

Genetic and COVID-19 Testing Companies Set To Be Regulated in California

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In the last days of the most recent legislative session, the California State Legislature was busy passing several privacy bills set to impact businesses. The most recent, the Genetic Information Privacy Act, would require companies that sell and market consumer-focused genetic testing products directly to consumers (including COVID-19 testing companies) to comply with certain privacy requirements.

If signed by Governor Newsom, the Genetic Information Privacy Act will require the following:

- **Adequate Notice**. Companies must provide privacy policies that make it clear what data the company is collecting, using, maintaining, and disclosing regarding the consumer's genetic data.
- **Express Consent**. Express consent for the collection, use, and disclosure must be obtained for each activity for which the genetic data will be used, such as related marketing activities.
- **Revocation of Consent**. Consumers must be given a meaningful way to revoke consent for the use of their genetic data.
- **"Reasonable Security" Emerges Again**. Companies collecting, using, and disclosing genetic data must employ "reasonable security" measures – a term of art also found in the California Consumer Privacy Act.
- **Consumer Access Request Mechanisms**. Consumers have to be afforded mechanisms to access their data, delete their data, and destroy the biological sample from which their genetic data was obtained.

- **Discrimination for Exercise of Rights Barred.** Businesses cannot discriminate against consumers who exercise their privacy rights.

The responsibilities set upon businesses and the rights afforded to consumers reflect a pattern emerging in consumer privacy legislation, most notably, the California Consumer Privacy Act, which went into effect on January 1, 2020, and into full enforcement on August 14, 2020.

The Act goes further to ensure that consumers' genetic data will not be disclosed to health insurers, insurance providers, or employers who may make decisions regarding provision of coverage or employment to an individual consumer.

With the adaptation and growth of testing companies that have emerged in the wake of COVID-19, established businesses and startups alike must heed this new regulation.

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