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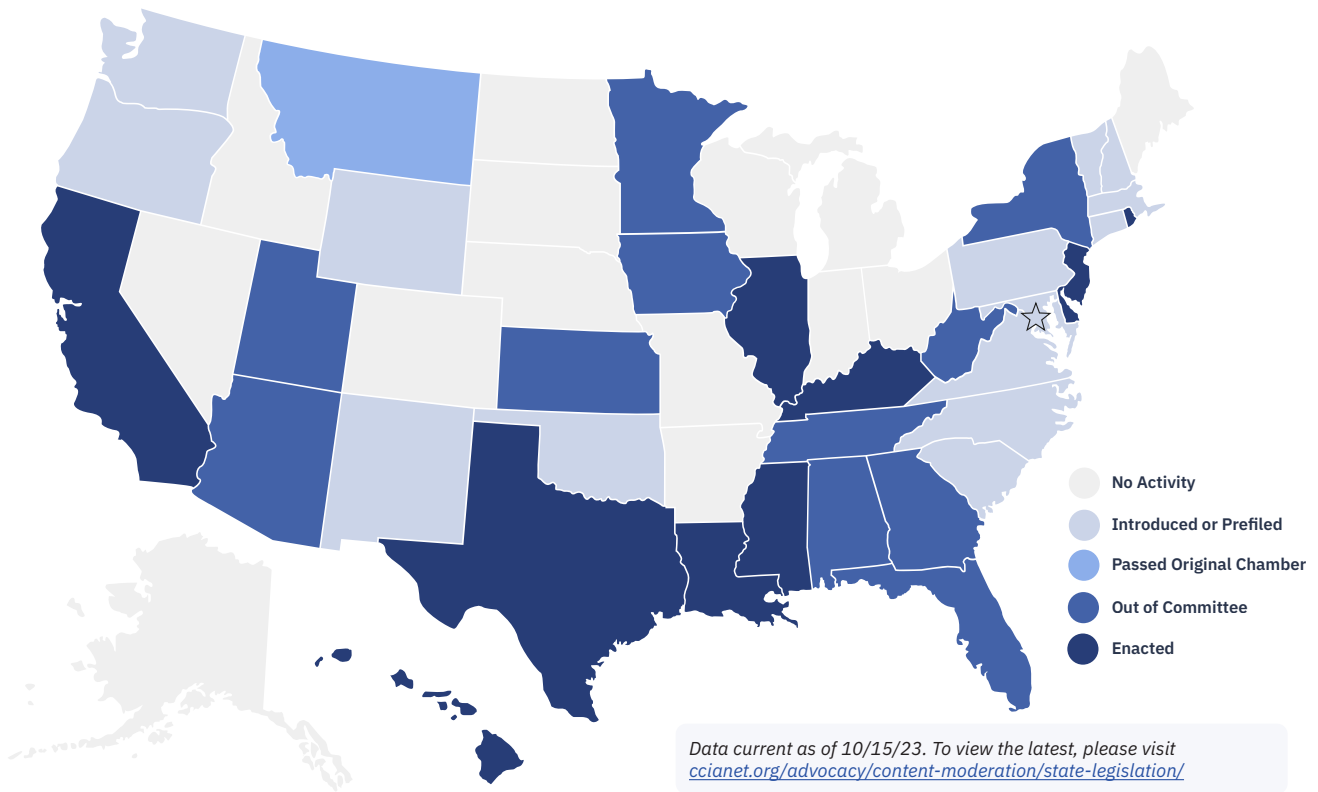
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State Landscape Content Moderation



2023 State Landscapes



Introduction

Legislation aimed at regulating online businesses and content on their platforms took on several different iterations in 2023. CCIA tracked over [200 pieces of legislation](#) this session that focused on regulating online content. States such as [Kansas](#), [California](#), [New York](#), [Arizona](#), [Montana](#), [Tennessee](#), [Georgia](#), and [Minnesota](#), among others, 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 content on their platforms.

With the rise in AI technologies in 2023, legislators began to introduce proposals regulating the use of algorithmically informed decision-making, including when it comes to online content moderation. Many proposals were aimed at studying these technologies or creating oversight commissions or offices to manage how AI is used and where regulation may be needed. However, as many online businesses continue to use algorithmically informed decision-making to make content moderation decisions, it has become an increasingly important question as to how, or whether, states can regulate social media and what is considered free speech online.

