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Overview of U.S. Privacy Laws

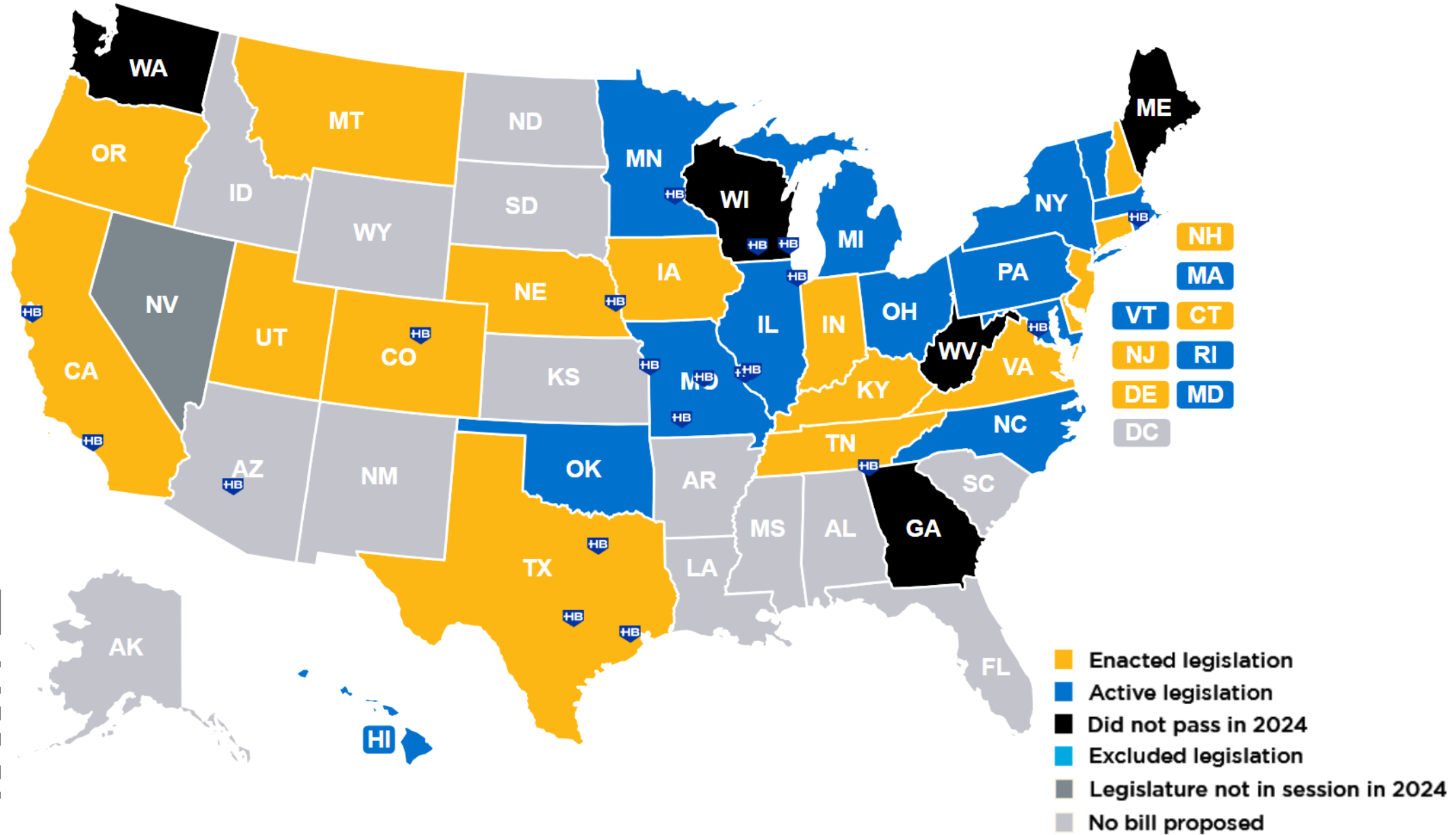
David Stauss, Partner, CIPP/US/E, CIPT, FIP, PLS

