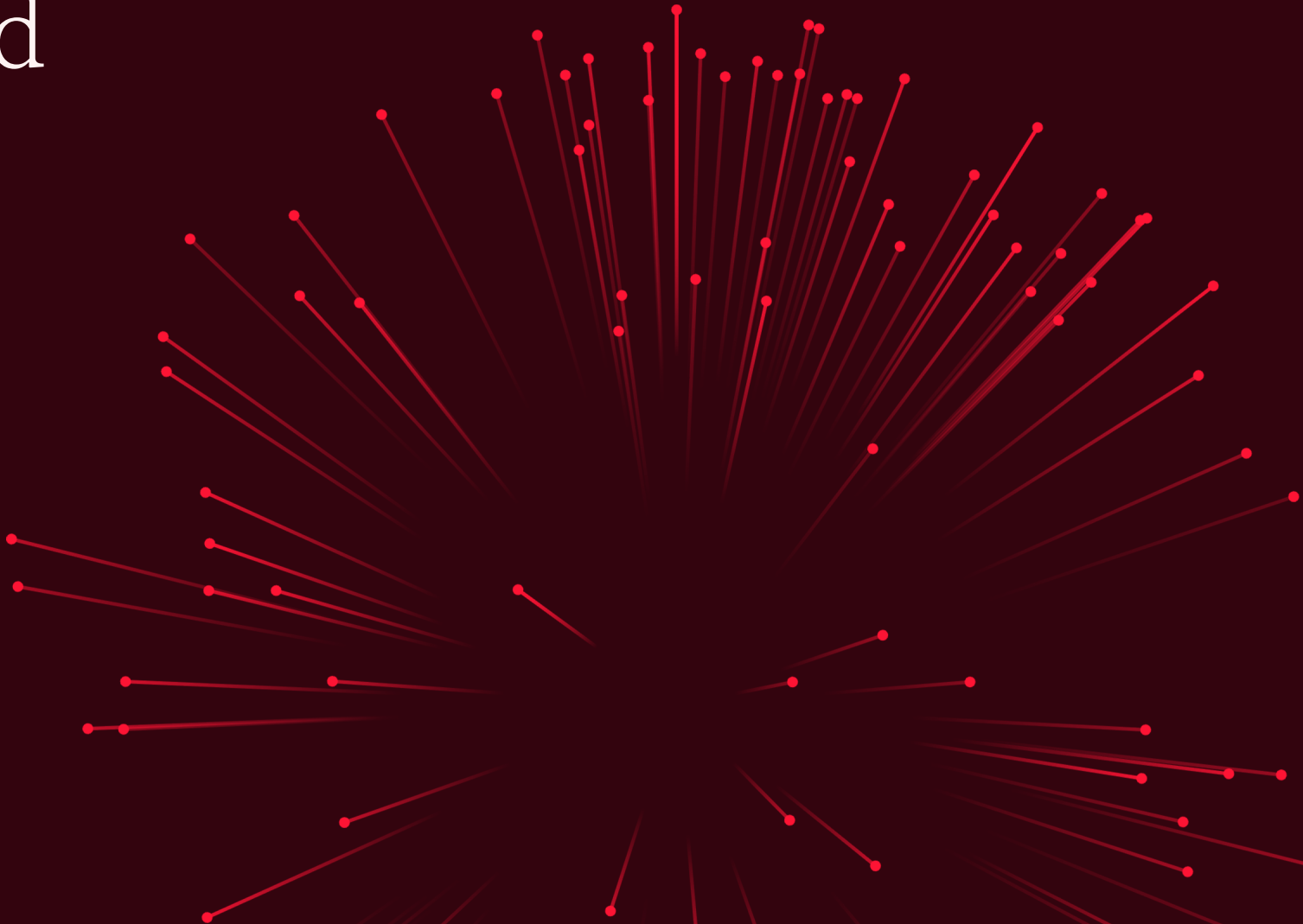


Neurotech Laws and Legislation Update

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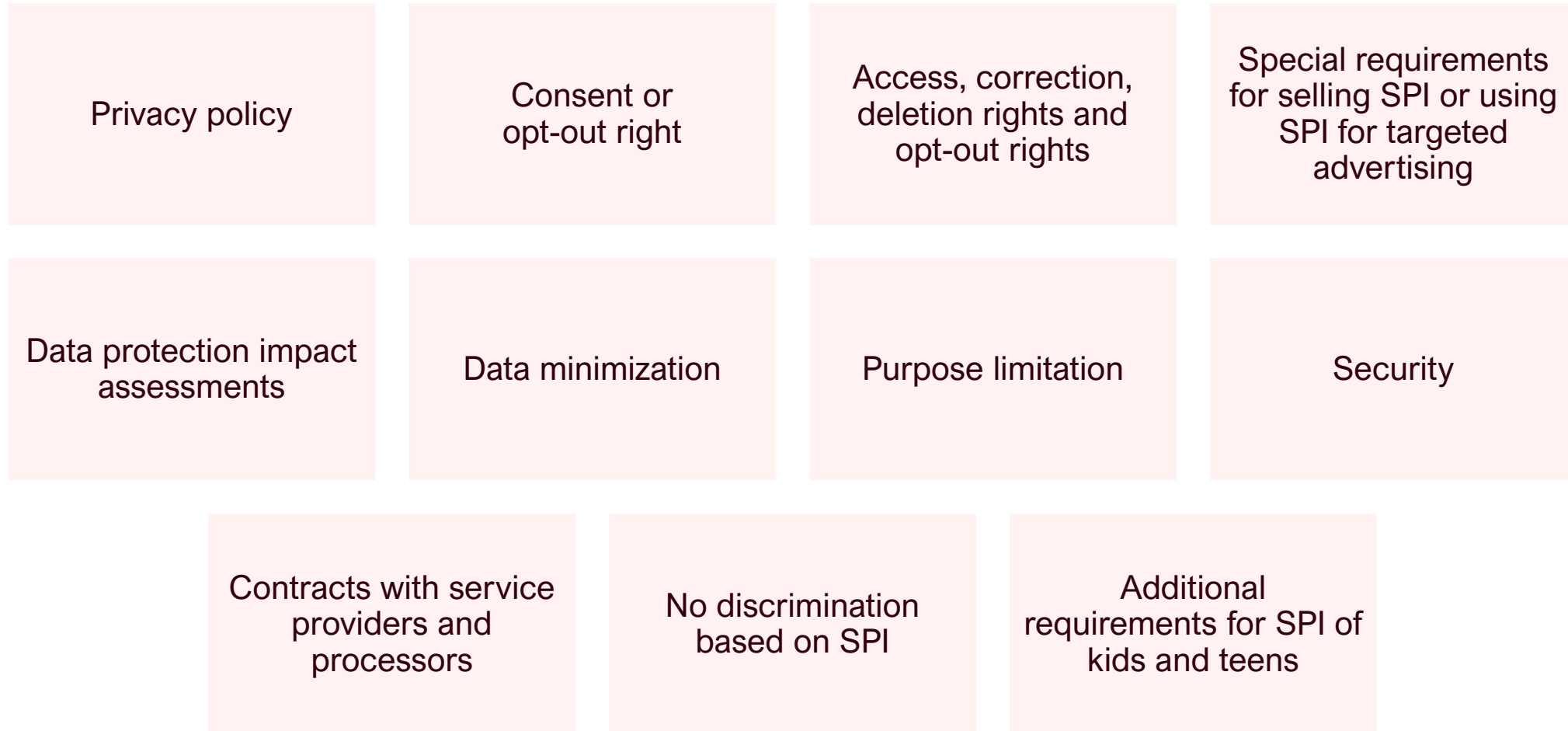
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Four US state laws regulate neural data

- State consumer privacy laws
 - Colorado
 - California
 - Connecticut
- State genetic privacy law
 - Montana
- Laws refer to neural data as sensitive personal information (SPI)

Legal requirements for handling neural data



Colorado H.B. 24-1058

- Amended the Colorado Privacy Act (CPA), including to add “biological data” to the definition of “sensitive data” within the meaning of the CPA.
- Signed into law on April 17, 2024.
- **Definitions**
 - **Neural data:** “information that is generated by the measurement of the activity of an individual’s central or peripheral nervous systems and that can be processed by or with the assistance of a device.”
 - **Biological data:** “data generated by technical processing, measurement, or analysis of an individual’s biological, genetic, biochemical, physiological, or neural properties, compositions, or activities of an individual’s body or bodily functions, which data is used or intended to be used, singly or in combination with other personal data for identification purposes. ‘Biological Data’ includes ‘Neural Data’.”

Colorado H.B. 24-1058

A closer look

- **Biological data:** “data generated by technical processing, measurement, or analysis of an individual’s biological, genetic, biochemical, physiological, or neural properties, compositions, or activities of an individual’s body or bodily functions, **which data is used or intended to be used, singly or in combination with other personal data for identification purposes.** ‘Biological Data’ includes ‘Neural Data’.”
- Ambiguous whether neural data is covered if it is not used for identification purposes – most commentators say it is not.
- Researchers are creating ways to use neural data to authenticate individuals.

