

# Post-*Wayfair* Options for the States

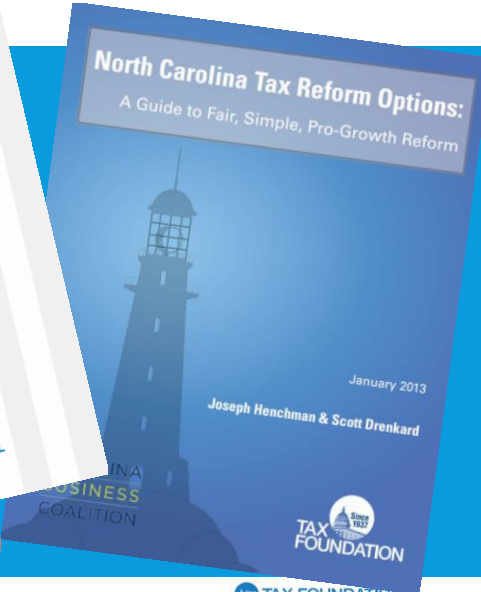
STRAW Working Group

February 14, 2019

**Joseph Bishop-Henchman**  
Executive Vice President  
[henchman@taxfoundation.org](mailto:henchman@taxfoundation.org)  
[www.taxfoundation.org](http://www.taxfoundation.org)

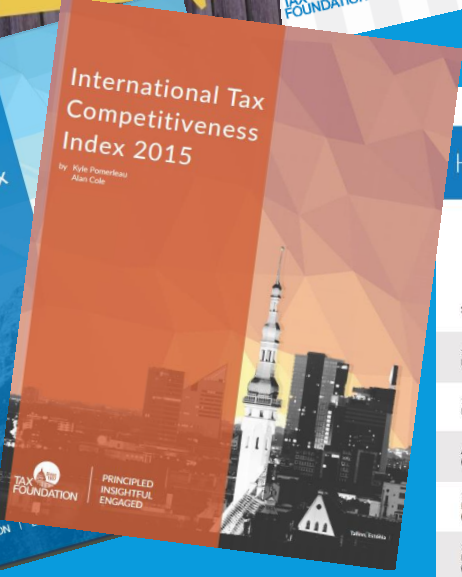
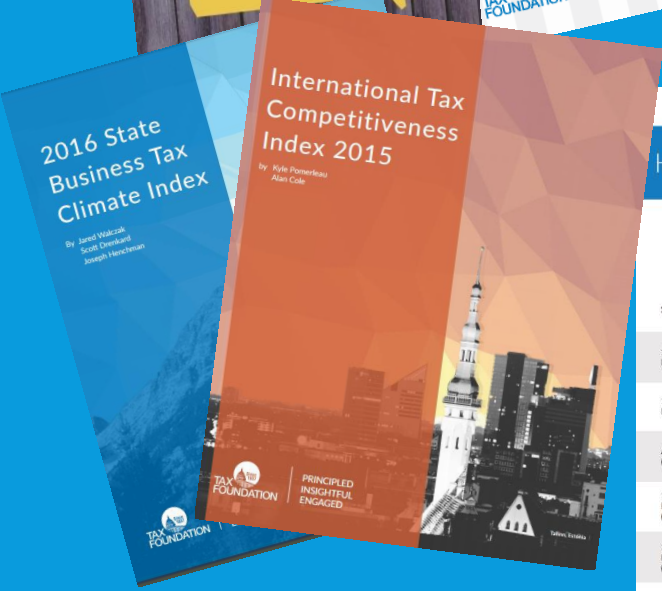


# ABOUT THE TAX FOUNDATION



we've worked for  
**80 years**

on objective  
research,  
data,  
& analysis  
at the  
federal,  
state,  
& local levels

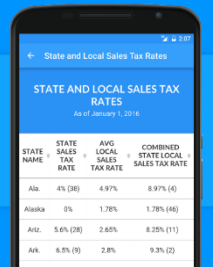


How do the 2016 Presidential Tax Plans Compare So Far?

