

Virginia Consumer Data Privacy Act (VCDPA)



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The VCDPA, which goes into effect on January 1, 2023, gives Virginia consumers the right to control their personal data and imposes corresponding obligations on businesses that handle the personal data of consumers in the marketplace.

The VCDPA provides consumers with rights similar to those afforded Californians and Europeans, including:

1. the right to know, access and confirm personal data;
2. the right to delete personal data;
3. the right to correct inaccuracies in personal data;
4. the right to data portability;
5. the right to opt out of the processing of personal data for targeted advertising purposes;
6. the right to opt out of the sale of personal data;
7. the right to opt out of profiling based upon personal data; and
8. the right to not be discriminated against for exercising any of the foregoing rights.

The VCDPA's definition of "consumer" is narrower than its California counterpart because it clearly excludes employees and business contacts.

In order to comply with the law and the rights afforded under it, businesses that are subject to the VCDPA, must create a process through which consumers can exercise those rights. For example, businesses must obtain prior consent to collect or process certain categories of sensitive personal data such as precise geolocation data, data about protected characteristics and genetic or biometric data. In addition, the obligations imposed on business when

collecting personal data, must be passed down to service providers with access to such data on behalf of the business.

Many businesses outside the Commonwealth of Virginia assume in error that the law does not apply to them. However, like the iconic, California Consumer Privacy Act, the VCDPA can apply to businesses with no physical presence in the State if they nonetheless do business there. Specifically, the VCDPA covers businesses that conduct business in Virginia or produce products or services that are targeted to Virginia residents and that either:

1. control or process the personal data of at least 100,000 consumers during a calendar year, or
2. Control or process the personal data of at least 25,000 consumers and derive at least 50% of its gross revenue from the sale of personal data.

In order to prepare for enforcement of the VCDPA, businesses must review their personal data processing activities, privacy policies, data security and service provider contracts.

For more information about how Hodgson Russ can assist your company with VCDPA compliance, email or call one of our [Privacy and Security](#) lawyers.