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Overview

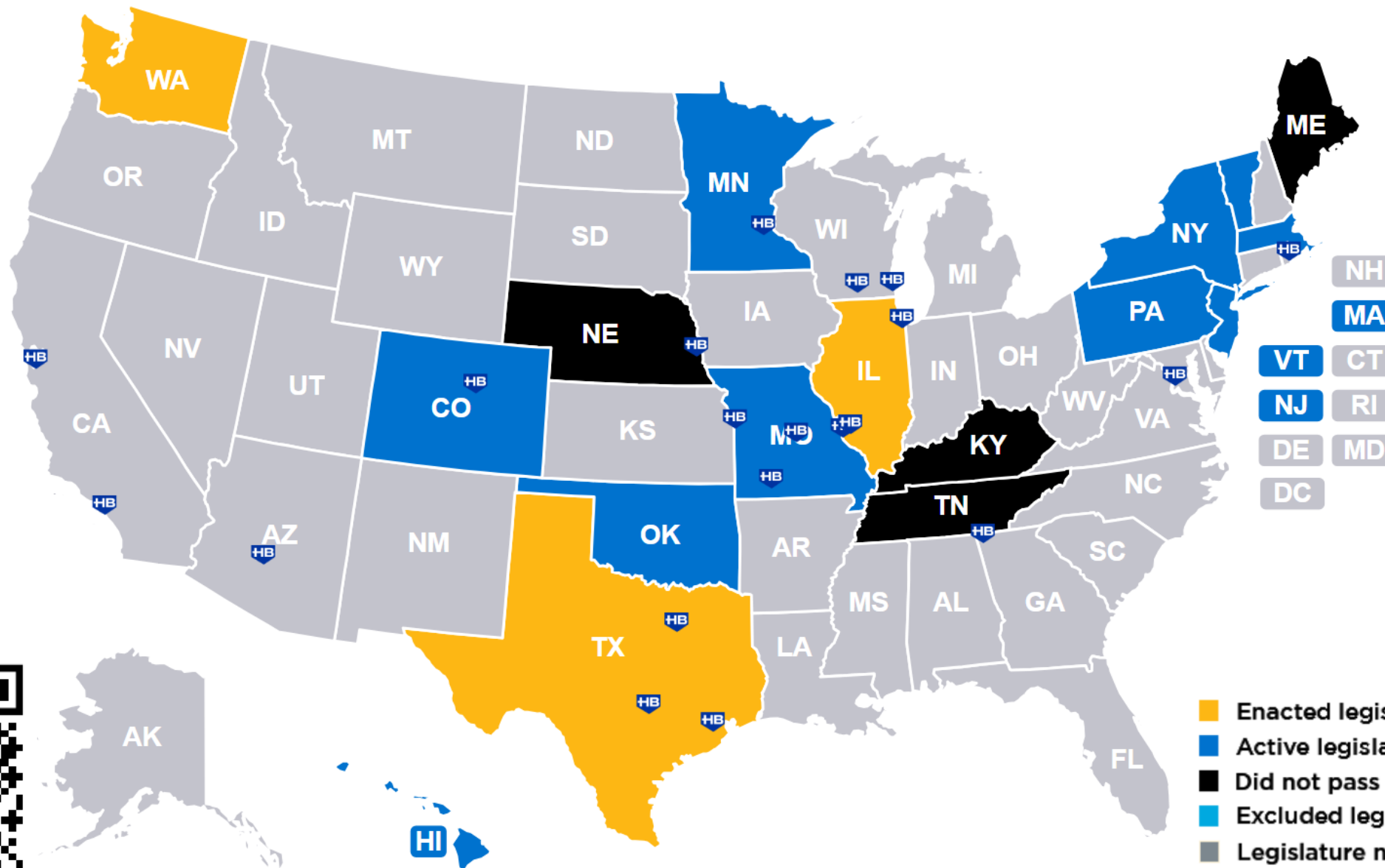
2024 State Privacy Law Tracker

Click the states to view various resources.

