

Ohio data bill would apply NIST privacy standards

[Ken Silva](#)

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The Ohio Personal Privacy Act (OPPA) has support from government and business stakeholders, but privacy groups have yet to enter the fray.

Introduced 28 September in the Ohio House Government Oversight Committee, OPPA would provide state residents with GDPR-like legal rights to access, correct, delete, and opt out of sale for their personal data.

Uniquely, the Ohio bill encourages companies to adopt [privacy standards set by US National Institute of Standards and Technology \(NIST\)](#), a federal government agency that sets best practices for the science and tech sectors. OPPA provides an affirmative defence for firms that can show they follow NIST standards.

Kristin Bryan at Squire Patton Boggs in Cleveland said the NIST provision serves two functions – giving firms following best standards an affirmative defence, while also encouraging companies to stick with best practices as they change over time.

Bryan said the drafters of the Ohio bill wanted to make sure the state avoided passing “cumbersome regulations on business” that “don’t evolve as technology evolves.”

Along with the affirmative defence, OPPA also lacks a private right of action and gives companies a 30-day period to cure violations before they can be penalised. It also doesn’t cover entities already regulated by health, education or financial privacy rules – making it one of the most business-friendly state privacy bills introduced to date.

Bryan said the legislation was drafted by CyberOhio, a committee created by Ohio governor Mike DeWine in 2016 to work on cyber issues affecting the state. CyberOhio is made up of people from business, government, and academia.

Thus far, the legislation has yet to receive much pushback from privacy groups, which have opposed other industry-backed bills such as the [Washington Privacy Act](#) – a proposal that failed for the third time earlier this year despite having the support of Microsoft and other tech firms.

“I think really it's the next couple of months that you need to keep an eye on,” Bryan said on whether she expects the bill to receive stiff opposition.

While the bill will likely be amended as it makes its way through the legislature, Bryan said a dealbreaker would be if there’s a push to add a private right of action.

“On the right the private right of action: If it were included in [OPPA], there's no way in my view it would get passed,” she said, explaining that the bill’s drafters were wary of the influx of litigation stemming from the Illinois Biometric Privacy Information Act and the California Consumer Privacy Act.

“Ohio is not the only state this year to have gotten cold feet as a result of the flood of data-privacy cases that have been filed in other states following their enactment of comprehensive privacy laws,” she said. “There have been hundreds of cases filed in the courts of both states, to the point where Florida this year failed to pass comprehensive privacy legislation over a similar debate.”

When introducing the legislation on 28 September, Rep. Rick Carfagna said Ohio is aiming to have OPPA “serve as a national model” for other states as well as potential federal privacy legislation.

Bryan said OPPA is the state’s attempt to push standards that provide baseline protections while not hampering industry.

“This bill would be a definitive line in the sand for Ohio taking a different approach from other states in providing baseline privacy protections to Ohio residents, while also trying to balance legitimate business concerns regarding litigation risk and other potential liabilities that can flow from having to comply with the law,” she said.

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