State Privacy Laws – July 2023

July 10, 2023

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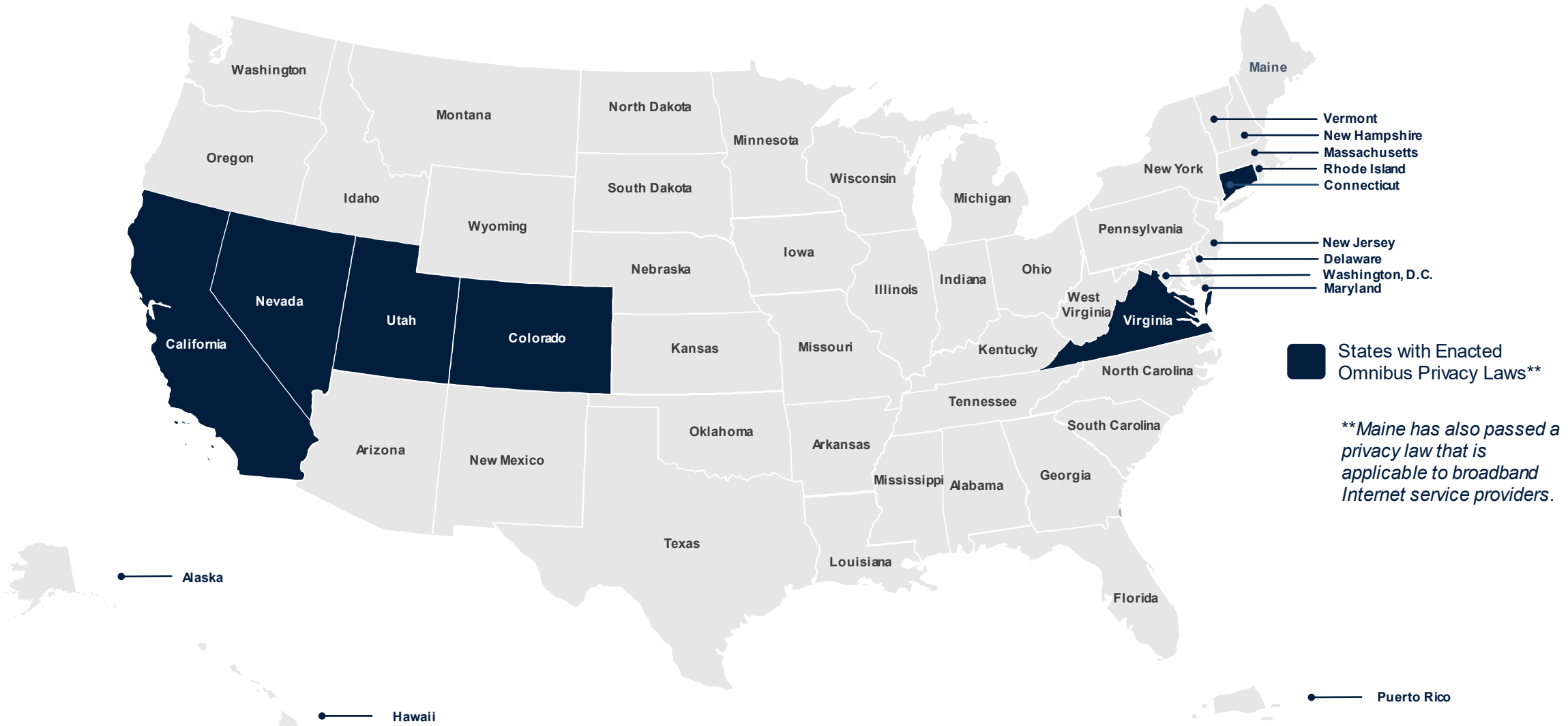
2022 Snapshot: State Privacy Laws