	Bush	Carson	Cruz	Paul	Rubio	Santorum	Trump
10-Year GDP Growth	10%	16.0%	13.9%	12.9%	15%	10.2%	11.5%
10-Year Capital Investment Growth	28.8%	46.6%	43.9%	40.5%	48.9%	29%	29%
10-Year Wage Rate Growth	7.4%	10.9%	12.2%	11.4%	12.5%	7.3%	6.5%
Added Jobs (millions)	2.7	5.2	4.9	4.3	2.7	3.1	5.3
10-Year Static Revenue Estimate (billions)	-\$3,665	-\$5,617	-\$3,666	-\$1,797	-\$6,055	-\$3,223	-\$11,980
10-Year Dynamic Revenue Estimate (billions)	-\$1,610	-\$2,472	-\$768	+\$737	-\$2,401	-\$1,093	-\$10,135

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INTRODUCING  
**FACTS & FIGURES**  
FOR YOUR SMARTPHONE



# STRAW WORKING GROUP

## STATE TAX REFORM AFTER WAYFAIR

- Monitor post-*Wayfair* developments
- Produce educational materials for policymakers, stakeholders, and the general public on important post-*Wayfair* issues
- Promote adoption of and adherence to *Wayfair* checklist
- Provide advice to state policymakers on state tax reforms
- Amplify post-*Wayfair* issues in the media, on our blog, via email, in legal briefs, in legislative testimony, and on social media

# STRAW WORKING GROUP

## WHAT YOU GET

- Monthly call chock full of information about new developments, pending legislation, and rumors

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- Better state sales tax policy

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- Learn in advance about our current testimony, amicus, and research activities
- Help us shape strategy toward particular states and sub-issues
- Better state sales tax policy
- Joe's personal thanks for supporting what we do!



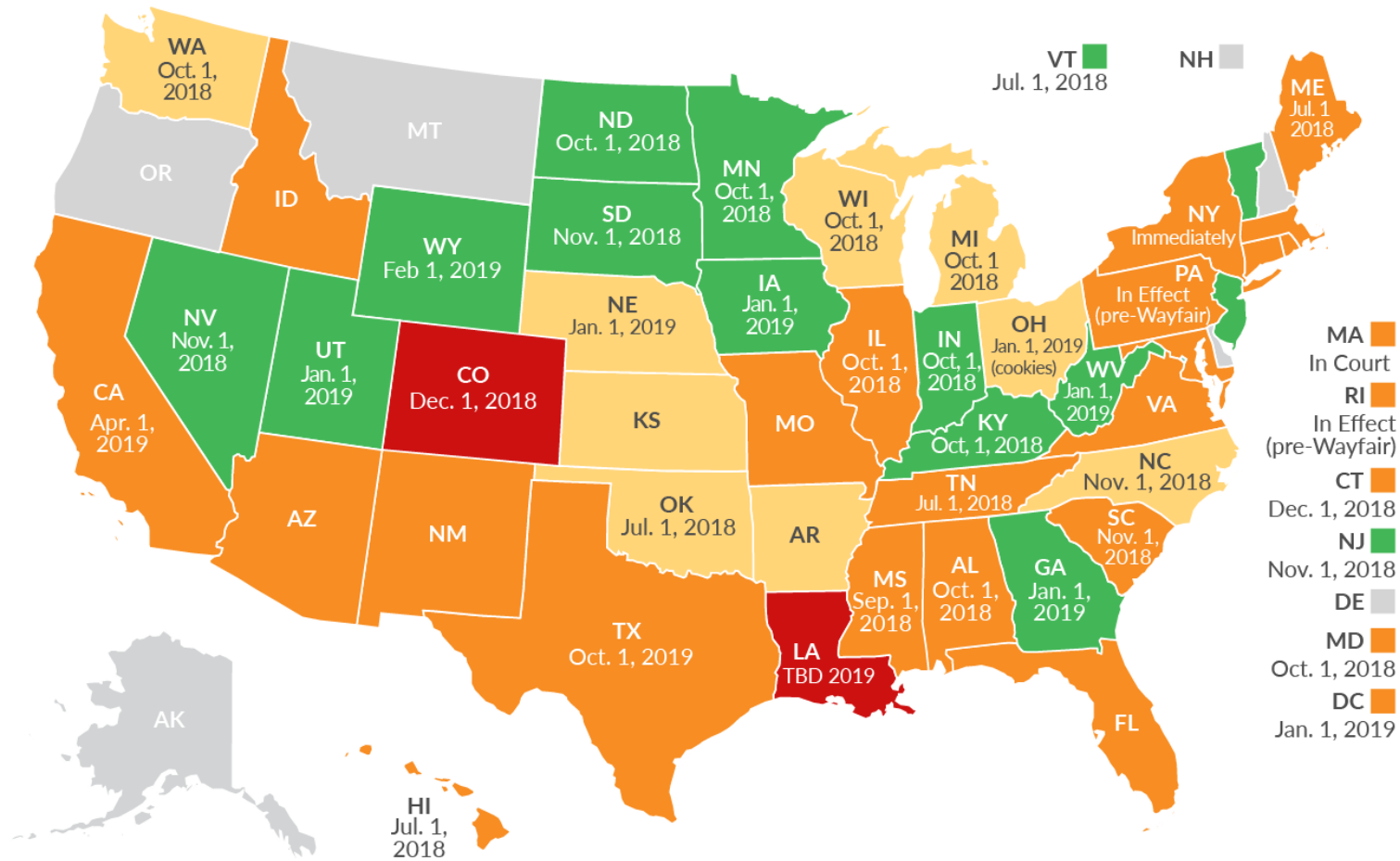
# WHEN CAN STATES TAX?

