

2023 State Legislation Review

- BSA tracked more than 1,850 new bills in 2023 in all 50 states and Washington, DC across multiple issue areas including comprehensive privacy, artificial intelligence (AI)/automated decision making, procurement, digital transformation, platform regulation, cybersecurity, right to repair, and autorenewal.
- Two-thirds of the bills could be classified as procurement, privacy, cybersecurity, or platform regulation-related bills.
- AI saw the greatest change in the volume of bills from 2022, whereas COVID-19 related bills saw the greater decrease.

Privacy. States continued to introduce and enact comprehensive privacy legislation. Twenty-seven states introduced 59 comprehensive privacy bills. Eight states—Delaware, Florida, Indiana, Iowa, Montana, Oregon, Tennessee, and Texas—enacted comprehensive privacy laws. Importantly, those enacted privacy bills modeled the existing privacy laws—primarily those in Connecticut and Virginia—highlighting a growing trend of using existing legislative models to protect consumer privacy in the states. BSA anticipates continued discussion of comprehensive privacy bills in the 37 states without laws.

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. California Privacy Protection Agency (CPPA) finalized its first regulations this year and initiated preliminary rulemaking for new regulations on cybersecurity audits, risk assessments, and automated decision making. Additionally, Colorado’s Attorney General’s office undertook broad rulemaking to implement the Colorado Privacy Act and finalized the rulemaking in March 2023, which address requirements for privacy notices, data protection assessments, and universal opt-out mechanisms.

Artificial Intelligence. The biggest change from 2022 to 2023 was the prevalence of discussion and bills about multiple aspects of AI. State legislators introduced more than 400% more AI-related bills in 2023 than in 2022. Topics include establishing governance frameworks, creating inventories of states, regulating uses of AI, establishing task forces and committees, and addressing the state governments’ AI use. Most enacted bills were related, however, to deepfakes, government’s AI use, including law enforcement, and task forces/committees. Legislators also considered AI as part of a broader privacy focus on privacy issues. BSA expects intersections between privacy and AI legislation to continue into 2024 and beyond.

Municipal interest in AI surged, too, demonstrated by, Miami, New York City, San Jose, and Seattle all created regulations and guidelines on various aspects of AI, including generative AI, automated employment decision systems, and impact assessments. The National Association of Counties, especially, is taking a proactive approach to leading on AI policy.

Cybersecurity. The states considered fewer bills in 2023 than they did in 2022; however, they enacted more than 40% more cybersecurity-related bills. The most common cybersecurity issues in bills were breach notification, incident reporting, incident response, intergovernmental cooperation, and third-party applications. Several states also passed laws for cybersecurity funding, and addressing work

force challenges, updating protocols, tackling ransomware, and establishing affirmative defense laws. States continued to address various cybersecurity concerns, focusing primarily on public sector concerns, which included breach notification bills, improving intergovernmental cooperation, updating protocols, and tackling ransomware. States also looked to address cybersecurity issues in the private sector including addressing workforce challenges, establishing criminal penalties, modifying breach notifications, and banning or setting requirements for third-party applications and devices.

Platform Regulation. States continued to review platform regulation legislation with more than 200 new bills, but a lot of the focus shifted to targeting TikTok and ByteDance. Thirteen states passed either bans on certain applications on state devices or in the state. Arkansas, Louisiana, and Utah passed age-verification and consent laws for social media. A law to amend Connecticut's privacy law loops in a minor's social media platform requests. Texas enacted three platform regulation laws: one related to where social media cases are heard; one related to an age mechanism to access certain materials on a social media platform; and one related to sales via social media sites. Platform regulation legislation continues to be one of the most volatile and most changing issue area; for example, TikTok legislation was not tracked in 2022, whereas the two most tracked issues related to ecommerce were not ubiquitous at all in 2023.

Procurement. This year, states introduced about 300 new procurement bills, a 100% increase from 2022. They enacted 45 bills and another 107 were at least heard in committee. The most common topics of all introduced bills were environmental, social, and governance (ESG) issues; state/US-preference; foreign government regulations; procedure; and requirements. Notably West Virginia enacted legislation to require state agencies to adopt cloud services, as several other states continue to discuss the protocols and standards for cloud services. Software licensing bills appeared in Arizona, Iowa, Massachusetts, Minnesota, New Hampshire, Rhode Island, and West Virginia; these bills and discussions will continue into 2024. States also continued to look at modernizing their procurement processes. BSA anticipates that states will continue their interest in regulating ESG policy next year. Although the general interest in foreign country legislation has declined from 2022, significantly more legislation surfaced in 2023 than in 2021, with 38 bills introduced. Nine such bills were enacted in seven states with predominantly in Republican-controlled legislatures.

Other Topics. Thirty states introduced more than 70 digital right-to-repair bills, a sharp increase from 47 bills in 2022. Colorado enacted a right-to-repair bill. Auto-renewal contract bills continue to pop up across the US in nearly half of states (24) with 42 auto-renewal bills, as compared with 20 bills in 2022. Seven bills in 10 states were enacted to regulate auto-renewal contracts.

Digital Transformation. Thirty-eight states introduced more than 150 digital transformation bills in 2023, approximately the same number as in 2022. Two-thirds of those states enacted digital transformation bills, more than in 2022. Nearly a quarter of digital transformation bills became laws in 2023 compared to 18% in 2022. The most common topics were e-signature and remote online notarizations (RON). Other digital transformation topics included procurement process updates, tech improvements, e-filing, cloud computing, open-source software, and open data. States also reviewed legislation modernizing state web portals for government services.

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