It is also important to note the unique circumstances surrounding how legislators are approaching content moderation proposals this session in comparison to 2021 and 2022. This year was the first session in which litigation on whether states can dictate how online businesses moderate content and speech on their platforms is before the Supreme Court of the United States. The outcome of [NetChoice & CCIA v. Paxton](#) and [NetChoice & CCIA v. Moody](#) will impact how user-generated content is treated moving forward. Many proposals introduced this session, specifically on limiting “censorship” on platforms, were put on pause due to the nature of these current cases. Many legislators made the measured decision to pause the advancement of this type of legislation until the Supreme Court makes its decision.

Although content moderation likely won’t be the only tech policy topic on state legislative agendas, we anticipate this will likely continue to be a main focus for legislators in 2024. CCIA has developed state-focused advocacy materials, provided real-time monitoring of state legislative activity, and coordinated with third-party stakeholders, including providing testimony and comments to legislators throughout 2023. This document provides a rundown of state legislative activity related to content moderation this session as such discussions continue.

Types of Content Moderation Measures

“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. Primarily sponsored by Republican lawmakers.

Examples:

- [Arizona SB 1106](#)
- [Montana HB 770](#)
- [Tennessee SB 111/HB 682](#)

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.

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).

Examples:

- [Illinois HB 3943](#)
- [New York SB 895A](#)
- [Oklahoma HB 2548](#)

Impact:

This would require digital services to divert limited resources and be enlisted into bureaucratic paper-pushing exercises. Their primary function should be as an innovator while focusing on preventing the spread of harmful content online. When their duties are overwhelming and resources are spread thin, it is difficult for digital services to focus on their chief responsibilities.

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.

Examples:

- [District of Columbia B25-0114](#)
- [California AB 331](#)
- [Illinois HB 3733](#)
- [Vermont HB 114](#)

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 also 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 Study and Investigation

What:

Requires the legislature or an appointed commission to study or investigate digital services' practices, including the impacts of social media or technology on its users. Most recently, many of these studies involve automated decision making and how it is used to make content moderation decisions.

Examples:

- [Illinois HB 3563](#)
- [Rhode Island HR 6423](#)
- [Louisiana SCR 49](#)

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.

5 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.

Examples:

- California [AB 1027](#) and [SB 680](#)
- [New York AB 1942/SB 577](#)

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.

6 Resolutions

What:

Resolutions calling on Congress to amend or repeal Section 230.

Examples:

- [Kansas SB 222](#)
- [New Jersey ACR 117](#)

Impact:

Amending or repealing Section 230 would result in potentially dire collateral consequences and would ultimately end up doing more harm than good. Exposing digital services to broad liability for user speech would lead to the removal of much more than just dangerous speech. 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

Arizona

Arizona's republican Senate introduced a particularly problematic content moderation bill focused on the idea of the "censorship" of political candidates (modeled after Florida's [SB 7027](#)) this session. [SB 1106](#) eventually passed the full Legislature but was vetoed by Democratic Governor Katie Hobbs. Given the significant traction [SB 1106](#) had in the 2023 legislative session, Arizona Republicans are poised to continue debates over whether and how the Legislature should regulate social media platforms. [SB 1503](#) contains provisions relating to what online material could be considered harmful to minors and requires age verification for those under the age of 18. It is likely that these types of policies could gain further traction when the Legislature reconvenes in 2024.

California

As California continues to experiment with advancing various proposals focused on tech policy, many of the bills introduced in 2023 were problematic. Most notably, [AB 886](#) (California Journalism Preservation Act (CJPA)) runs afoul of the First Amendment principle against compelling the subsidization of another's speech. By forcing covered digital services to link to news publishers who demand payment under the guise of prohibiting "retaliation", the bill unlawfully limits the editorial discretion of digital services. The bill was deemed a "two-year bill" meaning it will not be eligible for further consideration in 2023 but will pick up where it left off in 2024 in the Senate Judiciary Committee.

California democrats introduced a plethora of problematic bills aside from the CJPA, including [SB 680](#) which forces businesses to moderate certain user-generated content through the use of algorithms under the guise of "protecting children online."

Also of note, NetChoice has [sued California](#) over the passage of AB 2273 (Age Appropriate Design Code) in 2021 stating that California is violating the First Amendment by telling sites how to manage constitutionally protected speech. Due to the influx of tech-related legislation introduced by lawmakers in the past few years coupled with a lawsuit, it is likely California will continue to be a hotbed for tech-related legislation in 2024, including new topics such as children's online safety and automated decision-making.

Illinois

The Illinois Legislature introduced several content moderation bills this session, including bills like [HB 3943](#) that sought to regulate terms of service for platforms and "increased transparency" through reporting requirements. While this measure failed to advance, two others were sent to Governor JB Pritzker (D) for signature. Specifically, [SR 249](#) urged the federal government to pass legislation of their own to "protect [minors] from negative and harmful social media algorithms." [HB 3563](#) creates a Generative AI and Natural Language Processing Task Force to investigate and provide a report on generative artificial intelligence software and natural language processing software. The investigation must include the recommendation of legislation and policies for schools and the state government to implement to improve public services while protecting civil liberties.