## NEXUS

- Old rule (*Quill*)
  - Whether seller is physically present in taxing jurisdiction
- New rule (*Wayfair*)
  - Whether the state tax law places excessive or discriminatory burdens on interstate commerce
- *Wayfair* checklist (safe harbor)
  - Exclude those who transact limited business in state (SD had \$100,000 or 200 transaction threshold)
  - No retroactive collection
  - Actions to simplify tax collection for remote sellers
- Marketplace

# Is Your State Prepared to Tax Internet Sellers?

Status as of February, 2019



Note: Dates represent enforcement start date of remote seller collection.  
 Source: Tax Foundation review of state statutes and regulations.

- State Compliant with Wayfair Checklist
- State Can Proceed with Caution
- State Should Proceed Only After Making Legislative Changes
- No Sales Tax
- Not Compliant with Wayfair Checklist

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## TAX FOUNDATION “STOPLIGHTS”

- **Green:** Has adopted a post-*Wayfair* law and is either or a SSUTA member or separately adopted simplifications (13 states)
  - Georgia (1/1/19)
  - Indiana (10/1/18)
  - Iowa (1/1/19)
  - Kentucky (10/1/18)
  - Minnesota (10/1/18)
  - Nevada (11/1/18)
  - New Jersey (11/1/18)
  - North Dakota (10/1/18)
  - South Dakota (11/1/18)
  - Utah (1/1/19)
  - Vermont (7/1/18)
  - West Virginia (1/1/19)
  - Wyoming (2/1/19)

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## TAX FOUNDATION “STOPLIGHTS”

- **Yellow:** State is a SSUTA member but has not yet adopted a post-*Wayfair* law. May have adopted regulations with similar provisions. (9 states)
  - Arkansas
  - Kansas
  - Michigan (10/1/18)
  - Nebraska (1/1/19)
  - North Carolina (11/1/18)
  - Oklahoma (7/1/18)
  - Ohio (1/1/19) (cookie, \$500,000 threshold)
  - Washington (10/1/18)
  - Wisconsin (10/1/18)

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## TAX FOUNDATION “STOPLIGHTS”

- **Orange:** Neither SSUTA member nor separately adopted simplifications. May have adopted post-*Wayfair* law or regulations. (20 states)
  - Alabama (10/1/18)
  - Arizona
  - California (4/1/19)
  - Connecticut (12/1/18)
  - DC (1/1/19)
  - Florida
  - Hawaii (7/1/18)
  - Idaho
  - Illinois (10/1/18)
  - Maine (7/1/18)
  - Massachusetts (court)
  - Mississippi (9/1/18)
  - Missouri
  - New Mexico
  - New York (“immediately”)
  - Pennsylvania (in effect)
  - Rhode Island (in effect)
  - South Carolina (11/1/18)
  - Tennessee (7/1/18)
  - Texas (10/1/19)
  - Virginia

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TAX FOUNDATION “STOPLIGHTS”

