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**2024 Data Privacy Legislative Review:  
Federal Lawmakers Fall Short As More State Laws Gain Teeth**

by

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**I. Introduction and Summary**

With the year's end right around the corner, the time is right for a recap of data privacy legislative developments. After a flurry of springtime activity and a brief bout of "[fired up](#)" enthusiasm, efforts to pass a federal comprehensive data privacy statute hit a familiar wall: counterproductive calls for inclusion of a private right of action. Meanwhile, seven additional states passed laws, bringing the total ([by my count](#)) to twenty. And the number of states with enforceable laws in effect more than doubled, to nine.

For individuals attempting to understand their rights and businesses struggling to comply with their obligations, the long-feared "patchwork" of inconsistent state approaches has arrived. This is a troubling development that, if not remedied, will have the effect of harming consumers.

Looking ahead, eight additional state laws will become effective in 2025, thereby exacerbating the situation. But with single-party control of the White House, Senate, and House of Representatives, there is a cause for at least some optimism that the logjam at the federal level at

long last will break. Despite numerous disappointing false starts over the past several years, including 2022's [American Data Privacy and Protection Act](#) and this year's [American Privacy Rights Act](#), the pressing – and growing – need for a single set of simple, workable data privacy rights and responsibilities compels continued advocacy for the adoption of a national privacy framework that preempts state laws and rests enforcement solely in the hands of the Federal Trade Commission.

## II. The American Privacy Rights Act's Brief Moment in the Sun

As I described in "[Congressional Leaders Return Privacy to the Front Burner](#)," an April 2024 *Perspectives from FSF Scholars*, the American Privacy Rights Act of 2024 (APRA) appeared, seemingly out of thin air, on April 7, 2024. Released in the form of a [Discussion Draft](#), its co-sponsors, Senate Commerce Committee Chair Maria Cantwell (D-WA) and House Energy and Commerce Committee Chair Cathy McMorris Rodgers (R-WA), [hailed](#) the APRA as "the best opportunity we've had in decades to establish a national data privacy and security standard."

On the plus side, the APRA included language (1) generally preempting state privacy laws, and (2) terminating the FTC's so-called "commercial surveillance" proceeding, a misguided overreach in response to which Free State Foundation President Randolph May and I offered [numerous criticisms](#). On the other side, the APRA problematically established an individual private right of action, thereby opening the door to opportunistic lawsuits, discouraging innovation, and burdening, in particular, small businesses and new entrants.

It appears that the private right of action sealed the APRA's fate. After [advancing from the Innovation, Data, and Commerce Subcommittee](#) to the House Energy and Commerce Committee in May, the APRA was scheduled for a [full committee markup](#) on June 27, 2024. That morning, however, the markup was [cancelled, reportedly](#) because of the APRA's inclusion of an individual right to sue. There has been no congressional focus of note on the APRA since.

## III. The Proliferation of the State-Level "Patchwork"

Without a federal comprehensive data privacy regime in place that preempts state laws, a steadily expanding number of states have taken matters into their own hands, creating a "[patchwork](#)" of inconsistent approaches that create confusion and impose unjustified costs.

At the beginning of 2024, that total was thirteen, five of which had seen their distinct laws go into effect – California (not just [once](#), but [twice](#)), [Virginia](#), [Colorado](#), [Connecticut](#), and [Utah](#) – and eight of which had not: [Iowa](#), [Indiana](#), [Tennessee](#), [Montana](#), [Texas](#), [Oregon](#), [Delaware](#), and [Florida](#).

Over the course of this year, effective dates in Florida, Montana, Oregon, and Texas came and went, increasing the number of different enforceable state approaches to nine. In addition, seven more states passed their own takes on a comprehensive data privacy law, bringing the total to twenty: [New Jersey](#), [New Hampshire](#), [Kentucky](#), [Nebraska](#), [Maryland](#), [Minnesota](#), and [Rhode Island](#).

Looking forward to 2025, [eight more state laws will become enforceable](#). In Delaware, Iowa, New Hampshire, and Nebraska on the first of the year, in New Jersey later that month, in Tennessee and Minnesota in July, and in Maryland in October.

While these laws overlap in many ways, they are by no means identical. The slate of consumer rights created, the types of notices required, the limits imposed on how businesses may use personal data, the entities to which the laws apply – these and other factors vary from state to state.

The Internet, however, is blind to state boundaries. As such, consumers are not well served by a piecemeal approach that hinges upon opaque factors such as the location of a website's corporate headquarters, the number of consenting customers from which an online destination obtains personal information, or the amount of money that that activity generates.

Nor, for that matter, are businesses. In a [2021 \*Perspectives\*](#), I described a scenario in which a company might reasonably choose to comply with a "worst-of-all-worlds" hypothetical set of regulations rather than attempt to tailor its compliance efforts to the home state of each of its customers. In the more than three years that have passed since that paper was written, that "worst-of-all-worlds" scenario, described at a point in time when just two state laws had become enforceable, has grown significantly worse.

#### **IV. Conclusion**

On New Year's Day, the number of states with enforceable, distinct, confusion-causing comprehensive data privacy laws will jump from nine to thirteen. During 2025, that total will increase to seventeen, and on the first day of 2026 another three state statutes will go into effect. Keep in mind, too, that at any point still more states could jump into the fray. A twenty (or more) state "patchwork" is unworkable for consumers and untenable for companies, and this is especially so for smaller businesses and new entrants unable to absorb the associated compliance costs.

The next Congress, at long last, should enact a federal data privacy regime that preempts state laws and empowers the FTC with exclusive enforcement authority.

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#### **Further Readings**

Andrew Long, "[Federal Privacy Bill Hits Roadblock, State Activity Picks Up Speed](#)," *FSF Blog* (June 28, 2024).

Andrew Long, "[Congressional Leaders Return Privacy to the Front Burner](#)," *Perspectives from FSF Scholars*, Vol. 19, No. 13 (April 19, 2024).

Andrew Long, "[18 ... and Up? Maryland Is the Latest State to Enact a Privacy Law](#)," *FSF Blog* (May 13, 2024).

Andrew Long, "[Nebraska Is State 17 to Pass Privacy Law; House Holds Hearing on APRA](#)," *FSF Blog* (April 29, 2024).

Andrew Long, "[New Jersey Passes 2024's First State Privacy Law](#)," *FSF Blog* (January 19, 2024).

Randolph J. May, "[Communications Law and Policy Priorities for 2024](#)," *FSF Blog* (January 11, 2024).

Andrew Long, "[More States Compound the Dreaded Privacy 'Patchwork' Problem](#)," *Perspectives from FSF Scholars*, Vol. 18, No. 31 (July 24, 2023).

Andrew Long, "[In 2023, the Congressional Privacy Impasse Could Reach Its Breaking Point](#)," *Perspectives from FSF Scholars*, Vol. 18, No. 6 (February 3, 2023).

Andrew Long, "[A Tale of Three Data Privacy Bills: Federal Legislative Stalemate Enables Bad State Laws](#)," *Perspectives from FSF Scholars*, Vol. 17, No. 2 (January 6, 2022).

Andrew Long, "[Inconsistent State Data Privacy Laws Increase Confusion and Costs](#)," *Perspectives from FSF Scholars*, Vol. 16, No. 14 (March 16, 2021).

Andrew Long, "[A Privacy Private Right of Action Is Inferior to FTC Enforcement](#)," *Perspectives from FSF Scholars*, Vol. 15, No. 4 (January 21, 2020).