

## Latest Congressional Efforts to Enact Privacy Legislation

October 22, 2019

### Key Points:

- On October 17, Senator Ron Wyden (D-OR) introduced legislation to establish baseline privacy and cybersecurity protections and issue fines to companies and criminal penalties to senior executives.
- The New Democrat Coalition (NDC) recently announced the endorsement of several bills, including privacy legislation introduced by Rep. Suzan DelBene (D-WA).
- Privacy negotiations within the Senate Commerce, Science, and Transportation Committee remain ongoing.

### Mind Your Business Act

Senator Ron Wyden (D-OR) **introduced** the Mind Your Own Business Act on October 17, which would empower the Federal Trade Commission (FTC) to establish minimum privacy and cybersecurity standards and issue fines of up to four percent of annual revenue on the first offense for companies and 10-20 year criminal penalties for senior executives who knowingly mislead the FTC.

The bill would also create a national Do Not Track system for users and establish access, deletion and correction rights. Companies offering services which require the sharing of consumer data would be mandated to offer a privacy-friendly version of the service for a “reasonable” fee. However, this fee would be waived for low-income consumers.

The legislation grants additional resources to the Commission, including 175 full-time staff members dedicated to privacy. Regarding enforcement, the bill establishes a right of action for protection and advocacy organizations, with each state allowing a single organization to file civil suits against companies with privacy violations. The designated organizations would receive funding from fines collected by the FTC.

The bill also includes a requirement for companies to examine the impact of algorithms on discrimination and accuracy.

### Contact Information

If you have any questions concerning this alert, please contact:

#### Ed Pagano

Partner  
epagano@akingump.com  
Washington, D.C.  
+1 202.887.4255

#### Chris A. Treanor

Counsel  
ctreanor@akingump.com  
Washington, D.C.  
+1 202.887.4551

#### Galen A. Roehl

Senior Policy Advisor  
groehl@akingump.com  
Washington, D.C.  
+1 202.887.4224

#### Taylor Daly

Public Policy Specialist  
tdaly@akingump.com  
Washington, D.C.  
+1 202.416.5541

The measure was previously [introduced](#) as a draft in November 2018 and includes several modifications, including a new provision to allow for state attorneys general enforcement and a clarification that the bill would not preempt state laws. The bill has been referred to the Senate Finance Committee.

The full text of the Mind Your Business Act may be accessed [here](#).

#### *New Democrat Coalition Endorses Rep. DelBene's (D-WA) Online Privacy Bill*

On Tuesday, October 15, the NDC [announced](#) the endorsement of several pieces of legislation on technology and artificial intelligence (AI). The NDC, co-chaired by Rep. Derek Kilmer (D-WA) and Rep. Suzan DelBene (D-WA), consists of 104 House Democrats and has been active in endorsing bills and policy priorities in the 116th Congress.

The package of bills endorsed includes H.R. 2013, the Information Transparency & Personal Data Control Act. The bill, introduced by NDC Vice Chair DelBene (D-WA) in March, would establish a preemptive federal standard built upon an opt-in model.

The measure would particularly grant the FTC with primary enforcement authority for issues pertaining to consumer privacy, directing the Commission to put forward regulations within 90 days of enactment. These regulations would require platforms to establish opt-in protocols for “sensitive personal information,” which is defined to include genetic data, financial account information, precise geolocations information, and information about religious beliefs and sexual orientation, among other items. The definition would exclude de-identified information, information related to employment or publically available information.

The legislation would also allow the FTC to fine companies upon their first offense and provide the Commission with 50 additional full-time employees, 15 of which must be technical experts, as well as an additional \$35 million. In addition, the measure would allow state attorneys general to obtain injunctive relief.

H.R. 2013 would further require companies to conduct privacy audits by a neutral third party and submit all results to the Commission every two years. These audit requirements would not apply to companies collecting or sharing the sensitive personal information of less than 5,000 individuals.

The full text of the Information Transparency & Personal Data Control Act may be accessed [here](#).

The NDC also endorsed [H.R. 827](#), the AI JOBS Act. The bill, introduced by Rep. Darren Soto (D-FL), would allow the Department of Labor to work with businesses and educational institutions to compile a report assessing the future growth of AI and its impact on the American workforce.

In addition, the NDC endorsed [H.Res.153](#), which would support the development of guidelines for ethical development of AI in consultation with stakeholders.

[akingump.com](http://akingump.com)