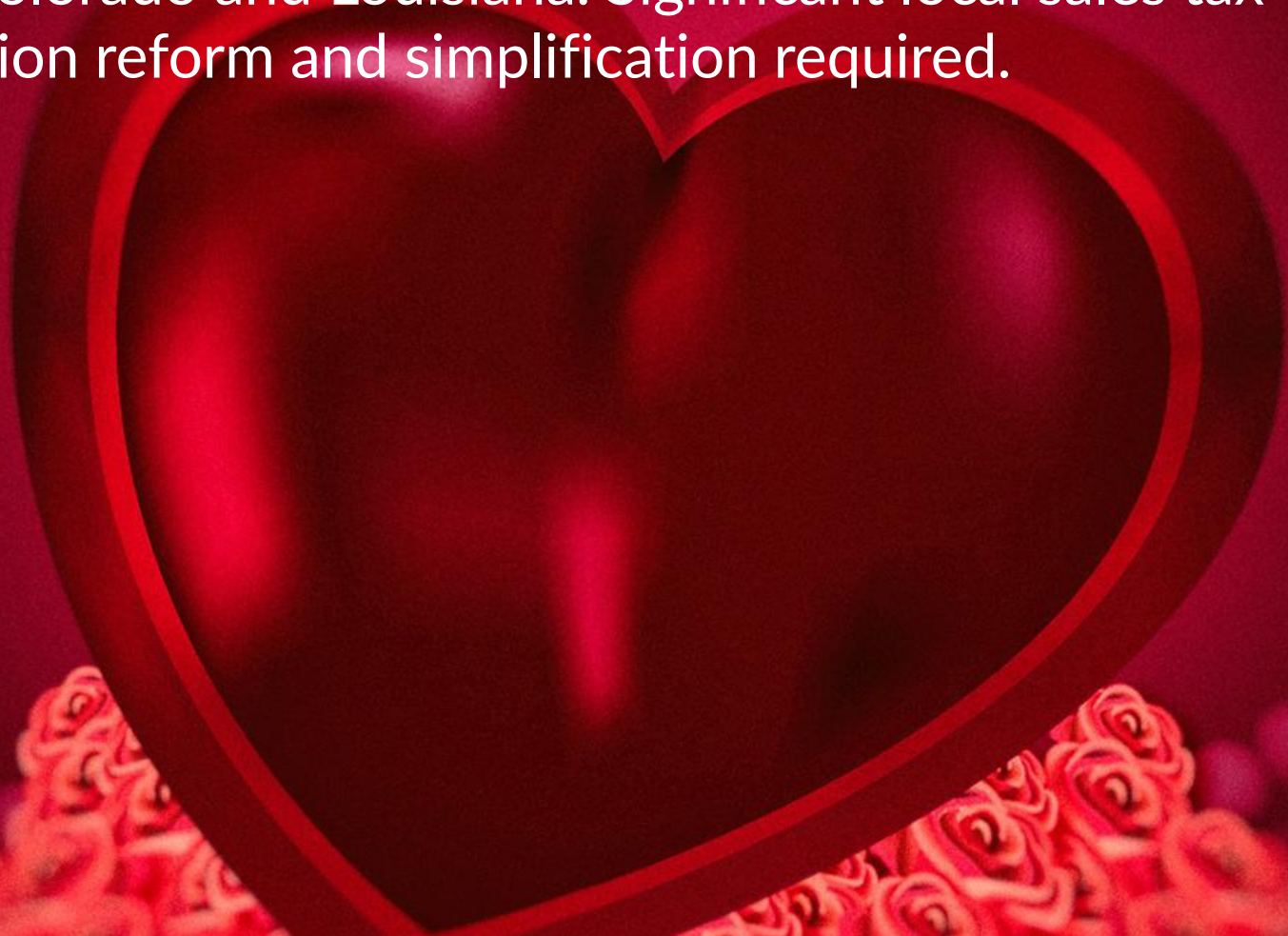




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- **Red:** Colorado and Louisiana. Significant local sales tax collection reform and simplification required.



