



WHY YOUR STATE SHOULD ADOPT THE UNIFORM PERSONAL DATA PROTECTION ACT (2021)

The Uniform Personal Data Protection Act, promulgated by the Uniform Law Commission in 2021, applies fair information practices to the collection and use of personal data from consumers by business enterprises. By adapting a risk-based approach to privacy regulation, the act protects all data subjects from harmful processing and also offers the flexibility for startups and established firms to innovate.

The Act has several elements that make it more practical, more flexible, and less costly than other models of state privacy legislation. Specifically, the Uniform Personal Data Protection Act does the following:

- Applies broadly to any entity that collects or maintains personal data but exempts small businesses unless they use personal data in a manner that a consumer would not expect.
- Gives consumers the right to access and correct their personal data held by others and protects them from unexpected, potentially risky uses of their data without their consent.
- Allows businesses to avoid the costs of consent if they use data exclusively in ways that are compatible with consumer expectations and best interests.
- Provides incentives for businesses to pseudonymize personal data to enhance consumer protection and directs consumer requests for access to businesses best able to authenticate their identity.
- Reduces the compliance costs for businesses and the enforcement costs on state governments required by other more regulatory models such as the European General Data Privacy Regulation and the California Data Privacy Act.
- Respects First Amendment limitations on the regulation of personal data (*Sorrell v. IMS Health Inc.*, 564 U.S. 552 (2011)).
- Promotes compatibility by recognizing compliance with existing state and federal personal data privacy regimes as compliance with this act.
- Addresses the variety of contexts and needs for different sectors by allowing data users and data subjects to negotiate voluntary consensus standards for data use.

- Uses existing enforcement mechanisms in state consumer protection laws for enforcement of this act.
- Leaves to each state the question of whether to authorize a private cause of action for violation of the act.

Altogether, the provisions of this act provide substantial protection to data subjects while reflecting pragmatism and optimism about the data-driven economy. The Act is pragmatic by keeping compliance costs manageable and by avoiding obvious conflicts with the First Amendment. The Act is optimistic by leaving room for unexpected, beneficial innovations in the creative use of personal data. And the Act avoids high compliance and regulatory costs associated with more restrictive regimes.

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