



FEBRUARY 18, 2021

## The CCPA and CPRA – Enforcement, Litigation and Insurance

Sushila Chanana, Privacy and Litigation Attorney, Farella Braun + Martel  
Nate Garhart, Privacy and IP Attorney, Farella Braun + Martel  
Tyler Gerking, Insurance Recovery Attorney, Farella Braun + Martel  
Paola Zeni, Chief Privacy Officer, Ring Central

*This presentation is provided for informational purposes and does not constitute legal advice.*

# Privacy Landscape Discussion Topics

- **CCPA/CPRA Refresher**
- **Data Security Requirements**
- **CCPA Enforcement (Regulatory and Private)**
- **Available Insurance Coverage**

# The Legal Landscape – CCPA and CPRA

- **California Consumer Privacy Act (CCPA)**
  - Came into effect on January 1, 2020
  - Applies to the information of California residents
- **California Privacy Rights Act (CPRA)**
  - Will go into effect on January 1, 2023
  - Amends and replaces the CCPA





# Refresher

## CCPA

- **Applies to for-profit companies collecting information from California residents if such company**
  - **Has annual gross revenues greater than or equal to \$25 million; OR**
  - **Obtains personal information of at least 50,000 California residents, households, or devices annually; OR**
  - **Gets at least 50% of its annual revenue from selling the personal information of California residents**

# CCPA Rights of Individuals

- **The right to know what personal information is collected**
- **The right to know the personal information sold or disclosed to third parties, and to whom (categories)**
- **The right to say no to the sale of that personal information**
- **The right to access that personal information**
- **The right to equal pricing regardless of exercising privacy rights (note re incentives)**
- **The right to be forgotten**

# CCPA Regulations

- **Seem to be regularly changing**
- **Must be regularly checked for such changes—many are very material**
- **E.g., prior “final” regulations re notice for offline collections vs. Dec. 10 release**

# California Privacy Rights Act

- **Recently passed (Prop 24), will replace and amend the CCPA (January 1, 2023)**
- **Creates a floor for privacy protection in California**
- **Stronger protection for new category of “sensitive information” (health, finance, etc.)**
- **Data use must be connected to collection purposes**
- **Rights to correct and port data; expands right to be forgotten to require notification of third parties w/ whom info has been shared**
- **Right to opt out from selling or sharing (home page button)**



# California Privacy Rights Act

- **Right to opt out of automated decision making technology that uses personal information, and right to know about that tech**
- **Right to opt out from using PI for behavioral advertising**
- **Creates new enforcement body and removes 30-day cure period before sanctions can be imposed**
- **Expands private right of action**
- **Requires companies contracting with those covered by CPRA to comply as to data received from such companies**

