



Navigating the Privacy Landscape: Trends to Watch in 2025

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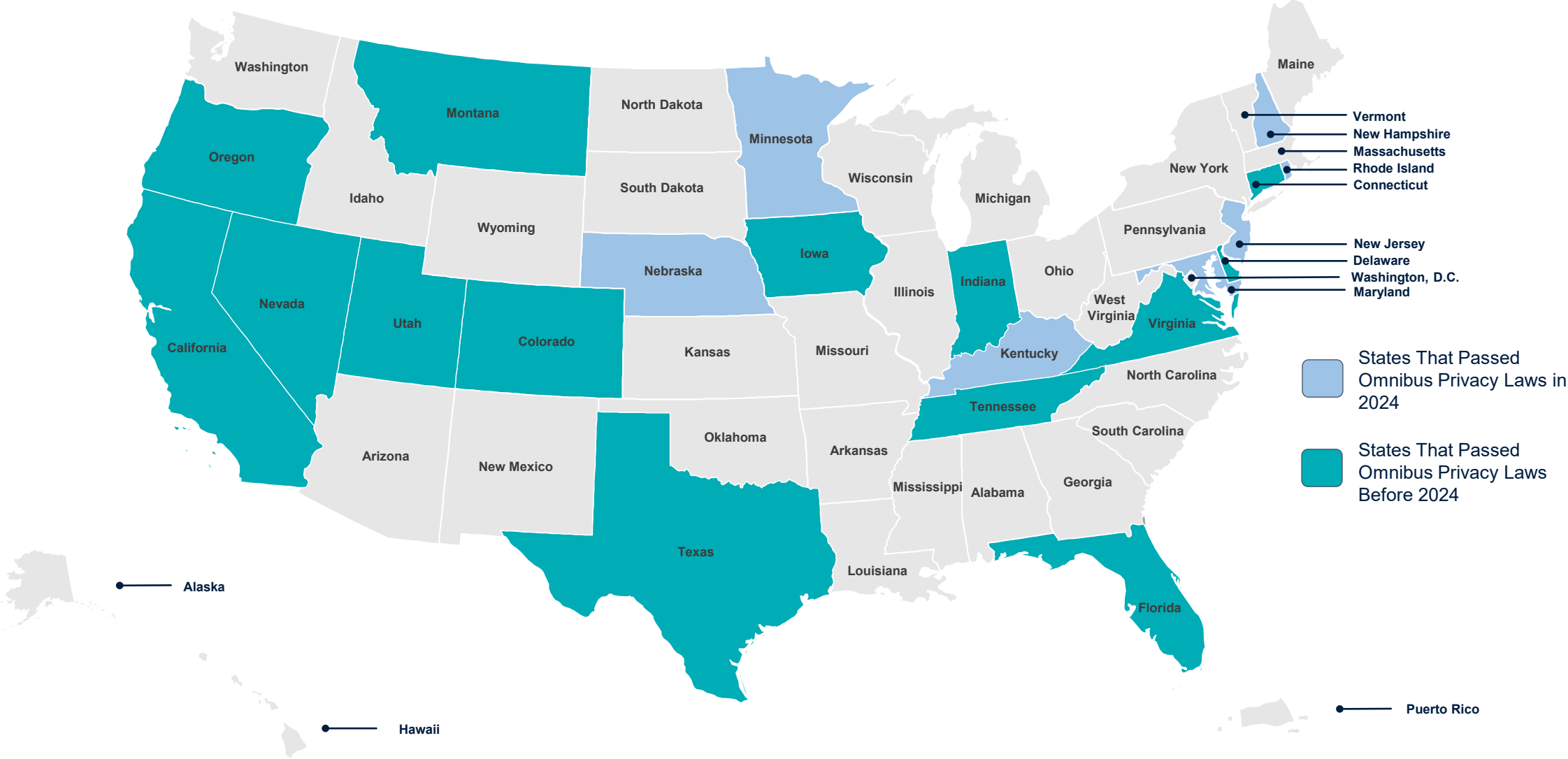
State Law

