

# Online Children's Privacy State Legislation & Litigation

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# State Online Children's Privacy Laws

No national, uniform approach to regulating children's data outside of federal Children's Online Privacy Protection Act (**COPPA**) of 1998.

States have enacted **over a dozen laws** attempting to address this issues.

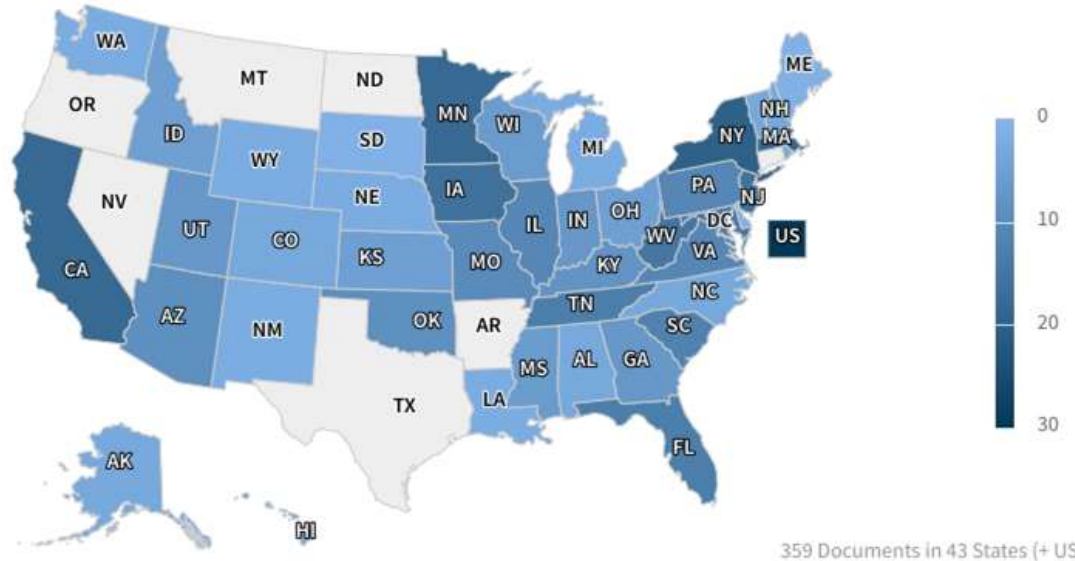
This year, lawmakers have introduced nearly **330 bills** related to child online safety (+30 in Congress).

Most are standalone bills that regulate specific issues related to children's interactions with online services and social media platforms.

Largely a **bipartisan** effort across the states.

Child Online Safety Bills

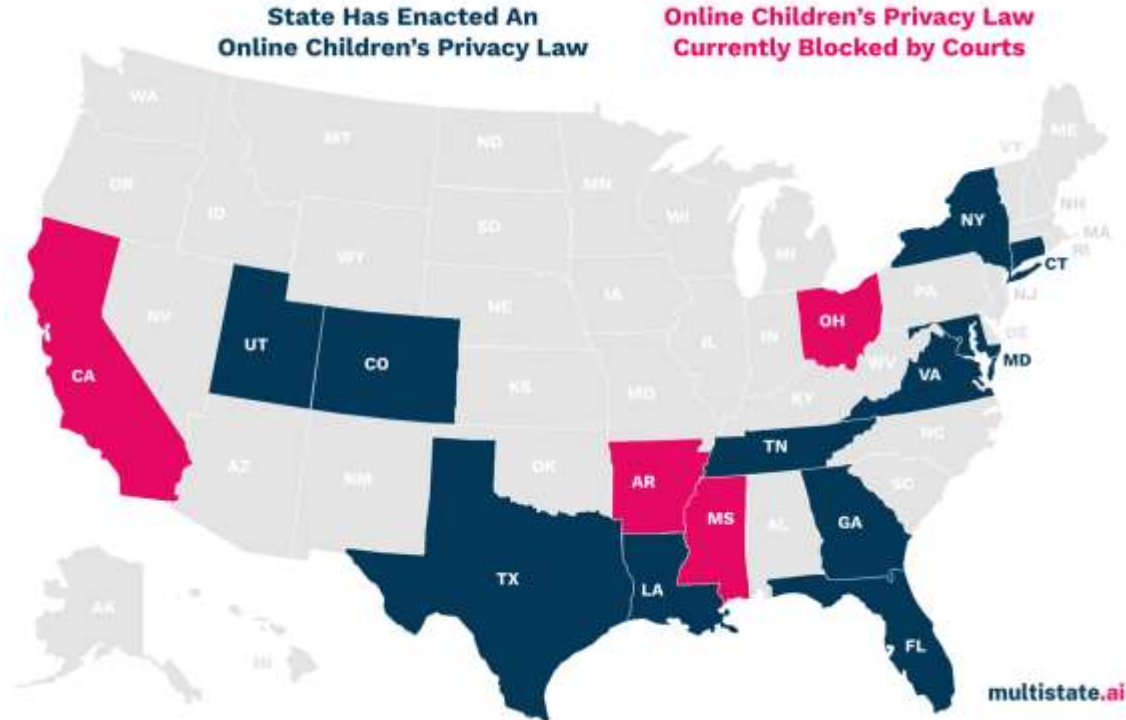
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# State Online Children's Privacy Laws

