s Privacy Protection Act (“DPPA”),
- ◇ **Child/Minor Information:** information and data that is collected and processed in compliance with the Children’s Online Privacy Protection Act (“COPPA”),
- ◇ **Educational Information:** information regulated by the Family Educational Rights and Privacy Act (“FERPA”).

The chart below provides a comparison of the common exemptions by state.

NOTE: This chart discusses explicit exemptions. To the extent that the laws do not specifically exempt an entity (and, by extension, its data), it is possible that it may not fall within the definition of a “business.” The entity would not be governed by the respective state law. See [Part I](#) of the series for a discussion on what businesses are covered under each state’s law.

Exemptions		CPRA	VCDPA	CPA	UCPA	CTDPA
Government Entities	Entity-Based Exemption?	Yes. Government entities do not fall within the CPRA definition of businesses.	Yes. Exempts VA commonwealth and local government entities.	No.	Yes. Exempts any government entity or third party “under contract with a governmental entity when the third party is working on behalf of the governmental entity.”	Yes. Exempts state and local government entities.
	Data-Based Exemption?	No.	No.	Yes. Exempts data if collected and used for non-commercial purposes, as authorized by State and Federal law.	No.	No.
Nonprofits	Entity-Based Exemption?	Yes. Nonprofits do not fall within the CPRA definition of businesses.	Yes. Exempts nonprofit organizations as defined by State and Federal law.	No.	Yes. Exempts nonprofit organizations.	Yes. Exempts nonprofit organizations.
	Data-Based Exemption?	No.	No.	No.	No.	No.
GLBA/Financial Institutions	Entity-Based Exemption?	No.	Yes. Exempts financial institutions subject to the GLBA.	Yes. Exempts financial institutions and their affiliates subject to the GLBA.	Yes. Exempts financial institutions and their affiliates governed by GLBA.	Yes. Exempts financial institutions.
	Data-Based Exemption?	Yes. Exempts “personal information collected, processed, sold, or disclosed subject to” the GLBA.	Yes. Exempts GLBA-regulated data.	Yes. Exempts personal data “collected, processed, sold, or processed pursuant to” and in compliance with the GLBA.	Yes. Exempts “data subject to” the GLBA.	Yes. Exempts data governed by the GLBA.
	Entity-Based Exemption?	No.	No.	No.	No.	No.

