

2023 State Privacy Trends

Eight States Adopt Comprehensive Privacy Laws

In 2023, the number of states that passed comprehensive privacy legislation more than doubled from the previous year. Eight states: Delaware, Florida, Indiana, Iowa, Montana, Oregon, Tennessee, and Texas passed comprehensive privacy laws. Importantly, all states to pass privacy bills modeled those measures on existing privacy laws—primarily those in Virginia and Connecticut—highlighting a growing trend of using existing legislative models to protect consumer privacy in the states. For greater detail on that trend, see [BSA’s document comparing models of state privacy](#).

Five State Privacy Laws Take Effect

In 2023, new state privacy laws took effect in California and Virginia on January 1, Colorado and Connecticut on July 1, and will take effect in Utah on December 31.

Artificial Intelligence Fused With Comprehensive Privacy

Increasingly, BSA saw comprehensive privacy bills with AI or automated decision-making provisions, which will likely persist into 2024. Many of these bills would go beyond existing protections in state privacy laws allowing consumers to opt out of profiling in furtherance of certain automated decisions and would establish a consumer right to access information on the existence of automated decision making, require impact assessments, or establish task forces to study automated decision making.

2023 STATE COMPREHENSIVE PRIVACY BY THE NUMBERS

13

total states with laws

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8

new states adopted laws

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40%

of Americans now live in states with comprehensive privacy laws

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27

states introduced bills

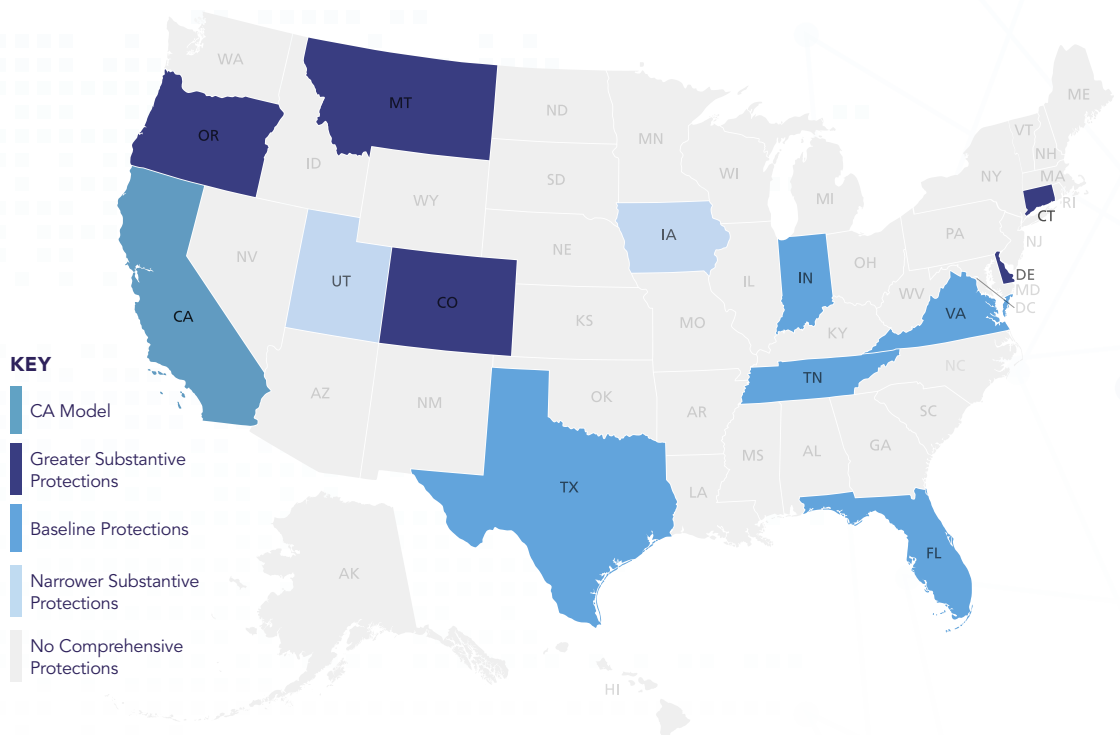
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59

comprehensive state privacy bills introduced

STATE PRIVACY LAWS

States continue to adopt bills modeled on existing state comprehensive privacy laws, primarily those in Connecticut and Virginia, in both Republican and Democratic-led legislatures. This trend promotes a harmonized approach to protecting consumer privacy in the states.



