

Addressing California S.B. 27 Obligations

S.B. 27 is a new California law effective January 1, 2005 that requires marketers to either:

OPTION A

- Disseminate through one of three methods a contact point where California customers may request information about your practices.
- Have in place a published policy of not sharing personally identifiable information (PII) with others for marketing purposes (unless they offer consumers a choice to object to such exchange);
- Notify customers of their rights to prevent information sharing; **and**
- Provide a cost free method for California customers to exercise that right.

OR

OPTION B

- Disseminate through one of three methods a contact point where California customers may request information about your practices.
- Provide customers (upon request) a very detailed notice of your information sharing disclosures, including:
 - a list of categories of personal information disclosed to third parties for use in direct marketing during the prior calendar year;
 - the names and addresses of those third party; and
 - examples of those third parties' products and services (if the nature of the third parties' businesses could not be determined from their names alone).
- Designate a contact point where California customers can go to get this information for free.

Is my business/nonprofit covered by the statute?

S.B. 27 applies to **online and offline disclosures for marketing**. It applies to data sharing practices as they relate to **consumer information**, and does not cover information submitted in the business-to-business capacity. And it applies to **California customers**. To the extent that you may not be able to determine whether the information you are sharing pertains to California customers, this law may have broad implications for your privacy practices. And it applies to **non-profits as well as for-profits**.

Specifically, this law applies to businesses/nonprofits that have:

- 20 or more employees;

- an established business relationship with a California resident; and
- shared customer's personally identifiable information with a third party for the third party's own commercial marketing purposes within the previous calendar year.

Is my business/nonprofit exempt from the statute?

Certain business-to-business activities and financial institutions are **EXEMPT**.

A rule of thumb for determining whether disclosures are exempt is that the third party is only assisting a marketer in the provision of, the product or service, and is NOT engaging in its own subsequent direct marketing activities

Specifically, the law does not apply to disclosures pertaining to:

- Service providers for processing, storage, management, or organization of information, or performance of services on behalf of the business, if the information is not used or further disclosed for direct marketing; for example, if you disclose PII to a sweepstakes fulfillment company to assist with administration of the sweepstakes (*e.g.*, winner selection and prize fulfillment) or to a database company to organize your marketing lists, this disclosure is exempt, provided these companies use the PII only for performing those services on your behalf.
- Marketing on behalf of the disclosing business to that business' customers where the information is not disclosed to third parties for their direct marketing purposes; For example, if you disclose PII to an outside company to send promotional materials on your behalf to your customers, the disclosure is exempt provided that the company only uses the PII.
- Maintaining or servicing accounts;
- Property public record information obtained from a government agency or an realtors' multiple listing service (MLS);
- Joint marketing under a written agreement, where:
 - The product or service is offered by one of the parties & jointly offered or sponsored by the businesses that disclose and receive the info;

- The product or service clearly and conspicuously identifies the businesses that disclose and receive personal info for the marketing effort; and
- The written agreement binds the recipient to maintain confidentiality and not to disclose or use the information for any purpose other than the joint offering or servicing of a product or service covered by the agreement;
- Disclosures to or from a consumer reporting agency of a customer's payment history or other transaction or experience information if the information is to be reported in, or used to generate, a consumer report, and is regulated by FCRA;
- Disclosures to a third-party financial institution solely for the purpose of the business obtaining payment for a transaction;
- Certain disclosures between a licensed agent and its principal necessary for transactions between them if the information is used solely to market products or services to customers with whom both have EBRs as a result of the principal-agent relationship; and
- Disclosures between a financial institution and a business that has a private label credit card, affinity card, retail installment contract, or co-branded card program with the institution if the information is necessary for account maintenance or transaction completion and is used solely for direct marketing to customers with whom both entities have an EBR as a result of the arrangement.
- Certain disclosures by financial institutions subject to California S.B. 1, if the financial institution is in compliance with Sections 4052, 4025, 4053, 4053.5 and .6 of the Financial Code.

Note: The exceptions to the law are complicated! Consult with counsel before making a determination as to whether or not you are exempt.

How do I create a contact point?

All businesses/non-profits that are not exempt from the law must designate a contact point (e-mail address, mailing address, and toll-free telephone number or fax number) where customers may request a copy of your notice or otherwise learn about their rights under the statute.

You must make your contact point available by one of the following means:

- At every place of business in California where you or your agents have regular customer contact.

- Through employees or agents who have regular contact with customers, provided that they all have been instructed to provide contact point information to customers requesting your business’s Information-Sharing Disclosure Notice.
- On your web site’s home page with a link to your privacy policy entitled “Your Privacy Rights” **OR** a link entitled “Your California Privacy Rights,”
 - If you post a “Your California Privacy Rights” link, you may ignore customer requests for notice that are not sent to the designated contact point.
 - The link must take users **directly** to your disclosure of customer rights under the statute and your contact point.

How do I respond to a customer request?

