

Comprehensive Federal Privacy Legislation

Can Build on State Privacy Laws

THERE ARE THREE KEY COMPONENTS OF PRIVACY LEGISLATION:

1

ESTABLISHING CONSUMERS' RIGHTS IN THEIR DATA

California creates new consumer rights including:

- Confirmation of Processing
- Access
- Correction
- Deletion
- Portability
- Opt out of: (1) sale, and (2) sharing of personal information

Colorado, Connecticut, Delaware, Florida, Indiana, Montana, Oregon, Tennessee, Texas, and Virginia create the same consumer rights as well as broader opt out rights, allowing consumers to opt out of: (1) sale, (2) targeted advertising, and (3) certain types of "profiling."

Iowa and Utah create a narrower set of rights, with no right to correct or right to opt out of profiling.

Federal Law should create these important consumer rights.

2

OBLIGATING COMPANIES TO HANDLE THAT DATA IN WAYS THAT DO NOT SURPRISE CONSUMERS

California imposes several obligations on companies that decide how and why a consumer's personal information is collected and used, including:

- Data minimization and purpose specification
- Reasonable security measures
- Prohibition on retaliating against consumers that exercise new rights

Most states create a broader set of obligations on businesses that decide how and why consumers' personal data is processed, including:

- For sensitive data, at least 10 states put the burden on companies to obtain consent from consumers (in contrast, **California, Iowa, and Utah** put the burden on consumers to opt out of the processing of sensitive data)
- At least 10 states prohibit processing data in violation of state and federal non-discrimination laws

Several states also create new protections for specific issues, including:

- **California, Colorado, Connecticut, Delaware, Florida, Montana, Oregon, and Texas** prohibit the use of "dark patterns" when obtaining consent
- **California, Connecticut, Delaware, Florida, Montana, and Oregon** require consent for targeted advertising or sale of information of children

All 13 states recognize the distinct role of service providers, including requiring them to process data pursuant to a contract.

Federal Law should build on these obligations to ensure that companies use consumers' personal data consistent with consumer expectations.

3

STRONG ENFORCEMENT

All 13 states create a role for the Attorney General to enforce the privacy law, including:

- **California** creates a new agency to administratively enforce the law, in addition to the AG's civil enforcement
- **Colorado** also empowers district attorneys to enforce the law, in addition to AG enforcement
- **Utah** authorizes the state's Commerce Department to refer complaints to the AG for enforcement

Federal Law should not be enforced by a single regulator, but by federal and state agencies working together.

Federal: The FTC should enforce a federal privacy law, with new tools including:

1. Targeted rulemaking authority
2. Authority to fine first-time violators
3. Additional funding and staff

State: Attorneys General in all states and territories should also enforce the law, adding 50+ new enforcement agencies.

We urge Congress to enact a federal consumer privacy law that builds on state privacy protections in each area. Congress should build on privacy laws enacted by these 13 states to protect consumers nationwide.