PRIVACY RULEMAKING AND ENFORCEMENT

California

The California Privacy Protection Agency (CPPA) finalized its first regulations on a broad set of topics on March 30, 2023. The agency also initiated preliminary rulemaking for new regulations on cybersecurity audits, risk assessments, and automated decision making. A June 2023 court decision held that final agency regulations cannot be enforced for 12 months after their enactment. If the court's order remains in place, the first regulations will become enforceable on March 30, 2024. In August 2023, the CPPA filed a petition to overturn the decision, and the litigation is ongoing.

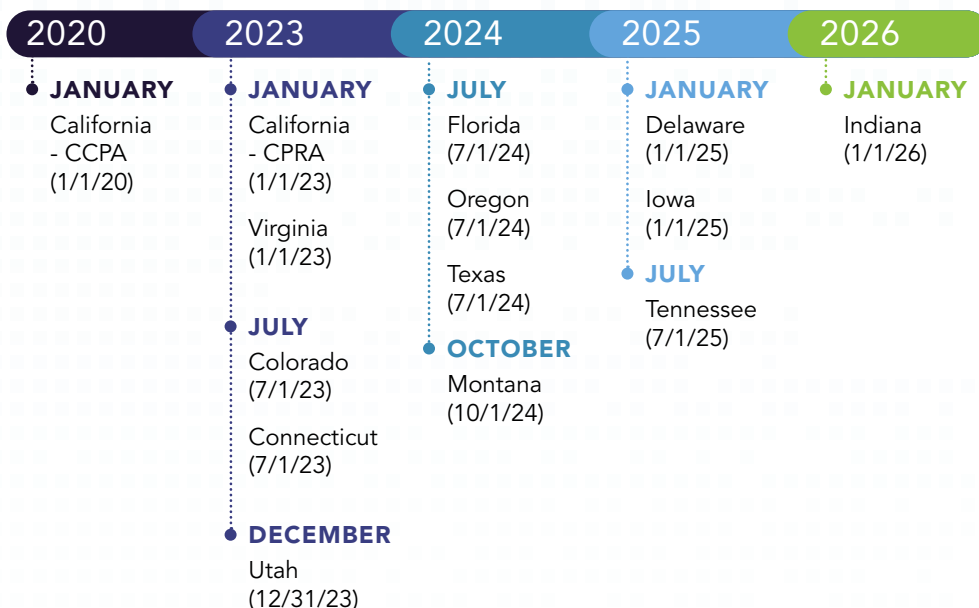
Colorado

Colorado's Attorney General's (AG) office undertook broad rulemaking to implement the Colorado Privacy Act. Those rules, finalized in March 2023, address requirements for privacy notices, data protection assessments, and universal opt-out mechanisms, among other topics. They took effect on July 1, 2023, when most of Colorado's privacy law took effect. However, the law's requirement for controllers to honor universal opt-out mechanisms does not take effect until July 1, 2024.

Enforcement

State AGs played an important role in informing consumers about their rights under new state privacy laws and laying the groundwork for enforcement. The California AG also announced an investigative sweep of retail, travel, and food service apps and sent inquiry letters to large state employers requesting information on their compliance with the California Consumer Privacy Act (CCPA)'s protections on employee data. The Connecticut AG informed businesses and consumers of rights and obligations under the CTDPA. Similarly, the Colorado AG sent letters to businesses making them aware of the Colorado Privacy Act (CPA) and directing them to educational resources.

The timeline below provides the effective dates for the state comprehensive privacy laws taking effect in 13 states between 2020 and 2026



OTHER PRIVACY ISSUES

Consumer Health Data Emerges as a New Focus

Nine states introduced consumer health data privacy legislation, including Connecticut, Nevada, and Washington, which enacted laws this year. The laws aim to regulate health data beyond traditionally defined "medical" information.

Regulated entities in Nevada and Washington must gain consent to collect or share consumer health data. Both laws prohibit the sale of consumer health data without valid authorization from the consumer. Similarly, Connecticut's bill requires consent to process and sell consumers' health data. Notably, all the laws restrict the use of geofences.

The states' AGs will enforce the laws. However, Washington's law contains a private right of action under the state's Consumer Protection Act. Connecticut's law went into effect July 1, 2023, whereas Nevada's and Washington's laws will go into effect on March 31, 2024, with a delay for small businesses until June 30, 2024, in Washington.

Movement on Children's Privacy Continues

Children's privacy bills saw a significant increase from 2022 and expanded beyond platform regulation bills. Both Connecticut and Texas enacted children's privacy protections. Eight other states considered children's privacy bills, including California, which currently has a children's privacy law. Relatedly, several states introduced measures on parental rights, which included provisions on the collection of children's data. BSA anticipates the focus on children's privacy and the role of parental consent to continue.

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