

# The Key Laws Retailers Should Pay Attention To In 2024

By **Stephanie Sheridan, Meegan Brooks and Nina Stabile** (December 20, 2023, 4:15 PM EST)

With a new year on the horizon, retailers across the country are bracing themselves for new laws set to take effect in 2024.

With California leading the charge in imposing new restrictions, including regulating junk fees and recyclability claims, other states are catching up and continuing to regulate per- and polyfluoroalkyl, consumer data, plastic packaging and more.

Below is a summary of some key laws and regulations that will affect the retail and e-commerce industry in 2024.

## Data Protection Laws

This past year saw a large increase in states enacting omnibus data protection laws, with new laws coming into effect in California — amending the existing California Consumer Privacy Act — Colorado, Connecticut, Utah and Virginia.

Omnibus data protection laws in Florida, Oregon, Tennessee and Texas will come into effect July 1, 2024. Montana will follow suit, with its law taking effect Oct. 1, 2024.

These new laws vary in applicability — with Florida's being the most narrow, likely only applying to the largest of businesses, and Texas' being the broadest, applying to any business collecting any amount of Texas residents' personal data.

While each state's laws have unique nuances, they generally require covered businesses to:

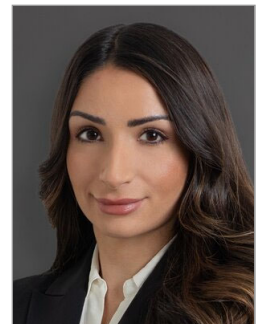
- Provide an opt-out mechanism from the sale of an individual's personal data;
- Provide an opt-out mechanism from cross-contextual behavioral advertising, e.g., targeted advertising;
- Obtain consent prior to collecting or processing sensitive personal data such as race, ethnicity, citizenship status, sexual orientation, health and genetic data, precise geolocation information, biometric data, etc.;
- Provide other common data privacy rights such as access to and deletion and correction of personal data; and
- Not discriminate against an individual for exercising their data privacy rights — including through the use of loyalty programs.



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Among other things, businesses will also need to provide consumers with robust privacy notices at or before the time of collection — even where collection of the personal data is occurring in person.

California's Delete Act — which will, by Jan. 1, 2026, require the California Privacy Protection Agency to establish a website where consumers can request the blanket deletion of their personal data — goes into effect starting Jan. 1, 2024.

The Delete Act's enhanced reporting requirements for data brokers — defined as "a business that knowingly collects and sells to third parties the personal information of a consumer with whom the business does not have a direct relationship" — will apply to the next registration period on or before Jan. 31, 2024.

Data brokers will need to disclose metrics regarding the number of CCPA consumer requests and Delete Act deletion requests they receive, information about their collection of minors' personal information, and more. The Delete Act imposes fines of \$200 for each day a data broker fails to register with CCPA or fails to delete information as required.

In addition to the omnibus data protection laws, a handful of states have enacted laws to enhance protections required for children's personal data and use of social media and internet platforms, such as in California and Utah.

However, those laws have faced an uphill battle, with courts finding such laws are likely in violation of the First Amendment.

### **Prohibitions on Junk Fees**

On Oct. 7, California became the first state to ban fees that are not disclosed until checkout, which some have dubbed junk fees.

Effective July 1, 2024, S.B. 478 amends California's Consumers Legal Remedies Act to prohibit companies from "advertising, displaying, or offering a price or a good or service that does not include all mandatory fees or charges." The law provides exceptions for "taxes and fees imposed by a government," or "reasonably and actually incurred" postage or shipping charges.

However, many other fees typically charged by retailers — including supply chain fees, service fees, resort fees, employee healthcare surcharges and other related fees — may violate S.B. 478 if not disclosed to the consumer until checkout.

The CLRA provides for actual damages, injunctive relief, restitution and punitive damages, plus additional statutory relief of up to \$5,000 to senior citizens or disabled persons in certain instances.

Just days after California enacted S.B. 478, the Federal Trade Commission announced a notice of proposed rulemaking on a trade regulation rule on unfair or deceptive fees.

Similar to S.B. 478, the FTC's proposed rule would prohibit "offering, displaying, or advertising an amount a consumer may pay without adequate disclosure of the Total Price." If enacted, violators could be subject to penalties of up to \$50,120 per violation. The FTC has requested comments on the proposed rule, which are due by Jan. 8, 2024.

While a smattering of class actions concerning fees and surcharges have been filed in recent years, we expect such cases to become much more popular when the California law — and potential FTC rule — take effect.

### **California Restricts the Chasing Arrows Recycling Logo**

Effective Jan. 1, 2024, California's SB 343 will ban recyclability claims — including a "chasing arrows" logo — unless a product or its packaging meets specifically enumerated benchmarks focused on the practical realities of the recycling process.

Under this new law, a product or packaging is recyclable only if it is made from a material that is

collected by recycling programs in jurisdictions encompassing at least 60% of the state's population, and sorted into defined streams for recycling processes by at least 60% of the state's recycling programs.

Additionally, recyclable products and packaging must not contain inks, additives or labels that prevent them from being recycled, certain chemicals, or plastic or fiber containing PFAS. S.B. 343 imposes significant penalties for violations, including prison time, a fine up to \$2,500 or both.

California's new restriction is even stricter than the FTC Green Guides, which currently advise against making unqualified recyclable claims unless the product is recyclable at facilities available to at least 60% of consumers or communities in the markets where the product is sold.

Updated Green Guides are scheduled to be released in 2024 and will likely update guidance surrounding sustainability, recyclability, and other green or environmentally friendly claims.

