

Colorado Legislature Passes Consumer Privacy Legislation

On June 8, 2021, the Colorado legislature passed the [Colorado Privacy Act](#) (“CPA”) (SB 21-190), a broad consumer privacy bill that allows Colorado consumers to opt-out of data collection for the purposes of targeted advertising, sales to third parties, or for profiling in relation to decisions that produce legal or similarly significant effects. Governor Jared Polis (D) has until July 12 to sign or veto the bill or it will automatically become law without his signature. The effective date for the Colorado Privacy Act is July 1, 2023. If enacted, Colorado will become just the third state – after California and Virginia – to pass broad consumer privacy legislation. A veto from the governor is not expected.

This law will require in-scope companies to fully analyze their data collection, use, sharing, and data security practices. It would apply to businesses that collect and store data on more than 100,000 individuals or those earning revenue from the data of more than 25,000 consumers. Worth noting, there is an absence of a revenue threshold for imposing these data privacy obligations, meaning that even large businesses will not be subject to the law so long as they do not fall within one of the two categories listed above.

Prior to passage, the 4A's along with other representatives from the advertising industry issued [a letter of opposition](#) highlighting major concerns in the bill. Important provisions in the CPA include:

- Requiring the Attorney General to establish technical specifications for a user-selected, targeted advertising and sale opt-out mechanism (e.g., global privacy control) by July 1, 2023, which controllers must honor starting July 1, 2024.
- Requiring opt-in consent for processing a consumer's sensitive data, including children's data.
- Giving consumers rights to access, delete, and correct their data. Certain rights do not apply to pseudonymous data.
- Granting consumers the option to use an authorized agent for opt-out requests.

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- Requiring that controllers and processors enter into a written contract for processing personal data.
- Requiring that Data Protection Assessments (DPAs) be developed for a cost-benefit risk assessment of each processing activity that involves personal data. DPAs must be made available to the Colorado Attorney General upon request.
- Does not create a private right of action for consumers.
- Issuing rulemaking and enforcement authority to the CO Attorney General. The AG's office can issue opinion letters and interpretive guidance starting in 2025.
- Creating a two-year sunset on a cure provision that requires the Attorney General and district attorneys to give an entity notice and allow sixty (60) days to cure any alleged violation. This cure period will only be provided until January 1, 2025.

How CPA Stacks Up Against Virginia's Privacy Law

The CPA generally does not impose significant new requirements that are not addressed under [California's](#) or [Virginia's](#) privacy bills. Following Virginia's lead, CPA requires controllers to set up mechanisms permitting consumers to appeal a controller's decision not to comply with a consumer's request. One key difference when compared to the Virginia bill is that CPA does not require Children's Online Privacy Protection Act (COPPA)-compliant consent for processing children's data; instead, CPA does exempt from the law personal data that is processed consistent with COPPA requirements. The cure period in Colorado's bill is also double that of Virginia's bill at 60 days to remedy violations; however, Virginia's bill does not have sunset for its cure period.

With the 2021 state legislative season coming to a close, the 4A's Government Relations team will continue to monitor outstanding state privacy legislation, including a decision by leadership in the Connecticut House of Representatives to remove privacy provisions from the state's biennial budget bill, [SB 1202](#). The revised bill was transmitted back to the Connecticut Senate for consideration.

Federal Privacy Bill Remains Off Hill's Priority List

With a litany of thorny issues currently tying up the Legislative Branch including bipartisan infrastructure spending talks, voting rights protection bills, police reform legislation, and Biden appointee confirmation hearings, it's no wonder Congress hasn't found time to debate federal data privacy legislation this year. Diminishing committee bandwidth and a perceived lack of urgency given increasing state action seem to be the key drivers for stalling the issue; however, it doesn't mean there aren't things going on behind the scenes to prepare for future comprehensive privacy bill negotiations in the 117th Congress.