## Common provisions:

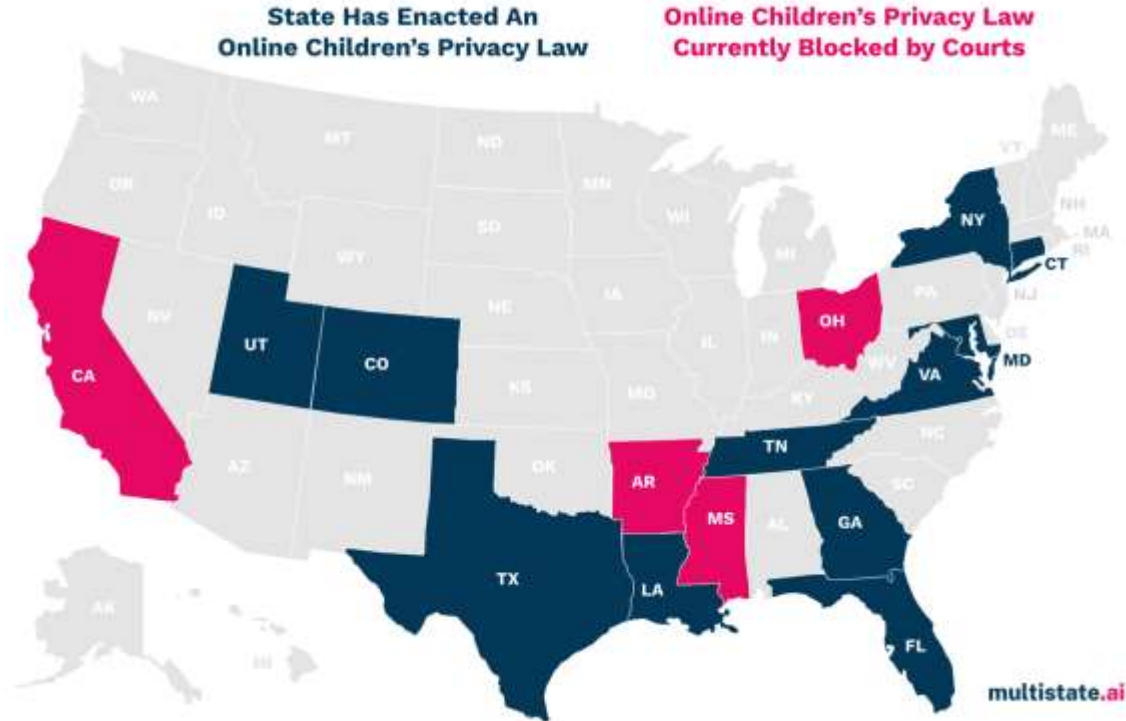
- Target “**online services**” and/or “**social media platforms.**”
- Limiting the selling or sharing of “**sensitive**” data of users under a certain age (e.g., geolocation data).
- **Additional disclosures** for child users, data protection **impact assessment** obligations, and **age verification** requirements.
- Proactively consider children’s best interest at the **design stage.**
- Restricting specific, potentially addictive **design features** (e.g., chronological vs algorithmic social media feeds).
- **Parental controls** and **consent.**
- **Monetary liability** for violations (fines, PRA)



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## Legal challenges:

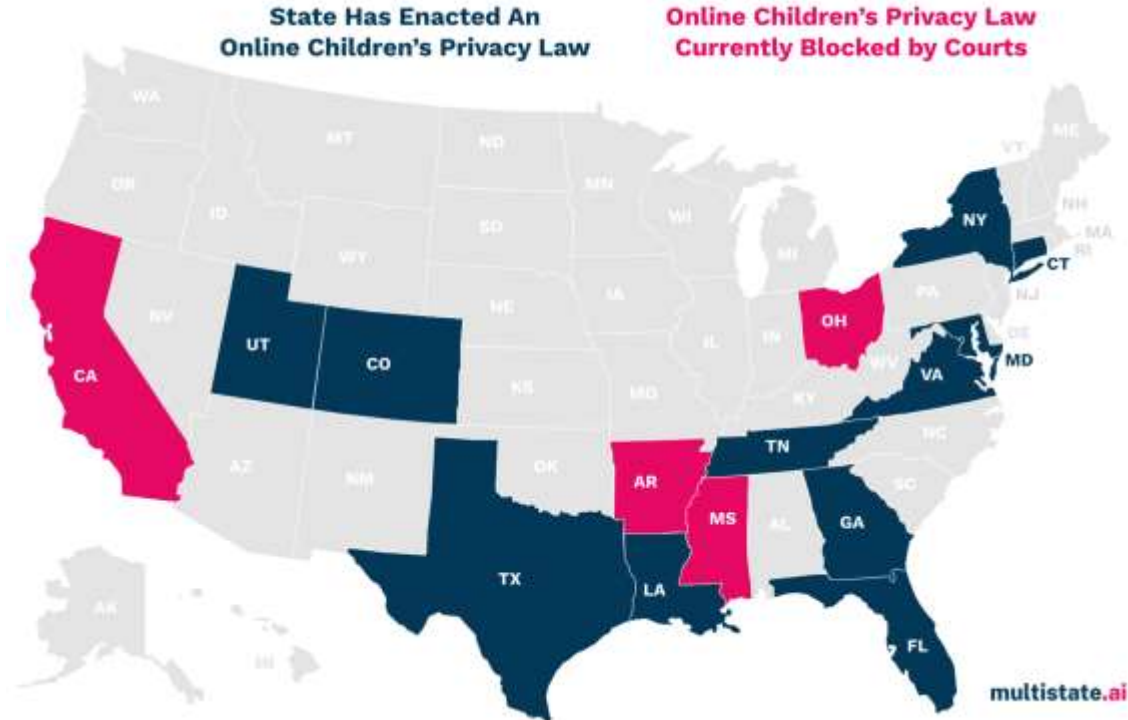
- Some of these laws are facing **significant legal challenges**.
- A handful are already **under injunctions**, blocking implementation until a decision can be reached on the merits.
- Biggest legal hurdle is free speech rights under the **First Amendment**.
- **Lawmakers are adapting** by enacting new laws that might better withstand legal scrutiny.