A Growing Patchwork

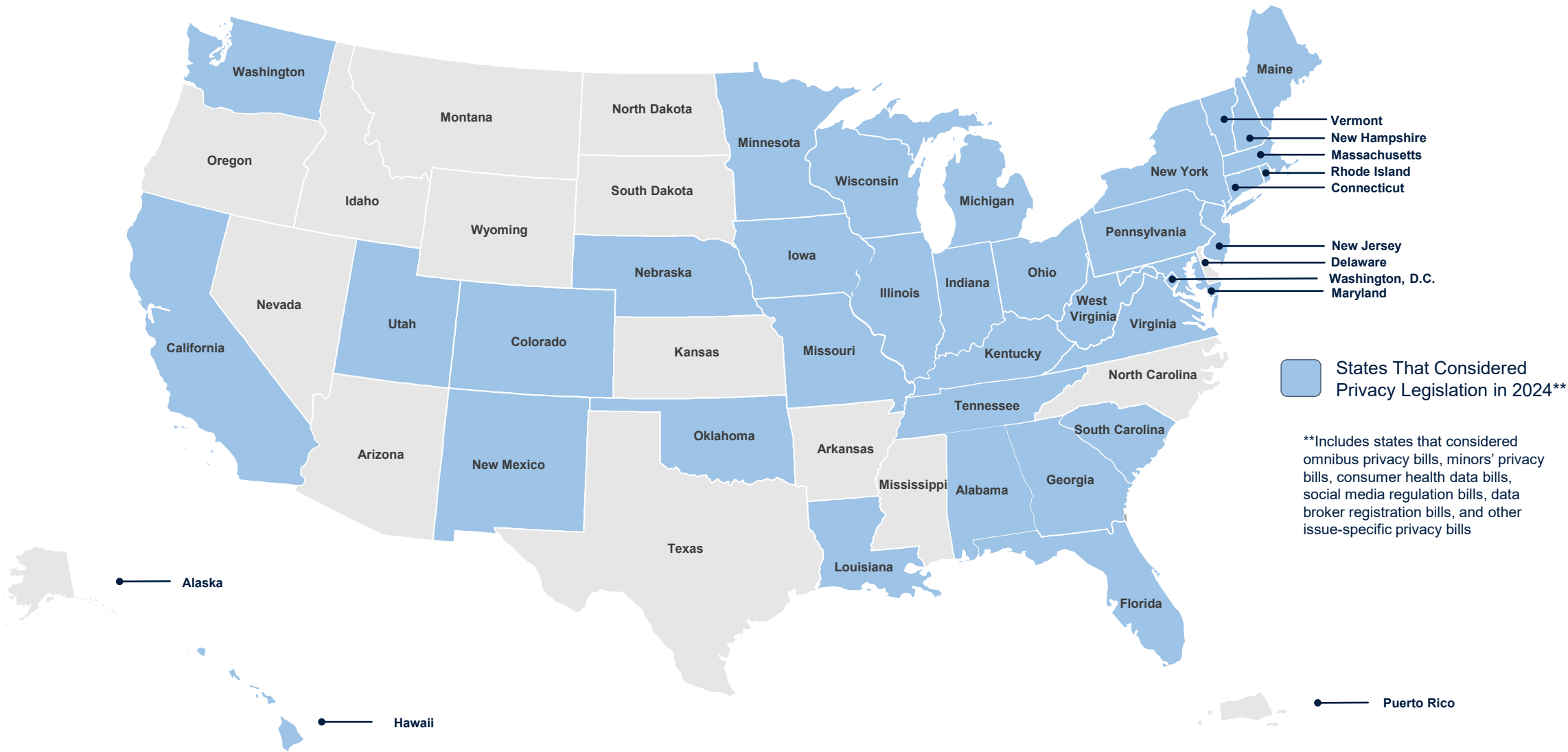


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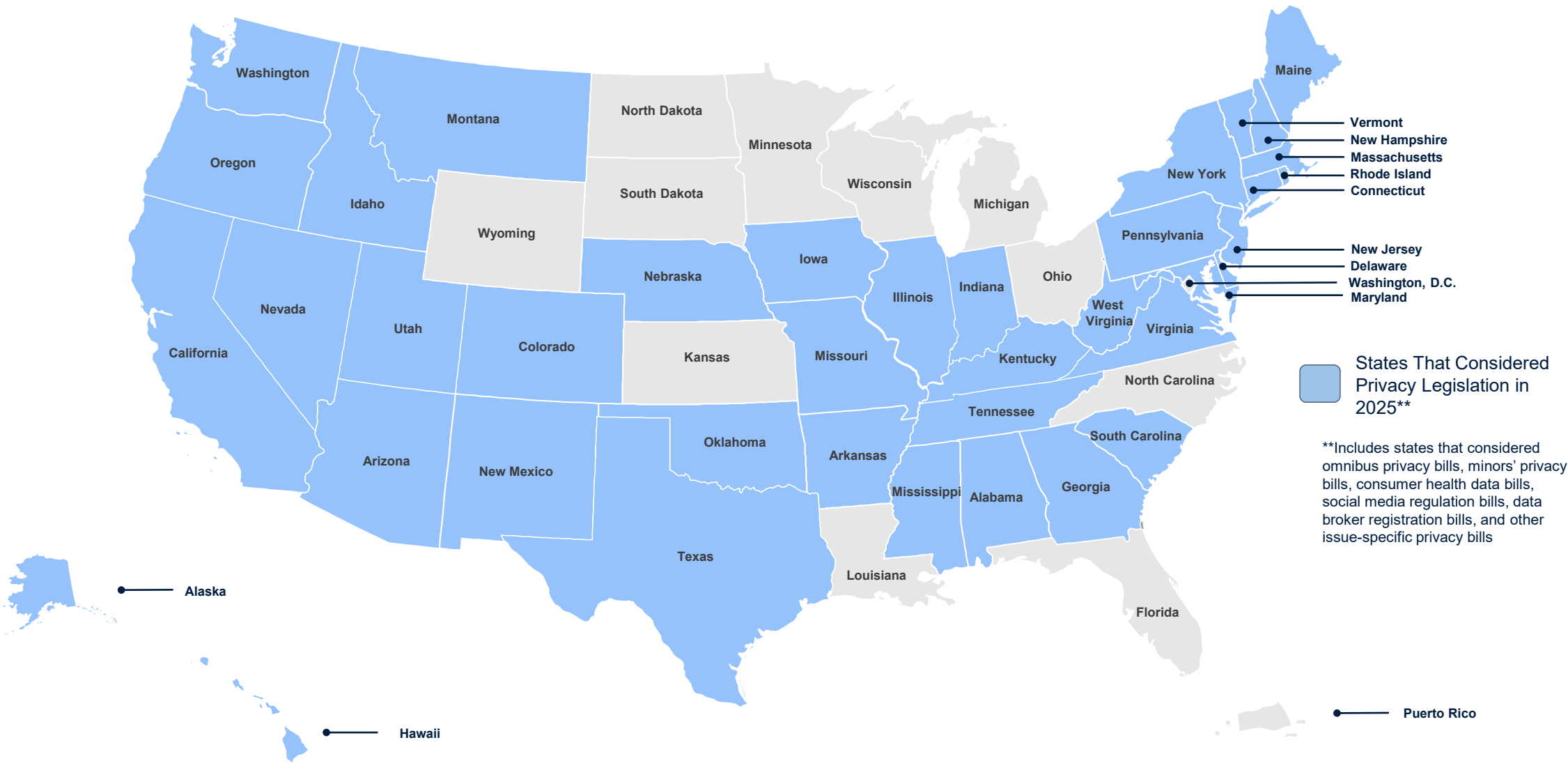
Omnibus Privacy Laws



States That Considered Privacy Legislation in Fall 2024



States That Have Considered Privacy Legislation in 2025



Common Themes and Key Differences

- All are “rights-based” laws that focus on notice for consumers as well as rights like:
 - Access, Deletion, Correction
 - Opt-out of sales/sharing/targeted advertising
 - Opt-in/opt-out from sensitive data processing
- All grant enforcement authority to the state attorney general
- BUT there are also numerous differences:
 - Certain states like CA, CO, and TX require adherence to universal opt-out mechanisms
 - CA regulates cross-context behavioral advertising; other states regulate targeted advertising
 - Certain states, like MN and OR, require specific disclosures (e.g., list of specific third parties)
 - MD data minimization provision
 - Detailed and prescriptive regulations in CA and CO; other laws are much shorter
 - CA is in the process of regulating automated decisionmaking, but legislators have pushed back via a letter to the CPPA to express concerns about the scope of the rulemaking

Emerging Trends

- Consumer Health Data/Regulated Health Information (WA, MD, CT, NV; other states are considering similar bills, including NM, NY, etc.)
- Limits on Processing of Reproductive and Sexual Health Information (MO, VA – includes a private right of action)
- Cookie Consent Bills (VA)
- Data Broker Registries and DELETE Act (CA, IL, NE, NJ, WA)