***Maine has also passed a privacy law that is applicable to broadband Internet service providers.*

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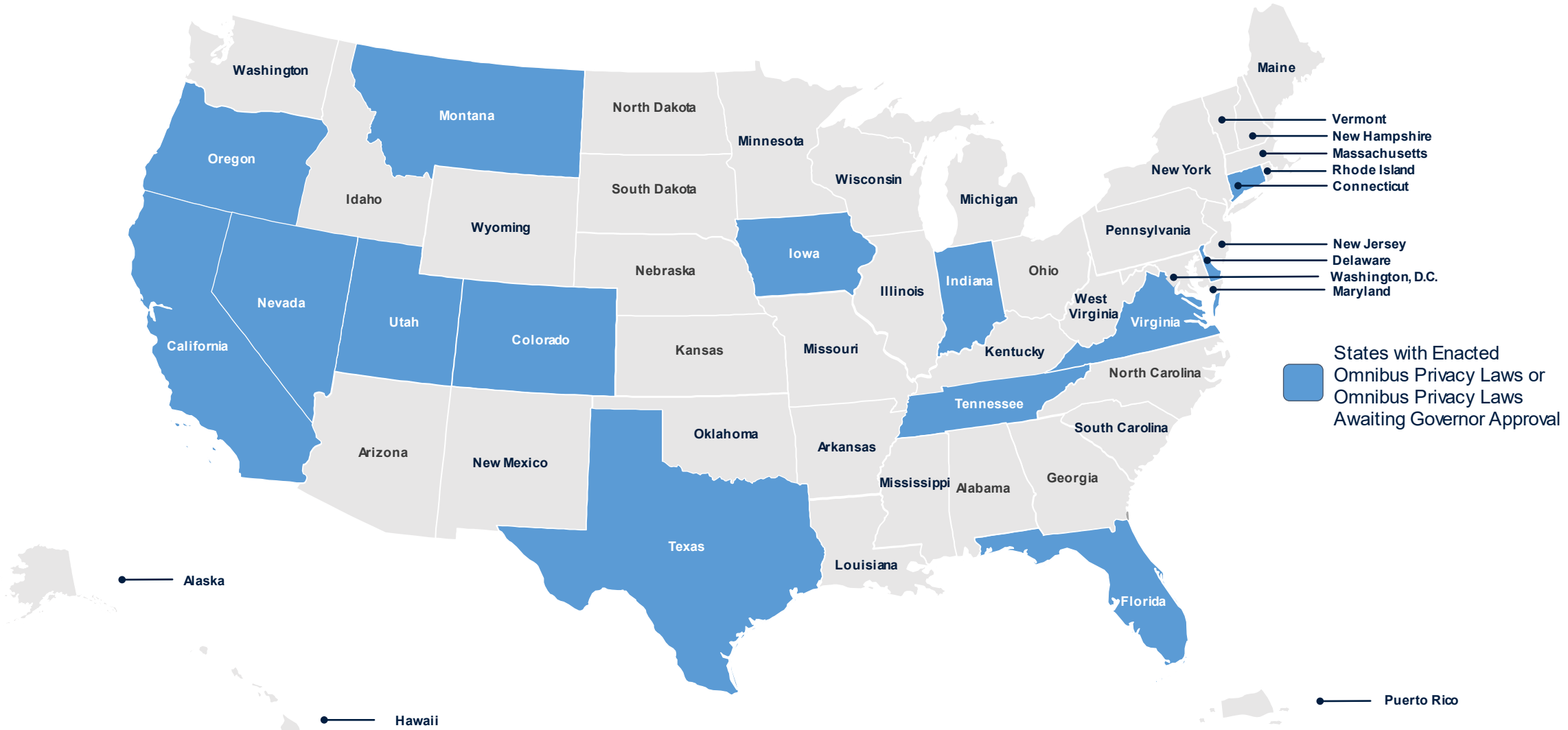
Omnibus Privacy Laws as of July 2023



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Newly Enacted Omnibus Privacy Laws (as of July 2023) and Effective Dates

Delaware Personal Data Privacy Act - **January 1, 2025**

Florida Digital Bill of Rights – **July 1, 2024**

Indiana Consumer Data Protection Act – **January 1, 2026**

Iowa Act Relating to Consumer Data Protection – **January 1, 2025**

Montana Consumer Data Privacy Act – **October 1, 2024**

Oregon Act Relating to Protections for the Personal Data of Consumers – **July 1, 2024**

Texas Data Privacy & Security Act – **July 1, 2024**

Tennessee Information Privacy Act (TIPA) – **July 1, 2025**

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Delaware Personal Data Privacy Act (January 1, 2025)

Notice and Choice.
- Consumer Rights: Access, correction, deletion, portability, and opt-out for (1) targeted advertising, (2) sales, and (3) profiling.
- Privacy policy required.