Colorado requirements for neural data

Post a **privacy notice** informing individuals about the neural data collected and the **use, retention** and **disclosure** of this information, including **each purpose** for which **each kind** of personal information is used and **the kinds of third parties** it is shared with.

Obtain **clear, freely given, informed, specific, affirmative** and **unambiguous consent** from an individual before collecting or using their neural data, which such consent must include a disclosure regarding the names of any third parties to which the information is sold.

Consent wording must inform individuals of the **names of any third parties to which the business sells this information.**

Refresh every individual's consent **every 24 months**, absent having interacted with the individual in the meantime, or provide a **user-controlled interface** for the individual to manage their opt-out preferences at any time.

Refrain from using **dark patterns** when obtaining consent from individuals.

Delete or de-identify this information when it is no longer necessary for the purpose for which it was collected, and in any event when an individual has withdrawn consent for its use.

Inform individuals of the purposes for which the business uses this data and only collect such information that is **reasonably necessary to fulfill**, or that is **compatible with**, those purposes, absent additional consent.

Afford individuals the right and ability to **access, correct and delete** this information in the business' possession or control, and to **opt out of the sale** of this information or use for **targeted advertising** or to make **important automated decisions.**

Conduct **data protection assessments** addressing the collection, use, retention and disclosure of this information.

Do not use this data for unlawful **discrimination.**

Take reasonable measures to **secure** this data.

Colorado practice tips

- CPA + Regulations + H.B. 24-1058 → must be read together
- The CPA's requirements relating to biometric data, which includes biological data, apply to businesses **even if they do not otherwise meet the applicability requirements of the CPA.**

California S.B. 1223

- Amended the California Consumer Privacy Act (CCPA), including to add “neural data” to the definition of “sensitive personal information” within the meaning of the CCPA.
- **Neural data:** “information that is generated by measuring the activity of a consumer’s central or peripheral nervous system, and that is not inferred from nonneural information.”

California requirements for neural data

- Similar to CPA, however, notable differences include:
 - More granular consumer “right to know.”
 - “Notice at collection” of data.
 - Rather than a requirement that individuals opt **in** to the processing of their SPI, the CCPA instead provides a right to opt **out** of the processing of such information other than for specified purposes.
 - However, consumers do **not** have the right to opt out of the use and disclosure of SPI if the SPI is not used by the business to infer characteristics about them.
 - The privacy policy must state the retention period or criteria for the retention period of SPI.

California practice tips

- CCPA + Regulations + S.B. 1223 → must be read together
- California's law applies to employee data, whereas the CPA exempts employee data.

Montana S.B. 163

- Montana was the third state to specifically protect neural data.
- Law added “neural data” to Montana’s Genetic Information Privacy Act.
- Neural data = information that is generated by the measurement of the activity of an individual’s central or peripheral nervous system, and that can be processed by or with the assistance of a device.
- Covers neural data of Montana residents.
- Applies to “entities” as narrowly (and confusingly) defined.

Montana S.B. 163

A closer look

- **Entity:** “‘Entity’ means a partnership, corporation, association, or public or private organization of any character that: (a) offers consumer genetic testing products or services directly to a consumer; or (b) collects, uses, or analyzes genetic data.”
- Ambiguous whether the law only covers entities that offer genetic testing products and services.
- Legislative history suggests the law was not intended to be limited this way.

Montana requirements on entities that handle neural data

- Two different privacy policies:
 - A **high-level privacy policy** overview with basic essential information about the entity's collection, use and disclosure of neural data.
 - A **prominent, publicly available privacy notice** that includes, at least, information about the entity's data collection, consent, use, access, disclosure, transfer, security, retention and deletion practices for neural data.
- Obtain initial express consent for the **collection, use or disclosure** of a consumer's neural data. Such consent must specify how the entity may share the neural data.
- Obtain a consumer's separate express consent to **transfer or disclose** a consumer's neural data to any third party **other than the entity's processors**. This **consent must include the name of the third party** to which the neural data is transferred or disclosed.
- Obtain a consumer's separate express consent to use neural data **beyond the primary purpose** and inherent contextual uses.
- Obtain a consumer's informed express consent **to transfer or disclose** a consumer's neural data to third persons for **research purposes**.
- Obtain a consumer's express consent **to market to the consumer based on the consumer's neural data**.