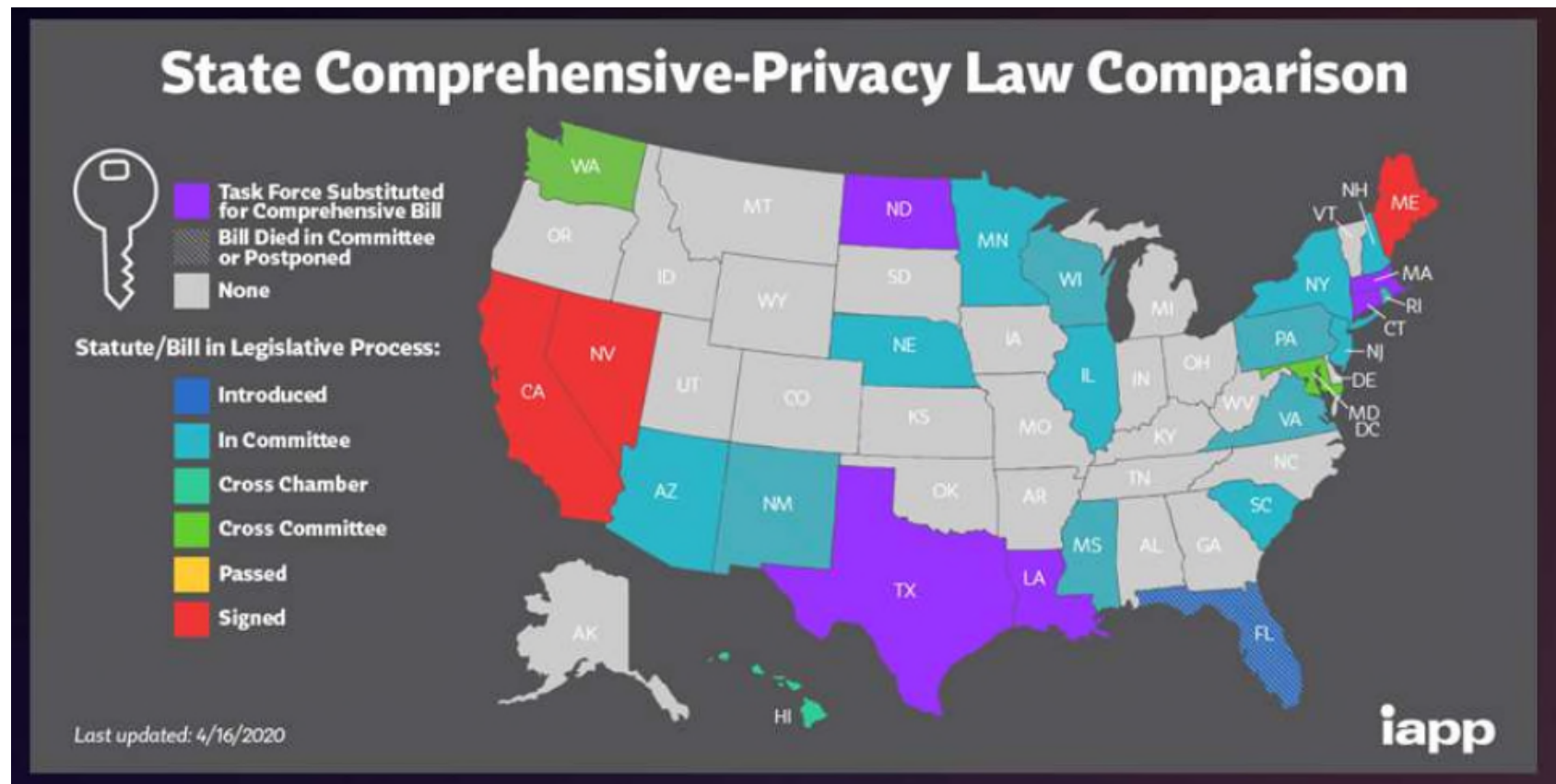


# Data Security and Breaches

## CCPA/CPRA

- “**Reasonable** security procedures and practices” required
- Private right of action
- Statutory damages
- But what is “**reasonable**”?

# California Is Leading The Way



# Enforcement & Litigation Actions

Violations – AG

**DAMAGES**  
**\$2,500**  
**TO**  
**\$7,500**

Per Violation



Unauthorized Disclosure –  
Private Action

**DAMAGES**  
**\$100**  
**TO**  
**\$750**

Per Data Subject

# Private Right of Action

- **An individual consumer may recover anywhere from \$100 to \$750 in statutory damages “per incident” if the unauthorized access was due to:**
  - **Unreasonable security procedures and practices; and**
  - **The compromised data included nonencrypted and nonredacted personal information.**



# ***“Reasonable security procedures and practices”***

- **The CCPA requires companies subject to the CCPA to “implement and maintain reasonable security procedures and practices”**
- **What is “reasonable”?**
  - **Yet to be determined by the courts.**
  - **Best guidance: the 2016 CA Data Breach Report from the CA AG’s Office**
    - **20 data security controls published by the Center for Internet Security. Examples:**
      - **“inventory and control of hardware assets”**
      - **“continuous vulnerability management,” and**
      - **“data recovery capabilities.”**
  - **The then-current AG noted that a failure to implement “all” applicable controls “constitutes a lack of reasonable security.”**
  - **Not yet clear if the current AG will follow this guidance, but this is a good starting point.**