Approach to Advertising. *Pseudonymous data is exempt from all rights* ***except the rights to opt-out***.
- Opt-outs of processing for (1) targeted advertising, (2) sales, and (3) profiling.
- Targeted advertising includes "displaying advertisements to a consumer where the advertisement is selected based on personal data obtained *or inferred* from that consumer's activities over time and across nonaffiliated Internet websites or online applications to predict such consumer's preferences or interests." *Note* that the term does not include processing personal data solely to measure or report advertising frequency, performance, or reach.

Approach to Sensitive Data. Consent required for processing.

Approach to Minors/Children. Requires **parental consent** to process sensitive data concerning a known child (defined as it is under COPPA). Requires **consent for targeted advertising or sales related to consumers aged 13-17** (actual knowledge or willful disregard standard).

Global Privacy Controls.
- **Requires recognition** of opt-out preference signals by January 1, 2026.

Enforcement & Regulatory Processes.
- Delaware Department of Justice ("DE DOJ"), with a 60-day cure period if a cure is "deemed possible" until December 31, 2025, and then at the discretion of the DE DOJ beginning on January 1, 2026.
- No explicit regulatory authority for any state agency, but the DE DOJ is directed to conduct educational outreach to the public and businesses regarding the Act no later than July 1, 2024.

Unique Provisions.
- Permits consumers to obtain a list of the categories of third parties to which the controller has disclosed "the consumer's personal data."
- Exemption for nonprofit organizations is limited to "organizations dedicated exclusively to preventing and addressing insurance crime," and to personal data related to victims or witnesses of child abuse, domestic violence, human trafficking, sexual assault, violent felonies, or stalking that is collected, processed, or maintain by a nonprofit organization providing services to such victims or witnesses.

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Florida Digital Bill of Rights (July 1, 2024)

Notice and Choice.
- Consumer Rights: Access, correction, deletion, portability, and opt-out of (1) targeted advertising, (2) sales, and (3) profiling. Opt-out of collection of personal data via a voice recognition feature.
- Privacy policy required.

Approach to Advertising. *Pseudonymous data exemption for access, correction, deletion, portability* ***and the rights to opt-out***.
- Opt-outs of processing for (1) targeted advertising, (2) sales, and (3) profiling.
  - "Targeted advertising" means "displaying to a consumer an advertisement selected based on personal data obtained from that consumer's activities over time across **affiliated** or unaffiliated websites and online applications used to predict the consumer's preferences or interests." *Note* that processing personal data solely for measuring or reporting advertising performance, reach, or frequency is exempt from the law.

Approach to Sensitive Data. Consent required for processing of sensitive data. Consumers may opt-out of the collection and processing of sensitive data after providing consent (right to revoke consent).
- *NOTE:* Opt-in to sales of sensitive data ***for any for-profit entity*** that conducts business in Florida and collects personal data.

Approach to Minors/Children. Includes terms related to protection of "children" (defined as **U-18s**) in online spaces (actual knowledge or willful disregard standard). Limits processing that may result in substantial harm or privacy risk to children; profiling a child; collecting, selling, sharing, or retaining personal information not necessary to provide the online service to the child; collecting precise geolocation data associated with a child; using dark patterns to lead or encourage children to provide personal information; and using/retaining personal information to estimate age. Requires **parental consent** to process sensitive data of a known child under age 13, or "affirmative authorization for such processing **by a known child**" to process sensitive data of a known child between 13 and 18 years of age.

Global Privacy Controls.
- No explicit requirements.

Enforcement & Regulatory Processes.
- FL AG, with discretionary 45-day cure period for most alleged violations. Civil penalties may amount to $50,000 per violation, and such penalties may be tripled for certain violations (violations involving children; failure to delete or correct; continuing to sell or share after receiving an opt-out).
- **Florida Department of Legal Affairs may issue rules** (standards for authenticated rights requests, enforcement, data security, and authorized agents).

Unique Provisions.
- **Any for-profit entity or controller** that sells sensitive data, and any **controller** that sells biometric data, must post the following "notices," respectively: "NOTICE: This website may sell your sensitive personal data." ***and/or*** "NOTICE: This website may sell your biometric personal data." Such notices must be posted in accordance with privacy notice requirements.

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Indiana Consumer Data Protection Act (January 1, 2026)

Notice and Choice.
- Consumer Rights: Access, correction, deletion, portability, and opt-out for (1) targeted advertising, (2) sales, and (3) profiling.
- Privacy policy required.

