

# Federal & State Privacy Update

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# Federal Privacy Update

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- **Congress**

- *House:* [The American Data Privacy and Protection Act \(ADPPA\) \(117<sup>th</sup>\)](#)

- 117<sup>th</sup> - Passed out of the Energy and Commerce (E&C) Committee; no floor consideration
  - Data minimization: prohibitions on collection, processing, and transferring beyond reasonably necessary for specific actions
    - Including targeted advertising
  - Consumer rights: access, correct, delete, and portability; consent to transfer; COPPA protections; opt-out requirements
  - Included almost 20 state law exceptions in preemption language (including BIPA and CCPA enforcement)
  - Private right of action included compensatory damages and attorney fees and litigation costs (right to cure and bad faith demand letters)
- 118<sup>th</sup> – general privacy hearings; no legislation introduced

- *Senate*

- Children's privacy reform: [COPPA 2.0](#) and [KOSA](#)

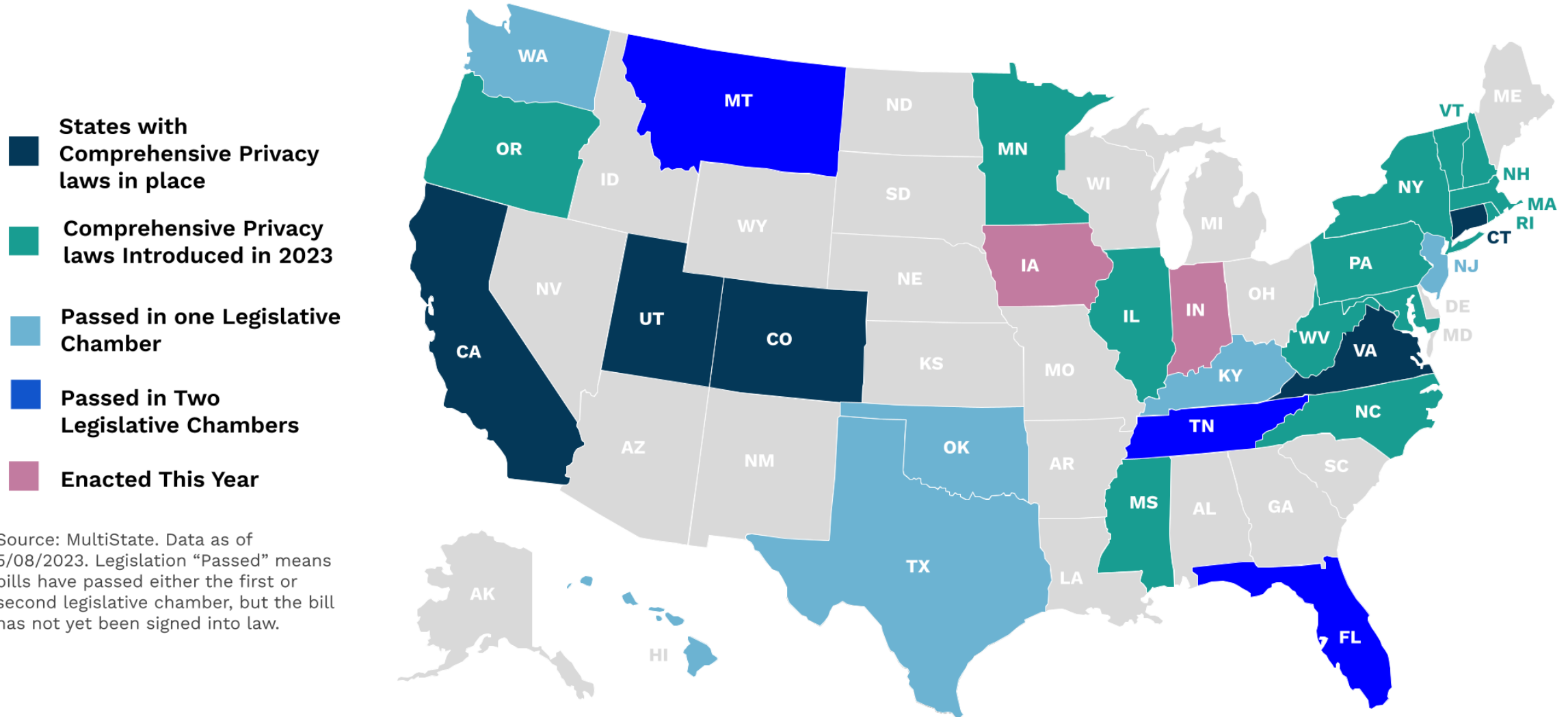
# Federal Privacy Update

- **Agency Action**

- Federal Trade Commission (FTC)
  - [Commercial Surveillance and Data Security ANPRM](#) (8/21/22)
- Health and Human Services (HHS)
  - [HHS NPRM](#) (4/12/23) - Added protection beyond HIPAA for reproductive health

# State Privacy Update

# State Privacy | Landscape of state privacy Laws in 2023.



Source: MultiState. Data as of 5/08/2023. Legislation "Passed" means bills have passed either the first or second legislative chamber, but the bill has not yet been signed into law.