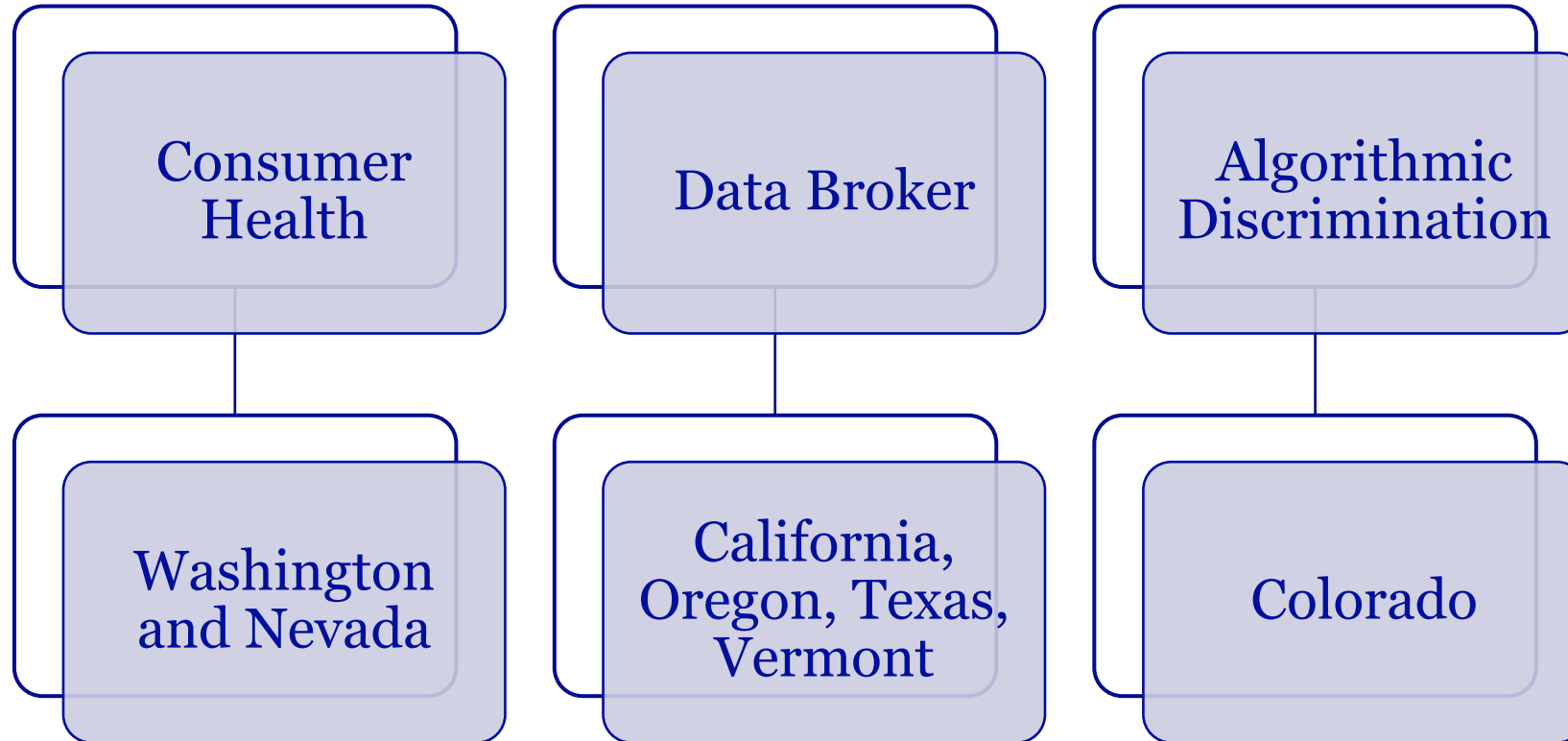


2024 State Biometric Privacy Law Tracker

Click the states to view various resources.