Montana requirements on entities that handle neural data (continued)

- Obtain a consumer's express consent **to sell** the consumer's neural data in exchange for valuable consideration.
- Comply with applicable law requiring **valid legal process before disclosing neural data to law enforcement or any other governmental agency**, absent a consumer's express consent.
- Develop, implement and maintain a **comprehensive security program** to protect consumers' neural data against unauthorized access, use and disclosure.
- Provide a process for consumers to **access and delete** their neural data, and **revoke any consent** provided by the consumer regarding their neural data.
- Neural data collected in Montana may not be stored within the **territorial boundaries of any country currently sanctioned by the US or designated as a foreign adversary of the US**.
- Neural data collected in Montana may only be transferred or stored **outside of the US with the consent of the consumer**.
- Entities may not disclose a consumer's neural data to any entity offering **health insurance, life insurance or long-term care insurance**, or to the consumer's **employer**, absent the consumer's express consent.

Connecticut S.B. 1295

- Signed by the governor on June 24, 2025.
- Amendment adds neural data to definition of sensitive data.
- “Neural data” means any information that is generated by measuring the activity of an individual’s central nervous system.
- Of the four laws, this is the only one that covers the central, but not the peripheral, nervous system.

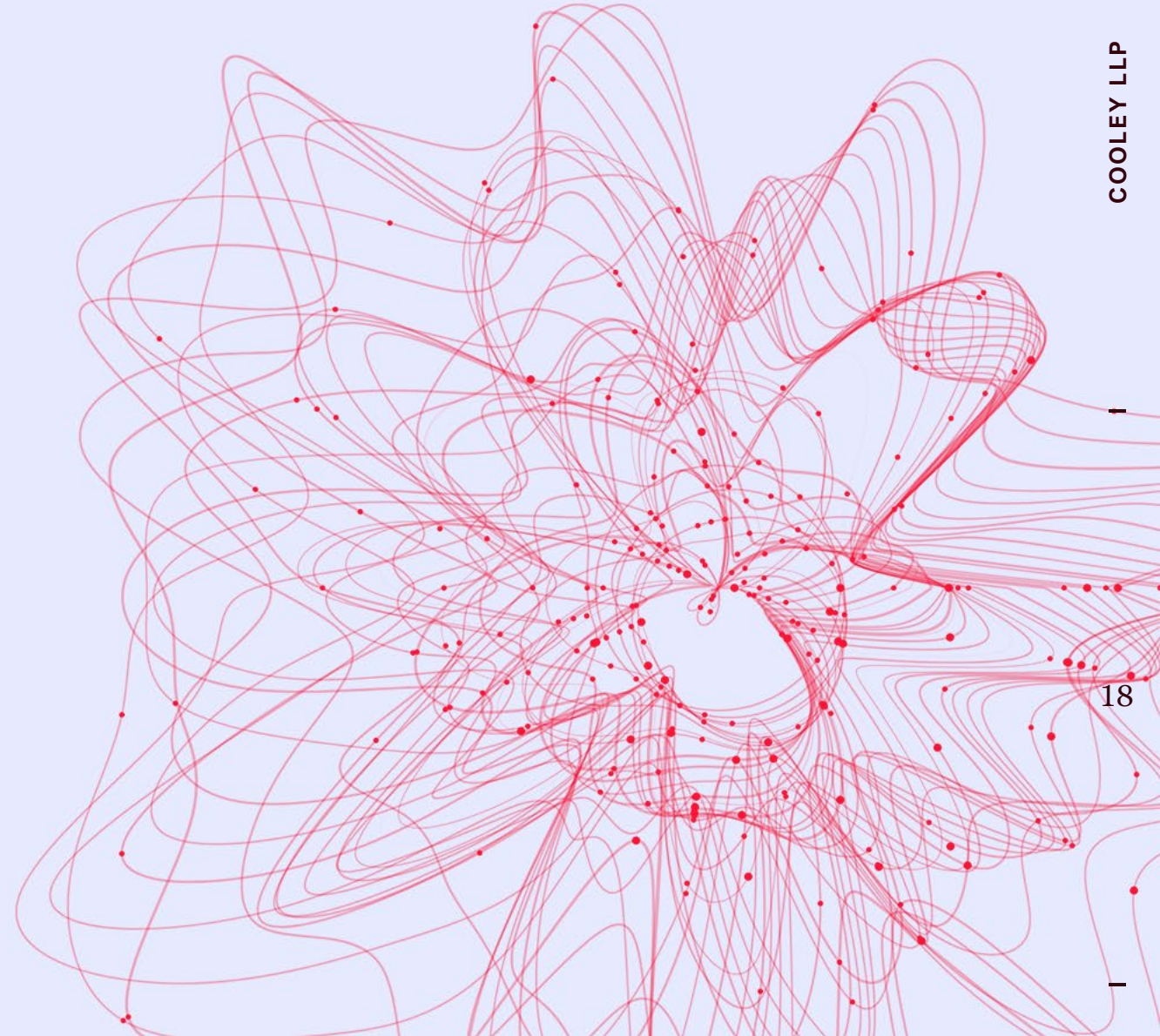
Connecticut S.B. 1295

- Opt-in, affirmative consent before processing neural data, with a prohibition on dark patterns.
- May not process neural data unless reasonably necessary in relation to the purposes for which such data are processed.
- Privacy notice must contain a statement disclosing whether the controller collects, uses or sells personal data, including neural data, for the purpose of training large language models.
- May not sell the neural data of a consumer without the consumer's consent.
- Must conduct privacy impact assessments regarding handling of neural data.
- Must provide easy opt-out mechanism.
- Consumer right to access a list of the third parties to whom a controller sold their personal data.

Connecticut practice tips

- There are no regulations, but the Connecticut attorney general actively enforces, publishes an FAQ and reports on enforcement each spring.
- The Connecticut Data Privacy Act applies to entities that control or process consumers' sensitive data, which includes neural data, **even if they do not otherwise meet the applicability requirements of the Connecticut Data Privacy Act.**

Pending Neurotech Legislation



California pending legislation

California A.B. 1221	Would prohibit employers from using workplace surveillance tools that collect, obtain or infer a worker's neural data.
California A.B. 1337	Would require state agencies to keep record of the source of neural data, provide a privacy notice to individuals including their neural data access rights, include provisions in contracts with contractors, and rules of conduct for persons who handle neural data. Would prohibit agencies from using neural data for purposes beyond the purposes for which it was collected, and otherwise as required by state law. Limits on disclosure of neural data absent consent. Breach notification.