Businesses/non-profits must respond to requests by California residents who are customers either:

- By providing an Information Sharing Disclosure under S.B. 27 (described below); or
- By allowing customers to prevent the sharing of their personal information with other companies for their direct marketing purposes, and notifying the requester of his or her right to do this. Under this approach, companies must
 - Have in place a published privacy policy of not sharing personal information with third parties for direct marketing purposes without customer opt in or opt out;
 - Notify customers of their right to prevent information sharing; and
 - Provide a cost-free means for customers to exercise that right.

Businesses must respond to requests:

within 30 days if the request is sent to the designated contact point, OR

within a reasonable time period (no more than 150 days from receipt of the request) if the request is sent to another address.

Do I need to create the Information Sharing Disclosure Under California S.B. 27?

You **will** need to provide an Information-Sharing Disclosure Notice if your business/non-profit makes non-exempt disclosures of PII to any one of the types of third parties listed in Question # 2 of the Template below, and does not offer notice of a cost-free mechanism to opt out of such disclosures in response to a request from a California customer.

You **do NOT** need to provide an Information-Sharing Disclosure Notice for any disclosures that fall within the following exceptions:

- disclosure for a purpose other than marketing.
- joint marketing partners where (i) the partner may use the information for the promotion or servicing of a jointly offered product or service, (ii) a confidentiality provision in the joint marketing agreement binds the recipient to keep the information confidential and not use or disclose it for any other purpose, and the offering clearly and conspicuously identifies the businesses that disclose and receive the personal information.
- disclosure to service providers if the information is not used or further disclosed for direct marketing (consult special exception above)
- disclosure for maintaining or servicing accounts
- disclosure between a licensed agent and principal (consult special exception above)
- disclosure to a third-party financial institution solely for payment purpose (consult special exception above)
- disclosure to or from a consumer reporting agency (consult special exception above)
- disclosure between a financial institution and a business that has a private label credit card, affinity card, retail installment contract, or co-branded card program with the financial institution (consult special exception above).

You may not need to provide an Information-Sharing Disclosure Notice at all and, at most, will need to make a more limited disclosure, for disclosures between:

- affiliates with the same brand name (for affiliates with same brand name that share information, the disclosure requirements are more limited and apply to a more limited range of data elements)

When and to whom should I make available the Information Sharing Disclosure?

This notice would be made available upon request from a California customer, once per customer per calendar year.

Businesses may provide a single, standardized annual notice, or may provide different notices for each affiliated company.

The statute does not require businesses to provide information regarding disclosures of data pertaining to a particular customer (e.g., the customer making the request).

What should the Information Sharing Disclosure Notice contain?

Each notice must contain:

1. A list of the categories of personal information shared with third parties for their own direct marketing purposes during the immediately preceding calendar year; and
2. The names and addresses of third parties with whom such information was shared, with examples of products or services if needed to indicate the nature of their business.

How do I create an Information Sharing Disclosure Notice (Option B) that satisfies the requirements of S.B. 27?

The DMA, in cooperation with the E-commerce and Privacy Practice of Piper Rudnick, has developed a template to help you get a head start on creating an Information-Sharing Disclosure Notice that details your practices for the third parties' direct marketing purposes **during the prior calendar year**. To get started, answer the three questions listed in the following template.

Template for Notice of Information Sharing Disclosures Under Option B

When answering the questions in the compliance tool consider both online and offline data practices.

1. With respect to our information sharing practices with other reputable companies that may contact consumers for their own marketing purposes (PPG Question 4), the types of third parties with whom we share information are . . . *(choose all that apply)*

- unrelated third parties (a business not affiliated with your business by common ownership or common corporate control)
- affiliates that are separately incorporated (separate legal entity)
- a business authorized to access for its own direct marketing purposes a database shared among businesses

2. The categories of personally identifiable information that we have shared during the immediately preceding calendar year with the above third parties for their own marketing purposes for which we have not provided consumers with notice and an opportunity to opt out are:

(choose all that apply)

- name and address
- e-mail address
- age or date of birth
- information concerning children (*i.e.*, names of children, e-mail or other addresses of children, number of children, age or gender of children)
- height
- weight
- race
- religion
- occupation
- telephone number
- education
- political party affiliation
- medical condition
- drugs, therapies, or medical products or equipment used
- the type of product the customer purchased, leased, or rented
- real property purchased, leased, or rented
- the type of service provided
- Social Security Number
- bank account number
- credit card number
- debit card number
- bank or investment account, debit card, or credit card balance
- payment history
- information pertaining to the customer's creditworthiness, assets, income, or liabilities
- other—please specify: _____

Note that if disclosures are made only to companies that share a common brand name, notice is not required for many of these data elements.

3. The names and addresses of all third parties with whom such information is shared follows.

- Name of Third Party: _____
Address: _____
Where the nature of the business is unclear from name alone, examples of the types of products or services offered by the third party:

- Name of Third Party: _____
Address: _____
Where the nature of the business is unclear from name alone, examples of the types of products or services offered by the third party:

- Name of Third Party: _____
Address: _____
Where the nature of the business is unclear from name alone, examples of the types of products or services offered by the third party:

(Note: Expand this list to cover as many such relationships as you have.)