Insights: Alerts

Proposed Federal Ban on State Regulation of AI

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Late Sunday, May 11, 2025, the House Energy and Commerce Committee released markup text for the forthcoming reconciliation bill. The legislation, referred to by President Trump as “One Big Beautiful Bill” (or as a friend likes to refer to it “O-Tripple B”), is the multi-trillion omnibus bill set to tackle various matters, including tax issues, Medicare, Medicaid, energy policy, and broad federal program funding. One unexpected matter addressed in the Committee's text is a proposed provision limiting States or political subdivisions from enforcing rules concerning artificial intelligence (“AI”).

Specifically, Title IV – Energy and Commerce – Subtitle C – Communication, states,

> (c) Moratorium
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> (1) IN GENERAL.—Except as provided in paragraph (2), no State or political subdivision thereof may enforce any law or regulation regulating artificial intelligence models, artificial intelligence systems, or automated decision systems during the 10-year period beginning on the date of the enactment of this Act.

There are provided caveats to the moratorium provision explaining that it will not prohibit enforcement in certain areas, including laws that remove impediments to the deployment or operation of AI or that support the development of AI infrastructure. But for the most part, the moratorium would meaningfully limit the ability of states to implement laws and regulations addressing AI.

In the current legislative landscape, the absence of comprehensive federal AI regulation has prompted numerous states to develop and implement their own AI-specific legislative frameworks. States such as Utah, Tennessee, Colorado, Illinois, New York, and California have all enacted, and intend to enact additional laws and regulations addressing various aspects of AI, from transparency and accountability to data privacy and discrimination. If signed into law as part of the reconciliation bill, the proposed federal moratorium would substantially curtail the ability of these states—and others—to enforce existing AI laws or to implement new AI regulatory measures for the ten-year duration of the moratorium.

It remains uncertain whether this provision will survive the legislative process and be included in the final version of the reconciliation legislation. The reconciliation process is a parliamentary procedure that enables Congress to pass certain budget-related legislation with a simple majority vote in both chambers, thereby bypassing the Senate filibuster. However, this process is subject to significant constraints, notably Section 313 of the Congressional Budget Act, commonly known as the “Byrd Rule.” The Byrd Rule prohibits the inclusion of “extraneous” provisions in reconciliation bills, specifically provisions that do not have a direct impact on federal

spending or revenue. As a result, there is a meaningful possibility that the Senate Parliamentarian may determine that the AI preemption provision falls outside the permissible scope of reconciliation, placing its future in jeopardy.

As the Senate prepares to consider the reconciliation package and negotiations between the House and Senate intensify, the fate of the proposed AI moratorium provision remains uncertain. What is clear, however, is that artificial intelligence regulation continues to be a central focus for lawmakers, underscoring broader concerns about national security, technological innovation, and global competitiveness. We anticipate that AI policy will remain—and continue to grow as—a key priority for both the administration and the 119th Congress. Kilpatrick will continue to monitor these developments closely and provide updates as issues evolve.

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For more information on these and other critical matters—or to discuss strategies for navigating and influencing federal government actions impacting your business—please reach out to John Loving at jloving@ktslaw.com and Stephen Anstey at sanstey@ktslaw.com or visit us at: Kilpatrick – Government & Regulatory, Kilpatrick – Government Relations.

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