In the House, bipartisan leadership from the Consumer Protection and Commerce Subcommittee, Reps. Jan Schakowsky (D-IL) and Gus Bilirakis (R-FL), are planning to host a series of roundtables with industry and consumer advocate stakeholders on issues including preemption, private rights of action, data minimization, and anti-discrimination. We expect to hear an announcement on when these events will be scheduled soon. A key data privacy policy priority for Democrats will be bolstering civil rights protections for targeted advertising. A key bill to watch on this topic is [H.R. 3184- the Civil Rights Modernization Act of 2021](#), sponsored by Rep. Yvette Clarke (D-NY). To date, the only comprehensive privacy bill introduced in the House this year is the [Information Transparency & Personal Data Control Act \(H.R. 1816\)](#), sponsored by Rep. Suzan Del Bene (D-OR). It was also introduced last Congress, but failed to advance out of committee.

On the Senate side, Subcommittee on Consumer Protection, Product Safety, and Data Security Chairman Richard Blumenthal (D-CT) is also hoping to initiate federal data privacy proposal discussions in the coming weeks. At a [June 10 event](#), he and Subcommittee ranking member Marsha Blackburn (R-TN) committed to holding hearings on data privacy soon, possibly as early as next month, pending alignment with Committee leadership on scheduling. Both subcommittee leaders acknowledged that there seems to be significant bipartisan consensus on several data privacy policy areas including augmenting children's online privacy protections, bolstering Federal Trade Commission enforcement ability, and codifying consumer data ownership and portability. For now, Democratic and Republican party disagreement seems to center around the areas of federal state law preemption and instituting a private right of action. Committee jurisdictional disagreements over consumer data privacy may also bog down the legislative process. A bipartisan bill, [\(S.1667 -the Social Media Privacy Protection and Consumer Rights Act of 2021\)](#), sponsored by Sens. Klobuchar (D-MN), Burr (R-NC), and Kennedy (R-LA), may be the most promising starting point for bicameral discussions, although as written, the bill does not preempt state privacy laws or address a private right of action. Senator Kirsten Gillibrand (D-NY) also [recently introduced](#) the [Data Protection Act of 2021](#), which would create an independent Data Protection Agency (DPA) to enforce data protection rules—created either by itself or Congress. The agency would be equipped with a broad range of enforcement tools to protect consumer data including civil penalties, injunctive relief, and equitable remedies. The new DPA would also aim to promote data protection and privacy innovation across public and private sectors by developing model privacy and data protection standards, guidelines, and policies for use by the private sector.

Unfortunately, a definitive timeline for the passage of federal data privacy legislation continues to remain uncertain. While bicameral committee leadership says they are hoping to pass a comprehensive, national data privacy law by 2022, the 4A's Government Relations team remains less optimistic. It's likely that the ever growing list of policy priorities that the Democrats want to accomplish in Biden's first year in office will continue to push comprehensive federal data privacy reform legislation further down Congress' to-do list. The 4A's, along with other key stakeholders in the advertising industry, are

continuing to advocate for a responsible data use, accountability, and security framework proposed by [Privacy for America](#).

New FTC Chair Sails through Confirmation

The Biden Administration's Federal Trade Commission (FTC) nominee, progressive Lina Khan (D) was [sworn in](#) as chair of the Federal Trade Commission last week. Commissioner Khan will take over the chairmanship from Acting Chair Rebecca Kelly Slaughter, who has led the Commission under the Biden presidency. A vocal critic of big tech and staunch supporter of aggressive antitrust law enforcement, she had broad bipartisan support in her Senate confirmation process. President Biden is expected to name a third commissioner to succeed Rohit Chopra (D), whom he has nominated to lead the Consumer Financial Protection Bureau.

To learn more about the 4A's efforts to advocate for a pragmatic solution to federal and state data privacy and security policy, visit our [Government Relations Privacy Page](#).

