

The DPDPA (effective January 1, 2025) governs certain entities that control (“controllers”) or process (“processors”) and, as applicable, sell, the personal data of Delaware residents, other than in the employment or business-to-business contexts (“consumers”). It also grants Delaware residents certain rights with respect to their personal data.

Applicability

The DPDPA applies to persons or entities conducting business in Delaware or producing products or services targeted to Delaware residents, and who during the preceding calendar year either:

- Controlled or processed the personal data of at least **35,000** consumers, excluding personal data controlled or processed solely for the purpose of completing a payment transaction, or
- Derived at least **20%** of their gross revenue from the sale of personal data and controlled or processed the personal data of at least **10,000** consumers.

Practical Application for Businesses

Consumer Rights:

- (1) **Right to Access**: the right to confirm whether a controller is processing personal data and access such data, unless it would require the controller to reveal a trade secret.
- (2) **Right to Correct**: the right to correct inaccuracies in the consumer’s personal data (taking into account the nature of the personal data and the purposes of processing the data).
- (3) **Right to Delete**: the right to delete personal data concerning the consumer.
- (4) **Right to Data Portability**: the right to obtain the personal data in a portable and, to the extent technically feasible, readily usable format that allows the consumer to transmit the data to another entity without hindrance, where the processing is carried out by automated means, provided the controller will not be required to reveal any trade secret.
- (5) **Right to Obtain**: the right to obtain categories of third parties to whom the consumer’s personal data was disclosed.
- (6) **Right to Opt Out**: the right to opt out of the processing of personal data for purposes of (i) targeted advertising, (ii) the sale of personal data, or (iii) profiling for decisions that significantly affect a consumer.

Controller Obligations:

- Publish a privacy notice that contains requisite details and is reasonably accessible, clear, and meaningful.
- Obtain consent to collect sensitive data, including parental consent for personal data of consumers under **13**.
- Provide consumers with sufficient methods to exercise their rights.
- Act on consumer requests within **45 days**; provide notice of extensions and the appeals process as necessary.
- Enter into binding data processing agreements with requisite limitations for third-party processors.
- Conduct and document an impact assessment for each processing activity that poses a “heightened risk of harm” to the consumer (e.g., selling personal data, processing sensitive data, or targeted advertising or profiling with certain foreseeable risks) if controlling or processing personal data of at least 100,000 consumers, excluding data controlled or processed solely for the purpose of completing a payment transaction.

Recommendations for Controllers:

- Regularly update data maps to detail personal data collection, including sensitive data and targeted advertising.
- Train employees how to handle consumer inquiries and requests.
- Maintain clear and executable data retention policies and procedures.

Penalties:

- The Delaware Department of Justice has exclusive enforcement authority. A violation of the DPDPA will constitute an unfair trade practice with civil penalties up to **\$10,000 per “willful” violation**.
- Until December 31, 2025, there is a 60-day cure period to correct violations following notice from the Delaware Department of Justice as long as a cure is possible. Beginning January 1, 2026, the Delaware Department of Justice may extend a cure period in its discretion.