### **Additional Extended Producer Responsibility Laws**

Extended producer responsibility laws are intended to shift the cost of post-purchase recycling back onto retailers and manufacturers by requiring them to absorb some of the costs for collecting and recycling.

California signed into law the most ambitious extended producer responsibility law in the country in 2022, under which all producers of covered materials must join a producer responsibility organization by Jan. 1, 2024.

Effective Jan. 18, 2024, New Jersey's Recycled Content Law establishes post-consumer recycled content requirements for rigid plastic containers, glass containers, paper and plastic carryout bags, and plastic trash bags, and prohibits the sale of polystyrene loose-fill packaging. The law sets different recycled content standards and deadlines for different products, ranging from 10% to 50%.

Annual compliance reports will be required beginning July 18, 2025, providing the total quantity of post-consumer resin utilized in the manufacturing process, and the total quantity of overall materials used, for all regulated containers and products.

In line with extended producer responsibility laws, a number of states have also enacted laws that limit the use of certain plastic packaging, with new laws coming into effect this year.

Starting Jan. 1, 2024, for example, Colorado's Plastic Pollution Reduction Act will prohibit stores and retail food establishments from providing single-use plastic carryout bags and expanded polystyrene foam takeout containers.

Retailers may provide recycled paper carryout bags to customers for a 10-cent fee. Beginning April 1, 2024, they must remit 60% of their carryout bag fee revenues to the counties where they are located.

### **PFAS Bans**

Effective Jan. 1, 2024, several states have adopted bans on intentionally added PFAS in food packaging, including Colorado via H.B. 22-1345, Connecticut via Public Act 21-191, Maryland via S.B. 273, Minnesota via S.F. 20, Rhode Island via H.B. 7438 and Vermont via S.20.

Hawaii will follow suit, with H.B. 1644 taking effect on Dec. 31, 2024. These laws come on the heels of similar laws in California and New York, which took effect in 2022.

Several states have also banned the sale of carpets containing PFAS in 2024: Maryland and Colorado, both effective Jan. 1, 2024, and New York, effective Dec. 31, 2024.

Colorado's H.B. 22-1345 also prohibits the sale or distribution of fabric treatments, juvenile products — including cribs, car seats, highchairs, playpens, strollers and more — and oil and gas products containing intentionally added PFAS.

Beginning Jan. 1, 2024, Colorado's law will also require certain disclosure of PFAS in cookware. California's disclosure requirements for PFAS in cookware came into effect in 2023, with additional product label disclosures required starting Jan. 1, 2024.

Bigger PFAS prohibitions are on the horizon. Starting in 2025, California's PFAS ban will extend to cosmetics and textiles. Colorado's law will also expand, banning cosmetics, indoor textile furnishings — such as draperies, floor coverings, bedding, towels, etc. — and indoor upholstered furniture in 2025.

New York's PFAS bans will expand to apparel in 2025, including unintentionally added PFAS beginning in 2027 and outerwear for severe wet conditions beginning in 2028. In Maine, a broad prohibition of all intentionally added PFAS takes effect in 2030, with Minnesota's ban following closely behind in 2032.

In October, the U.S. Environmental Protection Agency also finalized reporting and recordkeeping requirements for PFAS, requiring manufacturers to begin submitting information regarding PFAS uses, production volumes, byproducts, disposal, exposures, and existing information on environmental or health effects.

### **Employee Off-Duty Cannabis Use**

Effective Jan. 1, 2024, California's A.B. 2188 will make it unlawful for an employer to discriminate against a job applicant or employee based on the "person's use of cannabis off the job and away from the workplace."

California joins a handful of other states with similar protections, including New York, New Jersey and Nevada.

Washington's S.B. 5123, also effective January 1, similarly prohibits employers from discriminating in initial hiring decisions based on an applicant's lawful cannabis use.

### **California's Mandatory Workplace Violence Prevention Plans**

California recently became the first state to enact general industry workplace violence prevention plan requirements, which are applicable to nearly all employers in California, including retail employers.

Beginning July 1, 2024, employers must implement a comprehensive workplace violence prevention plan, which includes providing training to employees and maintaining records of workplace violence incidents and responses.

### **California's Gender-Neutral Retail Departments**

Beginning Jan. 1, 2024, California's A.B. 1084 will require all retail department stores physically located in California with at least 500 employees across all California retail locations to maintain gender-neutral sections for childcare items and toys.

While the law does not ban traditional "girls" and "boys" sections, the newly required gender-neutral sections must display "a reasonable selection of the items and toys ... regardless of whether they have been traditionally marketed for either girls or for boys."

California retailers may face civil penalties of \$250 for the first violation and \$500 for subsequent violations.

### **Minnesota's Retail Delivery Fee**

Beginning July 1, 2024, retailers will be subject to a \$0.50 road improvement and food delivery fee on transactions that are \$100 or more involving a retail delivery within the state of Minnesota.

Retailers can either directly pay the fee or collect it from the consumer — but only if it is listed on the receipt as a separate line item, and not included in any delivery fee. The fee requirement does not

apply to deliveries resulting from the sale of food or food ingredients, drugs, medical devices, or baby products.

### **New York's Ban on Animal Sales at Pet Stores**

New York is the latest state to ban pet stores from selling pets — dogs, cats and rabbits — in an attempt to target commercial breeding operations, or puppy mills, joining California, Illinois, Maryland, Maine and Washington, as well as hundreds of cities across the country.

### **Conclusion**

2024 promises to be another transformative year for retailers as they navigate the evolving regulatory landscape, particularly surrounding data privacy and sustainability.

Retailers should make it a practice to keep track of new legislation and invest in compliance efforts early on, especially with plaintiffs firms and state and local governments looking to collect penalties and fees.

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