

# State Privacy Law Panel

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Kate Goodloe, Libbie Canter, and Liz Lyons  
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# Presenters

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*HP*



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# Agenda

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Developments in  
State  
Comprehensive  
Privacy Laws

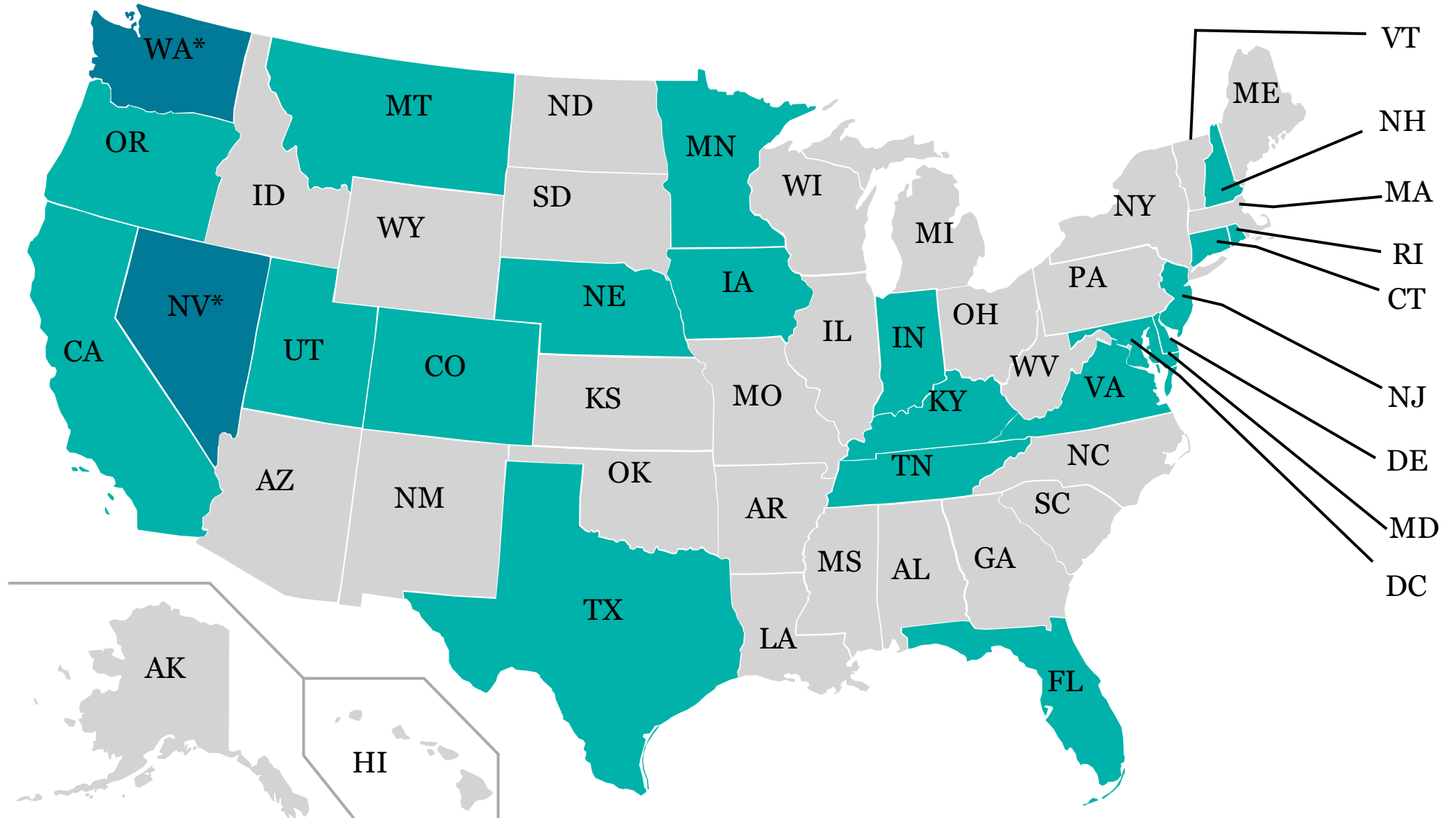
Hot Topics and  
Evolving Areas

# Part I

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## Developments in State Comprehensive Privacy Laws

