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Data Privacy Year in Review and Beyond: A Guide for In House Counsel

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Data Privacy Year in Review and Beyond:
A Guide for In House Counsel

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Presenters

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Principal

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Associate

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Data Privacy is…

The use and governance of personal information

It manifests in:

Rights given to Data Subjects

Obligations placed upon Businesses

Attendant **Risk Management**

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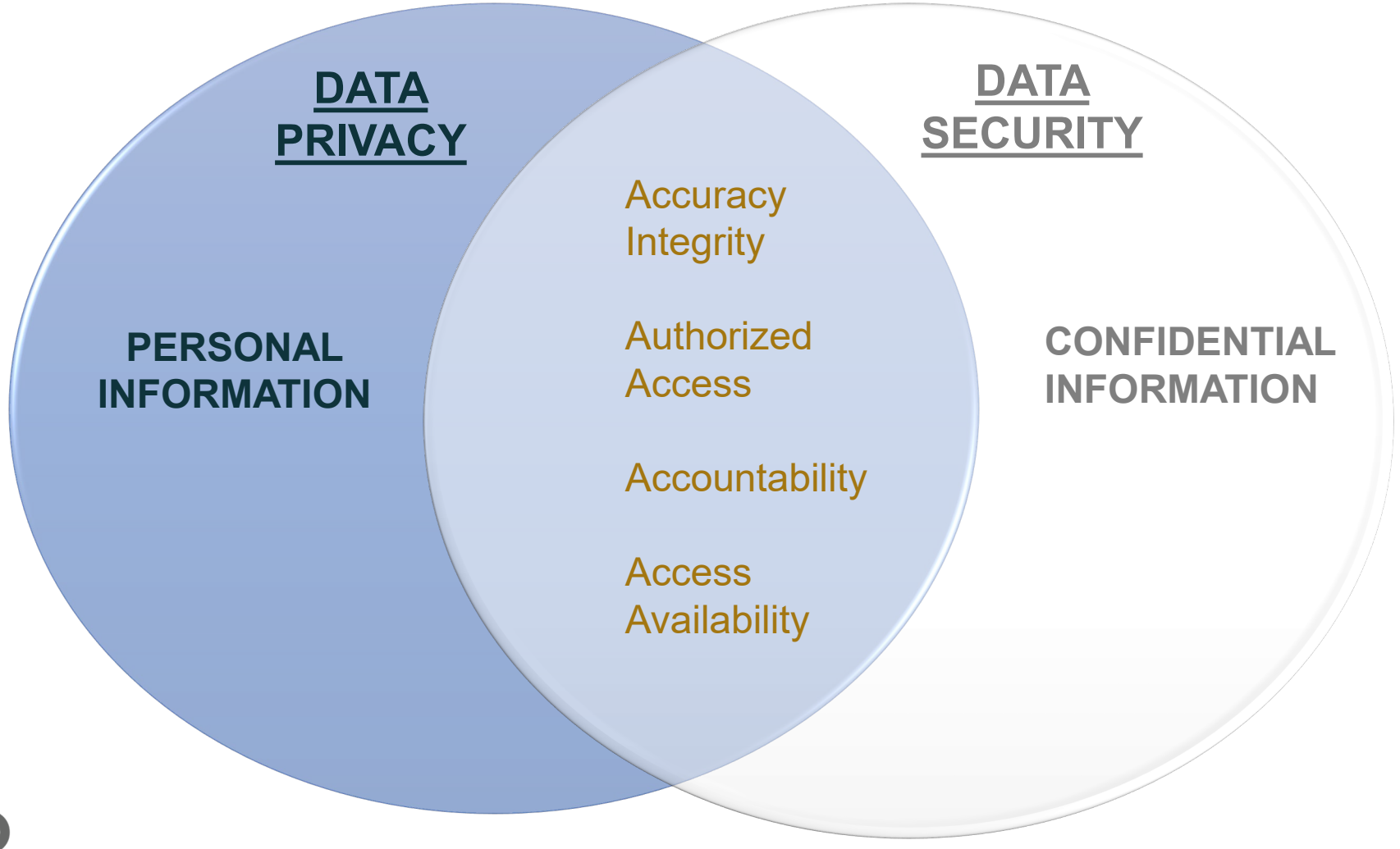
Data Privacy versus Data Security



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Falling in SCOPE of State Comprehensive Consumer Privacy Laws

Context (personal/household or employment/B2B)

Number (of consumers)

Activity (with the data)

Revenue (total or specific to actions)

