



State Privacy Law 101

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Origin of state privacy laws

- “When you control the mail, you control . . . INFORMATION!” (Newman, circa 1993)
- Times have changed
- Where did state privacy laws come from?



Landscape of state privacy laws

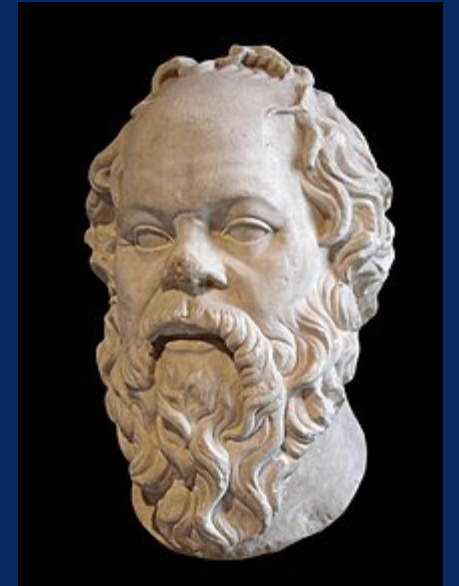
- 8 states where privacy laws are currently in effect
 - CA, VA, CO, UT, CT, TX, OR, NV*
- 12 states with pending privacy laws
 - 10/1/24 – MT
 - 1/1/25 – DE, IA, NE, NH
 - 1/15/25 – NJ
 - 7/1/25 – TN
 - 7/31/25 – MN
 - 10/1/25 – MD
 - 1/1/26 – IN, KY, RI

What do state privacy laws cover?

- Data – but not just any data
 - “Personal information” (CA)
 - “Personal data” (other states)
- Exceptions and exemptions
 - Publicly available information
 - De-identified data
 - Aggregated data
 - State-specific (very pointed/narrow)
- Wait, there’s more? (“sensitive” information or data)

Who do state privacy laws cover?

- “To know thyself is the beginning of wisdom.” (Socrates)
- Thresholds and triggers
 - Activity-based
 - Revenue-based
 - Quantity-based
- Entity-level exceptions/exemptions



Your business is covered. Now what?

- Key compliance pillars:
 - Limit
 - Protect
 - Disclose
 - Honor consumer rights
 - Contract
 - Assess

Compliance: Limitation

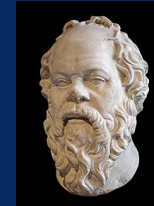
- Key principle = data minimization
- Limit personal data collection to what is adequate, relevant, and reasonably necessary to the purposes for using the data
- Limit processing of personal data to purposes that are reasonably necessary and compatible with the purposes disclosed to consumers, unless additional consent is obtained

Compliance: Protection

- Key principle = security
- Establish, implement, and maintain reasonable data security practices
 - Administrative
 - Technical
 - Physical
- “Reasonable” = not one-size-fits-all
 - Volume of personal data
 - Nature of personal data (risk-level)

Compliance: Disclosure

- Key principles = fairness and transparency
 - REMINDER: “To know thyself is the beginning of wisdom.”
 - Golden rule = say what you do, and do what you say you do
- Privacy notice
 - Data practices
 - Consumer rights
 - Operation/administration (e.g., how consumers can exercise rights)
- Notice at collection (CA)
 - What is collected and why
 - Whether personal data is sold or shared



Compliance: Honoring Consumer Rights

- Key principle = fairness
- Understand the rights
 - Know/access
 - Correct
 - Delete
 - Opt out
 - Limit
 - No retaliation/discrimination

Compliance: Honoring Consumer Rights

- Be prepared to honor consumer rights requests
 - Means for consumers to exercise rights
 - Opt-out features
 - Methods for verifying consumer requests
 - Methods for responding to rights requests
 - Methods for tracking the process

Compliance: Contracts

- Every business uses vendors, service providers, etc.
 - CA = service providers and contractors
 - Other states = processors
- Processing of personal data must be governed by written contract
- Laws (and associated regulations where applicable) outline provisions that must be included
 - Instructions, obligations, restrictions, etc.
- California vs. everyone else (as usual!)

Compliance: Assessments

- Data protection assessments required for certain activities
 - Processing of personal data for targeted advertising
 - Sale of personal data
 - Processing of personal data for purposes of certain profiling
 - Processing of sensitive data
 - Processing data that presents a heightened risk of harm to consumers
- Weigh benefits against potential risks to consumer rights
- Assessments must be documented
- Assessments can address multiple activities

Enforcement



- Almost exclusively by state attorneys general
- Exception in California – limited private right of action:
 - Data breach resulting from a business' failure to implement and maintain reasonable and appropriate security procedures and practices
 - Recover monetary damages and injunctive relief

The Vermont Experience

- May 2024 -- Vermont Legislature passed H.121
- Similar to other state privacy laws but with some key differences:
 - Very low thresholds for applicability (which decreased over time)
 - Private right of action (limited)
 - Certain violations by data brokers and large data holders (100K+ consumers)
 - Sunset after two years in effect
- June 2024 – H.121 was vetoed by Gov. Phil Scott
 - “unnecessary and avoidable level of risk”
 - “negatively impact mid-sized employers”
 - “significant fear and concern among many small businesses”
 - “big and expensive new burdens and competitive disadvantages”

Thank You!



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