Approach to Advertising. *Pseudonymous data is exempt from all rights* ***except the rights to opt-out***.
- Opt-outs of processing for (1) targeted advertising, (2) sales, and (3) profiling.

Approach to Sensitive Data. Consent required for processing.

Approach to Minors/Children. Requires **parental consent** to process sensitive data concerning a known child (U-13).

Global Privacy Controls.
- No explicit requirements.

Enforcement & Regulatory Processes.
- Indiana Attorney General, with a 30-day cure period. Civil penalties may amount to $7,500 per violation.
- No explicit regulatory authority for any state agency, but the Indiana Attorney General may publish compliance resources for controllers, such as a model privacy notice.

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Iowa Act Relating to Consumer Data Protection (January 1, 2025)

Notice and Choice.
- Consumer Rights: Access, deletion, portability, and opt-out for (1) targeted advertising and (2) sales.
- Privacy policy required.

Approach to Advertising. *Pseudonymous data exemption for all rights,* ***including the rights to opt-out****.*
- Opt-out of personal data sales and targeted advertising. No concept of "profiling."

Approach to Sensitive Data. Opt-out required for sensitive data processing.

Approach to Children/Minors. Parental consent required to process sensitive data associated with known children (U-13s).

Global Privacy Controls.
- No explicit requirements.

Enforcement & Regulatory Processes.
- Iowa Attorney General, with 90-day cure period. Civil penalties may amount to $7,500 per violation.
- No explicit regulatory authority for any state agency.

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Montana Consumer Data Privacy Act (October 1, 2024)

Notice and Choice.
- Consumer Rights: Access, correction, deletion, portability, and opt-out for (1) targeted advertising, (2) sales, and (3) profiling.
- Privacy policy required.

Approach to Advertising. *Pseudonymous data is exempt from all rights* ***except the rights to opt-out***
- Opt-outs of processing for (1) targeted advertising, (2) sales, and (3) profiling.
- Targeted advertising includes "displaying advertisements to a consumer in which the advertisement is selected based on personal data obtained *or inferred* from that consumer's activities over time and across nonaffiliated internet websites or online applications to predict the consumer's preferences or interests." *Note* that the term does not include processing personal data solely to measure or report advertising frequency, performance, or reach.

Approach to Sensitive Data. Consent required for processing.

Approach to Children/Minors. Parental consent required to process sensitive data associated with known children (U-13s). Requires **consent for targeted advertising or sales related to consumers aged 13-15** (actual knowledge standard).

Global Privacy Controls.
- Requires recognition of opt-out preference signals by January 1, 2025.

Enforcement & Regulatory Processes.
- Montana Attorney General, with a 60-day cure period that sunsets on April 1, 2026.
- No explicit regulatory authority for any state agency.

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Oregon Act Relating to Protections for the Personal Data of Consumers (July 1, 2024)

Notice and Choice.
- Consumer Rights: Access, correction, deletion, portability, and opt-out for (1) targeted advertising, (2) sales, and (3) profiling.
- Privacy policy required.

Approach to Advertising. *No pseudonymous data exemption.*
- Opt-outs of processing for (1) targeted advertising, (2) sales, and (3) profiling.

Approach to Sensitive Data. Consent required for processing.

Approach to Minors/Children. Parental consent required to process sensitive data associated with known children (U-13s). Requires **consent for targeted advertising, sales, and profiling related to consumers aged 13-15** (actual knowledge or willful disregard standard).

Global Privacy Controls.
- Requires recognition of opt-out preference signals by January 1, 2026.

Enforcement & Regulatory Processes.
- Oregon Attorney General, with a 60-day cure period that sunsets on January 1, 2026. Civil penalties may amount to $7,500 per violation.
- No explicit regulatory authority for any state agency.

Unique Provisions.
- No concept of pseudonymous data.
- Disclosure of third-party names required in response to an access request. Option to provide a list of all third parties or a list of third parties specific to a consumer making an access request.
- Act will apply to nonprofit organizations beginning July 1, 2025. The law's exception for nonprofit organizations is limited to organizations "established to detect and prevent fraudulent acts in connection with insurance," or that provide programming to radio or television networks.

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Texas Data Privacy and Security Act (July 1, 2024)

Notice & Choice.
- Consumer Rights: Access, correction, deletion, portability, and opt-out for (1) targeted advertising, (2) sales, and (3) profiling.
- Privacy policy required.