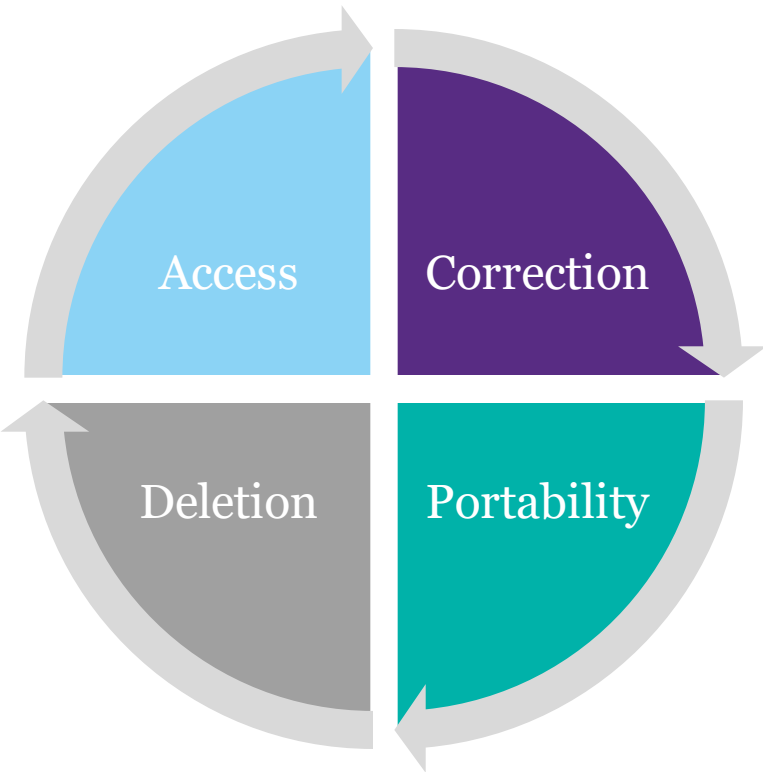
# 20 States With Enacted Comprehensive Privacy Laws



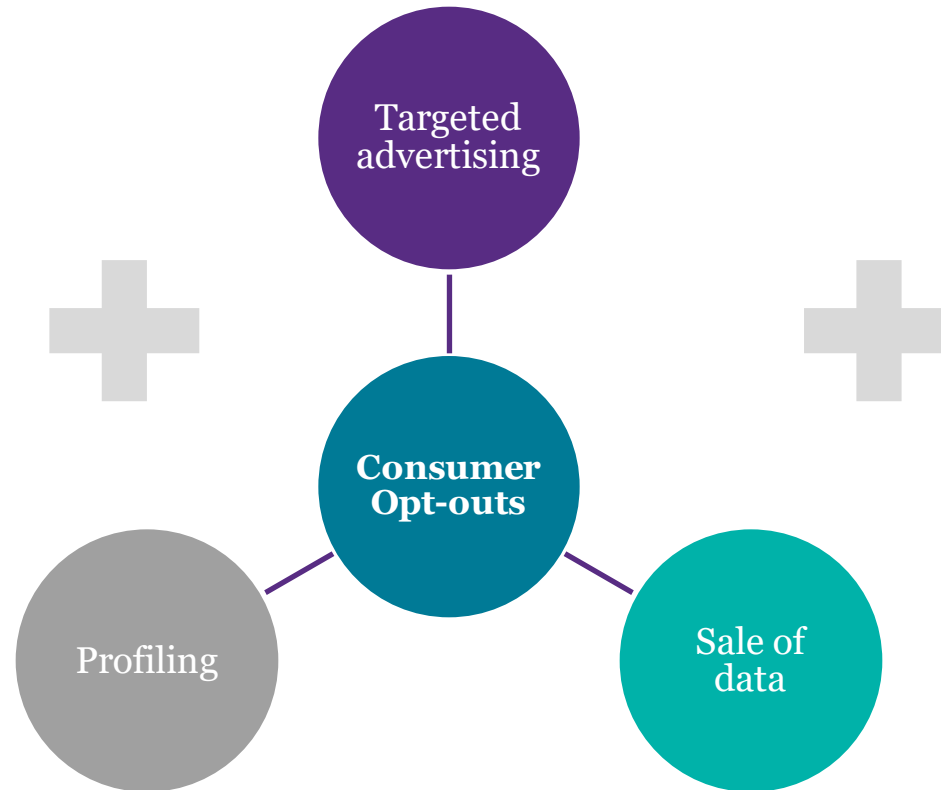
*\*WA has enacted consumer health data laws, rather than a comprehensive privacy law; NV is narrower than other state laws.*

# “Baseline”: VA, FL, IN, KY, NE, TN, TX, and RI

GDPR/CCPA-like rights



CPRA-like rights



Opt-in for sensitive personal information



# Categories of State Privacy Laws

## “Fewer Substantive Obligations”

- Utah
- Iowa
- *Nevada*

## “Baseline Approach”

- Virginia
- Indiana
- Kentucky
- Tennessee
- Florida
- Texas
- Nebraska
- Rhode Island\*

## “More Substantive Obligations”

- Colorado
- Connecticut
- New Hampshire
- New Jersey
- Montana
- Delaware
- Oregon