Emerging Trends

- Data Broker Tax (WA, MD)
 - MD SB 904: “Data broker” means any business entity that engages in data brokering (subject to certain exceptions for consumer reporting agencies and financial institutions). “Data brokering” means the act of collecting, aggregating, analyzing, buying, selling, and sharing personal data.
- Surveillance Pricing (CA, IL)
 - CA AB 466: “Surveillance pricing” means setting a price offered to a consumer, based, in whole or in part, upon personally identifiable information gathered through an electronic surveillance technology, including electronic shelving labels.
- Limits on Collection, Use, Share/Sell of Location Data (CA, VA)

Enforcement Trends

- CA Data Broker Registry – range of penalties associated with non-compliance
 - CA-based data broker – \$50,000
 - NY-based data broker – \$54,200
 - FL-based broker – \$46,600
- CA Investigative Sweeps
 - Streaming Services: non-compliance with CCPA’s opt-out requirements for businesses that sell or share consumer personal information
 - Hospitality Businesses with Loyalty Programs: non-compliance with CCPA’s provisions related to financial incentives
- Enforcement action results in temporary shutdown: Broker was building and selling customer profiles and failed to register as a data broker.
- Three enforcement actions (Sephora, Tilting Point, and DoorDash) focused on allegations related to notice and opt-out for “sale” of data, as well as children’s privacy.

Congress

A “Reset” on Privacy



2024 Recap

- **American Privacy Rights Act (APRA):** A proposal that would have represented a significant shift from the state-based approaches, ultimately died in the summer before receiving a markup in the House Energy & Commerce Committee. The APRA was a spiritual successor to the ADPPA in the prior Congress.
- **Kids & Teens:** COPPA 2.0 and the Kids Online Safety Act (KOSA) passed the Senate and stalled in the House.
- **GLBA Update:** House Financial Services Committee passed the Data Privacy Rights Act of 2023, which would have amended the Gramm-Leach-Bliley Act with new consent requirements and consumer rights of access and deletion. The bill did not receive a vote in the full House.

2025 Key Congressional Actors



Rep. Brett Guthrie (R-KY) now chairs the House Energy & Commerce Committee and has kicked off a new working group to develop a consensus on comprehensive data privacy, headed by Rep. John Joyce, MD (R-PA).



Rep. Frank Pallone (D-NJ) is ranking member on House Energy & Commerce. He sponsored the ADPPA and APRA.

“This landmark legislation gives Americans the right to control where their information goes and who can sell it.”



Sen. Ted Cruz (R-TX) is chair of the Senate Commerce Committee; he supports preemptive federal privacy legislation, but opposed the ADPPA or APRA, noting,

“I support Congress, not the FTC or any federal agency, but Congress, setting a nationwide data privacy standard.”



Sen. Maria Cantwell (D-WA) is the ranking member of the Senate Commerce Committee; she supported the APRA.

“A federal data privacy law must do two things: it must make privacy a consumer right, and it must give consumers the ability to enforce that right.”

2025: Process Is Key

- **House Energy & Commerce Working Group:** The working group is made up of nine Republican members starting from a “blank sheet of paper” to seek consensus on what a national privacy law could look like and how to leverage state models for a national framework.
- **Senate Commerce:** Senator Cruz and his staff continue to work toward a comprehensive privacy proposal in that chamber.
- **Kids & Teens:** COPPA 2.0, KOSA, and the Kids Off Social Media Act (KOSMA) are planned to operate on a timeline that is different from comprehensive legislation, separating kids and teens issues from the broader debate.
- **Sectoral Updates:** Targeted bills on AI, connected vehicles, health, financial, and other “sectoral” data privacy issues could percolate alongside an omnibus effort in relevant committees.

2025 Outlook

- **Trifecta:** With a Republican trifecta in Washington, this Congress represents a rare moment of alignment in Congress to advance a preemptive consumer data privacy law.
- **State “Consensus” Models:** With over 20 state laws on the books (and more to come), Congress can look at what works and what doesn’t in the states.
- **Potential Timeline:** The process in the House could stretch to Q3/4 of 2025 for a legislative vehicle, while kids and teens bills could move sooner. The Senate could move sooner, but competition among priorities like nominations, government funding, and other matters may delay a focus on privacy.

