Trends in State Privacy Laws

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Speaker

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Roadmap

1. Overview of 2022 Session
2. Brief Comparison of Passed Laws
3. Status of California and Colorado
4. American Data Privacy & Protection Act
5. Resources
Overview of 2022 Session
## By the numbers

<p>| | |</p>
<table>
<thead>
<tr>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>29</strong></td>
<td>• States + D.C. introduced or carried over bills from 2021</td>
</tr>
<tr>
<td><strong>23</strong></td>
<td>• States held committee hearings</td>
</tr>
<tr>
<td><strong>14</strong></td>
<td>• States passed a bill out of committee</td>
</tr>
<tr>
<td><strong>7</strong></td>
<td>• States passed a bill through one chamber (CT, FL, IN, IO, OK, UT, &amp; WI)</td>
</tr>
<tr>
<td><strong>2</strong></td>
<td>• States passed laws (CT &amp; UT)</td>
</tr>
</tbody>
</table>
Takeaways

Emergence of model law (with variants)
- Using 2021 Washington Privacy Act as model
- Colorado, Connecticut, Utah and Virginia have passed variants

Push for business-friendly variants
- Indiana, Iowa, Kentucky, Louisiana, Tennessee, and Wisconsin
- One bill passed in Utah
- Targeting Republican-controlled legislatures

Uniform Law Commission Model Law
- Failed to catch on
- Bills proposed in three states but did not move forward
Brief Comparison of Passed Laws
## Applicability

<table>
<thead>
<tr>
<th>Law</th>
<th>$</th>
<th># Consumers</th>
<th>Population</th>
</tr>
</thead>
<tbody>
<tr>
<td>CCPA</td>
<td>$25,000,000</td>
<td>50,000 consumers, households or devices</td>
<td>39.2 million</td>
</tr>
<tr>
<td>CPRA</td>
<td>$25,000,000</td>
<td>100,000 consumers or households</td>
<td>39.2 million</td>
</tr>
<tr>
<td>Virginia</td>
<td>N/A</td>
<td>100,000 consumers</td>
<td>8.6 million</td>
</tr>
<tr>
<td>Colorado</td>
<td>N/A</td>
<td>100,000 consumers</td>
<td>5.8 million</td>
</tr>
<tr>
<td>Utah</td>
<td>$25,000,000 (+ another category)</td>
<td>100,000 consumers</td>
<td>3.3 million</td>
</tr>
<tr>
<td>Connecticut</td>
<td>N/A</td>
<td>100,000 consumers</td>
<td>3.6 million</td>
</tr>
<tr>
<td>Law</td>
<td>Data Broker</td>
<td></td>
<td></td>
</tr>
<tr>
<td>-----------</td>
<td>-----------------------------------------------------------------------------</td>
<td></td>
<td></td>
</tr>
<tr>
<td>CCPA</td>
<td>Derives 50% or more of annual revenues from selling consumers’ personal information</td>
<td></td>
<td></td>
</tr>
<tr>
<td>CPRA</td>
<td>Derives 50% or more of annual revenues from selling <em>or sharing</em> consumers’ personal information</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Virginia</td>
<td>Derives over 50% of gross revenue from sale of personal data + control or process personal data of at least 25,000 consumers</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Colorado</td>
<td>Derives revenue or receives a discount on the price of goods or services from the sale of personal data + processes or controls the personal data of 25,000 or more consumers</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Utah</td>
<td>Derives over 50% of gross revenue from sale of personal data + controls or processes personal data of 25,000 or more consumers</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Connecticut</td>
<td>Derives more than 25% of gross revenue from sale of personal data + control or process personal data of not less than 25,000 consumers</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Rights</td>
<td>CPRA</td>
<td>VCDPA</td>
<td>CPA</td>
</tr>
<tr>
<td>-------------------------------</td>
<td>------</td>
<td>-------</td>
<td>-----</td>
</tr>
<tr>
<td>Know / Confirm</td>
<td>✔</td>
<td>✔</td>
<td>✔</td>
</tr>
<tr>
<td>Access</td>
<td>✔</td>
<td>✔</td>
<td>✔</td>
</tr>
<tr>
<td>Data portability</td>
<td>✔</td>
<td>✔</td>
<td>✔</td>
</tr>
<tr>
<td>Deletion</td>
<td>✔</td>
<td>✔</td>
<td>✔</td>
</tr>
<tr>
<td>Correct inaccuracies</td>
<td>✔</td>
<td>✔</td>
<td>✔</td>
</tr>
<tr>
<td>Not be discriminated against</td>
<td>✔</td>
<td>✔</td>
<td>✔</td>
</tr>
</tbody>
</table>