## Rights

Right	Cal.	Colo.	Co nn.	Ind.	Iowa	Mont.	Tenn.	Utah	Virg.
Know	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Access	Yes	Yes	Yes	Partial	Yes	Yes	Yes	Yes	Yes
Data Portability	Yes	Yes	Yes	Partial	Partial	Yes	Yes	Partial	Yes
Deletion	Partial	Yes	Yes	Yes	Partial	Yes	Yes	Partial	Yes
Correct inaccuracies	Yes	Yes	Yes	Partial	No	Yes	Yes	No	Yes
Not be discriminated against	Yes	Yes	Yes	Yes	Partial	Yes	Yes	Partial	Yes
Opt-out of sale	Yes	Yes	Yes	Yes	Partial (pseudonymous data carve out)	Yes	Partial (pseudonymous data carve out)	Partial	Yes
Opt-out of targeted advertising / sharing	Yes	Yes	Yes	Yes	Unclear (right is not listed in consumer rights provision but controllers must provide means to opt out)	Yes	Partial (pseudonymous data carve out)	Yes	Yes

<b>Right</b>	<b>Cal.</b>	<b>Colo.</b>	<b>Co nn.</b>	<b>Ind.</b>	<b>Iowa</b>	<b>Mont.</b>	<b>Tenn.</b>	<b>Utah</b>	<b>Virg.</b>
<b>Opt-out of certain types of profiling</b>	Yes	Yes	Yes	Yes	No	Yes	Partial (pseudonymous data carve out)	No	Yes
<b>Recognize opt out signals</b>	Yes (through rulemaking)	Yes	Yes	No	No	Yes	No	No	No
<b>Revoke consent</b>	N/A	Yes (by regulation)	Yes	No	No	Yes	No	No	No





<b>Privacy Policy</b>	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
<b>Implement Reasonable Data Security Measures</b>	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
<b>Duty to Avoid Secondary Use</b>	Yes	Yes	Yes	Yes	No	Yes	Yes	No	Yes
<b>Data Minimization</b>	Yes	Yes	Yes	Yes	No	Yes	Yes	No	Yes
<b>Enforcement</b>	Attorney General / Agency (limited PRA for data breaches)	Attorney General + district attorneys	Attorney General	Attorney General	Attorney General	Attorney General	Attorney General	Attorney General	Attorney General
<b>Right to Cure</b>	Expired	60 days (sunsets Jan. 1, 2025)	60 days (sunsets Dec. 31, 2024)	30 days (does not sunset)	90 days (does not sunset)	60 days (sunsets April 1, 2026)	60 days (does not sunset) + NIST safe harbor	30 days (does not sunset)	30 days (does not sunset)
<b>Rulemaking</b>	Yes	Yes	No	No	No	No	No	No	No
<b>Effective Date</b>	Jan. 1, 2023	July 1, 2023	July 1, 2023	Jan. 1, 2026	Jan. 1, 2025	Oct. 1, 2024	July 1, 2025	Dec. 31, 2023	Jan. 1, 2023

# My Health, My Data – Washington State

- Signed into law April 19.
- The privacy law differs from other recent state privacy legislation in that it is singularly focused on non-Health Insurance Portability and Accountability Act (HIPAA)-regulated consumer health data.
- Applies to organizations that collect, process, or transfer covered data in any way that touches Washington State.
  - If customer health data is at any point accessed in, travels through, or is stored in Washington State, MHMD is likely to apply.
  - The definition of health data is far broader than the definitions established by other contemporary legal frameworks, and will encompass information that is not typically treated as health data.
- The bill takes effect on March 31, 2024 or June 30, 2024 for small businesses.

# My Health, My Data – Washington State

## Key Takeaways:

- Contains a broad definition of "Consumer Health Data."
- Provides prescriptive consent requirements.
- Creates expansive consumer rights.
- Provides limitations on geofencing.
- Provides for Attorney General enforcement as well as a private right of action.

# Resources and Contact Information

- Information on RILA's public policy position on privacy -

<https://www.rila.org/retail-works-for-all-of-us/supporting-free-markets-and-fostering-innovation/retail-privacy>

- Learn more about RILA's Privacy Leaders Council –

<https://www.rila.org/committees/privacy-leaders-council>

- Interested in participating in **RILA's Privacy Leaders Council** or for more information about federal and state privacy issue please contact Justin Goldberger at [Justin.Goldberger@rila.org](mailto:Justin.Goldberger@rila.org) or Austin Gold at [Austin.Gold@rila.org](mailto:Austin.Gold@rila.org).