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Exemptions		CPRA	VCDPA	CPA	UCPA	CTDPA
FCRA/Credit Reporting	Data-Based Exemption?	Yes. Exempts certain activities of consumer reporting agencies, furnishers, and users of consumer reports as defined by the FCRA, to the extent such activities are subject to regulation by the FCRA.	Yes. Exempts certain activities of consumer reporting agencies, furnishers, and users of consumer reports as defined by the FCRA, to the extent such activities are subject to regulation by the FCRA.	Yes. Exempts certain activities of consumer reporting agencies, furnishers, and users of consumer reports as defined by the FCRA, to the extent such activities are subject to regulation by the FCRA.	Yes. Exempts certain activities of consumer reporting agencies, furnishers, and users of consumer reports as defined by the FCRA, to the extent such activities are subject to regulation by the FCRA.	Yes. Exempts certain activities of consumer reporting agencies, furnishers, and users of consumer reports as defined by the FCRA, to the extent such activities are subject to regulation by the FCRA.
HIPAA/Healthcare	Entity-Based Exemption?	Yes. Exempts CMIA providers of healthcare and HIPAA covered entities to the extent they protect patient data as required by the CMIA and HIPAA, respectively.	Yes. Exempts covered entities and business associates, as defined by HIPAA.	No.	Yes. Exempts covered entities and business associates, as defined by HIPAA.	Yes. Exempts covered entities and business associates, as defined by HIPAA.
	Data-Based Exemption?	Yes. Exempts (1) medical information governed by the CMIA, (2) protected health information under HIPAA, and (3) certain clinical trial data and biomedical research.	Yes. Exempts protected health information, as defined under HIPAA, and certain other types of health-related information, including identifiable private information and personal data of biomedical research subjects.	Yes. Exempts protected health information, as defined under HIPAA, and certain other types of health-related information, including identifiable private information and personal data of biomedical research subjects.	Yes. Exempts protected health information, as defined under HIPAA, and certain other types of health-related information, including identifiable private information and personal data of biomedical research subjects.	Yes. Exempts protected health information, as defined under HIPAA, and certain other types of health-related information, including identifiable private information and personal data of biomedical research subjects.
COPPA/Children	Entity-Based Exemption?	No. CPRA only states that it "shall only apply to the extent not in conflict with" COPPA.	Yes. Exempts controllers and processors who comply with the verified parental consent requirements of COPPA.	No.	Yes. Exempts controllers and processors who comply with the verified parental consent requirements of COPPA.	Yes. Exempts controllers and processors who comply with the verified parental consent requirements of COPPA.
	Data-Based Exemption?	No. CPRA only states that it "shall only apply to the extent not in conflict with" COPPA.	No.	Yes. Exempts personal data that is "regulated by" COPPA provided it is collected, processed, and maintained in compliance with COPPA.	No.	No.
FERPA/Educational	Entity-Based Exemption?	No.	Yes. Exempts public and private institutions of higher learning, as defined by Commonwealth law.	No.	Yes. Exempts institutions of higher education.	Yes. Exempts institutions of higher education.
	Data-Based Exemption?	Yes. There are limited exemptions that protect a student's educational records and for items such as yearbooks, where a consumer has previously "consented to the [...] use, disclosure, or sale" of their personal information.	Yes. Exempts personal data "regulated by" the Family Educational Rights and Privacy Act (FERPA).	Yes. Exempts data maintained by "state institutions of higher education" (as defined by State law), so long as the data is "collected, maintained, disclosed, communicated, and used as authorized by state and federal law for noncommercial purposes."	Yes. Exempts personal data regulated by FERPA.	Yes. Exempts personal data regulated by FERPA.
DPPA/Drivers Information	Entity-Based Exemption?	No.	No.	No.	No.	No.
	Data-Based Exemption?	Yes. Exempts personal information "collected, processed, sold or disclosed" pursuant to DPPA.	Yes. Exempts personal data that is "collected, processed, sold, or disclosed in compliance with" the DPPA.	Yes. Exempts personal data that is "collected, processed, sold, or disclosed" pursuant to DPPA, if such activity "is regulated by that law."	Yes. Exempts personal data that is "collected, processed, sold, or disclosed" pursuant to DPPA.	Yes. Exempts personal data that is "collected, processed, sold[,] or disclosed" pursuant to DPPA.

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Exemptions		CPRA	VCDPA	CPA	UCPA	CTDPA
SEC-Regulated Securities Associations	Entity-Based Exemption?	No.	No.	Yes. Exempts SEC-registered "national securities associations."	No.	Yes. Exempts national securities associations registered under the Securities Exchange Act.
	Data-Based Exemption?	No.	No.	No.	No.	No.
Air Carriers	Entity-Based Exemption?	No.	No.	Yes. Exempts air carriers.	Yes. Exempts air carriers.	No.
	Data-Based Exemption?	No.	No.	No.	No.	Yes. Exempts personal data "collected, processed, sold[,] or disclosed in relation to price, route[,] or service" as defined by Federal law.

Looking Ahead

As with any change in the law, attention to detail is the key to success. Preparation is essential to compliance and avoiding allegations of violations. Every organization has an obligation to conduct a detailed review of each law they may be subject to. Further, the rulemaking process is ongoing in some states which means there may be new or different substantive obligations forthcoming. Redgrave LLP will continue to monitor the changing landscape of U.S. data privacy legislation and is available to consult and assist in the development and implementation of successful information governance and privacy policies and practices.

For additional information on this topic, please contact Martin Tully at mtully@redgravellp.com or Eliza Davis at edavis@redgravellp.com.

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