# State Online Children's Privacy Laws

**California** enacted the Age Appropriate Design Code Act (CA ADCA) in 2022.

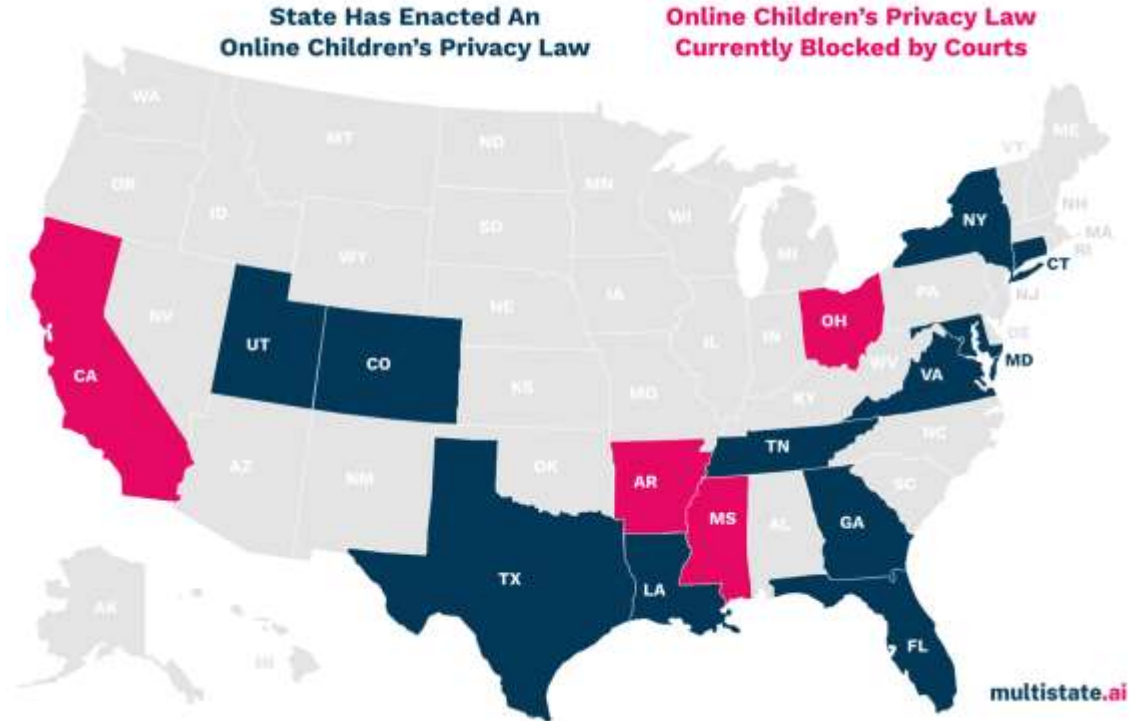
- CA **Privacy Rights Act** (2020) already limits “selling” or “sharing” of children’s (under 16) personal information.
- ADCA requires certain businesses that provide online services that are “**likely to be accessed by children**” to have the maximum privacy settings enabled by default.
- Requires businesses to complete a Data Protection **Impact Assessment** for any online services, products, or feature that are likely to be accessed by children.
- U.S. A District Court judge **blocked** the law from going into effect in Sep. 2023.



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Arkansas (2023), Ohio (2023), and Mississippi (2024) enacted social media age verification laws.

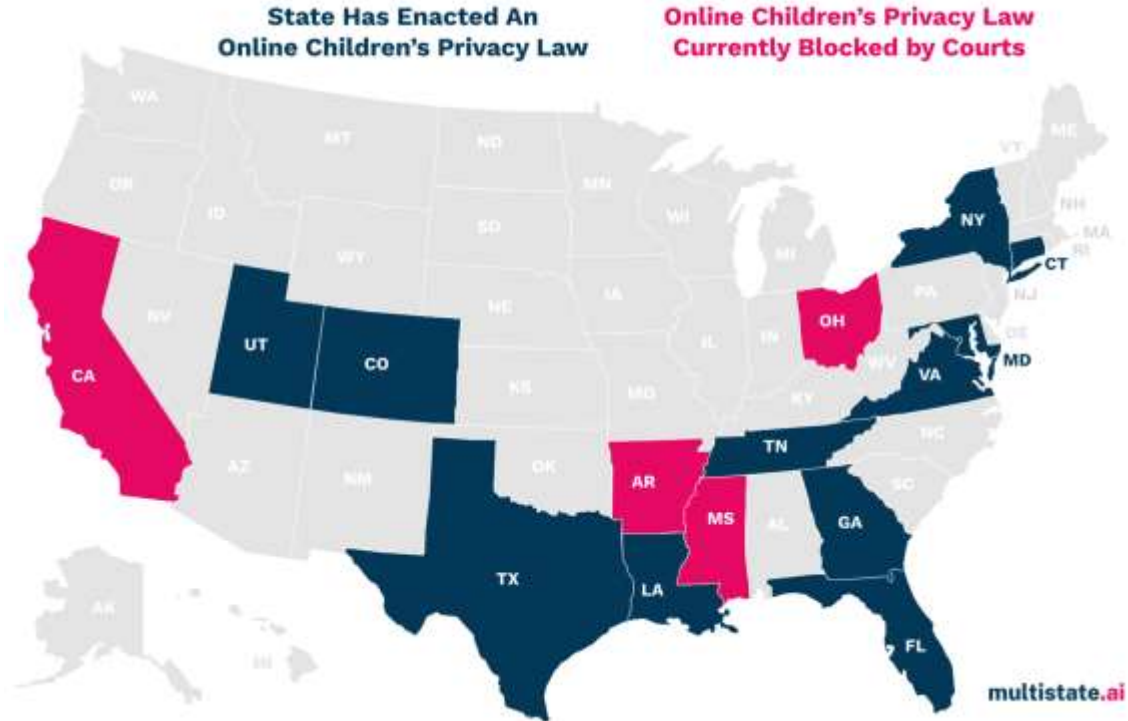
- Requires an **age verification** process and **parental consent** for minors to have a social media account.
- In separate cases, U.S. A District Court judges granted preliminary injunctions, **blocking** these laws from going into effect in (AR - Aug. 2023, OH - Feb. 2024, and MS - July 2024).
- The judge in MS case found that while protecting children is a compelling state interest, the law was **not narrowly tailored** to accomplish that goal without burdening First Amendment rights.



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**Utah** initially enacted a pair of laws in 2023, but replaced them in 2024 with new laws.

- New law requires an “**age assurance system**” (95% accuracy). Repeals 2023 law’s parental consent requirements and restrictions on nighttime access.
- Requires **maximum privacy setting** be enabled by default for children.
- Make **supervisory tools** available to parents of children users.
- The 2023 law **limited the designs** and features that might cause children to become addicted to the platform.
- These design requirements were replaced in 2024 with a **private right of action** for “adverse mental health outcomes” at least partially attributable to a child’s social media use.



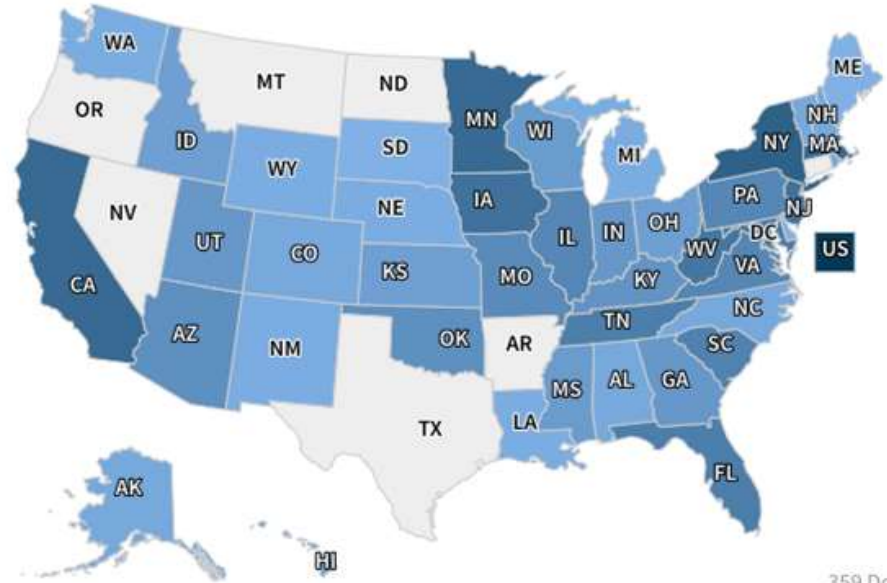
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Notably, in 2024:

- **Florida** passed a prohibition on social media accounts for those under 14 (parental consent required for 14-15 year olds).
- **Georgia** (under 16) and **Tennessee** (under 18) enacted parental consent laws for children to have social media accounts.
- **Maryland** enacted a modified version of a California's Age-Appropriate Design Code Act.
- **New York** enacted protections for children on social media, requiring chronological (rather than personalized) feeds and blocking notifications during overnight hours without parental permission.

Bottom Line: **This issue isn't going away.**

States will continue to iterate, react to court decisions, and try new avenues judges may allow. If so, that path is likely to be adopted widely (if not nationally).







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## Deepfakes in Electoral Campaigns

### State Legislators Address A Direct Threat from AI: Their Own Electoral Campaigns

As lawmakers contemplate their reelection campaigns, a [direct concern](#) of theirs, a concern shared by industry leaders, is AI's use to influence future elections. AI, in the form of "deepfake" images, audio, and video could be used to manipulate images and recordings as large as candidate's speech like something they didn't say, alter a candidate's appearance in an embarrassing manner, or doctor images to perpetuate false narratives. Add to today's viral social media environments, an order of magnitude more voters will have had more than one deepfake than will see any fact-check page correcting the truth.

Deepfake media produced by AI to influence elections may originate from a variety of sources – individual campaigns, outside groups seeking to support or support a candidate or issue, or foreign adversaries seeking to influence the outcome of an election. It's unclear at this point what type of impact deepfake AI deepfakes could have on elections, but this potential impact is being taken especially seriously given social media's influence on recent elections. A report [today](#) we've seen from policymakers looking to regulate AI is the report that lawmakers failed to act on social media and that they aren't make the same mistake with AI.

And we've already seeing the early effect of media distortions on elections. In 2022, a [paraphrased video](#) of former House Speaker Nancy Pelosi went viral, which initially slowed down her speech and made it appear slower, later being removed during a press conference. This summer, a PAC supporting Florida Governor DeSantis [submitted](#) an affidavit AI-generated audio of former President Donald Trump attacking former Governor Republic. While the audio was based on posts Trump had made on social media, it did not reflect words that were actually spoken by the former president. In a recent election for president in Argentina that month, AI-generated images of candidates are circulating, both positive and negative, as well as manipulated videos of candidates making statements that were not shared by the candidate.

Currently, few states have enacted laws to regulate the use of deepfake media in electoral campaigns.

### States Regulation of the Use of AI-Generated Media in Elections

#### Introduced bills to regulate AI use in elections in 2023

#### Enacted bills to regulate AI use in elections

Source: Multistate  
Data as of Dec. 8, 2023.

Currently, 9 states have enacted laws to regulate the use of "deepfake" media in electoral campaigns.



State lawmakers' concerns over deepfake use in elections date back to 2019, when legislators in California (CA AB 130) and Texas (TX SB 121) enacted bills to prohibit the use of deepfakes to influence political campaigns. Lawmakers in seven additional states introduced legislation this year aiming to reduce the harm that AI could pose to elections. Three states signed bills into law this year: Minnesota enacted digital ID (MN AB 1745) in November for the use of deepfake technology to influence an election. Washington enacted a bill (WA SB 5121) to require disclosure when any manipulated audio or visual media is used in an electronic news communication. Michigan enacted a package of bills aimed at reducing the potential harm caused by AI in elections. These laws require disclosure (MI HB 5121) for pay-received phone messages and political advertisements that were created with AI, prohibit (MI HB 5421) distributing media that manipulates the speech or conduct of a candidate within 30 days of an election without a disclosure, and establish (MI HB 5423) monitoring guidelines for election law officers related to deepfake media created with AI.

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## Lessons from Regulating Facial Recognition Technology

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### Lessons from Regulating Facial Recognition Technology

Along with recent and highly anticipated releases, AI itself is not all that new, and policymakers have addressed AI in one case long before ChatGPT burst on the scene a year ago. Our example is facial recognition technology — something that policymakers quickly became skeptical of, especially when used on the public without consent. State legislators moved forward but eventually backtracked on broadly banning facial recognition use by law enforcement. However, the desire to regulate how technology like facial recognition is used is still alive.

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## Lawmakers Address A Direct Threat from AI: Their Campaigns

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### Lawmakers Address A Direct Threat from AI: Their Campaigns

Last week, legislators still just this time were held in a handful of states, which means we're officially in the 2024 presidential election cycle. As lawmakers contemplate their reelection campaigns, a direct concern of theirs, a concern shared by industry leaders, is AI's use to influence 2024 election media, AI, in the form of "deepfake" images, audio,

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## California's Proposed AI Rules: Notifications and Opt-Outs

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### Understanding California's Proposed AI Rules: Notifications and Opt-Outs

On November 22, 2023, the California Privacy Protection Agency (CPTA) released a draft set of regulations related to business' use of "mass-scale decision-making technology." The draft regulations, if adopted, would establish a framework for how businesses can implement automated decision-making technology that uses personal information to make a decision as well as a requirement for business decision-making. A key issue that the CPTA draft regulations address is when a consumer can opt out of a business' use of this technology.

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## AI Policy 101: Key Trends in State Legislation

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### AI Policy 101: Key Trends in State Legislation

In total, state lawmakers have introduced over 200 bills related to AI this year. Truly, the vast majority of this legislation failed to move past the committee stage of the legislative process. While a few of these bills focused on generative AI models, many of



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