

The Utah Consumer Privacy Act (UCPA)

The UCPA (“the Act”) grants Utah consumers individual rights and imposes corresponding obligations on covered businesses.

GDPR-like Controller / Processor Distinction

Like the EU GDPR, the Act distinguishes between:

Controllers: Entities doing business in Utah that determine the purpose and means of processing personal data; and

Processors: Entities that process personal data on behalf of a controller. The Act imposes specific obligations and limitations on processors, and it sets forth required contents of controller-processor contracts.

Individual rights

- 1 Right to Know / Access.** Confirm whether a controller is processing the consumer’s personal data and obtain access to that personal data.
Note: Unlike the Virginia and Colorado consumer privacy laws, the UCPA does not provide for a correction right.
- 2 Right to Deletion.** Request deletion of the consumer’s personal data that the consumer provided to the controller.
- 3 Right to Data Portability.** Obtain a copy of the consumer’s personal data that the consumer previously provided to the controller, in a portable format.
- 4 Right to Opt Out.** Opt out of the processing of the consumer’s personal data for purposes of targeted advertising or sale.
Note: Unlike the Virginia and Colorado consumer privacy laws, the Act would not give consumers the right to opt out of profiling in furtherance of decisions that produce legal or other significant effects.

Controllers’ obligations



Notice. Controllers must provide consumers with an accessible and clear notice regarding the personal data that controllers process, the purposes of processing, the personal data that controllers share with third parties, if applicable, and how consumers may exercise their rights under the Act.



Data Security. Controllers must establish, implement, and maintain reasonable administrative, technical, and physical data security practices designed to protect personal data.



Sensitive/Children’s Data. Controllers may not process sensitive data collected from a consumer without presenting the consumer with clear notice and an opportunity to opt out. Controllers may only process the personal data of children *under age 13* in accordance with COPPA



Non-Discrimination. Controllers may not discriminate against consumers for exercising their rights under the Act, e.g., by denying or charging a different price for a good or service. Exceptions apply if the consumer has opted out of targeted advertising or if an offer is related to the consumer’s voluntary participation in a loyalty or similar program.

Pro-business departures from the Virginia and Colorado consumer privacy laws



Consumer Appeals. The Act does not require controllers to establish a process for a consumer to appeal the controller’s refusal to take action on a consumer request.



Data Protection Impact Assessments. The Act does not require controllers to perform and document data protection assessments before undertaking specified processing activities, such as targeted advertising, sale, profiling, the processing of sensitive data, or other high-risk processing.

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Who Must Comply?

The Act applies to entities that conduct business in Utah or produce products or services that are targeted to Utah consumers, have annual revenues of **\$25 million or more**, and:

Control or process personal data of at least **100,000 consumers who are UT residents** in a calendar year; or

Control or process the personal data of at least **25,000 consumers who are UT residents** and derive **over 50% of gross revenue** from the sale of personal data.

Key Definitions

Consumer: A Utah resident acting in an individual/household context

- Excludes individuals acting in an employment or commercial context.

Personal Data: Information linked or reasonably linkable to an identified or identifiable individual.

- Excludes de-identified, aggregated, and publicly available data.

Sensitive Data: i) Personal data revealing racial or ethnic origin, religious beliefs, sexual orientation, citizenship or immigration status, or medical history, mental or physical health condition, or medical treatment or diagnosis; (ii) genetic or biometric data for identification purposes; and (iii) specific geolocation data.

Sale: The exchange of personal data from a controller to a third party for monetary consideration.

- Excludes sharing data with affiliates and certain other sharing.

Exceptions



Entities: The Act exempts nonprofits, tribes, institutions of higher education, air carriers, financial institutions subject to Title V of the GLBA, and HIPAA-covered entities and business associates.



Types of Personal Data: The Act exempts personal data created or maintained in the employment context or for purposes of select federal laws, including HIPAA, the Fair Credit Reporting Act, the Family Educational Rights and Privacy Act, and the Driver's Privacy Protection Act.



Permitted Processing: The Act does not restrict a controller or processor's ability to comply with laws or regulations or provide a product or service specifically requested by a consumer, among other purposes.

Enforcement

- Utah AG has exclusive enforcement authority.
- No private right of action.
- Businesses have **30-day period** to cure alleged violations, upon receipt of AG notice.
- Thereafter, AG may seek **actual damages** and civil penalties of up to **\$7,500 per violation**.

MoFo Contacts



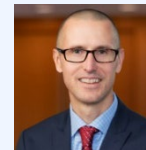
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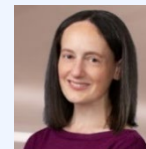
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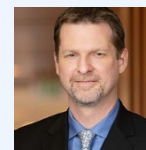
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For more, please visit:

[MoFo's CCPA/CPRA Resource Center](#) for additional state privacy law resources. The UCPA will become **operative on December 31, 2023**.