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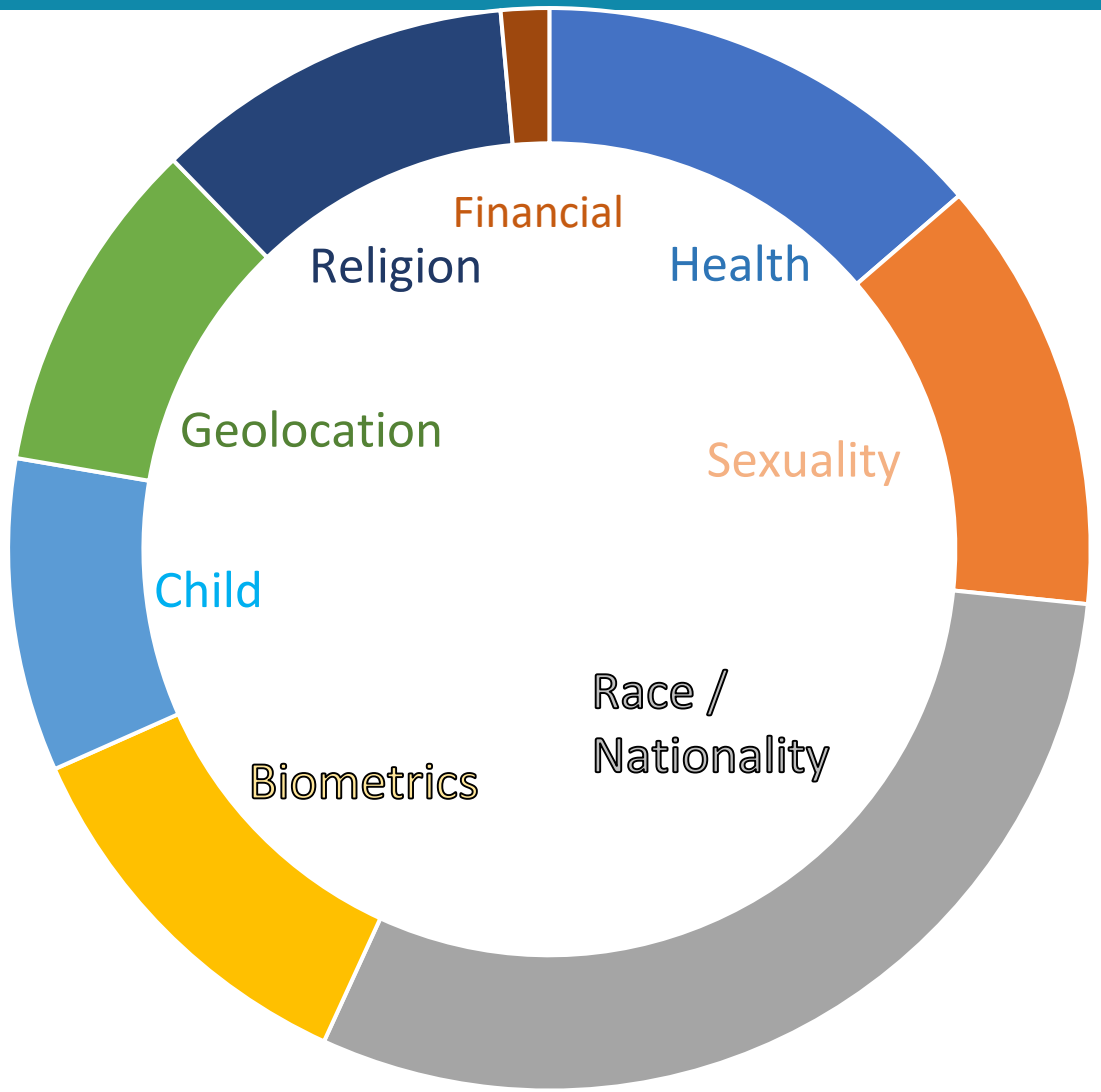
Sensitive Data

Sensitive data is a **subcategory of personal data** and is afforded special treatment because of its nature.

Sensitive data often includes **private details** that cannot easily be 'reset' if misappropriated. **Once it's out, it's out.**

Categories of **Sensitive Data** vary by region and statute



Some unique categories:

Trade Union membership (CA only)
Crime victim status
Philosophical beliefs (CA only)
Contents of personal email, texts
Political Opinion (GDPR only)

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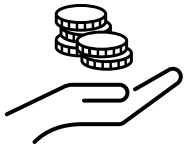
Hotspots for Personal Data Collection…



Provided Directly

- Directly and voluntarily from the user, with **consent**, when engaging with us or signing up to receive information

Collected Automatically

- Collected **automatically** by technology when engaging with you online, *e.g.* by way of *cookies* or similar tracking technologies

Third Parties

- Collected from **third parties** acting on our behalf (*e.g.* vendors, co-ops) or publicly available identity sources

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Data Privacy Laws: Expanding Coverage