With the rise in legislation across the country regarding children's online safety and the use of automated decision making by digital services, it is likely that legislation surrounding these topics will be introduced or re-introduced next session.

Key States

Iowa

Iowa Republicans introduced many problematic bills in 2023. Particularly, [SB 1189/SF 486](#) mimics Texas' HB 20 prohibiting "censorship" of viewpoint but also includes a "platform fee" to "support universal service programs." This bill supported the view that social media platforms should be considered "common carriers." There were also a few bills introduced aimed at "protecting children online," including bills like [HF 526/HF 712](#), [HSB 223](#), and [SF 50](#) which sought to regulate how children use the internet, including requiring parental consent for those younger than 16.

Though none of these bills passed the Legislature in 2023, these policy discussions surrounding content moderation and what children can have access to online are likely to be widespread throughout Iowa and other republican states in 2024.

Montana

Montana lawmakers introduced several bills in 2023 that raised concerns regarding conflicts with the First Amendment and Section 230. Of particular significance, [SB 419](#) removes a user's right in the state to have access to the TikTok app and holds intermediaries liable for providing the app on their platform. [TikTok and a group of content creators](#) have already [sued the state](#) of Montana for passing SB 419.

[HB 770](#) narrowly avoided passage before being stopped in a Senate committee. This bill was similar to Texas' [HB 20](#) prohibiting "censorship" of viewpoints. With Montana introducing many bills this session that conflict with Section 230 and the First Amendment, it is likely that these policies will still be top of mind for some lawmakers in 2024.

New York

While [SB 895](#) only made it through the Senate during the 2023 legislative session, there is potential for a renewed push next year, particularly if groups like the Anti-Defamation League, who lent their support for the bill late into session, kick off their advocacy efforts earlier in session. [SB 895](#) and its Assembly counterpart [AB 6789](#) will be automatically carried over into the 2024 session and will restart the legislative process.

Tennessee

The Tennessee Legislature introduced seven bills in 2023 alone focused on content moderation. Although none passed this year, due to volume and legislative investment, it is reasonable to believe that additional measures may be introduced, or that the measures will gain traction in 2024 given that they are eligible to automatically carry over to the next session. [SB 111/HB 682](#) mimicked Texas' HB 20 prohibiting "censorship" of viewpoint but also declared social media platforms "common carriers," therefore providing that private online businesses could not moderate content on their platforms. [SB 1299/HB 1504](#) and [HB 1528](#) similarly regulated "censorship" based on viewpoint.

Since the Legislature adjourned in April, many legislators have joined as co-sponsors to these bills. It is very unlikely that conversations surrounding how platforms moderate content on their platforms will go away in Tennessee in 2024.

Litigation and Amicus Work

California

N.D. Cal. No. 22-cv-08861

Summary

In December 2022, NetChoice filed suit against the California Attorney General over a children’s online safety bill, AB 2733, arguing that it violates the First Amendment, Fourth Amendment, Due Process, Commerce Clause, and the Supremacy Clause.

Timeline

- ❖ **December 14, 2022:** NetChoice filed a [complaint](#) against AB 2733
- ❖ **February 2023:** NetChoice filed a [motion](#) for a preliminary injunction.
- ❖ **March 2023:** CCIA [filed](#) an amicus brief in support of NetChoice. The brief argues that the bill violates service providers’ First Amendment rights to display and recommend content as well as compels speech in violation of the First Amendment.
- ❖ **September 18, 2023:** the court [granted](#) the preliminary injunction on First Amendment grounds, blocking the law from going into effect.

Florida

N.D. Fla. No. 21-cv-00220; 11th Cir. No. 21-12355; U.S. Sup. Ct. Nos. 22-277, 22-393

Summary

In May 2021, CCIA and NetChoice [filed suit](#) against the Florida Attorney General, Elections Commission, and Department of Management Services over a content moderation bill, [SB 7072](#), arguing it was unconstitutional under the First Amendment, 14th Amendment (Equal Protection and Due Process), Commerce Clause, and preempted by Section 230.