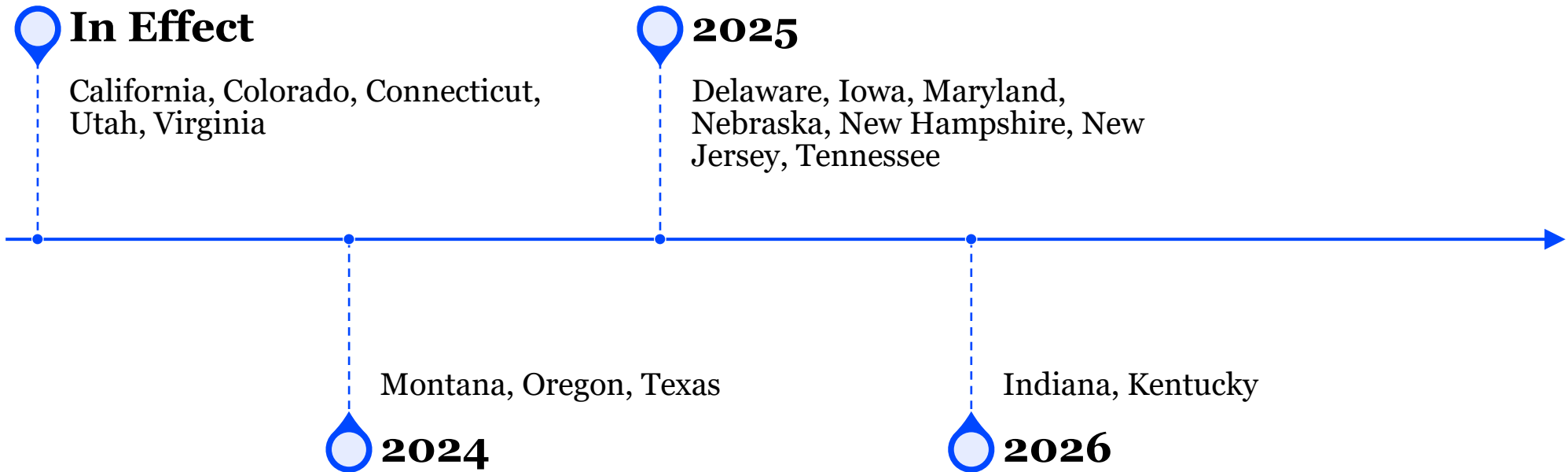
Other Laws



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Consumer Data Privacy

Timeline



Comparison Charts



APPLICABILITY THRESHOLDS

State	Monetary Threshold	# of Consumers Threshold	Sell/Share Threshold	Other
California	\$25,000,000			
Colorado	N/A			
Connecticut	N/A			
Delaware	N/A			
Indiana	N/A			
Iowa	N/A			
Montana	N/A			
New Hampshire	N/A			

RIGHTS

RIGHT	CA	CO	CT	DE	IN	IA	MT	NH	NJ	OR	TN	TX	UT	VA
Know	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
Access	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
Obtain list of 3d Parties to Which Personal Data Was Disclosed														
Data Portability														
Delete														
Correct inaccuracies														
Not be discriminated against														
Opt-out of sale														
Opt-out of targeted advertising / sharing														
Opt-out of certain types of profiling														
Recognize opt out signals														
Revoke consent														

OTHER PROVISIONS

PROVISION	CA	CO	CT	DE	IN	IA	MT	NH	NJ	OR	TN	TX	UT	VA
Data Protection Assessments	TBD (rulemaking)	Yes	Yes	Yes	Yes	No	Yes	Yes	Yes	Yes	Yes	Yes	No	Yes
Definition of sale	Monetary or other valuable consideration	Monetary or other valuable consideration	Monetary or other valuable consideration	Monetary or other valuable consideration	Monetary consideration	Monetary consideration	Monetary or other valuable consideration	Monetary or other valuable consideration	Monetary or other valuable consideration	Monetary or other valuable consideration	Monetary or other valuable consideration	Monetary or other valuable consideration	Monetary or other valuable consideration	Monetary or other valuable consideration
Opt-out Request Can be Verified	No	Yes	No	No	Yes	Yes	No	No	No	No	Yes	Yes	Yes	Yes
Treatment of Sensitive Data	Right to Limit Use	Opt-in	Opt-in	Opt-in	Opt-in	Notice and opt-out	Opt-in	Opt-in	Opt-in	Opt-in	Opt-in	Opt-in	Notice and opt-out	Opt-in
GLBA exemption	Data level	Entity and data level	Entity and data level	Entity and data level	Entity and data level	Entity and data level	Entity and data level	Entity and data level	Entity and data level	Data and state entity*	Entity and data level	Entity and data level	Entity and data level	Entity and data level
Applies to nonprofits	No	Yes	No	Yes	No	No	No	No	Yes	Yes	No	No	No	No
Additional Children's Rights	Opt-in for selling or sharing of PI of children ages 13-15	No	Opt-in for targeted advertising or sale of PI of children ages 13-15	Opt-in for targeted advertising or sale of PI of children ages 13-17	No	No	Opt-in for targeted advertising or sale of PI of children ages 13-15	Opt-in for targeted advertising or sale of PI of children ages 13-15	Opt-in for targeted advertising, sale of PI, and profiling of children ages 13-16	Opt-in for targeted advertising, sale of PI, and profiling of children ages 13-15	No	No	No	No
Data Processing Agreements	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Privacy Policy	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes**	Yes	Yes
Duty of Purpose Specification	No	Yes	No	No	No	No	No	No	Yes	Yes	No	No	No	No