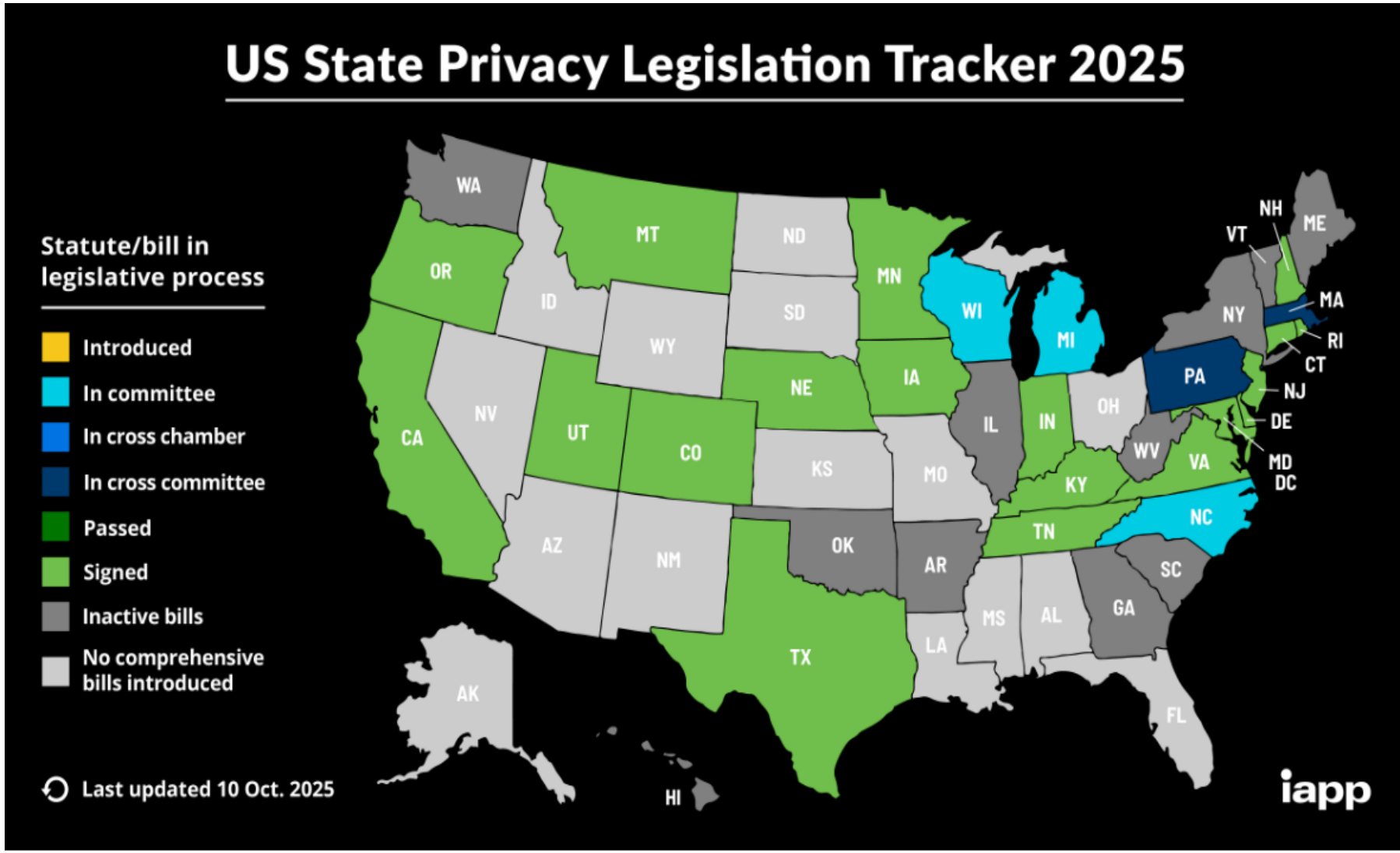
By year end 2026…

≈ 50%

of the U.S. Population

≈ 75%

of World Population



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Where Are We Coming From?

As we look back at 2025, including the 8 new comprehensive state privacy laws that became effective, regulatory changes, and landmark enforcement actions, we are reminded of the growing complexity of managing data across jurisdictions.

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Landscape of ‘Comprehensive’ State Data Privacy Laws

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The 2025 Class – Applicability

State	Annual Revenue	Consumer	Business Activity
Delaware	-	Control or process PD of at least 35,000 consumers (unless solely to process payment transaction) **OR**	Control or process personal data of **10,000** or more consumers AND derives more than **20% of gross revenue from sale** of data
Iowa	-	Control or process PD of 100,000 or more consumers **OR**	Control or process PD of **25,000 or more consumers** AND derives more than **40% of gross revenue from sale** of PD
New Hampshire	-	Control or process PD of at least 35,000 unique consumers (unless solely to complete payment transaction) **OR**	Control or process PD of at least **10,000 unique consumers** AND derive more than **25% of gross revenue from sale** of PD
Nebraska	-	n/a	Process or engage in **sale** of PD (unless a Small Business per the SBA)
New Jersey	-	Control or process PD of at least 100,000 consumers (unless solely to complete a payment transaction) **OR**	Control or process PD of **25,000 or more consumers** AND derives **revenue or discount** from the **sale** of data
Tennessee	>$25M **AND**	Control or process PI of 175,000 or more consumers **OR**	Control or process PI of **25,000 or more consumers** AND derive more than **50% of gross revenue from sale** of data
Minnesota	-	Control or process PD of 100,000 or more consumers (excluding solely to process a payment transaction) **OR**	Derive over **25% of gross revenue from the sale** of PD AND process or control PD of at least **25,000 consumers**
Maryland	-	Control or process PD of at least 35,000 consumer (unless solely to process a payment transaction) **OR**	Control and process PD of at least **10,000 consumers** AND derive more than **20% of gross revenue from sale** of PD

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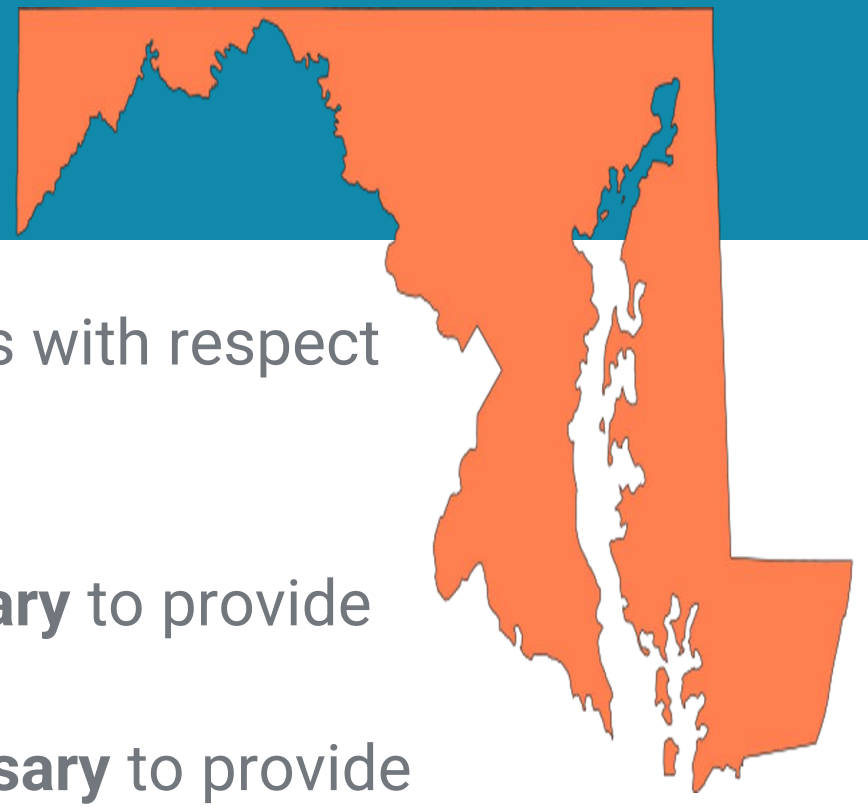
Maryland



Maryland (MODPA): arguably the strictest of the 2025 class with respect to **Data Minimization** requirements.