## “Outliers”

- California
- Maryland
- Minnesota
- Washington and Nevada consumer health data laws

# High-Water Marks and Novel Compliance Requirements



- List of Specific Third Parties: **Oregon and Minnesota** consumers have the right to obtain a list of specific third parties to whom controllers disclose a consumer’s personal data.
- Stricter Data Minimization Standard: **Maryland** requires controllers to limit their collection of personal data to *what is necessary and proportionate to provide or maintain a specific product or service* requested by a consumer, as opposed to the purposes listed in their privacy notices. **California** rules also impose somewhat heightened standard.
- New Rights with Respect to Profiling: **Minnesota** provides a right for the consumer to *question the result of profiling* in furtherance of decisions that produce legal or similarly significant effects, to be informed of the reason the profiling resulted in the decision, to review the consumer’s personal data used in profiling, and to correct personal data and have the profiling decision reevaluated if inaccurate data was used.
- New Documentation Requirements:
  - **Maryland** requires controllers to conduct a data protection assessment for processing activities presenting a heightened risk of harm to a consumer, *including an assessment for each algorithm that is used*.
  - **Minnesota** requires controllers to “document and maintain a description of policies and procedures” adopted to comply with the state’s privacy law, including the name and contact information for the controller’s chief privacy officer.



# Effective Dates

<b>Timeline</b>	
<b>January 1, 2023</b>	California (CPRA amending CCPA), Virginia
<b>July 1, 2023</b>	Colorado, Connecticut
<b>December 31, 2023</b>	Utah
<b>July 1, 2024</b>	Florida, Texas, Oregon
<b>October 1, 2024</b>	Montana
<b>January 1, 2025</b>	Delaware, Iowa, Nebraska, New Hampshire
<b>January 15, 2025</b>	New Jersey
<b>July 1, 2025</b>	Tennessee
<b>July 31, 2025</b>	Minnesota
<b>October 1, 2025</b>	Maryland
<b>January 1, 2026</b>	Indiana, Kentucky, Rhode Island

# Next Phase in Privacy Laws

## What to expect:

- Legislative shifts towards the “More Substantive Obligations” approach; increased focus on data minimization and AI
- Amended legislation, increased rulemaking (e.g., California, New Jersey, Florida, Colorado)
- Expanded enforcement, including under consumer protection, consumer health privacy, and comprehensive privacy laws



# Part II

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## Hot Topics and Evolving Areas



# Neural Data as an Emerging Area in Health Privacy

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## Two States Add Neural Data to Rights and Restrictions for “Sensitive Information”

- Colorado was the first state to regulate neural data by including the term in its definition for sensitive information.
- On September 28, California amended the CCPA to cover neural data in its definition of sensitive personal information.



# Artificial Intelligence: Recent Rulemaking and Legislation

## Recent Rulemaking and Legislation

- In California:
  - Rulemaking for “automated decisionmaking technology” (“ADMT”) under the CCPA in November
  - AB 2013 enacted in August
  - Amendment of “personal information” under AB 1008
- The Colorado AI Act (SB 205) in revision process

### Notice Requirements

- Notification for automated decisions that affect rights and opportunities

### Impact Assessments

- Aim to mitigate potential discrimination, privacy, and accuracy harms

### Individual Rights

- AI as part of personal information definition, opt-outs, data correction and deletion

# Children & Teens: Litigation and New Laws

- Ninth Circuit partially upheld, partially vacated injunction halting California **Age-Appropriate Design Code (AADC)** implementation; while **Maryland's** state privacy law AADC requirements took effect.
- SCOTUS sidestepped **social media age-gating Texas and Florida laws**, directing the Circuit Courts to conduct further analysis on First Amendment issues.
- New York passed the **Child Data Protection Act** and **SAFE for Kids Act**, both now in the rulemaking process.

Aug 16, 2024

## Governor Newsom and Attorney General Bonta on appellate court decision regarding California's Age-Appropriate Design Code Act

SACRAMENTO — Governor Gavin Newsom and California Attorney General Rob Bonta today issued the following statements in response to the Ninth Circuit Court of Appeals' decision in *NetChoice v. Bonta*, finding that NetChoice did not demonstrate they were likely to succeed in showing that the majority of California's Age-Appropriate Design Code Act is unconstitutional.

US Will Hear Age-Gating



ing the constitutionality of a Texas law as where more than one-third of the can be attributed to Megan Iorio, Senior

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LAW

### Supreme Court puts Florida and Texas social media laws on hold

JULY 1, 2024 - 2:02 PM ET

By Bobby Allyn, Nina Totenberg

A photograph showing the top of a building with a grey roof, partially obscured by green tree leaves in the foreground.

# Questions?

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