# Current CCPA Litigation Landscape

---

34+

Class actions filed referencing CCPA since January 1

---

60%+

of actions claim negligence or non-data breach claims as primary theory

## Hanna Andersson Case – Settlement Terms

- Conduct a risk assessment of the Hanna data assets and environment consistent with the National Institute of Standards and Technology (NIST) Risk Management Framework;
- Enable multi-factor authentication for all cloud services accounts;
- Implement alerting processes for the establishment of new cloud services accounts;
- Hire additional technical personnel;

## Hanna Andersson Case – Settlement Terms

- Conduct phishing and penetration testing of the Hanna enterprise environment and enterprise user base;
- Deploy additional intrusion detection and prevention, malware and anti-virus, and monitoring applications
- Implement regular review of the logs of Hanna's ecommerce platforms; and
- Hire a Director of Cyber Security.

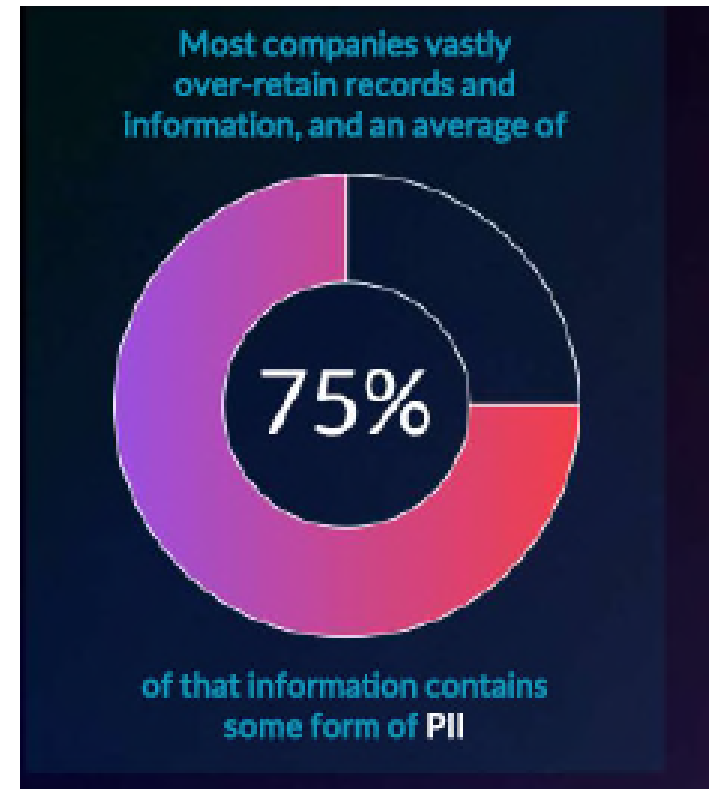


# What Have You Done to Prepare?



# Mitigate Liability

1. Know your data
2. Update policies and procedures
3. Organize record retention and deletion requirements
4. Bolster your security
5. Check in with vendors
6. Check in with litigation counsel before making any promises regarding treatment of data



## Cyber Insurance

### Are Actions for Violations of the CCPA Covered?

- All cyber insurance policies cover lawsuits arising from data security breaches.
- Some cyber insurance policies cover regulatory actions alleging privacy law violations.
- Insurers are adding “CCPA Endorsements” to expressly add coverage for enforcement actions by the CA Attorney General.
- Many policies do not clearly cover private-plaintiff civil actions for non-data breach CCPA violations.

# Contact Information



**Sushila Chanana**  
[schanana@fbm.com](mailto:schanana@fbm.com)



**Nate Garhart**  
[ngarhart@fbm.com](mailto:ngarhart@fbm.com)



**Tyler Gerking**  
[tgerking@fbm.com](mailto:tgerking@fbm.com)



**Paola Zeni**  
[Paola.zeni@ringcentral.com](mailto:Paola.zeni@ringcentral.com)



# Questions?

---