1 Consumers can obtain a list of cafes
 2 Contains pseudonymous data carved
 3 Right is not listed in consumer rights
 4 Right provided through rulemaking

Foundational Principles

Privacy Policy

- What you collect, how you use it, how you share it

Consumer Requests

- Know, access, delete, correct, port

Opt-Out Rights

- Sales, targeted advertising, profiling

Sensitive Data

- Opt-in / consent

Foundational Principles

Information Security

- Protect from data breaches

Data Processing Agreements

- Contractual requirements when transferring data

Data Protection Impact Assessments

- Validating high-risk processing activities

Data Minimization

- Collect only what you need

Emerging Issues

UOOMs

- Browser level opt outs

Private rights of action

- Private litigation

Health data

- Expanding definitions of consumer health data

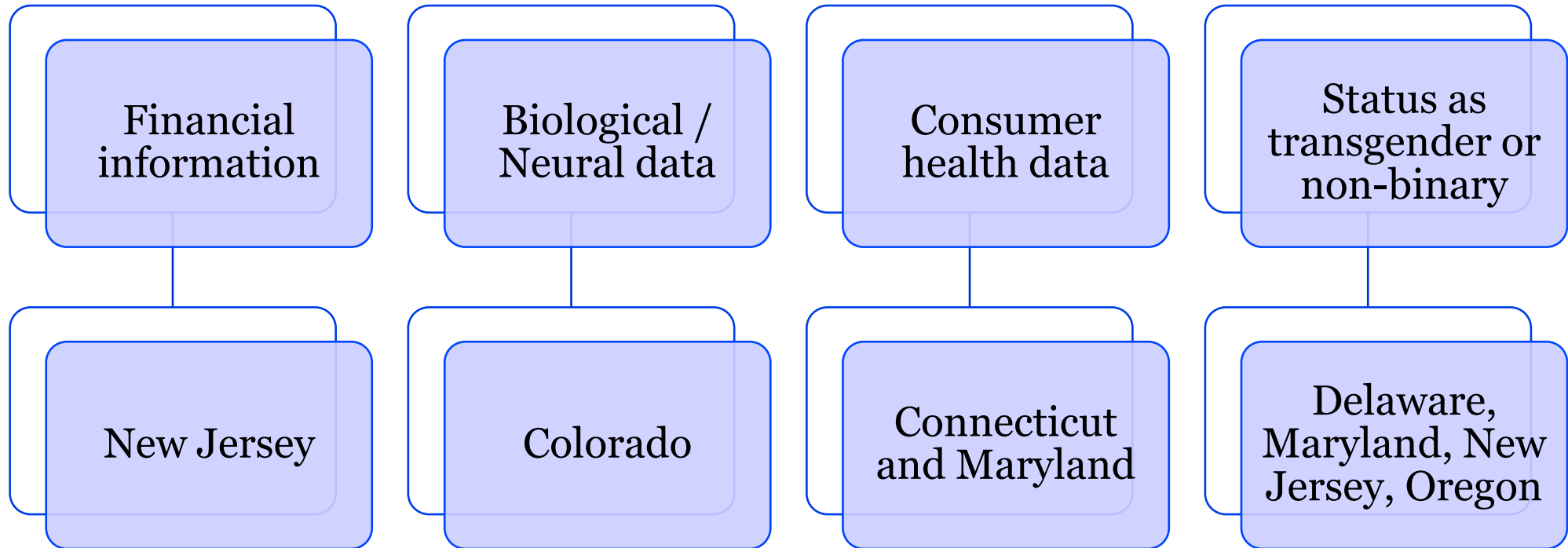
Employee data

- Extension of laws into employee data

Duties of Care

- Must use reasonable care in processing data

Expanding Definitions of Sensitive Data



Sensitive Data Charts



CATEGORIES OF SENSITIVE DATA														
CATEGORY	CA ⁱ	CO ⁱⁱ	CT	DE	IN	IA	MT	NH	NJ	OR	TN	TX	UT	VA
Racial or ethnic origin	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
National origin	✗	✗	✗	✗	✗	✗	✗	✗	✗	✓	✗	✗	✗	✗
Religious beliefs	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
Philosophical beliefs	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
Mental or physical health diagnosis	✓ ⁱⁱⁱ	✓	✓	✗	✓	✓	✓	✓	✓	✗	✓	✓	✓	✓
Mental or physical health condition	✗	✗	✗	✓	✗	✗	✗	✗	✗	✓	✗	✗	✗	✗
Mental or physical health treatment	✗	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✗	✓
Medical history	✓	✗	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
Medical treatment or diagnosis by health care professional	✓	✗	✓	✗	✗	✗	✗	✗	✗	✗	✗	✗	✗	✗
Mental or physical health diagnosis made by a health care provider	✗	✗	✓	✗	✗	✗	✗	✗	✗	✓	✗	✗	✗	✗
Sexual orientation	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
Sex life	✓	✗	✗	✗	✗	✗	✗	✗	✗	✗	✗	✗	✗	✗
Sexuality	✓	✗	✗	✗	✗	✗	✗	✗	✗	✗	✗	✗	✗	✗
Status as transgender or non-binary	✓	✗	✗	✗	✗	✗	✗	✗	✗	✗	✗	✗	✗	✗