Federal Trade Commission

Outlook for Privacy, Data Security, and AI



Current Status

- Currently, two holdover Republican members, two holdover Democratic members, and one vacant seat on the five-member Commission.
- Andrew Ferguson was designated as the new chair of the FTC on January 20, 2025.
- Mark Meador, an antitrust lawyer nominated for the open seat, had a confirmation hearing on February 25, 2025, and is expected to be confirmed.
- President Trump has moved to exercise more control over all independent federal agencies, including the FTC. Notable recent developments:
 - Asserting power to remove political appointees at will
 - Directing White House review of major regulatory actions (before *Federal Register* publication)
 - Directing agencies to review regulations for consistency with law and current Trump Administration policy

Possible Direction

- Likely to take an approach that is different from the prior FTC when issuing regulations and bringing complaints.
- Chair Ferguson has frequently been an open critic of rulemaking and enforcement that he believes exceeds the FTC's authority.
 - In a December 2024 memo leaked to the press, Ferguson stated his agenda as chair would include the following:
 - “Stop abusing FTC enforcement authorities as a substitute for comprehensive federal privacy legislation.”
 - “End the FTC's attempt to become an AI regulator.”
 - “No more novel and legally dubious consumer protection cases.”

Privacy Rulemaking

- Ferguson’s Concurring and Dissenting Statement on FTC’s Report on Social Media and Video Streaming Services (“SMVSS Report”) on September 19, 2024, outlined key views:
 - There is an “online privacy crisis” and Americans should be more aware of “online commercial surveillance.”
 - Report should focus more on proposing “legislative improvements” to protect children and parents, instead of “accusing companies of violating existing law under novel, dubious theories.”
 - Stated support for “comprehensive federal privacy legislation to protect consumers’ data and provide greater clarity” to controllers.

Location Data Practices

- In a case against Gravy Analytics and Mobilewalla, Chair Ferguson concurred on counts of:
 - (1) selling precise location data without safeguards,
 - (2) collecting/using/selling precise location data without consent, and
 - (3) unfairly retaining mobile advertising IDs and precise location data.
- Dissented on the counts of:
 - (1) categorizing consumers based on sensitive characteristics and
 - (2) selling those categorizations to third parties.

Key quote: The FTC Act “does not limit how someone who lawfully acquired those data might choose to analyze those data, or the conclusions that one might draw from them.”

Targeted Advertising

- Responding to the SMVSS Report, Chair Ferguson said:
 - “I do not share the Report’s apparent view that the display of targeted advertising to adults is, on balance, harmful.”
 - “[T]argeting based on sensitive categories” is not the “kind of injury the law should try to address.”
 - “[T]he pressing policy question is not targeted advertising itself . . . The correct regulatory focus is one step earlier in the supply chain – the largely unregulated collection, aggregation, sale, and retention of consumers’ data that makes the targeted advertising possible.
 - Targeted advertising is beneficial for consumers, producers, and competition.

Artificial Intelligence

- Chair Ferguson has called for restraint on regulation of AI.
- Statement on the SMVSS Report:
 - “a knee-jerk regulatory response will only squelch innovation,” entrench Big Tech, and drive away AI developers to potentially adversarial countries.
 - “neither AI’s creators nor its would-be regulators really understand [AI],” and so “imposing comprehensive regulations . . . would be foolish.”
 - Instead, “enforce existing laws” not specific to AI.
- Dissent from a case against Rytr, an AI-powered writing tool, called “the Commission’s aggressive move into AI regulation . . . premature.”
 - In contrast, concurred in complaint against accessiBe, an AI-powered website compliance checker, for misrepresenting the product’s performance.

Join Our Next Transition Outlook Webinar

March 12, 2025: AI Policy in 2025 and Beyond | 3:00 - 4:00 p.m. ET

Join us next Wednesday, March 12, for a timely discussion on AI policy in 2025. With artificial intelligence in the spotlight as a new administration and Congress kick off, this webinar will explore the evolving outlook for AI policy under the second Trump administration. We will discuss federal actions in the AI space to watch for, as well as the impact of the new administration and Congress on state policy. We will also dive into the implications of AI for energy policy and infrastructure planning.

Upcoming Webinars:

- March 19, 2025: Trump 2.0 - A Brave New World for Government Contractors | 2:00 - 3:00 p.m. ET
- March 26, 2025: Trade and Tariffs Under Trump 2.0: What's Next for U.S. Trade Policy | 2:00 - 3:00 p.m. ET



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