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(Original Signature of Member)

115TH CONGRESS
2D SESSION

H. R. _____

To require the Federal Trade Commission to promulgate regulations related to sensitive personal information or behavioral data, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

Ms. DELBENE introduced the following bill; which was referred to the
Committee on _____

A BILL

To require the Federal Trade Commission to promulgate regulations related to sensitive personal information or behavioral data, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Online Transparency
5 & Personal Data Control Act”.

1 **SEC. 2. REQUIREMENTS FOR SENSITIVE PERSONAL INFOR-**
2 **MATION OR BEHAVIORAL DATA.**

3 (a) REGULATIONS.—Not later than 90 days after the
4 date of the enactment of this Act, the Federal Trade Com-
5 mission shall promulgate regulations under section 553 of
6 title 5, United States Code, to require, except as provided
7 in subsection (b), any operator that provides services to
8 the public involving the collection, storage, processing,
9 sale, sharing with third parties, or other use of sensitive
10 personal information or behavioral data from United
11 States persons or persons located in the United States
12 when the data is collected, to meet the following require-
13 ments:

14 (1) AFFIRMATIVE, EXPRESS, AND OPT IN CON-
15 SENT.—Provide users with notice through a privacy
16 and data use policy of a specific request to use their
17 data and require that users provide affirmative, ex-
18 press, and opt in consent to any functionality that
19 involves the collection, storage, processing, or other
20 use of sensitive personal information or behavioral
21 data, including sharing personal data with third par-
22 ties.

23 (2) PRIVACY AND DATA USE POLICY.—Provide
24 users with an up-to-date, transparent privacy and
25 data use policy that meets general requirements, in-

1 including that such policy, presented to users in the
2 context where it applies—

3 (A) is concise and intelligible;

4 (B) is clear and prominent in appearance;

5 (C) uses clear and plain language;

6 (D) uses visualizations where appropriate
7 to make complex information understandable by
8 the ordinary user; and

9 (E) is provided free of charge.

10 (3) ADDITIONAL REQUIREMENTS FOR PRIVACY
11 AND DATA USE POLICY.—The privacy and data use
12 policy required under paragraph (2) shall include the
13 following:

14 (A) Identity and contact information of the
15 entity collecting the sensitive personal informa-
16 tion or behavioral data.

17 (B) The purpose or use for collecting, stor-
18 ing, processing, or otherwise using the data, in-
19 cluding how the data is shared with third par-
20 ties.

21 (C) Third parties with whom the data will
22 be shared and for what purposes.

23 (D) The storage period for how long the
24 data will be retained by the operator and any
25 third party, as applicable.

1 (E) How consent to collecting, storing,
2 processing, or otherwise using the data, includ-
3 ing sharing with third parties, may be with-
4 drawn.

5 (F) How a user can view their personal
6 history and whether it can be exported to other
7 web-based platforms.

8 (G) What kind of sensitive personal infor-
9 mation or behavioral data, if any, is required to
10 be provided for discrete functions or applica-
11 tions to work and what happens if that infor-
12 mation is not provided.

13 (H) Whether the data will be profiled or
14 automatically processed.

15 (4) PRIVACY AUDITS.—

16 (A) IN GENERAL.—Not less frequently
17 than every 2 years, obtain a privacy audit for
18 the previous 2 years from an objective, inde-
19 pendent third-party professional (with a min-
20 imum of 3 years of experience in the field of
21 privacy and data protection), who uses proce-
22 dures and standards generally accepted in such
23 field and submit the audit to the Commission.