Timeline

- ❖ **June 30, 2021:** CCIA and NetChoice’s motion to block SB 7072 from going into effect was [granted](#) by Northern District of Florida Judge Hinkle.
- ❖ **January 23, 2023:** the Court [invited](#) the Solicitor General to file a brief in the cases expressing the views of the United States.
- ❖ **May 23, 2022:** After the State of Florida appealed NetChoice and CCIA’s PI granted by the district court, The 11th Circuit Court of Appeals [upheld](#) the district court’s injunction on the law.
- ❖ **August 30, 2023:** CCIA [responded](#) to the brief of the U.S. Solicitor General that was filed pursuant to an order from the Supreme Court. CCIA emphasized that the SG agrees that our challenges to the “must-carry” provisions of SB 7072 warrant review and further demonstrated that the onerous disclosure requirements contained in these statutes are themselves an unconstitutional burden on the First Amendment rights of digital services providers.
- ❖ NetChoice and CCIA agreed with Florida to request a stay of proceedings in the district court and ask the Supreme Court to review the 11th Circuit’s decision. SB 7072 remains enjoined in the meantime.
- ❖ **September 21, 2022:** Florida [petitioned](#) the Supreme Court to hear the case.
- ❖ **September 29, 2023:** the Supreme Court [agreed](#) to hear the case.
- ❖ **October 24, 2022:** CCIA & NetChoice [petition](#) the Supreme Court to hear the case, to also consider the transparency provisions.

Litigation and Amicus Work

Montana

D. Mont. Nos. 23-cv-0005; 23-cv-00061

Summary

In May 2023, five Montana-based TikTok creators filed a complaint against Montana Attorney General Knudsen over Montana SB 419, [An Act Banning TikTok in Montana](#), followed the following week by a complaint from TikTok itself. The cases were later consolidated.

Timeline

- ❖ **May 2023:** Five Montana-based TikTok creators, Alario et al., filed a complaint against Montana Attorney General Knudsen in the U.S. District Court for Montana against Montana SB 419, [An Act Banning TikTok in Montana](#), followed the following week by a complaint from TikTok Inc. The cases were later consolidated.
- ❖ **August 10, 2023:** CCIA filed an amicus curiae [brief](#) in support of an injunction that will prevent SB 419 from becoming effective. CCIA's brief focuses on the effect of the statute on app stores, which would be fined \$10,000 per day per each Montana resident to whom TikTok is offered. The statute plainly infringes app stores' First Amendment rights to choose what content to display and make available to their users.

Texas

W.D. Tex. No. 21-cv-00840; 5th Cir. No. 21-51178; U.S. Sup. Ct. Nos. 21A720, 21-51178

Summary

In September 2021, CCIA and NetChoice [filed suit](#) against the Texas Attorney General over a content moderation bill, [HB 20](#), arguing it was unconstitutional under the First Amendment, Commerce Clause, Due Process Clause, Full Faith & Credit Clause, Equal Protection Clause, and preempted by Section 230.

Timeline

- ❖ **December 1st, 2021:** NetChoice and CCIA's motion to block HB 20 from going into effect was [granted](#) by Western District of Texas Judge Pitman.
- ❖ **May 11, 2022:** The Fifth Circuit Court of Appeals [lifted](#) the district court's injunction on HB 20 in a one-sentence order.
- ❖ **May 13, 2022:** NetChoice and CCIA filed an Emergency Application to the Supreme Court of the United States, seeking to get the Fifth Circuit order overturned. On May 31, 2022, SCOTUS [ruled](#) on NetChoice & CCIA's application for emergency relief, and HB 20 remains enjoined in the meantime while the lawsuit over its constitutionality proceeded.
- ❖ **September 16, 2022:** the Fifth Circuit [issued](#) a decision ruling in favor of Texas, subsequently allowing HB 20 to take effect. This invalidated the preliminary injunction and remanded the case for further consideration.
- ❖ **September 29, 2022:** CCIA and NetChoice filed an unopposed motion to the Fifth Circuit requesting that they again block HB 20 pending Supreme Court review.
- ❖ **December 15, 2022:** CCIA and NetChoice [asked](#) the Supreme Court of the United States to hear the case in order to strike down HB 20 and resolve the circuit split between Texas and Florida.
- ❖ **January 23, 2023:** The Court [invited](#) the Solicitor General to file a brief in the case expressing the views of the United States.
- ❖ **August 30, 2023:** CCIA [responded](#) to the brief of the U.S. Solicitor General that was filed pursuant to an order from the Supreme Court. CCIA emphasized that the SG agrees that our challenges to the "must-carry" provisions of HB 20 warrant review and further demonstrated that the onerous disclosure requirements contained in these statutes are themselves an unconstitutional burden on the First Amendment rights of digital services providers.
- ❖ **September 29, 2023:** the Supreme Court [agreed](#) to hear the case.

