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# PRATT'S PRIVACY & CYBERSECURITY LAW REPORT

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# Pratt's Privacy & Cybersecurity Law Report

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# How the Nevada Privacy Law Compares to the CCPA

***By Natasha G. Kohne, Michelle A. Reed, Jo-Ellyn Sakowitz Klein, Rachel Claire Kurzweil, and Mallory A. Jones****

*This article explores the similarities and differences between SB 220, Nevada's new privacy law, and the California Consumer Privacy Act.*

Nevada's governor approved a new privacy law last year, Senate Bill 220[1] ("SB 220"). SB 220 amended the Nevada law[2] that required operators of websites and online services ("Operators") to post privacy notices on their websites. The new law now requires Operators to provide consumers with the ability to opt-out of the sale of their personal information, specifying that Operators must establish a designated address to which consumers can send such requests and that they must respond to such requests within 60 days of receipt.

Although some of these provisions are similar to the California Consumer Privacy Act ("CCPA"), SB 220 is narrower in scope. SB 220 took effect on October 1, 2019, three months before the CCPA's January 1, 2020, effective date. This article explores the similarities and differences between SB 220 and the CCPA.

## SUMMARY OF SB 220

SB 220 amended Nevada privacy law to require covered entities to provide certain protections for consumers, and to create new exemptions for certain entities, including by:

- Revising the definition of "Operator" to exclude financial institutions subject to the Gramm-Leach-Bliley Act and the regulations adopted pursuant thereto ("GLBA"); entities subject to the provisions of the Health Insurance Portability and Accountability Act, as amended and as implemented through regulations ("HIPAA"); and certain persons who manufacture or service motor vehicles.

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[1] https://www.leg.state.nv.us/App/NELIS/REL/80th2019/Bill/6365/Text.

[2] https://www.leg.state.nv.us/NRS/NRS-603A.html.

- Requiring an Operator to establish a designated request address through which a consumer may submit a verified request directing the Operator not to make any "sale" of covered information collected about the consumer (which can be an email address, toll-free phone number, or website).
- Prohibiting Operators from making any "sale" of covered information collected about the consumer if the Operator receives a verified request not to sell their information (i.e., the right to opt-out).
- Defining the term "sale" to mean the exchange of covered information for monetary consideration by the Operator to a person for the person to license or sell the covered information to additional persons, subject to certain exceptions.
- Requiring Operators to respond to verified consumer requests within 60 days of receiving the request, with the potential to extend the response by up to 30 days.
- Authorizing the Nevada Attorney General to enforce SB 220 and bring a legal action seeking an injunction or a civil penalty of up to $5,000 for each violation.

## COMPARISON OF KEY PROVISIONS OF SB 220 AND THE CCPA

Like the CCPA, SB 220 provides consumers with the right to opt out of the sale of their personal information, but it is narrower in scope. Importantly, unlike the CCPA, SB 220 does not include rights of portability, deletion, or nondiscrimination.

### What Information Is Covered?

SB 220 did not amend the definition[3] of "covered information," which means any one or more of the following pieces of personally identifiable information about a consumer collected by an Operator through a website or online service and maintained by the Operator in "an accessible form"[4]:

1. First and last name;
2. Home or other physical address that includes street and city name;
3. Email address;
4. Telephone number;
5. Social Security number;
6. Identifier that allows a specific person to be contacted either physically or online; or

[3] https://www.leg.state.nv.us/NRS/NRS-603A.html#NRS603ASec320.

[4] The phrase "an accessible form" is not defined in the statute, but the context of the statute appears to suggest the term may be interpreted to mean in a manner that the Operator can access the information (i.e., it is not fully de-identified).

7. Any other information concerning a person collected from the person through the website or online service of the Operator and maintained by the Operator in combination with an identifier in a form that makes the information personally identifiable.

The CCPA's definition of "personal information" is generally broader, covering any information capable of being associated, or could reasonably be linked, directly or indirectly, with a "particular consumer or household."

**Who Is Regulated?**

While much of the privacy and security regime in Nevada applies to data collectors, which is defined quite broadly, SB 220 only amended provisions that extend to operators. As amended by SB 220, Nevada law defines "Operator" as a person who:

- Owns or operates an internet website or online service for commercial purposes.
- Collects and maintains covered information from consumers who reside in Nevada and use or visit the website or use the online service.
- Purposefully directs its activities toward Nevada, completes a transaction with the state of Nevada or a resident of Nevada, purposefully avails itself of the privilege of conducting activities in Nevada, or—as expanded by SB 220—otherwise creates a "sufficient nexus" with Nevada to satisfy the requirements of the U.S. Constitution.