Can only:

- Collect *Personal Data* to degree it is **reasonably necessary** to provide a **specifically requested** service or product
- Process *Sensitive Data only to degree it is* **strictly necessary** to provide or maintain a **specifically requested** product or service

CANNOT sell sensitive data, regardless of any consent to do so

Data Protection Assessments:

- Must conduct for any processing posing "heightened risk of harm to consumers," *e.g.* targeted advertising, profiling, use of sensitive data

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Minnesota

Minnesota (MCDPA):

- Right to request **list of 3Ps** (like OR)
- Right to Opt-Out or challenge **Automated Decision Making** (like CA, CO and under GDPR)
- **Data Inventory** is mandatory part of data security requirements

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New Jersey

New Jersey (SB 332- NJDPA) :

- includes certain kinds of **financial data** (like CA) in its definition of sensitive data and requires affirmative opt-in consent before it can be processed for purposes other than completing a transaction
- **Transgender/nonbinary status** is sensitive data (like DE, MD & OR)
- **Regulations** (like CA & CO)
- shorter opt-out period for processing (15 not 45 days)

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The Rest of the Class

Iowa Consumer Data Protection Act (ICDPA)

- No Rights to Correct or to Opt-Out of processing for profiling, targeted advertising or Automated Decision Making
- Need to Opt-Out of sensitive data processing

Nebraska Data Privacy Act (NDPA)

- No minimum consumer # threshold (like Texas)
- Small Businesses not in scope

Delaware Personal Data Privacy Act (DPDPA)

- Sensitive data includes status as transgender or nonbinary
- Most non-profits and higher education institutions are in scope

Tennessee Information Protection Act (TIPA)

- NIST Privacy Framework as an affirmative defense
- Similar to Virginia
- $25M as revenue threshold element (Utah)

New Hampshire (SB 255 - NHPA)

- Similar to Connecticut
- Requires controllers to conduct data impact assessment prior to processing sensitive data

Oregon

Oregon (OCPA):

- Although effective in 2024, Oregon made headlines by **including non-profits** in its privacy law's scope
- Most states exempt charities and non-profits, but Oregon gave them an extra year to comply
- Non-profits had until **July 1, 2025** to comply

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Montana – Amendments

- Drops applicability threshold from 50,000 to 25,000 consumers (or 15,000 down from 25,000 for companies that make >25% of revenue from selling PD)
- Removes the entity-level GLBA exemption
- Imposes a duty of care to avoid a "Heightened Risk of Harm" for minors
- Imposes new consent requirements for minors
- Imposes DPA requirements and consent requirements specifically for minors
- Enhanced privacy notice requirements
- Expanded opt-out rights
- Expanded enforcement authority
- Effective October 1, 2025

What Do We See Across the States?

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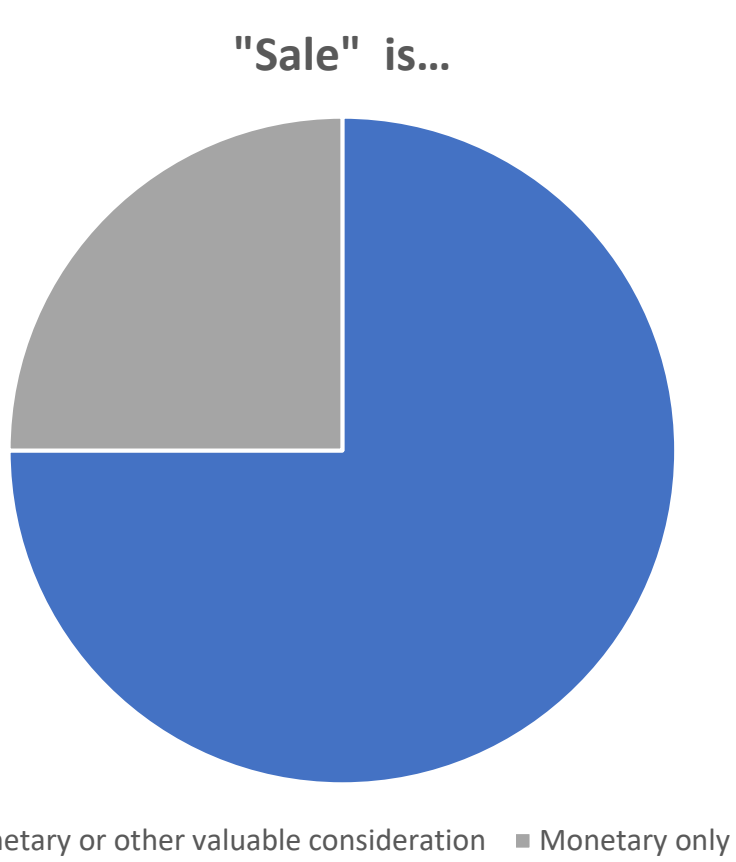
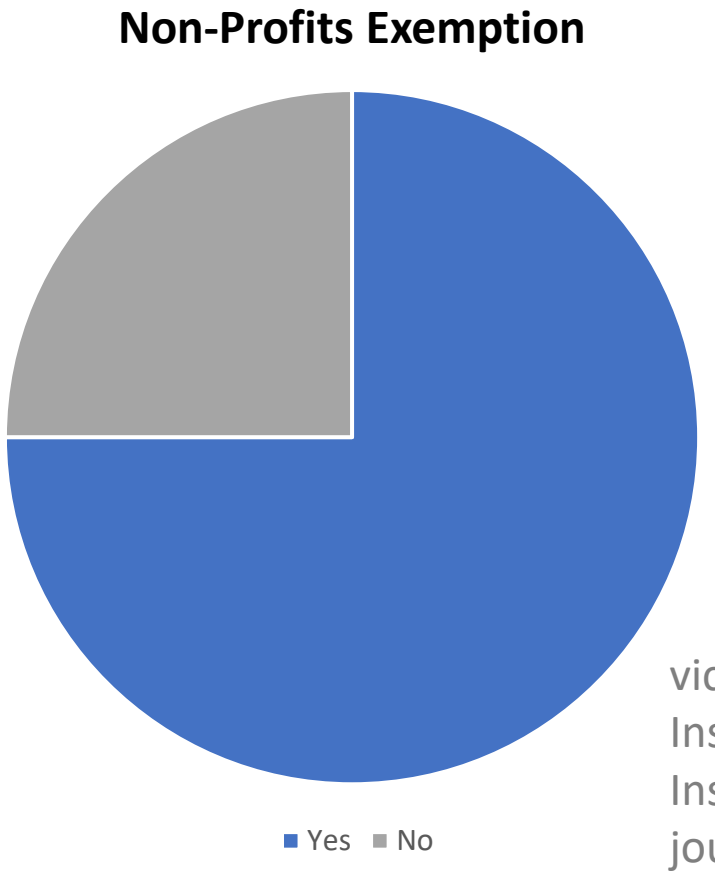
Balance Sheets

