

Background

The current state of privacy law in the U.S. has been influenced by sectorial needs and developments in technology. From healthcare, financial and children's data, the internet browser to social media, the collection, concentration and accessibility of personal information has grown exponentially. The theft and misuse of private information has created the need for legislative efforts to regulate the collection, use, storage and disclosure of personal information. Legal professionals must stay up to date with legislative developments and their effects on individual and corporate clients.



(1) Federal Level:

- (a) No omnibus federal privacy law
- (b) General privacy concerns, such as lack of transparency, deceptive disclosures, and failure to safeguard personal information addressed by Section 5 of Federal Trade Commission Act, which prohibits “unfair methods of competition in or affecting commerce.” 15 USC § 45.
- (c) Federal law also regulates privacy on a sectorial basis:
 - (1) Children’s data, Children’s Online Privacy Protection Act (COPPA)
 - (2) Health data, Health Insurance Portability and Accountability Act (HIPAA)
 - (3) Financial data, Gramm-Leach-Bliley Act (GLBA)



(1) States have started adopting comprehensive privacy laws:

- (A) California Consumer Privacy Act (January 1, 2020), as amended by California Privacy Rights Act (January 1, 2023).
- (B) Virginia's Consumer Data Protection Act (January 1, 2023)
- (C) Colorado Privacy Act (July 1, 2023)
- (D) Connecticut Data Privacy Act (July 1, 2023)
- (E) Utah Consumer Privacy Act (December 31, 2023)
- (F) Iowa Consumer Data Protection Act (January 1, 2025)

Plus: Light privacy law, The Nevada Privacy Law (October 1, 2019, and as amended, October 1, 2021)



(2) States have data breach notification rules:

Notification of breach triggered if certain personal information impacted, such as first name or first initial and last name in combination with certain sensitive data elements, such as SSN, driver's license number, financial account numbers, medical information, biometric data, or credentials to access an online account.



Other privacy laws:

- (1) California Constitution, Article 1, section 1. The state Constitution gives each citizen an “inalienable right” to pursue and obtain “privacy.”
- (2) California Consumer Privacy Act. is codified at Cal. Civ. Code § 1798.100 et seq. California Privacy Rights Act which amends CCPA.
- (3) Common law torts, i.e., Professor William L. Prosser’s four privacy torts (intrusion into private affairs, public disclosure of privacy facts, false light, and misappropriation of name or likeness).
- (4) Mini-state unfair business practices laws, e.g., California Business and Professions Code § 17200.

