



white paper

UTAH ENACTS THE UTAH CONSUMER PRIVACY ACT WITH NOTABLE EXEMPTION

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The UCPA¹ notably provides the same federal Fair Credit Reporting Act (FCRA) exemption set forth under California, Virginia and Colorado privacy laws, excluding personal information used by a consumer reporting agency to generate a consumer report under the FCRA.²

APPLICABILITY

The UCPA applies to any controller or processor who:

- Conducts business in the state or produces a product or service that is targeted to consumers who are residents of the state;
- Incurs an annual revenue of \$25 million or more; and
- Satisfies one or more of the following thresholds:
 - Controls or processes personal data of 100,000 or more consumers during a calendar year; or
 - Derives over 50 percent of the entity’s gross revenue from the sale of personal data and controls or processes personal data of 25,000 or more consumers.

The UCPA defines a “consumer” as “an individual who is a resident of the state acting in an individual or household context.”³ However, this does not extend to individuals “acting in an employment or commercial context.”⁴

EXEMPTIONS

The UCPA adopts similar exemptions that are available under the California, Virginia and Colorado privacy laws. As mentioned above, Sec. 13-61-102(2) of the UCPA states: “[t]his chapter does not apply to [...] an activity of a consumer reporting agency, as defined by U.S.C. Sec 1681a [...] or a user of a consumer report, as set forth in 15 U.S.C. 1681b [...] that involves the collection, maintenance, disclosure, sale, communication, or use of any personal data bearing on a consumer’s credit worthiness; credit standing; credit capacity; character; general reputation; personal characteristics; or mode of living.”

Beyond consumer reporting, the UCPA also does not apply to:

- Institutions of higher education and nonprofit organizations;
- Covered entities and business associates pursuant to the Health Information Portability and Accountability Act (HIPAA); and
- Financial institutions governed by the Gramm-Leach-Bliley Act (GLBA).

¹ *Utah Consumer Privacy Act* (“UCPA”) Section 13-61-102(2).

² Section 1681a & Section 1681b of Title 15 of the United States Code.

³ *UCPA* Section 13-61-101

⁴ *Id.*

The UCPA further allows for data-level exemptions, including information subject to HIPAA, GLBA, the Driver's Privacy Protection Act (DPPA), the Family Educational Rights and Privacy Act (FERPA) and the Farm Credit Act.

REQUIREMENTS UNDER THE UCPA

The UCPA implements several rights and requirements. While the UCPA requirements are rather similar to data privacy laws in California, Virginia, and Colorado, employers should ensure they understand the expectations specifically set forth in Utah.

1. Enforcement

The UCPA charges the Division of Consumer Protection as being the division responsible for investigating alleged violations of the UCPA. If the attorney general decides to take action regarding a filed complaint, the office must first provide written notice to the controller or processor. The UCPA allows controllers and processors 30 days to cure the violation and provide the attorney general with proof that the violation has been cured. The attorney general may impose fines of up to \$7,500 per violation.

The Act does not provide for a private right of action.

2. Consumer Rights

There are four main rights available to consumers under the UCPA.

- **Right to Access.** Provides consumers the ability to confirm whether a controller is processing personal data about the consumer and gain access to such data.
 - **Right to Delete.** Consumers are able to delete personal data "that the consumer provided to the controller." This does not include the right to delete all personal data related to the consumer that the controller may hold.
 - **Right to Data Portability.** This allows Consumers the ability to obtain a copy of the consumer's personal data that was previously provided to the controller, "without impediment."
 - **Right to Opt Out of Processing.** The right to opt out only extends to personal data processed for purposes of targeted advertising or the sale of personal data.
- Provide consumers with a reasonably accessible privacy notice that describes the categories of data processed, how consumers may exercise their rights and the categories of third parties that may receive data.
 - Engage data security practices appropriate for the volume and nature of personal data at issue.
 - Refrain from collecting data from a consumer without first providing a clear notice and opportunity to opt out of processing.
 - Ensure that the purpose for collection is clearly indicated and data will only be collected for the specified purpose.

CONCLUSION

Utah is now the fourth state to implement a consumer privacy law, joining California, Virginia and Colorado. Comparatively, the UCPA takes a more "business-friendly" approach, while still implementing some of the protections included in other state privacy laws. According to sponsors of SB0227, future amendments to the law are likely once the "effectiveness report" provided by the Utah attorney general and the Division of Consumer Protection is reviewed. ■

3. Business Operational Requirements

The UCPA sets forth several responsibilities for controllers including: