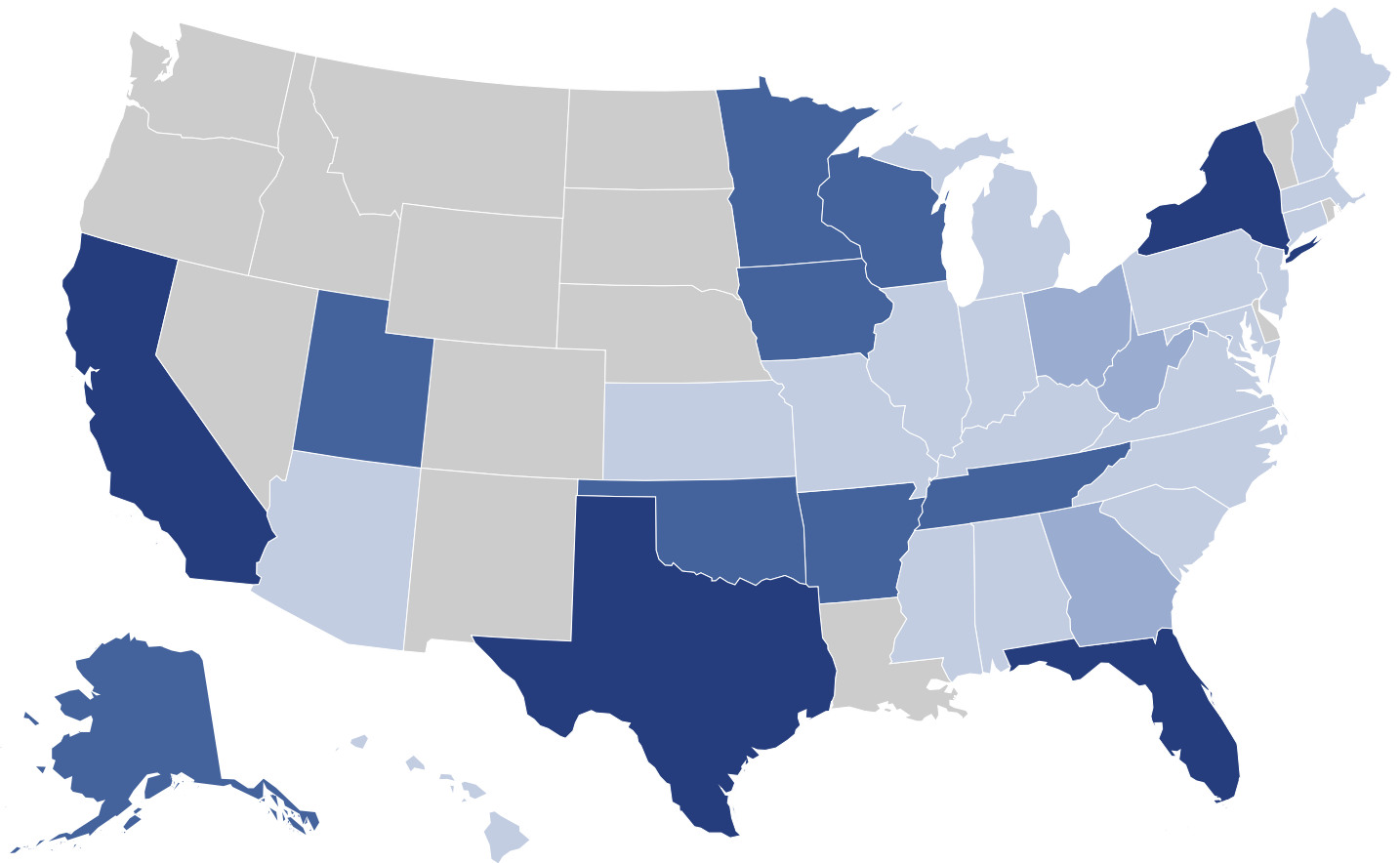




# State Content Moderation Landscape

Amid ongoing debates at the federal level, state lawmakers began their own initiatives to regulate online content moderation around 2018. Since 2021, states have introduced over 250 bills to regulate content across digital services' platforms. States such as California, the District of Columbia, Florida, Georgia, Minnesota, New York, South Carolina, Texas, and Utah are considering or have enacted legislation opposed by CCIA. Many of these bills are unconstitutional, conflict with federal law including Section 230, and would place major barriers on digital services' abilities to restrict dangerous con-tent on their platforms.

We anticipate that debates over content moderation will gain traction again soon after the next legislative cycle begins in 2023. CCIA continues to develop state-focused advocacy materials, provide real-time monitoring of state legislative activity, and coordinate with third-party stakeholders and legislators.



## Legend

- Introduced or Prefiled
- Passed Original Chamber
- Out of Committee
- Enacted

## Types of Content Moderation Measures

### 1 “Censorship”

#### What:

Restricts certain content removal practices or removal of specified content (e.g., political, religious) by online platforms. While most bill provisions apply broadly to all users, several apply specifically to content posted by, about, or on behalf of elected officials or candidates for public office. Many proposals specify steps a company must take in order to remove content, including notification and appeals processes.

#### Where:

- [Arizona SB 1344](#)
- [Georgia SB 393](#)
- [Michigan HB 5973](#)

#### Impact:

Forcing platforms to host any and all content raises serious First Amendment concerns. States should not require digital services to carry the “viewpoint” of nefarious actors or expect that they be the ultimate arbiter in identifying what is and what is not appropriate internet behavior or accurate information.

### 2 Transparency Reporting and Disclosure Requirement

#### What:

Requires platforms to submit regular reports detailing actions taken in response to violations of terms of service. Compels digital services to release confidential information regarding internal practices (e.g., algorithms).

#### Where:

- [California AB 587](#)
- [Ohio HB 441](#)
- [Georgia SB 393](#)

#### Impact:

Digital services are focused on preventing the spread of harmful online content through multi-faceted approaches – using technologies to flag content, employing trust and safety professionals, and creating tools and processes to empower users to flag such content. By providing greater insight into the workings of internal practices, bad actors may have the means to employ an increasingly evolving set of methods to try and skirt terms of service violations.

### 3 Disclosure and Auditing or Testing Requirements for Algorithms

#### What:

Addresses potential bias in algorithmically-informed decision-making technologies. Contains overly broad definitions and reporting requirements.

#### Where:

- [DC B24-0558](#)
- [Georgia HB 1651](#)

#### Impact:

Because these definitions tend to be so broad, algorithms that are aimed at positive outcomes for the public could be negatively impacted. Broadly applied and burdensome compliance requirements may also disproportionately impact small businesses. Overly prescriptive reporting requirements would require companies to divulge a vast amount of proprietary information. Disclosure requirements should not risk exposing trade secrets or business sensitive information as this would have a chilling effect on customer service and innovation while yielding little to no beneficial results for online users.

## Types of Content Moderation Measures

### 4 Revoke Tax Incentives

#### What:

Penalizes businesses for violating new “censorship” regulations by restricting their access to tax incentives, terminating any existing contracts they hold with public entities, and/or disqualifying them for bidding on public contracts.

#### Where:

- [Kentucky SB 82](#)
- [Oklahoma SB 1815](#)
- [Iowa SF 580](#)

#### Impact:

This type of penalization does not fundamentally solve the problem of curating a safer and better internet for all. This approach can lead to ultimately harming the wider internet much more than punishing companies for their failure to comply.

### 5 Child Safety

#### What:

Requires businesses that provide online services, products, or features likely to be accessed by children to comply with specified standards or outright ban children from accessing certain platforms.

#### Where:

- [California AB 2273](#)
- [New York SB 9563](#)

#### Impact:

These bills provide a great deal of subjectivity with little guidance on how to comply. The goal is to encourage and incentivize companies to take proactive steps to protect children online. At a minimum, proposed laws should include cure provisions that allow companies to correct and come into compliance. Simply enforcing punitive measures does not successfully create mechanisms for children’s online safety.

### 6 Establish an Oversight Body

#### What:

Establishes regulatory bodies to oversee various activities carried out by social media companies.

#### Where:

- [Tennessee SB 2161/HB 2369](#)
- [Colorado SB21-132](#)

#### Impact:

Businesses operating online depend on clear regulatory certainty across all jurisdictions. Ambiguous and inconsistent regulation at the state or local levels would undermine business certainty, creating significant confusion surrounding compliance. This type of regulatory patchwork may deter new entrants, harming competition and consumers, and disproportionately harm small businesses that lack the funding to comply with 50 different regimes. State policymakers should defer to existing federal law.

## Types of Content Moderation Measures

### 1 Study and Investigation

**What:**

Requires the legislature or an appointed commission to study or investigate digital services' practices.

**Where:**

- [Connecticut SB 220](#)
- [New York SB 9465](#)
- [Virginia HB 1195](#)

**Impact:**

If these studies fail to involve relevant stakeholders, including those who provide digital services, legislators may not gain critical insight into how these services are provided and may risk advancing ill-informed and inadequately tailored legislation. Since legislators are typically not technologists or trust & safety practitioners, experts help to ensure that proposed laws not only protect consumers but also adhere to constitutional protections and allow for innovation and growth.

### 2 Increased Content Removal

**What:**

Requires online platforms to implement new or additional strategies to moderate dangerous, illegal, false, or otherwise harmful information online. Primarily sponsored by Democratic lawmakers.

**Where:**

- [New York AB 8558/SB 8316](#)
- [California SB 1390](#)
- [Minnesota SF 3933](#)

**Impact:**

Forced content removal or editorial decisions raise serious First Amendment concerns. States should not require digital services to carry the "viewpoint" of nefarious actors or expect that they be the ultimate arbiter in identifying what is and what is not appropriate internet behavior or accurate information. This type of legislation also conflicts with Section 230.

### 3 Regulating Access to Abortive Care Information

**What:**

Holds online services criminally liable for hosting information related to obtaining an abortion, knowing that the information will be used, or is reasonably likely to be used, for an abortion. This type of legislation is based on a [model law](#) proposed by the National Right to Life Committee.

**Where:**

- [South Carolina S. 1373](#)

**Impact:**

This type of legislation raises serious First Amendment concerns, restricting access to information to services that are still legal at the federal level. These types of bills potentially expose internet services to lawsuits and prosecution from broad new classes of litigants.



## Types of Content Moderation Measures

### Resolutions

#### What:

Resolutions calling on Congress to amend or repeal Section 230.

#### Where:

- [Florida HM 23](#)
- [Illinois HR 637](#)
- [New Jersey ACR 117](#)

#### Impact:

Section 230 is key to free speech online and to dealing with lawful but awful material. Section 230 allows users to post their own content online and companies to remove dangerous content ranging from fraudulent information to disinformation by foreign actors. Amending or repealing Section 230 would expose users to a range of online threats if companies were no longer able to protect them. Section 230 allows service providers to remain open by default and worry about excluding misuse when it occurs, giving a voice to everyone with an internet connection. Every website that allows users to post information, share content, and comment relies on Section 230.

## Key States To Watch In The 2023 Legislative Cycle

### California:

As California wrapped up its legislative session, lawmakers approved several problematic bills regarding online content moderation and algorithms. The bills ranged from regulating devices and features on online platforms to holding companies responsible for underage users' access to the services. Measures like [AB 587](#) and [AB 2273](#) carry heavy compliance requirements along with costly penalties for non-compliance. Governor Gavin Newsom (D) ultimately signed these measures into law.

The [5Rights Foundation](#), a UK based organization founded by Baroness Beeban Kidron, was a "co-source" or sponsor of AB 2237 and is likely to [continue their efforts](#) to push similar legislation across the states in the coming years.

### Florida:

With the ongoing litigation regarding [SB 7072](#) passed in the 2021 session, it is likely that content moderation along with a whole host of tech-related issues will be taken up again in the Florida 2023 session. Although the Legislature only introduced two pieces of legislation during the 2022 session regarding content moderation, Florida Republicans are poised to continue debates over whether and how the legislature should regulate social media platforms. [HB 299](#) contains provisions defining social media platforms as "common carriers" and defines reporting requirements. The House also introduced [HM 23](#), calling on Congress to repeal Section 230. These types of policies could gain further traction when the legislature reconvenes in the beginning of March 2023.

### District of Columbia:

Though Chairman Phil Mendelson (D) introduced [B24-0558](#) in December 2021, a [hearing](#) was finally held on the bill on September 22, 2022. CCIA submitted testimony explaining that the language in the legislation was overly broad, would impede business activity, and harm consumers. Though the Council is scheduled to adjourn on December 31, 2022, making this measure no longer eligible for consideration, it is possible that a similar measure could be introduced during the next session given the interest by Attorney General Karl Racine (D) in seeing a bill of this nature passing.



## Key States To Watch In The 2023 Legislative Cycle

### Minnesota:

The Minnesota Legislature introduced eight bills in 2022 concerning content moderation. Though none of the eight bills passed both chambers, the likelihood of content moderation continuing to be top of mind for legislators is anticipated.

The 2022 legislation included measures ([SF 3933/HF 3724](#)) seeking to regulate algorithms that target user-generated content at account users under 18. With other children's online safety and privacy legislation passing in California, these policy discussions are likely to be widespread in 2023.

### New York:

The New York Legislature introduced several content moderation bills this session, including two that the Governor signed. [SB 9465](#) establishes a task force on social media and violent extremism, and [AB 7865/SB 4511](#) requires social media networks to provide and maintain mechanisms for reporting hateful conduct on their platform(s). Opponents of the latter measures maintain that the language is vague and overly broad, and may lead to the unintended consequences of a wholesale ban on categories of particularly risky content when users report third-party content, creating a collateral censorship problem.

In September 2022, the Senate introduced [SB 9563](#) that would impose additional data privacy and content moderation requirements on entities offering an online product that is targeted to users under 18. These requirements include conducting data protection impact assessments, reporting about community standards for online published content, in addition to banning online advertising targeted to children. Though this measure is unlikely to pass before the end of the year, due to the traction this type of legislation is gaining in other legislatures, including California, it is likely that these provisions will resurface in 2023.

### Ohio:

Ohio House Republicans began legislating on content moderation in 2022 by introducing [HB 441](#), aimed at prohibiting a social media platform from "censoring" a user, a user's expression, or a user's ability to receive the expression of another. The bill also declares that any social media platform that functionally has more than 50 million active users in the U.S. in a calendar month is a "common carrier" and includes a private right of action provision opening up social media companies to costly litigation expenses. The legislation passed the first chamber and is still eligible for consideration in the Senate until the Ohio Legislature adjourns on December 30, 2022.

### Texas:

With the ongoing litigation regarding [HB 20](#) passed in the 2021 session, it is likely that content moderation along with a whole host of tech-related issues will be taken up again in the Texas 2023 session. During the interim in 2022, the Senate Committee on State Affairs held an [interim study hearing](#) on privacy and transparency, including biometric identifiers. The law has not yet taken effect due to ongoing litigation, however, it is possible that lawmakers may attempt to pass legislation focusing on other legislative angles related to content moderation.

### Wisconsin:

Wisconsin Republicans introduced eight content moderation-related bills in the 2021-2022 session, including [AB 589](#) which would prevent the censorship of media enterprises based on the content of their publication or broadcast, and [AB 530](#) which would prevent the "censorship" of posts by or about political candidates and elected officials. Both bills include a private right of action, which would allow a user to sue a social media company and seek damages for any violations related to censorship. Although neither bill passed, the policy-making sentiment around these issues is still persistent with lawmakers in the state.