(controller may offer different price, quality, selection, etc. if consumer opts out of targeted advertising)
<table>
<thead>
<tr>
<th>Right</th>
<th>CPRA</th>
<th>VCDPA</th>
<th>CPA</th>
<th>UCPA</th>
<th>CTDPA</th>
</tr>
</thead>
<tbody>
<tr>
<td>Opt-out of sale</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
</tr>
<tr>
<td>Opt-out of targeted advertising / sharing</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
</tr>
<tr>
<td>Opt-out of certain types of profiling</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
</tr>
<tr>
<td>Recognize opt out signals</td>
<td>✓</td>
<td>✗</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
</tr>
</tbody>
</table>
Sensitive Data

- **Consent**
  - Colorado, Connecticut and Virginia

- **Limit Use of Sensitive Data to Certain Processing Activities**
  - California

- **Notice and Opportunity to Opt Out**
  - Utah
Biometric Data

- **Virginia**
  - Restrictive definition
  - Excludes facial recognition

- **Connecticut**
  - Most expansive definition

- **Colorado**
  - Does not define term
  - Could be dealt with during Attorney General rulemaking
Enforcement

- **No Private Right of Action**
  - Except for certain types of data breaches in California

- **Attorney General Enforcement**
  - Colorado (+ district attorneys), Connecticut, Utah, and Virginia

- **Agency and Attorney General Enforcement**
  - California
<table>
<thead>
<tr>
<th>State</th>
<th>Right to Cure</th>
<th>Sunset Date</th>
</tr>
</thead>
<tbody>
<tr>
<td>California</td>
<td>• 30 day right to cure; sunsets January 1, 2023</td>
<td></td>
</tr>
<tr>
<td>Colorado</td>
<td>• 60 day right to cure; sunsets January 1, 2025</td>
<td></td>
</tr>
<tr>
<td>Connecticut</td>
<td>• 60 day right to cure; sunsets December 31, 2024</td>
<td></td>
</tr>
<tr>
<td>Utah and Virginia</td>
<td>• 30 day right to cure</td>
<td></td>
</tr>
</tbody>
</table>
Rulemaking

Yes

- California and Colorado

No

- Connecticut, Utah and Virginia
Effective Dates

- California Privacy Rights Act
  - Virginia Consumer Data Protection Act
  - 1 Jan. 2023

- Colorado Privacy Act
  - Connecticut Data Privacy Act
  - 1 July 2023

- Utah Consumer Privacy Act
  - 31 Dec. 2023
Status of California and Colorado
California

Legislature closes August 31

- Multiple bills to amend CCPA/CPRA under consideration, including extensions of business-to-business and employee exemptions

CPRA rulemaking is delayed

- Formal rulemaking started July 8
- Rulemaking was supposed to be finished July 1
Colorado Privacy Act rulemaking yet to commence

Attorney General’s office held two public input sessions in June

Office is accepting pre-rulemaking comments through August 5

Formal rulemaking expected to start in Fall
American Data Privacy & Protection Act
American Data Privacy & Protection Act

“Three corners bill”
- Lacks support of Senator Maria Cantwell (Chair of the Senate Committee on Commerce, Science & Technology)

Reported out of House Committee on Energy & Commerce on July 20
- Eligible for full House floor vote
- Congress is in recess during August

Fate uncertain
- November election likely will lead to change in Republican leadership on Senate Commerce Committee
Webinar

ANALYZING THE AMERICAN DATA PRIVACY AND PROTECTION ACT (H.R. 8152)

August 18, 2022

REGISTER NOW
Resources
2022 State Privacy Law Tracker

Visit Husch Blackwell's Byte Back privacy blog, Florida feed.

Other resources:
- The Florida Senate, SB 1864
- Florida House of Representatives, HB 9

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• Analyzing the California Privacy Rights Act Draft Regulations

• Analyzing the Connecticut Data Privacy Act

• What is the Utah Consumer Privacy Act?

• U.S. Privacy Law Update: Tracking Proposed State Privacy Legislation

• Analyzing the Colorado Privacy Act

• Analyzing the Virginia Consumer Data Protection Act
Proposed State Privacy Law Update: May 16, 2022

By David Stauss on May 15, 2022
POSTED IN STATE PRIVACY LEGISLATION

Keypoint: This week the Connecticut Data Privacy Act was signed by the Governor, making Connecticut the fifth state to pass consumer data privacy legislation.

Below is our eighteenth – and final – weekly update on the status of proposed state privacy legislation in 2022. With the legislatures in many states now adjourned for the year, we are concluding our weekly updates.
Podcast

Interviews with state lawmakers who are spearheading privacy legislation
State Privacy Law Database

State Privacy Laws

US State Privacy Law Database

State Law or Regulation:
- California Consumer Privacy Act (CCPA)
- CCPA Regulations
- California Privacy Rights Act (CPRA)
- Colorado Privacy Act (CPA)
- Virginia Consumer Data Protection Act (VCDPA)
- Utah Consumer Privacy Act (UCPA)
2023 State Privacy Guide

2023 STATE PRIVACY GUIDE
Comparing Key Provisions of the CPRA, CPA and VCDPA
Thank you

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