California S.B. 354	Would require insurance licensees to not process a consumer's neural data other than in relation to an insurance transaction, to post a privacy notice to individuals, to give consumers privacy rights, and to include provisions in contracts with service providers. Security, breach notification and record retention periods.
California S.B. 435	Would cover neural data as sensitive personal information under the CCPA, even if the neural data is publicly available.
California S.B. 44	A business that makes available a brain-computer interface (BCI) to a California person may use neural data collected through the BCI only for the purpose for which the neural data was collected and delete the neural data when the purpose for which the neural data was collected is accomplished. "BCI" means a system that allows direct communication and control between a person's brain and an external device.

Massachusetts pending legislation

Massachusetts H.B. 103

Would prohibit collecting or processing neural data, except where such collection or processing is strictly necessary to provide or maintain a specific product or service requested by the individual to whom the data pertains. Prior consent required to transfer neural data unless required by federal law or to protect a person from imminent injury. May not process neural data for the purposes of targeted advertising. Access, correction, deletion rights. May not retaliate for exercising these rights. Privacy by design. Privacy policy. Consent withdrawal. Right to opt out of transfers and profiling. Requirements on service providers.

Massachusetts S.B. 2608

A general consumer privacy law that would include neural data in its definition of sensitive personal information.

Illinois pending legislation

Illinois H.B. 2984

Would amend the state's biometric information privacy act (BIPA) to add neural data to the definition of biometric identifier.

Federal neurorights legislation pending

- The MIND Act, S. 2925
 - Introduced by Sens. Chuck Schumer, Maria Cantwell and Ed Markey.
- Would require the Federal Trade Commission (FTC) to spend one year conferring with stakeholders to explore:
 - Whether the existing legal regime adequately addresses neurotechnology.
 - Whether there are any gaps in current laws.
 - What additional protections should be implemented to protect individuals from neurotechnologies that can be used in harmful ways.
- The FTC is to report its findings to Congress and the public and repeat the study annually.
- The MIND Act would allocate \$10 million to the FTC for its work.

The MIND Act

- Would cover both implanted BCIs and wearable neurotech devices, which can detect activity from the central or peripheral nervous system.
- Would apply not only to data collected from the nervous system, but also to other data that can infer, predict or reveal cognitive, emotional or psychological states or neurological conditions.
 - Heart rate variability, eye movement, voice analysis, facial expressions and sleep patterns

MIND Act motivators

- Mind and behavior manipulation, monetization of neural data, neuromarketing, erosion of personal autonomy, discrimination and exploitation, surveillance, and access to the minds of US citizens by foreign actors.
- Misuse of neural data in the employment, healthcare, financial services, housing and education industries, as well as in law enforcement and the criminal justice system.
- Legislation calls to incentivize neurotech businesses to self-regulate.

Thank you!

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