Approach to Advertising. *Pseudonymous data is exempt from all rights* ***except the rights to opt-out****.*
- Opt-outs of processing for (1) sales, (2) targeted advertising, and (3) profiling.

Approach to Sensitive Data. Consent required for processing. **Small businesses must also obtain consent** to engage in the sale of sensitive data.

Approach to Minors/Children. Parental consent required to process sensitive data associated with known children (U-13s).

Global Privacy Controls.
- Requires recognition of opt-out requests received through global privacy controls. Permits consumers to designate authorized agents using a technology, including a link to an Internet website, browser setting or extension, or global setting on an electronic device, that allows the consumer to indicate the consumer's intent to opt out.

Enforcement & Regulatory Processes.
- Texas Attorney General, with 30-day cure period. Civil penalties may amount to $7,500 per violation.
- No explicit regulatory authority for any state agency, though the Texas Department of Information Resources is required to create an online portal for members of the public to provide feedback and recommended changes to the law, no later than September 1, 2024.

Unique Provisions.
- Texas Attorney General must post an online mechanism through which a consumer may submit a complaint, and information related to the responsibilities of controllers and processors under the law.
- If a controller engages in the sale of personal data that is sensitive data or biometric data, the controller must post the following "notices," respectively: "NOTICE: We may sell your sensitive personal data." ***and/or*** "NOTICE: We may sell your biometric personal data." Such notices must be posted in the same location and in the same manner as the privacy notice.

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Tennessee Information Protection Act (July 1, 2025)

Notice & Choice.
- Consumer Rights: Access, correction, deletion, portability, and opt-out for (1) targeted advertising, (2) sales, and (3) profiling.
- Privacy policy required.

Approach to Advertising. *Pseudonymous data exemption for all rights,* ***including the rights to opt-out****.*
- Opt-outs of processing for (1) sales, (2) targeted advertising, and (3) profiling.

Approach to Sensitive Data. Consent required for processing.

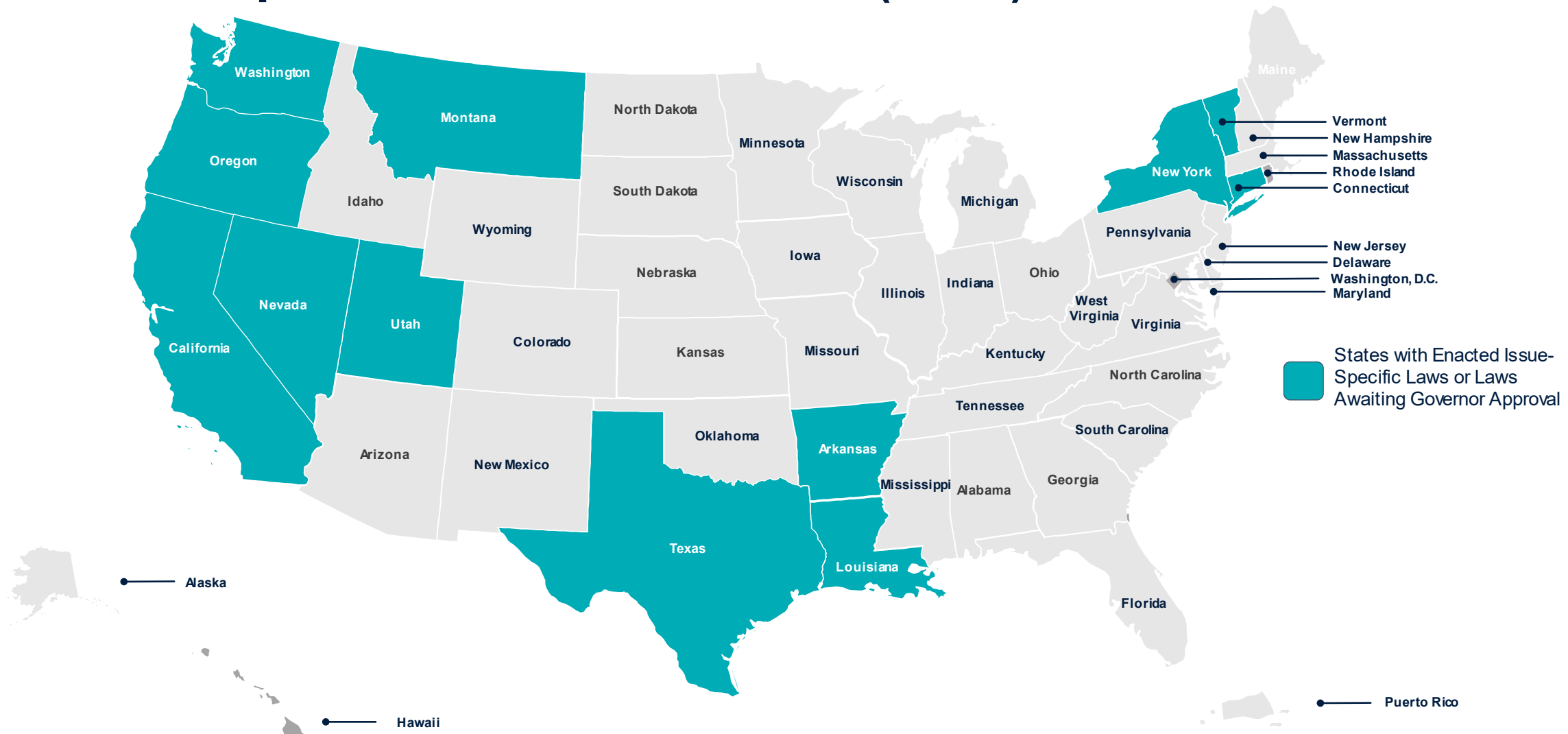
Approach to Minors/Children. Parental consent required to process sensitive data associated with known children (U-13s).

