

## 个人信息保护法热点问题

### 《中华人民共和国消费者权益保护法修正案（草案）（二次审议稿）》

#### 个人信息保护规定解读

继 2013 年 4 月十二届全国人大常委会第二次会议初次审议了《中华人民共和国消费者权益保护法修正案（草案）》（以下简称“《草案》”）之后，2013 年 8 月，十二届全国人大常委会第四次会议对草案二次审议稿（以下简称“《二审稿》”）进行了审议。《二审稿》现已公布并向社会公众征求意见。

2012 年 12 月 28 日，全国人民代表大会常务委员会颁布了《关于加强网络信息保护的决定》（以下简称“《决定》”），为《二审稿》中有关个人信息保护条款的起草提供了基础和铺垫。《二审稿》沿袭了《决定》中的规定，明确提出对于消费者个人信息的保护。

#### 保护对象

《二审稿》没有明确规定个人信息的定义，但是规定了“消费者在购买、使用商品和接受服务时，享有姓名、肖像、隐私等个人信息得到保护的权力。”

#### 信息收集和使用规范

《二审稿》要求经营者在收集、使用消费者个人信息时，遵循合法、正当、必要的原则，在此基础上对经营者的具体要求如下：

1. 明示收集、使用信息的目的、方式和范围，并经消费者同意；

2. 公开收集、使用规则，不得违反法律、法规的规定和双方的约定收集、使用信息；
3. 对收集的消费者个人信息严格保密，不得泄露、篡改、毁损，不得出售或者非法向他人提供；
4. 采取技术措施和其他必要措施，确保信息安全，防止消费者个人信息泄露、毁损、丢失，在发生或者可能发生信息泄露、毁损、丢失的情况时，应立即采取补救措施；
5. 未经消费者同意或者请求，或者消费者明确表示拒绝的，不得向其发送商业性信息。

#### 法律责任

《二审稿》对于经营者违反保护消费者个人信息义务的情形规定了民事责任和行政责任。

##### 1. 民事责任

经营者侵害消费者个人信息得到保护的权力的，应当停止侵害、恢复名誉、消除影响、赔礼道歉，并赔偿损失。

##### 2. 行政责任

经营者侵害消费者个人信息得到保护的权力的，除承担相应的民事责任外，其他有关法律、法规对外

罚机关和处罚方式有规定的，依照法律、法规的规定执行；法律、法规未作规定的，由工商行政管理部门或者其他有关行政部门责令改正，可以根据情节单处或者并处警告、没收违法所得、处以违法所

得一倍以上十倍以下的罚款，没有违法所得的，处以五十万元以下的罚款；情节严重的，责令停业整顿、吊销营业执照。

**我们将会进一步跟进《草案》的立法进程。**

董 潇 合伙人 电话：8610 8519 1233 邮箱地址：[dongx@junhe.com](mailto:dongx@junhe.com)  
古 宇 律 师 电话：8610 8519 1221 邮箱地址：[guyu@junhe.com](mailto:guyu@junhe.com)

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## Protection of Personal Information

### Personal Information Protection Stipulations in the Amendment to the Consumer Rights Protection Law (Second Examination Draft)

Following a first reading of the *Amendment to the Consumer Rights Protection Law* (the “**Law**”) in April this year, the National People’s Congress conducted the second reading in August, and released a second examination draft of the Law (the “**Draft**”) for public comments.

The Draft has included provisions regarding protection of personal information of consumers on the basis of the *Decision on Strengthening the Network Information Protection* issued in December, 2012.

#### Scope of Protection

The Draft does not include a specific definition of personal information, but it provides in principle that consumers’ personal information, such as name, portrait and privacy, during the process of purchase of commodities and receipt of services, is to be protected.

#### Protection Requirements

The Draft requires business operators to comply with the principles of legitimacy, rightfulness and necessity while collecting and using consumers’ personal information, and more specifically:-

- to explicitly inform consumers of the purpose, methods and scope of collection and use of personal information and obtain consumers’ consent;
- to publish rules for collection and use of consumers’ personal information;
- to keep consumers’ personal information strictly confidential, and not to disclose, destroy, sell or illegally provide such information to others;
- take necessary measures to ensure security of consumers’ personal information and at disclosure of loss of such information, immediately take remedial measures;
- not to send any commercial information to a consumer without his consent or request, or if the consumer expressly refuses to receive such information.

#### Legal Consequence

The Draft has stipulated civil and administrative liabilities for incompliance by business operators. In particular, it entitles the administration for industry and commerce with the authority to

confiscate illegal gains, impose fines and revoke business license if no other law or regulation is applicable.

**We will closely follow the further legislation process of the Law.**

Marissa Dong	Partner	T: 8610 8519 1233	E-mail: dongx@junhe.com
Jennifer Gu	Associate	T: 8610 8519 1221	E-mail: guyu@junhe.com

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