Prior Nevada law exempted third parties that operate, host, or manage a website or online service on behalf of its owner or that process information on behalf of the owner. SB 220 narrowed the definition of Operator to also exempt the following:

- Financial institutions or their affiliates that are regulated by the GLBA.
- Entities subject to the provisions of HIPAA.
- Motor vehicle manufacturers and repair personnel who collect, generate, record or store covered information that is retrieved "from a motor vehicle in connection with a technology or service related to the motor vehicle" or provided "by a consumer in connection with a subscription or registration for a technology or service related to the motor vehicle."

Unlike the CCPA, which applies only to businesses that have annual gross revenues above $25 million; handle data of more than 50,000 consumers, households or devices; or derive at least 50 percent of their revenue from selling personal information, SB 220 can apply to businesses of any size and without regard to the amount of data they handle or how much of their revenue is derived from the sale of data.

**Who Is Protected?**

SB 220 applies to "consumers" who reside in Nevada. As defined under prior law,[5] a "consumer" is a person who seeks or acquires, by purchase or lease, any good, services, money, or credit for personal, family or household purposes. This definition is narrower than the CCPA definition, which provides that a "consumer is any natural person who is a California resident (as that term is defined for tax purposes), however identified, including by a unique identifier." Where the data subjects fall within SB 220's narrower definition of "consumer," SB 220 applies only to Operators that collect and maintain covered information from consumers who reside in Nevada and use or visit the Operator's website or online services.

**What Is Considered a "Sale"?**

SB 220's definition of "sale" is not as broad at the CCPA's and includes several key exceptions. SB 220 defines "sale" as "the exchange of covered information for monetary consideration by the [O]perator to a person for the person to license or sell the covered information to additional persons." By contrast, the CCPA defines "sale" as "selling, renting, releasing, disclosing, disseminating, making available, transferring, or otherwise communicating orally, in writing, or by electronic or other means, a consumer's personal information by the business to another business or a third party for monetary value or other consideration."

Both laws contain exceptions to what constitutes a "sale" of information, though SB 220's carve-outs are arguably broader than those in the CCPA. SB 220 exempts from the definition of "sale" disclosures of covered information to:

- A person who processes the covered information on behalf of the Operator (e.g., a vendor).
- A person with whom the consumer has a direct relationship for the purposes of providing a product or service requested by the consumer.
- A person for purposes that are consistent with the reasonable expectations a consumer considering the context in which the consumer provided the covered information to the Operator.
- An Operator's affiliate as defined by Nev. Rev. Stat. § 686A.620, meaning any company that controls, is controlled by or is under common control with the Operator.
- A person as an asset that is part of a merger, acquisition, bankruptcy or other transaction in which the person assumes control of all or part of the assets of the Operator.

[5] https://www.leg.state.nv.us/NRS/NRS-603A.html#NRS603ASec320.

**What Are the Operator's Obligations?**

Prior Nevada law required Operators to post a privacy notice on their websites that, among other things, provided consumers certain details about their information collection and disclosure practices. SB 220 did not alter this notice requirement and, unlike the CCPA, it does not require Operators to post a "Do Not Sell" button on their homepage. However, SB 220 does require that Operators:

- Establish a designated request address (email address, toll-free phone number, or website) through which consumers can submit opt-out requests.
- Develop a means to "reasonably verify the authenticity of the request and the identity of the consumer using commercially reasonable means."
- Respond to a verified consumer request within 60 days of receipt, which may be extended by an additional 30 days if the Operator determines that the extension is "reasonably necessary" and provides notice of the extension to the consumer.

**Private Right of Action?**

SB 220 explicitly states that it does not create a private right of action against an Operator. The CCPA, on the other hand, includes a narrow private right of action following data breaches.

**How is the Law Enforced?**

Both laws rely on the relevant state Attorney General for enforcement but contain different amounts for fines. SB 220 specifies that Operators that violate the privacy requirements may face a penalty of up to $5,000 per violations and a temporary or permanent injunction, while violations of the CCPA range from $2,500 for each violation or $7,500 for each intentional violation.

**NEXT STEPS**

Entities should have determined, or should be in the process of determining, whether they are covered by the Nevada law. Importantly, entities that believe that they may be covered should evaluate what information they collect and how they use it to determine if it would constitute a "sale" under SB 220, triggering SB 220's opt-out requirements. Those that are in the process of preparing for the CCPA may be able to leverage current efforts, but need to remain mindful of the deadlines and differing scope.

Absent federal legislation governing online privacy, states are continuing to legislate in this space, creating a complicated patchwork of laws that applies to companies that operate across the country.