State Digital Advertising Tax Update

In 2020 after Maryland enacted a first-of-its-kind law ([H.B. 732](#)) levying taxes on annual gross revenues derived from digital advertising services, many tax policy experts predicted a wave of new state digital advertising taxes to backfill COVID-19-related budget shortfalls. While digital advertising and consumer data broker tax policies have been floating around for a few years now, lawmakers are facing increasing pressure to tax digital advertising revenues and data brokers to address increasing public misperceptions of social media company tax loopholes and soaring profits from businesses utilizing bulk consumer data.

With the 2021 state legislative season coming to a close and most FY 2022 state budgets enacted, we wanted to share the latest on state digital advertising tax laws. Each state has proposed legislation with different structures, different rules and different legal challenges. Agencies with operations in multiple states may find it hard to keep up.

The 4A's Government Relations team put together a quick issue overview and state bill tracking chart to help you follow which state legislatures are proposing new taxes and the types of tax frameworks being floated. Fortunately, thus far, no new state digital advertising taxes have been enacted during the 2021 state legislative season, although several serious proposals have been introduced in New York, Connecticut, West Virginia, and Massachusetts. It appears many states are taking a wait and see approach with the associated legal challenges facing Maryland's 2020 law, which has delayed implementation until 2022.

Biden Administration Advances Made In America Agenda by Strengthening Federal Contracting Opportunities For Small, Disadvantaged Businesses

During his first days in office, President Biden signed a [Made-in-America Executive Order](#) directing Federal agencies to ensure taxpayer dollars support American manufacturing, help American businesses compete in strategic industries, and safeguard American workers rights and benefits. While the initiative is chiefly targeted toward strengthening the vitality of U.S. manufacturing, one of the key pillars of this policy is to more intentionally and aggressively target the federal government's purchasing power toward federal contracting with U.S. small disadvantaged businesses (SDB). As part of this initiative, the Administration also plans to implement a multi-pronged small business contracting strategy that includes formula-based awards, widespread outreach and counseling to small businesses owners, and transparent monitoring of contract awards. Additional future plans include launching a new Federal Procurement Center — a new program to help minority-owned firms apply for and win federal government contracts.

On June 1, the Biden Administration [announced](#) that it would, among other initiatives, leverage federal procurement policy and the section 8(a) program to help advance black wealth and better address the racial wealth gap in America. Specifically, the policy directive aims to ensure that at least 23% of federal contracts get awarded to small, disadvantaged businesses (SDB), translating into an additional \$100 billion over five years (over a 50% increase from FY2021). All told, attainment of the new goal will represent the biggest increase in SDB contracting in more than 30 years ago.

As part of the initiative, federal agencies will be directed to assess every available tool to lower barriers to entry and increase opportunities for small disadvantaged businesses (SDB) and traditionally underserved entrepreneurs to compete for federal contracts. The Administration's aggressive approach for boosting SDBs means that small businesses will likely see expanded opportunities to contract directly with the U.S. government (USG). It could also mean new expanded subcontracting opportunities for small businesses, as large companies that serve as prime or subcontractors to the USG will see an increase in small business subcontracting goals. As such, large agencies should be aware of this policy change and plan to increase their SDB spend.

Traditionally, the Small Business Administration (SBA) promulgates the rules

governing which businesses qualify as SDB under Section 8(a). An SDB must be at least 51 percent owned and controlled by a socially and economically disadvantaged individual or individuals. African Americans, Hispanic Americans, Asian Pacific Americans, Subcontinent Asian Americans, and Native Americans are presumed to qualify. Other individuals can qualify if they show by a "preponderance of the evidence" that they are disadvantaged. All individuals must have a total net worth of < \$750,000, excluding the equity of the business and primary residence. Other industry-specific business size standards may apply.

For any questions or to learn more about the [4A's Government Relations](#) practice, please reach out to **Alison Pepper, 4A's, EVP - Government Relations**, at apecpper@4as.org.

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