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  - Colorado grace period ends May 31, 2019
    - SB 19-006 (Williams/Kraft-Tharp/Van Winkle): Electronic return acceptance and processing for state and local taxing jurisdictions. Wouldn't be in place until spring 2020. Passed Senate, pending in House.
    - Rumors that collection would be postponed until system is in place.
  - Louisiana set 1/1/19 start date but has now postponed
    - Sales and Use Tax Commission for Remote Sellers: state definition of “remote seller,” develop electronic system for return filing and processing
    - Sales Tax Streamlining & Modernization Commission: make legislative recommendations for improving sales tax
    - Louisiana Tax Commission: Administrator Charles Abels III resigned this week after his arrest for corruption
    - Marketplace litigation (Walmart.com v. Normand). Jefferson Parish demanding \$2 million from sales during period 2009 to 2015



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- NOMAD states: no sales tax (New Hampshire, Oregon, Montana, Alaska, Delaware).
  - New Hampshire efforts to oppose *Wayfair* ruling.
  - Montana doomed bill to adopt sales tax
  - Alaska local sales taxes
- Litigation
  - Massachusetts \$500,000 \*and\* 100 “cookie” nexus regulation being challenged. DOR enforcing to 10/1/17
  - Ohio identical provision – lawsuit withdrawn and collection has begun 1/1/19
  - South Dakota collection began 11/1/18 after end of court proceedings

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## DEVELOPMENTS SINCE NOVEMBER

- Currently: 32 states plus DC collecting.
- California – 4/1/19 with \$100,000/200
- Louisiana – postponed “a date to be determined in 2019”
- New York - \$300,000 \*and\* 100, “immediately”
- Ohio – lawsuit withdrawn, cookie nexus proceeded 1/1/19
- Texas – 10/1/19, \$500,000 threshold
- Wyoming – 2/1/19
- DC – began collecting 1/1/19. Marketplace 4/1/19.

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## PENDING ACTIONS

- Arkansas (+marketplace)
- Arizona (new! HB 2702. threshold, no retroactivity, common definitions. No uniform base, software, central portal, or rate simplification.)
- Colorado
- Connecticut (join SSUTA)
- Missouri (Eigel bill has income tax cuts, Koenig bill does not)
- Montana (adopt sales tax)
- North Dakota (marketplace)
- Tennessee
- Virginia
- probably others...

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## TAX FOUNDATION NEXT STEPS

- Release another update of post-Wayfair paper and map (released June 2018, updated November 2018)

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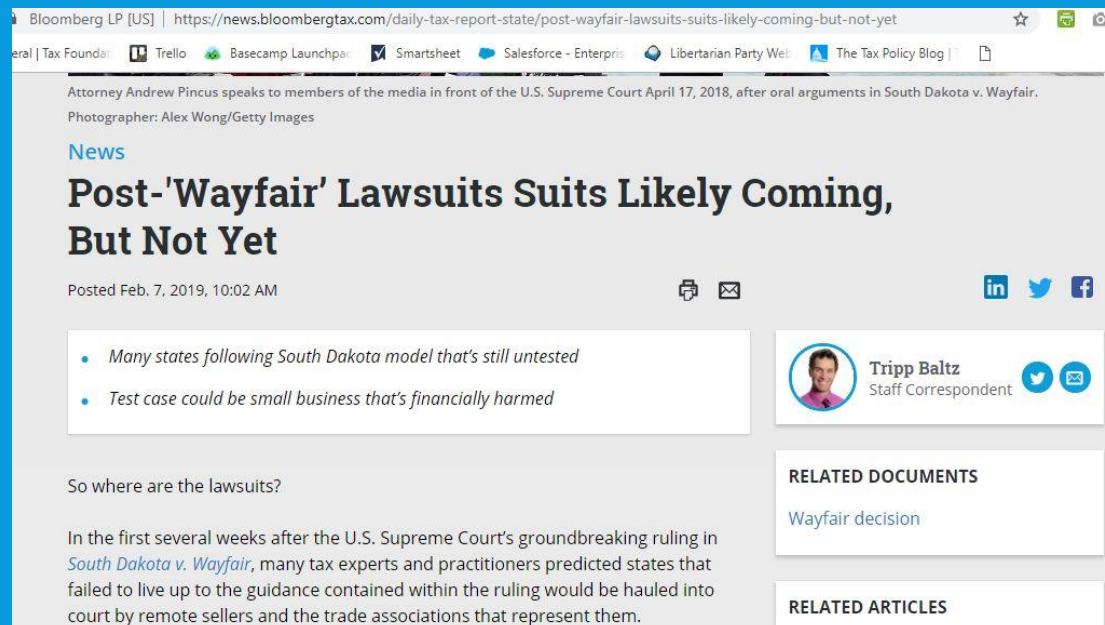
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The screenshot shows a web browser window displaying a Bloomberg Tax news article. The URL in the address bar is <https://news.bloombergtax.com/daily-tax-report-state/post-wayfair-lawsuits-suits-likely-coming-but-not-yet>. The article is dated February 7, 2019, at 10:02 AM. The author is Tripp Baltz, a Staff Correspondent. The article discusses the likelihood of lawsuits following the Supreme Court's decision in *South Dakota v. Wayfair*. A list of bullet points indicates that many states are following the South Dakota model and that a test case could be a small business financially harmed. The article also mentions that in the weeks following the ruling, many tax experts predicted states would sue remote sellers and trade associations.