Virginia
Utah
Iowa
Indiana
Kentucky



Colorado
New Jersey
Delaware*
Minnesota**
Oregon***



victims*
Ins. fraud **
Ins. fraud & journalists***

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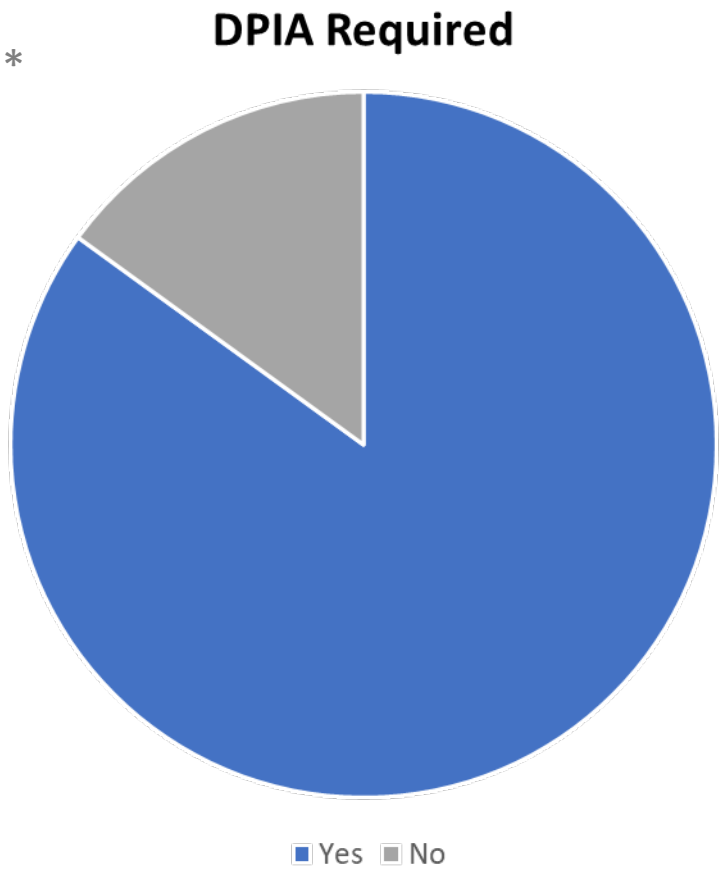
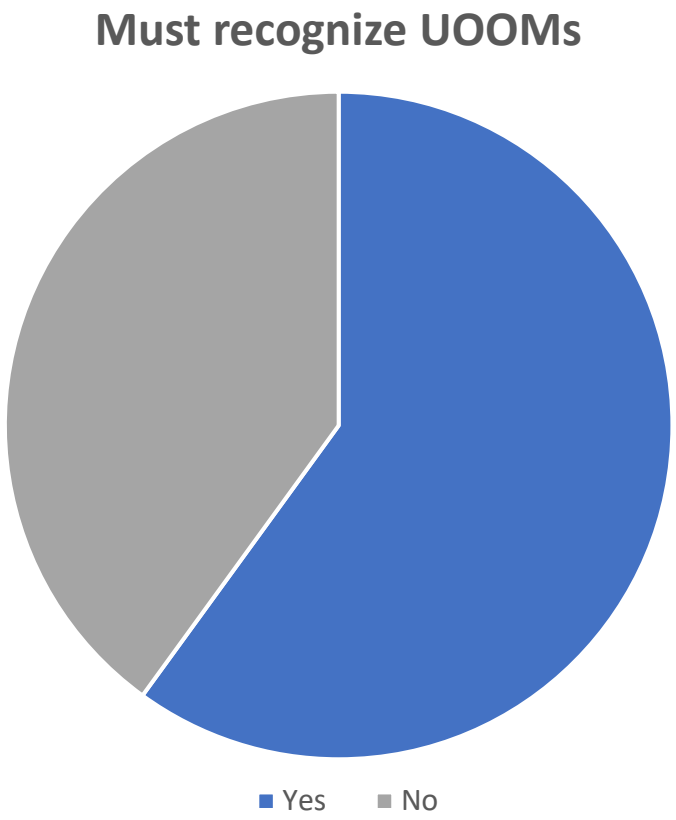
Activities

California*
Utah
Iowa





California
Colorado
Connecticut
Montana
Texas
Oregon
Delaware
New Jersey
New Hampshire
Minnesota
Maryland
Nebraska

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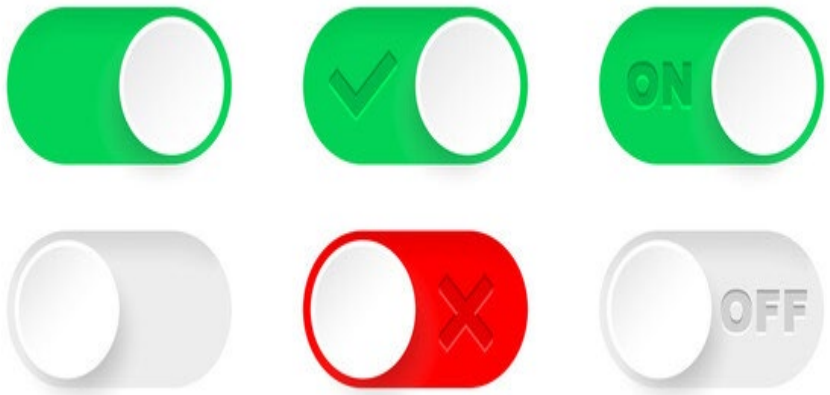
Opt-In / Opt-Out

