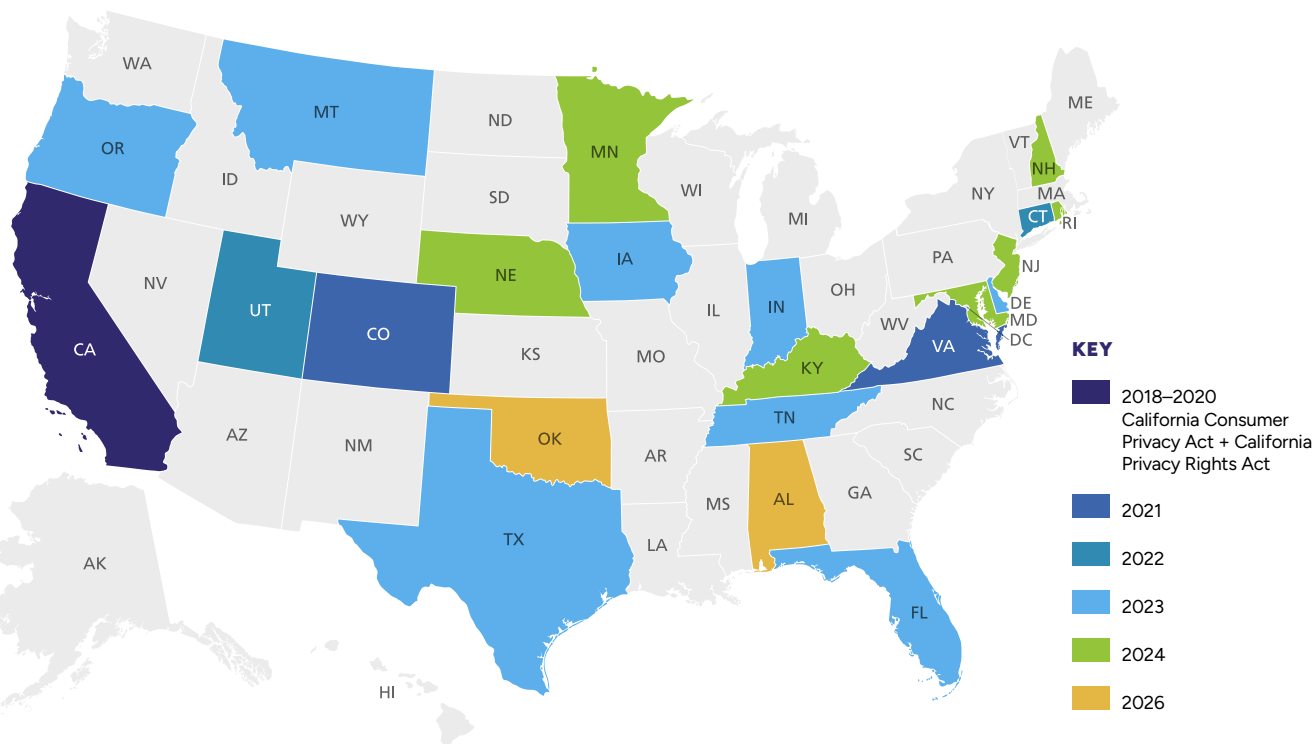


Federal Privacy Legislation Can Build on State Privacy Laws

Twenty-two states have enacted their own privacy laws, but there remains no uniform federal law to safeguard consumers' personal data nationwide. A federal privacy law would bring consistency to existing protections, create broad and long-lasting privacy safeguards for consumers, and advance US leadership.



Congress can build on the work of states and adopt a federal privacy law that: (1) provides consumers rights over their personal data, (2) requires companies to handle personal data responsibly, and (3) adopts a strong, consistent approach to enforcement.

Consumer Rights

A federal privacy law should give consumers important rights over their personal data, including to:

- » Access, correct, delete, and port their personal data
- » Opt out of:
 - sale,
 - targeted advertising, and
 - certain types of profiling

Obligations on Businesses

A federal privacy law should require companies that handle consumers' personal data to do so responsibly, including to:

- » Obtain consent for processing sensitive data
- » Adopt reasonable security measures
- » Require impact assessments for specific activities

It should also reflect the different roles and responsibilities of controllers and processors.

Strong Enforcement

A federal privacy law should be enforced by federal and state agencies working together.

- » The Federal Trade Commission has a long history of addressing consumer privacy.
- » Allowing state attorneys general to enforce the law adds 50+ enforcement agencies.

How Can Federal Privacy Legislation Build on State Privacy Laws?

Twenty-one of the 22 states with consumer privacy laws use the same structural model to protect consumer privacy. While states adapt this model by adding and removing substantive protections, these laws create a common framework that Congress can build on to create a uniform, nationwide privacy law.

CONGRESS CAN BUILD ON THE WORK OF STATES AND ADOPT A FEDERAL PRIVACY LAW THAT:



Provides consumers rights over their personal data,



Requires companies to handle personal data responsibly, and



Adopts a strong, consistent approach to enforcement.



Consumer Rights

All 22 state privacy laws create new rights for consumers in their personal data. These include:

- » **Right to access personal data:** 22 states
- » **Right to correct personal data:** 21 states
- » **Right to delete personal data:** 22 states
- » **Right to data portability:** 22 states
- » **Right to opt out of sale:** 22 states
- » **Right to opt out of targeted advertising:** 21 states
- » **Right to opt out of certain types of profiling:** 19 states



Obligations on Businesses

All 22 state privacy laws create obligations for businesses to handle consumers' personal data responsibly. All 22 also reflect the fundamental distinction between controllers, which are the companies that decide when and why to collect a consumer's personal data, and processors, which handle that personal data on behalf of another company and pursuant to their instructions.

State privacy laws assign important—and distinct—obligations to both controllers and processors, based on their different roles.

CONTROLLERS MUST:

- » **Obtain consent to process sensitive data:** 18 states
- » **Adopt reasonable security measures:** 22 states
- » **Conduct data protection assessments for certain activities:** 18 states
- » **Recognize universal opt out mechanisms:** 11 states
- » **Not retaliate against consumers who exercise their rights:** 22 states

PROCESSORS MUST:

- » **Process data pursuant to a contract:** 22 states
- » **Be subject to a duty of confidentiality:** 22 states
- » **Delete or return all data at the end of services:** 20 states
- » **Provide information a controller needs to conduct data protection assessments:** 17 states

Notably, state privacy laws focus on *consumer* privacy. Twenty-one states expressly exclude employees.



Enforcement

All 22 laws create a role for the state's attorney general to enforce the privacy law. The laws have:

- » **No private right of action for privacy violations:** 22 states
- » **Right to cure violations:** 21 states (10 sunset)
- » **Rulemaking required:** 4 states
- » **New state agency created to enforce law:** 1 state

For more information comparing state privacy laws, see [BSA's Models of State Privacy Legislation](#).