Global Privacy Controls.
- No explicit requirements.

Enforcement & Regulatory Processes.
- Tennessee Attorney General and Reporter, with 60-day cure period. Civil penalties may amount to $7,500 per violation, with treble damages available for willful or knowing violations.
- No explicit regulatory authority for any state agency.

Unique Provisions.
- Creates an affirmative defense for controllers and processors that implement a privacy program that conforms to the NIST Privacy Framework.

Issue-Specific Laws/Provisions (2023)



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Issue-Specific Laws/Provisions

	AR	CA	CT	LA	MT	NY	NV	OR	TX	UT	VT	WA
Age-Appropriate Design Code		✓										
Minors & Harm	✓		✓	✓					✓	✓		
Health Data			✓				✓					✓
Geofencing			✓			✓	✓					✓
Genetic Data					✓							
Data Broker Registration		✓						✓	✓		✓	

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Issue-Specific Laws/Provisions

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Age-Appropriate Design Code		✓										
Minors & Harm	✓		✓	✓					✓	✓		
Health Data			✓				✓					✓
Geofencing			✓			✓	✓					✓
Genetic Data					✓							
Data Broker Registration		✓						✓	✓		✓	

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Issue-Specific Laws: Minors & Harm

- **Arkansas, Connecticut, Louisiana, Texas, Utah**.
- Laws apply to "social media companies," "social media platforms," or "digital services providers," as defined, or controllers who offer any online service, product, or feature to consumers whom such controller has actual knowledge, or willfully disregards, are minors.
- Some laws apply to **U-18s** (UT, AR, CT, TX); others apply to **U-16s** (LA).
- Some laws require **parental consent** for a minor (as defined) to have social media accounts (UT, AR, LA). Some laws require social media platforms to **verify users' ages** (UT, AR, LA, TX). Some laws require verification through third-party vendors (AR).
- Some laws prohibit use of practices that would cause minors to become **addicted** to platforms (UT).
- Some laws require reasonable care to avoid any heightened risk of harm to minors (CT); others require development of a strategy to prevent a known minor's exposure to harmful material (TX)
- Some laws **prohibit advertising to minors** (UT, TX), subject to limited exceptions; some **limit advertising** in minors' social media accounts except based on location and age (LA).
- Some laws limit minors' **hours of access** to social media accounts and impose **parental control** rights (UT, LA).
- Some laws require **consent** to process personal data associated with a minor for **targeted advertising, sales, or profiling** and requires **consent** to collect **precise geolocation data** associated with a minor (CT).
- Some laws permit **adoption of regulations** to implement applicable law (UT, LA).
- Some laws are enforceable via a **private right of action** (UT, AR, TX), and others via the **state Attorney General** (UT, AR, LA, CT, TX).
- Some laws require a regulated entity to **unpublish** a minor's account and/or **delete** the account upon a minor or a parent/guardian's request (CT).