Sale

Targeted Advertising

Profiling

Sensitive Data



Right to Opt OUT:

- ✓ **Sale** of personal data (ALL STATES)
- ✓ Processing for **Profiling** (ALL STATES except Iowa)
- ✓ Some **Automated Decision Making** (ALL STATES except Iowa, Utah)

Right to Opt IN:

- ✓ **Processing of Sensitive Data** (ALL STATES except California*, Iowa, Utah)

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Global Privacy Updates

- On September 3, 2025, the EU General Court upheld the **EU-US Data Privacy Framework (DPF)** and the European Commission's **Adequacy Decision**
- Allows businesses to freely transfer personal data subject to the EU GDPR to US organisations certified under the DPF
- This ruling provides welcome additional certainty on trans-Atlantic data flows after years of uncertainty

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EU Pseudonymized Data Opinion

- The Court of Justice of the European Union issued a decision on September 4, 2025 confirming that pseudonymised data is not automatically “personal data” under the GDPR
- Qualification depends on reasonably being able to reidentify individuals, considering technical, organisational and legal factors
- Decision potentially expands options for handling, sharing or receiving pseudonymised data and may reduce compliance burdens

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Where Are We Going?

As we look ahead to 2026, the pressure to stay ahead of data privacy obligations and risks while enabling innovation has never been greater. With 3 new comprehensive state data privacy laws coming online in 2026, along with AI and data governance considerations, companies must diligently plan for the road ahead.

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The 2026 Class – Applicability

State	Annual Revenue	Consumer	Business Activity
Indiana	-	Control or process Personal Data of 100,000 or more Consumers **OR**	Control or process PD of **10,000** or more Consumers **AND** derives more than **20% of gross revenue from sale** of data
Kentucky	-	Control or process Personal Data of 100,000 or more Consumers **OR**	Control or process PD of **25,000** or more Consumers **AND** derives more than **50% of gross revenue from sale** of data
Rhode Island	-	Control or process PD of at least 35,000 Consumers (unless solely to process payment transaction) **OR**	Control or process PD of **25,000** or more Consumers **AND** derives more than **50% of gross revenue from sale** of data

Indiana Consumer Data Protection Act (INCDPA)

- Goes into effect on January 1, 2026
- Similar to Virginia
- Right to **opt out** of the sale of personal data
- Right to **opt in** for sensitive data processing

Kentucky Consumer Data Privacy Act ("KCDPA")

- Goes into effect January 1, 2026
- Businesses not required to honor requests made via Universal Opt Out Mechanisms
- Non-profit organization does not include political organizations

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Rhode Island Data Transparency and Privacy Protection Act ("RIDTPPA")

- Goes into effect January 1, 2026
- No cure period
- Broad Applicability of Privacy Notice Requirements
- Broad Disclosure Requirements for Third-Party Data Sales

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Oregon Consumer Privacy Act (OCPA) Amendments

- Effective January 1, 2026:
  - No sale of precise geolocation data
  - No sale of data of children under 16
  - No use of data of children under 16 for targeted advertising or certain types of profiling
  - Cure period sunsets
  - Universal opt-out mechanisms for opting out of targeted advertising
- Effective September 26, 2026:
  - Application of law extends to all auto manufacturers that collect PD regardless of number of consumers in OR

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Connecticut Comprehensive Privacy Law – Amendments

- Lowers applicability threshold from 100,000 to 35,000 consumers
- Removes applicability threshold for controlling or processing PD of at least 25,000 and deriving > 25% gross revenue from sale of PD
- Expands definitions of biometric data and sensitive information
- Imposes new data protections for minors
- Expands the applicability to any business that controls or processes sensitive PD or offers a consumer's personal data "for sale in trade or commerce" (even if the business does not meet the other thresholds)
- Remove the entity level-GLBA exemption
- Imposes new obligations on companies engaged in profiling or automated decision making
- Effective July 1, 2026

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California CCPA Regulations

- On September 23, 2025, the California Privacy Protection Agency (CPPA)'s new California Consumer Privacy Act (CCPA) regulations were approved
- In addition to covering cybersecurity audits, risk assessments, automated decision-making technology, the regulations also updated some key existing CCPA rules

California Consumer Privacy Act
New Regulations effective starting Jan. 1, 2026

Risk Assessments (risk vs. benefit)	• Needed when Personal Information use = “significant risk” to privacy • **Jan. 1, 2026**: Required for NEW activities • **Jan. 1, 2027**: Required for PREEXISTING activities
Cybersecurity Audit	• Implementation, Documentation, Controls & Enforcement • **April 1, 2028**: required if revenue is > $100M • **April 1, 2029**: required if revenue is > $50M • **April 1, 2030**: required for all businesses
Automated Decision-Making Technology	• Notice + Rights for “significant decisions” made with only limited human review • **Jan. 1, 2027**

