

Recent Updates to U.S. Consumer Privacy Policies and Biometric Privacy Policies

H. 121
4/27/2023

California Consumer Privacy Rights Act: Prop. 24.

Approved Nov. 2020, effective Jan. 1, 2023

Expands the consumer data privacy laws. Permits consumers to: (1) prevent businesses from sharing personal information; (2) correct inaccurate personal information; and (3) limit businesses' use of "sensitive personal information"—including precise geolocation; race; ethnicity; religion; genetic data; private communications; sexual orientation; and specified health information. Establishes the California Privacy Protection Agency to additionally enforce and implement consumer privacy laws and impose fines. Changes criteria for which businesses must comply with laws. Prohibits businesses' retention of personal information for longer than reasonably necessary. **Tripled maximum penalties for violations concerning consumers under age 16.** Authorizes civil penalties for theft of consumer login information, as specified. (Amended by [2021 A.B. 1490](#)). (NCSL).

Virginia, Colorado, Connecticut, and Utah are all implementing consumer privacy policies in 2023.

Understanding the General Data Protection Regulation: GDPR (E.U.)

- Codified several principles which became enforceable in 2018, reflecting Europeans' human-rights-based philosophical foundation for data privacy protection. Many of the U.S. upcoming CPP policies reflect these philosophical ideologies.
- Difference between "data controllers" and "data processors".

Rights of the GDPR:

1. Access
 2. Correction
 3. Portability
 4. Erasure
 5. Consent
 6. Appeal
- Data controllers are the businesses and entities that control the collection and use of data. They decide what to do with the data.
 - Data processors carry out the instructions provided by the data controllers.
- **The new consumer privacy policies set to go into effect in 2023 contain this distinction.**

<https://www.reuters.com/legal/legalindustry/us-data-privacy-laws-enter-new-era-2023-2023-01-12/>

Biometric Privacy Acts

At the beginning of the 2023 legislative session at least 15 BIPA proposals have emerged across 11 states. (AZ, HI, MD, MA, MN, MS, MO, NY, TN, WA).

Many of these proposals are modeled after the Illinois BIPA law, which is the longest standing BIPA law in the country (2008).

Trends and Highlights:

- Most of these bills are standalone, focused solely on biometric privacy issues. However, in four states (MD, NY, VT, and WA), biometrics-specific provisions are part of larger comprehensive consumer privacy laws.
- Private right of action
- Exempting HIPPA, GLBA, and local government and judicial entities.

Current Status as of 4/27/2023:

- [Arizona, SB 1238](#)
 - Passed by Transportation and Technology Committee and approved by Rules Committee. (2/10/23).
- Hawaii, ([SB 1085](#))
 - the bill had been deferred by the Labor and Technology Committee (2/10/23).
- Maryland, Biometric Data Privacy Act ([HB 33/SB 169](#)) and, Online and Biometric Data Privacy Act ([SB 698/HB 807](#)).
 - HB 33 had been subject to a hearing in the Economic Matters Committee (2/1/23) and SB 169 had been subject to a hearing in the Finance Committee (1/21/23).
 - SB 698 has a Finance Committee hearing scheduled for 3/8/23 (2/7/23), and HB 807 had a hearing in the Economic Matters Committee on 2/22/23.
- Massachusetts, [HD 3053](#), [S. 195](#)
 - (2/16/2023) Referred to the committee on Advanced Information Technology, the Internet and Cybersecurity.
 - (4/6/2023) Discharged to the committee on Advanced Information Technology, the Internet and Cybersecurity.
- Minnesota, [SF 954](#)
 - (1/30/2023) Referred to the Commerce and Consumer Protection Committee
- Mississippi, ([HB 467](#))
 - Bill has died in the Judiciary Committee on 1/30/2023
- Missouri, ([HB 1047](#))
 - the bill had been read for the second time in the House (2/7/23).
- New York, ([A. 1362/S. 4457](#))
 - A. 1362: 1/17/2023 Referred to the Consumer Affairs and Protection
 - S. 4457: Senate Consumer Protection
- Tennessee, ([SB 339/HB 932](#))
 - SB 339 had been referred to the Commerce and Labor Committee (1/25/23), and HB 932 had been assigned to the Banking and Consumer Affairs Subcommittee of the Commerce Committee (2/7/23).
- Washington: ([HB 1616/SB 5643](#))

- HB 1616 had been referred to the Civil Rights and Judiciary Committee (1/26/23), and SB 5643 had been referred to the Environment, Energy, and Technology Committee (1/31/23).

Source: <https://www.wilmerhale.com/insights/client-alerts/20230224-biometric-privacy-law-update>.