Bloomberg LP [US] | <https://news.bloombergtax.com/daily-tax-report-state/post-wayfair-lawsuits-suits-likely-coming-but-not-yet>

Attorney Andrew Pincus speaks to members of the media in front of the U.S. Supreme Court April 17, 2018, after oral arguments in *South Dakota v. Wayfair*.  
Photographer: Alex Wong/Getty Images

News

### Post-'Wayfair' Lawsuits Suits Likely Coming, But Not Yet

Posted Feb. 7, 2019, 10:02 AM

- Many states following South Dakota model that's still untested
- Test case could be small business that's financially harmed

So where are the lawsuits?

In the first several weeks after the U.S. Supreme Court's groundbreaking ruling in *South Dakota v. Wayfair*, many tax experts and practitioners predicted states that failed to live up to the guidance contained within the ruling would be hauled into court by remote sellers and the trade associations that represent them.

Tripp Baltz  
Staff Correspondent

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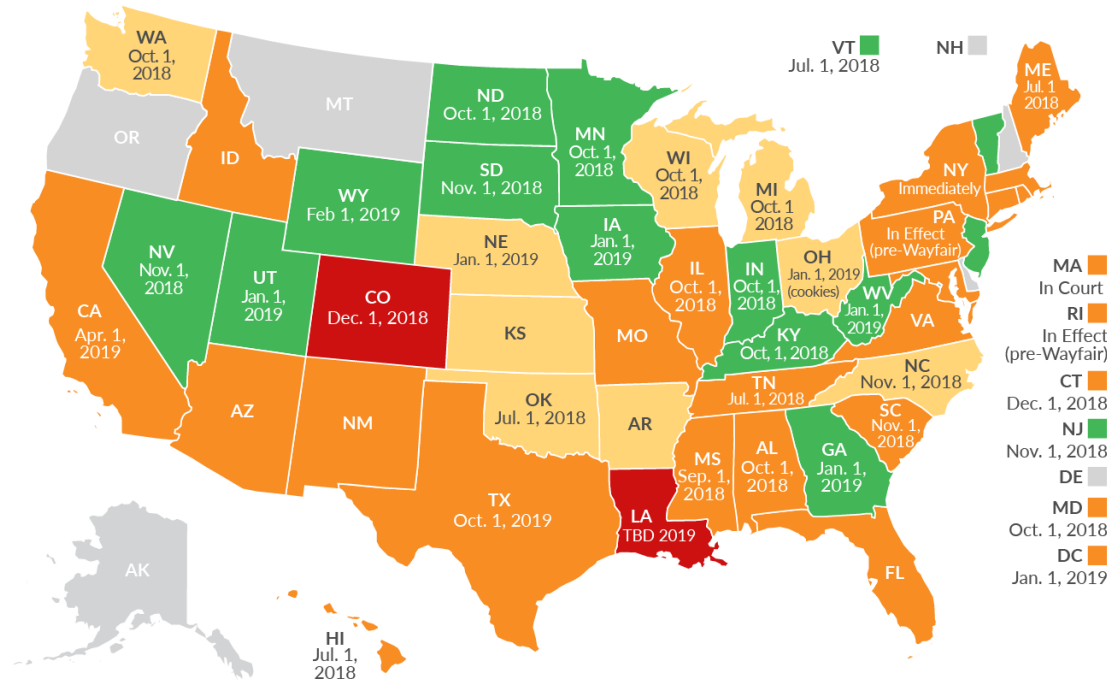
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