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Issue-Specific Laws: Health Data

Washington

- Requires entities that conduct business in Washington to **obtain separate and distinct consent to collect, share, or sell consumer health data**, subject to few exceptions. **Written consent is required for sales**.
- Requires a consumer health data **privacy policy** that makes certain disclosures, including a list of affiliates with whom consumer health data is shared.
- Consumer health data is defined **broadly** to include "personal information that is linked or reasonably linkable to a consumer and that identifies the consumer's past, present, or future physical or mental health status."
- Grants consumers rights of access and deletion, and a right to withdraw consent.
  - The right of access includes the right to obtain a list of all third parties and affiliates with whom health data has been shared or to whom it has been sold and an active online mechanism to contact such entities. The right of deletion includes a flow-down requirement to third parties and affiliates.
- Bars geofencing around entities that provide in-person health care services where the geofence is used to (1) identify or track consumers seeking health care services; (2) collect consumer health data from consumers; or (3) send notifications, messages, or advertisements to consumers related to their consumer health data or health care services.
- The law may be enforced by the AG and provides for a private right of action.
- **Effective on July 23, 2023,** and provisions related to geofencing take effect on that date; other operative requirements do not take effect until **March 31, 2024** for regulated entities and **June 30, 2024** for small businesses.

Issue-Specific Laws: Health Data

Nevada SB 370

- Requires entities that conduct business in Nevada to obtain **separate and distinct consent to collect, share, or sell consumer health data**, subject to few exceptions. **Written consent is required for sales**.
- Requires a consumer health data **privacy policy** that makes certain disclosures. No requirement to disclose specific names of consumer health data recipients.
- Consumer health data is "personally identifiable information that is linked or reasonably capable of being linked to a consumer and that a regulated entity ***uses to identify*** the past, present or future health status of the consumer." **The definition does not include shopping habits or consumer interests if not used to identify the health status of a consumer**.
- Bars geofencing within 1,750 feet of a medical facility, facility for the dependent or any other person, or entity that provides in-person health care services or products for the purpose of (1) identifying or tracking consumers seeking in-person health care services or products; (2) collecting consumer health data; or (3) sending notifications, messages, or advertisements to consumers related to their consumer health data or health care services or products.
- Grants consumers rights of access and deletion, and a right to withdraw consent. The right of access includes the right to obtain a list of all third parties with whom health data has been shared or to whom it has been sold. The right of deletion includes a flow-down requirement to third parties.
- Enforcement permitted by the AG and district attorneys under the state's Deceptive Trade Practices law. The law does not create a private right of action.
- **Effective on March 31, 2024.**

Issue-Specific Laws: Health Data

Connecticut

- Requires any person to obtain **consent to sell or offer to sell consumer health data**, subject to few exceptions.
- **Consumer health data** is defined as "any personal data that a controller ***uses to identify*** a consumer's physical or mental health condition or diagnosis, and includes, but is not limited to, gender-affirming health data and reproductive or sexual health data."
- Updates the Connecticut Privacy Act to make **consumer health data** and **data concerning an individual's status as a victim of a crime** "**sensitive data**."
- Bars use of geofence to establish a virtual boundary that is within 1,750 ft. of any mental health facility or reproductive or sexual health facility for the purpose of identifying, tracking, or collecting data from or sending any notification to a consumer regarding the consumer's consumer health data.
- Provides for exclusive AG enforcement, with a 60-day cure period that sunsets on December 31, 2024. A cure period is discretionary thereafter.
- **Effective on July 1, 2023**.

Issue-Specific Laws: Geofencing

New York

- Bars establishing a geofence or similar virtual boundary around any health care facility, other than by the owner of the health care facility, for purposes of delivering digital advertisements; building consumer profiles; or inferring health status, medial condition, or medical treatment of any person at or within such health care facility.
- Makes it unlawful for any person to **deliver any digital advertisement to a user at or within a health care facility**, other than by the owner of the health care facility, through the use of geofencing or a similar virtual boundary.
- "**Geofencing**" is defined as "a technology… to establish a… geofence around a particular location that allows a digital advertiser to track the location of an individual user and electronically deliver targeted digital advertisements directly to such user's mobile device upon such user's entry into the geofenced area. This shall also include the process of identifying whether a device enters, exits, or is present within a geographic area through the use of any information stored, transmitted, or received by the device, including but not limited to… forms of location data."
- **Effective on July 1, 2023**.

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