Citizenship or immigration status	✓	✗	✗	✗	✗	✗	✗	✗	✗	✗	✗	✗	✗	✗
Citizenship or citizenship status	✓	✗	✗	✗	✗	✗	✗	✗	✗	✗	✗	✗	✗	✗
Financial information, which shall include a consumer's account number, account log-in, financial account, or credit or debit card number, in combination with any required security code, access code, or password that would permit access to a consumer's financial account	✗	✗	✗	✗	✗	✗	✗	✗	✓	✗	✗	✗	✗	✗

CATEGORY	CA	CO	CT	DE	IN	IA	MT	NH	NJ	OR	TN	TX	UT	VA
Genetic or biometric data for purposes of uniquely identifying an individual	✓ ⁱⁱⁱ	✓	✓	✗	✓	✓	✓	✓	✓	✗	✓	✓	✓	✓
Genetic or biometric data	✗	✗	✗	✓	✗	✗	✗	✗	✗	✓	✗	✗	✗	✗
Personal data of known child	✗	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✗	✓
Precise geolocation	✓	✗	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
Consumer health data	✓	✗	✓	✗	✗	✗	✗	✗	✗	✗	✗	✗	✗	✗
Status as victim of crime	✗	✗	✓	✗	✗	✗	✗	✗	✗	✓	✗	✗	✗	✗
Social security, driver's license, state identification card, or passport number	✓	✗	✗	✗	✗	✗	✗	✗	✗	✗	✗	✗	✗	✗
Account log-in, financial account, debit card, or credit card number in combination with any required security or access code, password, or credentials allowing access to an account	✓	✗	✗	✗	✗	✗	✗	✗	✗	✗	✗	✗	✗	✗
Union membership	✓	✗	✗	✗	✗	✗	✗	✗	✗	✗	✗	✗	✗	✗
Contents of a consumer's mail, email, and text messages unless the business is the intended recipient of the communication	✓	✗	✗	✗	✗	✗	✗	✗	✗	✗	✗	✗	✗	✗
Financial information, which shall include a consumer's account number, account log-in, financial account, or credit or debit card number, in combination with any required security code, access code, or password that would permit access to a consumer's financial account	✗	✗	✗	✗	✗	✗	✗	✗	✓	✗	✗	✗	✗	✗

California Rulemaking

Existing Regulations

- 67 pages of existing regulations

Pending Rulemaking

- Cybersecurity audits
- Automated decisionmaking technology
- Risk assessments
- Revisions to the CCPA regulations
- Insurance
- Data broker registry fee

Draft CCPA Insurance Regulation



ARTICLE __. INSURANCE COMPANIES

§ 7 __. Definition of Insurance Company.

