

The VCDPA (effective January 1, 2023) governs entities that control (“controllers”) or process (“processors”) and, as applicable, sell, the personal data of Virginia residents, other than in the employment or business-to-business contexts (“consumers”). It also grants Virginia residents certain rights with respect to their personal data.

Applicability

The VCDPA applies to persons or entities conducting business for-profit in Virginia or producing products or services targeted to consumers, and who either:

- Control or process the personal data of at least **100,000** consumers annually, or
- Derive at least **50%** of their gross revenue from the sale of personal data and control or process the personal data of at least **25,000** consumers.

Practical Application for Businesses

Consumer Rights

- (1) **Right to Access**: the right to confirm whether a controller is processing personal data and access such data.
- (2) **Right to Correct**: the right to correct inaccuracies in the consumer’s personal data.
- (3) **Right to Delete**: the right to delete personal data concerning the consumer.
- (4) **Right to Data Portability**: the right to obtain the personal data in a portable and, to the extent technically feasible, readily usable format that allows the consumer to transmit the data to another entity without hindrance, where processing is by automated means.
- (5) **Right to Opt-out**: the right to opt out of the processing of personal data for purposes of (i) targeted advertising, (ii) the sale of personal data, or (iii) profiling for decisions that significantly affect a consumer.

Controller Obligations

- Publish a privacy notice that contains requisite details and is reasonably accessible, clear, and meaningful.
- Obtain consent to collect sensitive data, including personal data of any consumers under **13**.
- Provide consumers with methods to exercise their rights.
- Act on consumer requests within **45 days**; provide notice of extensions and the appeals process as necessary.
- Enter into binding data processing agreements with requisite limitations for third-party processors.
- Conduct and document an impact assessment for each processing activity generated after **January 1, 2023** that poses a “heightened risk of harm” to the consumer (e.g., selling personal data, processing sensitive data, or targeted advertising or profiling with certain foreseeable risks).
- Limit processing of personal data to that which is reasonably necessary and compatible with disclosed purposes.

Recommendations for Controllers:

- Regularly update data maps to detail personal data collection, including sensitive data and targeted advertising.
- Train employees how to handle consumer inquiries and requests.
- Maintain clear and executable data retention policies and procedures.

Penalties

- The Virginia Attorney General has exclusive enforcement authority and may seek injunctive relief and civil penalties **up to \$7,500 per violation**.
- There is a 30-day cure period to correct violations following notice from the Virginia Attorney General.