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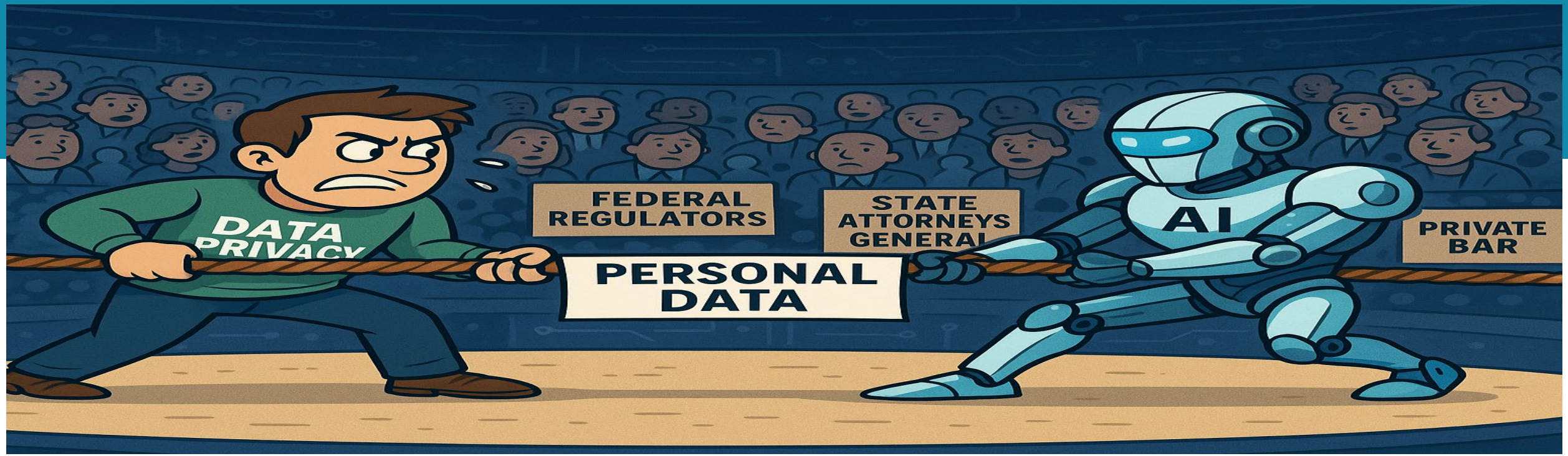
CCPA Regulations – Updates to Rules

- *Expanded right to know/access*
- *Clarification on privacy policy disclosures*
- *More illustrative examples for dark patterns*
- *Updated definition of "Sensitive Personal Information"*
- *Notice of the Right to Limit*
- *Opt-out preference signal indication required*



AI OUTCOMES, WITHOUT SUPERVISION, CAN BE **FLAWED**, RESULTING IN BUSINESS RISK

CURRENT GENERATIVE AI PROGRAMS LEARN FROM INPUT DATA AND, THEREFORE, MAY NOT OFFER **SECURITY** FOR DATA

UTILIZE AI PROGRAMS IN A WAY THAT LIMITS THE RISK OF **BIASES** AND SHOULD **MONITOR** PROGRAMS ON A REGULAR BASIS

UNDERSTAND WHERE EMPLOYEES ARE **UTILIZING** AI PROGRAMS TO THEN UNDERSTAND WHAT CONTROLS AND TRAINING WILL BE APPROPRIATE

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Global AI Framework

- EU AI Act (2024)
  - Aimed at establishing a comprehensive legal framework for AI
  - Based upon a risk-based classification of AI systems
  - Full compliance is expected mid-2027
- United States
  - The federal government has issued multiple mandates related to fostering AI innovation and governance
  - However, no AI legislation at federal level

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Colorado AI Act

- First law in the nation
- Originally passed in May 2024, recent amendments were signed in August 2025
- Becomes effective June 30, 2026
- Imposes a duty of reasonable care and disclosure obligations for “high risk” AI technology
- Any business that makes an AI system available for a consumer to interact with must provide the consumer with notice

The Building Blocks of Domestic Data Privacy Enforcement

'Comprehensive' consumer privacy laws (50% of U.S. population) + consumer health data laws

Biometric-specific data privacy laws (*e.g.* Illinois, Washington, Texas)

Federal Agencies enforcing by sector – FTC, the *de facto* privacy regulator, applying its unfair & deceptive powers as 'gap fillers'

State Attorneys General; Privacy Agency (CPPA); HHS/OCR and DOJ enforcements

Class Actions (VPPA / BIPA / wiretap laws, *e.g.* CIPA, PA)

State laws complementary to sectoral federal privacy laws (*e.g.* baby HIPAAs, financial regs, etc)

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Enforcement Trends

- Cure Periods Are Disappearing — The “Fix It First” Window Is Closing
- State-level enforcement is intensifying
  - Joint investigative initiatives
  - Focus on improper consumer disclosures
- The CCPA recently announced that it has hundreds of open investigations into non-compliance
- Enforcement agencies are focusing efforts on functionality and testing company controls (e.g., are deletion request links on websites functional? Etc.)

What We Have HEARD: Some FTC and State AG Public Statements on Privacy and Data Governance…

"Companies have a responsibility to secure data they maintain and to delete data they no longer need." – *February 2024, Blackbaud settlement*

"Protecting consumers' sensitive health data is a high priority for the FTC." – *April 2024, HBNR changes announced*

"[Texas is committed] to standing up to the world's biggest technology companies and holding them accountable for breaking the law and violating Texan's privacy rights. Any abuse of Texans' sensitive data will be met with the full force of the law." - *July 2024, Texas A.G. Ken Patton, CUBI $1.4B settlement*

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What We Have **SEEN**: Some Enforcement Actions of Note

SEPHORA

KEN PAXTON
ATTORNEY GENERAL of TEXAS

betterhelp

DOORDASH

blackbaud

TILTINGPOINT
RAISE YOUR GAME

GoodRx

Avast

AT&T

KOCHAVA

DRIZLY

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CPPA Enforcement – Tractor Supply Company

- September 2025: The California Privacy Protection Agency (CPPA) Board required Tractor Supply Company to pay **$1.35M** to resolve claims that the company violated the California Consumer Privacy Act (CCPA).
- Largest fine in CPPA's history.
- First decision to address the importance of CCPA privacy notices and privacy rights of job applicants.
- The complaint from a consumer alleged violation of Californians' privacy rights by:
  - Failing to maintain a privacy policy notifying consumers of their rights;
  - Failing to notify California job applicants of their privacy rights and how to exercise them;
  - Failing to provide consumers with an effective mechanism to opt-out of selling and sharing
    - And did not include opt-out preference signals such as Global Privacy Control
  - Disclosing personal information to other companies without entering into contracts that contain privacy protections.

