

June 25, 2020

BIWEEKLY ALERT

From Benesch's **Data Privacy Defense & Response Team**

Senator Brown Proposes Innovative Privacy Bill that Discards the Notice and Consent Regime

This past week, United States Senator Sherrod Brown proposed a draft data privacy bill aptly named the Data Accountability and Transparency Act of 2020 (DATA). The DATA seeks to restructure the current “consent” privacy paradigm—often critiqued as ineffective—to one that sets forth stringent limits on the *collection, use, and sharing* of American consumers’ personal data. By dissolving the notice and consent regime, the proposed legislation would alleviate the heavy burden of reading and comprehending the traditionally verbose and convoluted “privacy policies” found on company websites.

The DATA includes a number of individual protections that require organizations and agencies to: guarantee accuracy of, access to, and portability of data; provide a description of personal data collected and disclose the reason for the collection at the time of collection; and implement and maintain reasonable security procedures to protect personal data. Individuals may also challenge the reason for collection and request a human review of any automated decisions.

Significantly, the bill requires CEOs to certify compliance with the DATA and contains potential criminal and civil penalties for CEOs and Boards of Directors. To complement those provisions, the bill also includes strong whistleblower protections.

In addition to the above, the DATA includes these further safeguards:

- Robust civil rights protections designed to make certain that personal data is not used for discriminatory purposes in housing, employment, credit, insurance, and public accommodations.
- Prohibition of the use of facial recognition technology, which has garnered unfavorable publicity for its many privacy pitfalls in recent months.

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For more information, please contact one of the following members of Benesch’s Data Privacy Defense & Response Team:



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- The requirement that anyone using decision-making algorithms must provide new accountability reports.
- The creation of an independent agency tasked with advocating for the protection of Americans' privacy rights and the implementation of the DATA. This new agency will have rulemaking, supervisory, and enforcement authority, including the ability to issue civil penalties for violations, and a dedicated Office of Civil Rights to protect individuals from discrimination.
- A provision empowering individuals and state attorneys general to enforce privacy protections while not preempting more protective state laws.

This bill, if passed, would be the first federal data privacy regulation to apply across the states. Benesch's Data Privacy Defense & Response Team is following these legal developments closely and is available to advise current and future clients on what these legislative changes mean for their businesses.

Feeling attacked? Curious about how contact tracing efforts can affect your business? Now is the time to take action. We invite you to participate in a [complimentary 30-minute call with Benesch's data protection specialists](#). Benesch would be happy to provide you with our insight and guidance on these and other data privacy and protection best practices—including litigation avoidance strategies. We look forward to working with you to keep your data safe and secure.