- (a) For the purposes of these regulations, insurance company shall mean any person that is subject to the California Insurance Code. Insurance company shall include insurance institutions, agents, and insurance-support organizations, as those terms are defined in Insurance Code, section 791.02.

Note: Authority cited: Section 1798.185, Civil Code. Reference: Section 1798.__, Civil Code.

§ 7 __. General Application of the CCPA to Insurance Companies.

- (a) Insurance companies that meet the definition of “business” under the CCPA shall comply with the CCPA with regard to any personal information that they collect, use, process, or retain for purposes not subject to the Insurance Code. For example, those insurance companies shall comply with the CCPA for personal information that is used for purposes not in connection with an insurance transaction, as that term is defined in Insurance Code, section 791.02, subdivision (m).

Note: Authority cited: Section 1798.185, Civil Code. Reference: Section 1798.__, Civil Code.

California Privacy Protection Agency

Which Consumers Covered?

Which Businesses Covered?

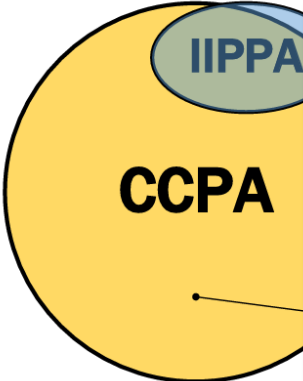


Diagram 2. E

What Information Involved?

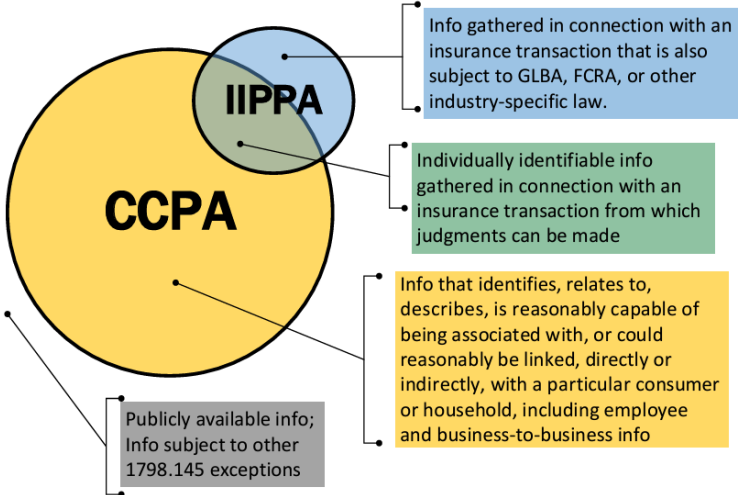


Diagram 3. Information subject to the CCPA and the IIPPA.



GLBA Exemptions

Entity &
Data Level

All others

Data Level

California

Other

Oregon (data
and state law
financial
institution)

Insurance-Specific Exemptions

Maryland

- “Personal data collected by or on behalf of a person regulated under the insurance article or an affiliate of such a person, in furtherance of the business of insurance.”

New Jersey

- Law does not apply to an “insurance institution subject to P.L.1985, c.179 (C.17:23A-1 20 et seq.)”

Oregon

- Law does not apply to “[a]n insurer, as defined in ORS 731.106, other than a person that, alone or in combination with another person, establishes and maintains a self-insurance program and that does not otherwise engage in the business of entering into policies of insurance; . . . An insurance producer, as defined in ORS 731.104; . . . An insurance consultant, as defined in ORS 744.602”

Insurance-Specific Exemptions

Tennessee

- Law does not apply to “An individual, firm, association, corporation, or other entity that is licensed in this state under title 56 as an insurance company and transacts insurance business”

Texas

- Law does not apply to an organization “that is described in section 701.052(a), Insurance Code”

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Federal Action

American Privacy Rights Act

Current Status

- Discussion draft circulate in early April
- Markup scheduled for May 23 with House E&C Committee

Preemption

- Seeks to preempt state privacy laws but contours are unclear

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