Additional Enforcement

California

- $1.55 million settlement with Healthline Media (July 2025)
- Violations: Failed to honor consumer opt-out requests; used personal data beyond disclosed purposes; deficient contracts with third-party vendors.

Texas

- Texas AG sued Allstate (January 2025)
- Allegations: Collection and sale of sensitive PD

Connecticut

- $85,000 settlement with TicketNetwork (July 2025)
- Violations: Deficient consumer privacy notice; inoperable rights mechanisms

Cure Periods

Iowa	90 days	No sunset
Nebraska	30 days	No sunset
Tennessee	60 days	No sunset

Delaware	60 days	Sunsets 1.1.26
New Hampshire	60 days	Sunsets 1.1.26
Minnesota	30 days	Sunsets 1.31.26
New Jersey	30 days	Sunsets 7.15.26
Maryland*	60 days	Sunsets 4.1.27

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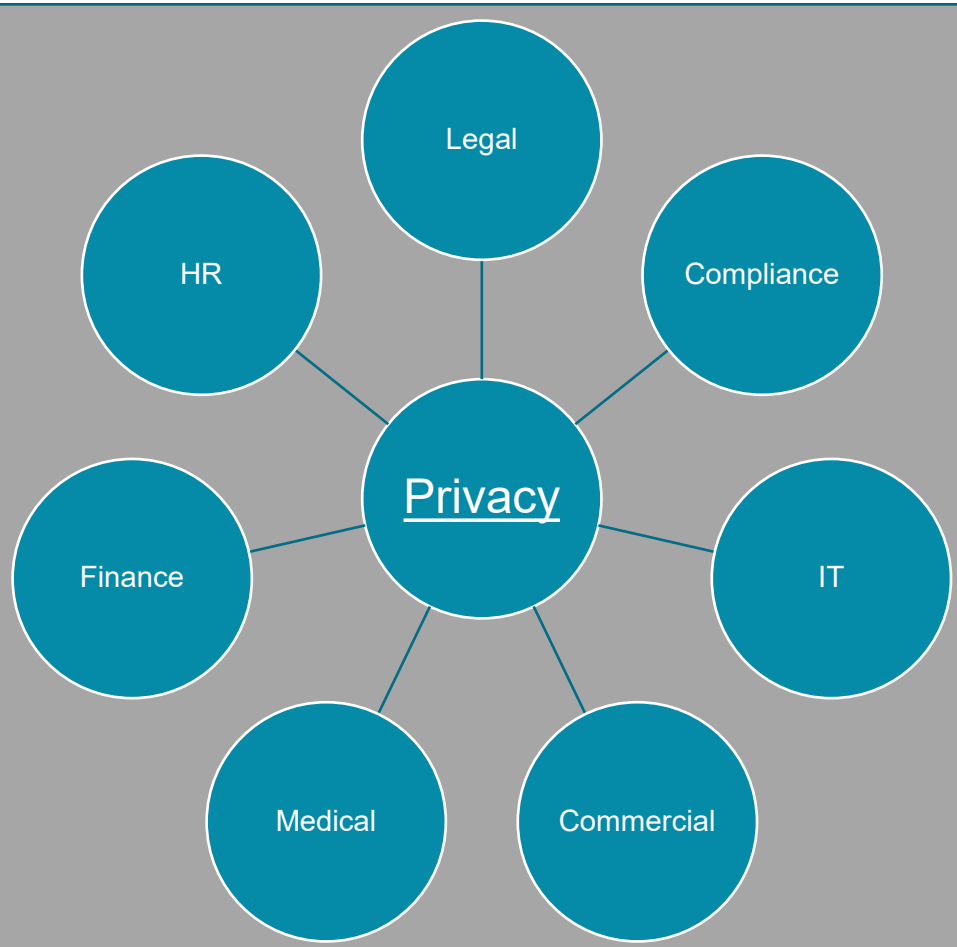
Data Governance Takes a Village

- Privacy Law is complex, and no single Department can ensure compliance.
- Privacy Law requires diligence and a team effort across many departments and their external partners and vendors!



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Understanding Your Data, Its Flow & Its Lifecycle:
Proactive Prevention versus Reactive Remediation

Work across functions to understand how data is collected, used, stored & shared in the Organization

- IT, HR, Finance, Business Affairs, Operations, Commercial, Others?

Leverage Existing Compliance Relationship

- Prioritize data gathering and understanding to create a more compliant organization
- Allow organization to see the value
- Staying within guidelines provides guards against enforcement/internal authority

Point Person(s)

- Each department doesn't always need to have one
- Consider Privacy Champions or Chief Privacy Officer/Data Protection Officer
- Need constant communication with all the groups

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Website Tracker Report by Porzio

SCAN ME

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1. First Name *

Enter your answer

2. Last Name: *

Enter your answer

3. Title: *

Enter your answer

4. Email Address *

Enter your answer

5. Company Name *

Enter your answer

6. Website URL (for report): *

Enter your answer

BIG PICTURE

Thoughtful data governance
can protect the privacy of personal data and increase security
to reduce the likelihood of misuse, breach and liability

DO WHAT YOU SAY (concerning data privacy)

SAY WHAT YOU DO (with personal data)

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Mitigating Data Privacy Risks

Respect and maintain the privacy of personal data; consider whether data is sensitive data

Know your data and what, where and how personal data is collected, used/processed, and shared

Comply with the company's privacy policy/statement/notice(s) and industry standards

Implement and maintain reasonable data security measures

Don't use personal data in a manner not disclosed in a privacy policy/statement/notice

Don't make misrepresentations in your privacy policy/statement/notice

Data Minimization

Data Retention Practices

Cross Border Transfer Mechanisms

Contract Management & Vendor Assessments

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Join us for our next presentation in Q1 2026 on:

“In-House Counsel’s Guide to Managing Data Processing Obligations”

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Stay Informed About Data Privacy

Sign up for our mailing list to receive updates and insights on data privacy and protection laws. Stay compliant and informed with Porzio's Data Privacy practice group.

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