

The Virginia Consumer Data Protection Act

The Virginia Consumer Data Protection Act (“VCDPA”) went into effect on January 1, 2023. This new law provides Virginia residents certain rights for personal data collected by businesses under conditions outlined in the law. The following information on this page is intended for informational purposes only and should not be construed as legal advice for Virginia residents seeking to protect their data interests under the VCDPA. The entire Act can be read here: <https://law.lis.virginia.gov/vacodefull/title59.1/chapter53/>.

What is personal data?

- “Personal data” means any information that is linked or reasonably linkable to a Virginia resident. “Personal data” does not include publicly available information such as public records held by the government.

What data is exempt from the VCDPA?

- The following types of data are not covered by the VCDPA: protected health information under the Health Insurance Portability and Accountability Act (“HIPAA”), health records, patient identifying information, and other sets of data identified in Va. Code § 59.1-576 that relate to compliance with various federal laws.

What rights do Virginia consumers have with their personal data?

- The VCDPA allows for consumers to request that the controller of their personal data:
 - Confirm if the controller is actually processing their personal data.
 - Correct inaccuracies in the consumer’s personal data that is collected by the controller.
 - Delete personal data provided by or obtained about the consumer.
 - Obtain copies of the personal data collected by the controller.
 - Opt out of the processing of personal data for purposes of targeted advertising, the sale of personal data, or further profiling.

Where can consumers submit requests regarding data held by businesses?

- Consumers can submit requests to businesses that target Virginia consumers for products or services and also do one of the following:
 - Control or process personal data of at least 100,000 consumers.
 - Control or process personal data of at least 25,000 consumers and derive over 50% of gross revenue from the sale of personal data.
- Consumers cannot submit requests relating to data under the VCDPA to state and local governments, nonprofit organizations, institutions of higher education, and any other entity listed under Va. Code § 59.1-576(B).

What should Virginia residents do to ensure that a business honors their rights regarding their personal data?

- Virginia consumers can invoke their rights by submitting a request to the controller of their personal data specifying the rights they want to invoke. Controllers are required to provide consumers with a reasonably accessible, clear, and meaningful privacy notice for exercising their rights. Information provided in response to a consumer request shall be provided by the controller free of charge, up to twice annually per consumer.
- The controller must respond within 45 days of the receipt of the request submitted by the consumer. The controller can request an extension of an additional 45 days to respond.
- The controller will either grant the consumer's request or decline it by providing the justification for declining it. The controller can also request that additional information be provided by the consumer in order to both authenticate the consumer and the consumer's request.
- If the request invoking the consumer's rights is declined, the controller must provide clear instructions for appealing the decision. Within 60 days of receipt of an appeal, the controller must provide in writing an explanation of the reasons for its decision.
- If the appeal is denied by the controller, the controller must provide the consumer with an online mechanism or other method through which the consumer may contact the Attorney General to submit a complaint.

What can Virginia consumers do to protect their sensitive data?

- Sensitive data is also considered as personal data under the VCDPA, but it is subject to additional requirements. For example, controllers cannot process sensitive data concerning a consumer without obtaining the consumer's consent.
- The VCDPA considers the following to be sensitive data:
 - A person's racial or ethnic origin, religious beliefs, mental or physical health diagnosis, sexual orientation, or citizenship or immigration status.
 - The processing of genetic or biometric data for the purposes of uniquely identifying that person.
 - The personal data collected from a known child, which is defined as someone younger than 13.
 - Precise geolocation data.

What can the Attorney General's Office do to help?

- Consumers can file complaints with the Virginia Attorney General's Office if an appeal by the controller is declined. A complaint can be filed at the following link: <https://www.oag.state.va.us/consumer-protection/index.php/file-a-complaint>.
- The Attorney General has authority to enforce the VCDPA and can notify controllers and processors of data that a violation of the law has occurred. These entities have 30 days in

writing to inform the Attorney General's office that the violation has been cured. If the controller or processor fails to cure violations within the 30-day period, the Attorney General can file a lawsuit against the entity and may seek civil penalties of up to \$7,500 for each violation of the VCDPA.

- The Attorney General's Office is the exclusive enforcer of the VCDPA and there exists no private right of actions for violations of this law.

For further assistance call our Consumer Protection Hotline at 1-800-552-9963 if calling from Virginia, or (804) 786-2042 if calling from the Richmond area or from outside Virginia. Our business hours are 8:30 a.m. to 5:00 p.m., Monday through Friday.