



Making Sense of MODPA

On October 1, 2025, the [Maryland Online Data Privacy Act](#) (MODPA) will go into effect, imposing sweeping restrictions on how companies and organizations can access and use the personal data of Maryland residents. While MODPA is part of a broader trend of comprehensive data privacy laws in states across the nation, it does contain unique elements that will make compliance challenging.

Scope and Applicability

MODPA applies to all organizations that conduct business in the state of Maryland, and that (1) control or process the personal data of at least 35,000 consumers or (2) control or process the data of at least 10,000 consumers while deriving at least 20% of their revenue from the sale of that data. This is a lower threshold than is imposed by many other states with data protection laws. (The Virginia Consumer Data Privacy Act (VCDPA), for example, applies only to businesses either serving 100,000 consumers or processing the data of at least 35,000 consumers and deriving 50% of their profits from selling that data.)

Exemptions

Some data collectors are exempt from MODPA, including the government and those using data for employment purposes. Data that is already protected by law—such as protected health information under HIPAA—is also exempt. But unlike the VCDPA and other data privacy laws, **MODPA contains no blanket exception for nonprofits and higher education institutions** meaning hospitals, schools, and charitable organizations will all need to be MODPA-compliant.

Consumer Rights

Under MODPA, consumers have the right to:

1. know who is collecting and using their data, and access that data;
2. correct data inaccuracies;
3. require deletion of data unless its retention is required by law;
4. receive a portable copy of their data;
5. obtain a list of any third parties the data has been disclosed to; and

6. opt-out of data processing for targeted advertising, data sales, and consumer profiling.

Obligations

- On or before October 1, 2025, controllers of consumer data must have a hyperlinked page in place on their websites, allowing consumers to opt-out of data processing for targeted advertising, data sales, and profiling.
- If a data controller declines to act on a consumer's request to exercise one of the six consumer rights listed above, it has 45 days to inform the consumer in writing of its reasons for doing so. It must also provide directions for appealing the decision, and if an appeal is made, must inform the consumer in writing whether action will be taken within 60 days. Finally, if the appeal is denied, the data controller must offer an online mechanism by which the consumer can submit a complaint to the Consumer Protection Division of the Maryland Office of the Attorney General.
- MODPA also contains a novel provision stating that organizations must limit data collection to what is "reasonably necessary and proportionate" and process no more sensitive consumer data than is "strictly necessary to provide or maintain a specific product or service requested by the consumer." These data minimization requirements will present a challenge to organizations that collect Marylanders' data, because they are not clearly defined in MODPA.
- Organizations that outsource data processing to contractors will need to pay close attention to MODPA. Under the statute, data privacy provisions must be included in the contract between the data controller (organization/business) and the data processor (contractor), identifying the type, purpose, and method of data processing authorized. If the contractor fails to comply with their contract, it could be subject to an enforcement action.

Enforcement

MODPA will be enforced by the Division of Consumer Protection within the office of Maryland's Attorney General starting on April 1, 2026. Violators of MODPA will be considered to have committed an unfair, abusive, or deceptive trade practice under Title 13 of the Maryland Code and will be assessed penalties of up to \$10,000, or \$25,000 for repeat offenders, per violation.

Before April 1, 2027, the division may opt, at its discretion, to transmit a Notice of Violation before bringing an enforcement action, affording the data controller 60 days to cure the violation. Although MODPA includes no private right of action, it is unique in that violation of the statute can be used as a basis for other private civil actions—all the more reason to ensure compliance.

Looking Forward

In short, MODPA represents a sea change for organizations that collect or use previously unprotected consumer data in Maryland—whether that data is used for accepting a donation, validating parking, or completing a purchase. Further, MODPA's novel provisions will require that organizations already compliant with other data privacy statutes audit their practices to ensure they meet Maryland's new standard.

The first step organizations must take to comply with MODPA is **updating their websites with the required opt-out information before October 1, 2025**. After that, they must audit their data collection and use practices, add a data privacy addendum to their contracts with data processors, and prepare a data map of their websites to ensure that they can identify what consumer data they collect and where it is stored. Gallagher's Data Privacy attorneys can help you determine what MODPA means for your organization and how to ensure your compliance with its provisions.

What's Next?

We would be happy to assist you in addressing any questions. Please reach out to:

Tom Dame

Mallory Regenbogen

Brandon Wharton

Celine Esmeir

Luanne Mottley

*View all of our Monday Minute issues [here](#).

Recent News



Gallagher's Commitment to Giving Back

About Our Firm

For more than 60 years, Gallagher has been a trusted partner to businesses and non-profits across the Mid-Atlantic region and nationwide. We represent leading universities, hospitals, financial institutions, real estate developers, and more. Our firm is experienced in a wide range of practice areas, including real estate development, affordable housing, civil litigation, confidential investigations, healthcare, employment law, corporate law, renewable energy, and tax-driven transactions. We pride ourselves on offering innovative, practical solutions with a personal touch, acting as your partner and trusted advisor. With a deep commitment to seeing challenges from every angle, Gallagher is here to help you navigate the complex legal landscape with confidence. For more information, visit www.gejlaw.com.



Share This Email

[Join Our Mailing List](#)

Gallagher Evelius & Jones | 218 North Charles Street, Suite 400 | Baltimore, MD 21201 US

[Unsubscribe](#) | [Update Profile](#) | [Constant Contact Data Notice](#)



Try email marketing for free today!