Litigation and Amicus Work

Selected Federal Amicus Work

Gonzalez v. Google, U.S. Sup. Ct. No. 21-1333; *Twitter v. Taamneh*, U.S. Sup. Ct. No. 21-1496

Status

CCIA coordinated an [amicus brief](#) in support of Google’s right to moderate online content by five associations: NetChoice, Digital Media Association, Information Technology Industry Council, Interactive Advertising Bureau, and TechNet. The brief explains how digital services’ content moderation and organization methods have evolved, now including methods that “account for users’ preferences, ensure that users see the content that is most relevant to them. It is a question of personalization, not recommendation. In these instances, the results are driven by the users’ choices, not the operators’.”

CCIA also [coordinated](#) an amicus brief on behalf of 8 organizations in *Twitter v. Taamneh* regarding social media companies’ efforts to protect users online.

Collected Analysis



Rescuing Local News Through Tax Credits: A review of policy in the U.S. and Canada UNC’s Center on Technology Policy

In June 2023, UNC’s Center on Technology Policy published a [report](#) entitled *Rescuing Local News Through Tax Credits: A review of policy in the U.S. and Canada*. The report gives an overview of journalism tax measures that have been proposed in the U.S., a deep dive on Canada’s tax credits for journalism, and an analysis of their impact and shortcomings.

This report is available at: https://techpolicy.unc.edu/wp-content/uploads/2023/06/UNC_Tech_Policy_Future_Report.pdf

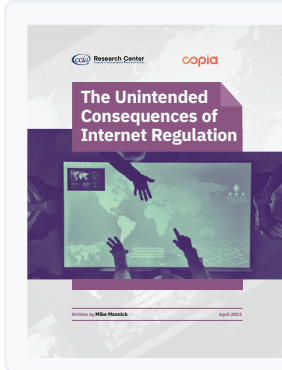


Trust & Safety Glossary of Terms Digital Trust & Safety Partnership

The Digital Trust & Safety Partnership (DTSP) released the inaugural edition of its [Trust & Safety Glossary of Terms](#). This is the first industry effort by technology companies, representing various products, sizes, and business models, to develop a common Trust and Safety lexicon. The glossary has been updated to incorporate valuable input received from academic organizations, industry partners, regulators, and other global stakeholders during the public consultation held earlier this year.

This report is available at: https://dtspartnership.org/wp-content/uploads/2023/07/DTSP_Trust-Safety-Glossary_July-2023.pdf

Collected Analysis

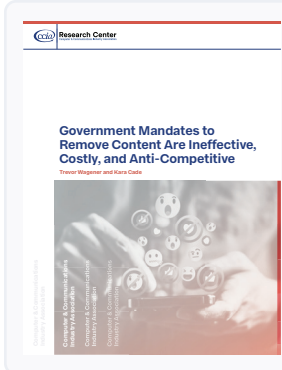


The Unintended Consequences of Internet Regulation

Copia Institute & CCIA Research Center

The Copia Institute & CCIA Research Center released a [report](#) examining unintended consequences of internet regulation, including the poor targeting of many of these policies, the slowing of investment in online businesses, and the inability of smaller start-up firms to compete.

This report is available at: <https://research.ccianet.org/reports/unintended-consequences-of-internet-regulation/>



Government Mandates to Remove Content Are Ineffective, Costly, and Anti-Competitive

CCIA Research Center

The CCIA Research Center provided two different reports on results surrounding government-mandated content moderation. Their first [report](#) examines why mandates to remove content are ineffective, costly, and anti-competitive.

This report is available at: <https://research.ccianet.org/reports/ccia-netzdg-german-network-enforcement-act-report/>

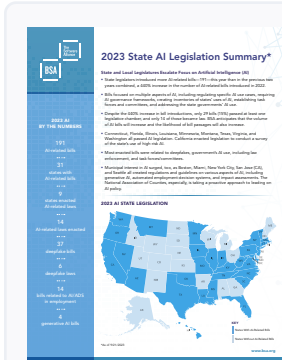


Social Media Survey Experiment

CCIA Research Center

The CCIA Research Center provided two different reports on results surrounding government-mandated content moderation. The second [report](#) suggests that policies requiring apps and websites to carry objectionable content could damage the digital economy through harms to digital services and companies that advertise on them.

This report is available at: <https://research.ccianet.org/stats/social-media-survey-experiment/>



2023 State AI Legislation Summary

BSA | The Software Alliance

BSA provided a [2023 State Legislative Summary](#) for AI-related bills. These include bills related to multiple facets of artificial intelligence including governance frameworks, establishing taskforces, and requiring impact assessments.

This report is available at: <https://www.bsa.org/policy-filings/us-bsa-2023-state-legislative-summary-ai>