24 (B) AUDIT REQUIREMENTS.—Each such
25 audit shall—

1 (i) set forth the specific privacy and
2 data use controls that the operator has im-
3 plemented and maintained during the re-
4 porting period;

5 (ii) describe whether such controls are
6 appropriate to the size and complexity of
7 the operator, the nature and scope of the
8 activities of the operator, and the sensi-
9 tivity of the sensitive personal information
10 or behavioral data collected by the oper-
11 ator;

12 (iii) certify whether the privacy con-
13 trols operate with sufficient effectiveness to
14 provide reasonable assurance to protect the
15 privacy of sensitive personal information or
16 behavioral data and that the controls have
17 so operated throughout the reporting pe-
18 riod;

19 (iv) be prepared and completed within
20 60 days after the end of the reporting pe-
21 riod to which the audit applies, and sub-
22 mitted to the Federal Trade Commission
23 upon the completion of the 60-day period;
24 and

1 (v) be subject to disclosure under sec-
2 tion 552 of title 5, United States Code
3 (commonly referred to as FOIA), except
4 for privileged business information and any
5 other exception described under subsection
6 (b) of such section.

7 (C) REDACTED VERSION FOR DISCLO-
8 SURE.—Publish a redacted version (removing
9 any information that would not be subject to
10 disclosure under section 552 of title 5, Untied
11 States Code) of any privacy audit submitted to
12 the Commission.

13 (b) EXEMPTIONS.—

14 (1) TECHNICALLY NECESSARY OPERATIONS
15 AND SECURITY PURPOSES.—The regulations promul-
16 gated pursuant to subsection (a) shall not apply to
17 the processing of sensitive personal information or
18 behavioral data that is performed in the course of
19 technically necessary operations to provide the serv-
20 ice a user has consented to or for security purposes.

21 (2) REASONABLE EXPECTATION OF USERS.—
22 The regulations promulgated pursuant to subsection
23 (a) with respect to the requirement to provide opt in
24 consent shall not apply to the processing of sensitive
25 personal information or behavioral data in which

1 such processing does not deviate from purposes con-
2 sistent with an operator's relationship with users as
3 understood by the reasonable user.

4 **SEC. 3. APPLICATION AND ENFORCEMENT BY THE FED-**
5 **ERAL TRADE COMMISSION.**

6 (a) GENERAL APPLICATION.—This Act and the regu-
7 lations promulgated under this Act apply, according to
8 their terms, to those persons, partnerships, and corpora-
9 tions over which the Federal Trade Commission has au-
10 thority pursuant to section 5(a)(2) of the Federal Trade
11 Commission Act (15 U.S.C. 45(a)(2)).

12 (b) ENFORCEMENT.—

13 (1) UNFAIR OR DECEPTIVE ACTS OR PRAC-
14 TICES.—A violation of this Act or a regulation pro-
15 mulgated under this Act shall be treated as a viola-
16 tion of a regulation under section 18(a)(1)(B) of the
17 Federal Trade Commission Act (15 U.S.C.
18 57a(a)(1)(B)) regarding unfair or deceptive acts or
19 practices.

20 (2) POWERS OF COMMISSION.—The Federal
21 Trade Commission shall enforce this Act and the
22 regulations promulgated under this Act in the same
23 manner, by the same means, and with the same ju-
24 risdiction, powers, and duties as though all applica-
25 ble terms and provisions of the Federal Trade Com-

1 mission Act (15 U.S.C. 41 et seq.) were incor-
2 porated into and made a part of this Act. Any per-
3 son who violates this Act or a regulation promul-
4 gated under this Act shall be subject to the penalties
5 and entitled to the privileges and immunities pro-
6 vided in the Federal Trade Commission Act.

7 **SEC. 4. DEFINITIONS.**

8 In this Act:

9 (1) CALL DETAIL RECORD.—The term “call de-
10 tail record”—

11 (A) means session-identifying information
12 (including an originating or terminating tele-
13 phone number, an International Mobile Sub-
14 scriber Identity number, or an International
15 Mobile Station Equipment Identity number), a
16 telephone calling card number, or the time or
17 duration of a call;

18 (B) does not include—

19 (i) the contents (as defined in section
20 2510(8) of title 18, United States Code) of
21 any communication;

22 (ii) the name, address, or financial in-
23 formation of a subscriber or customer; or

24 (iii) cell site location or global posi-
25 tioning system information.

1 (2) CLEAR AND PROMINENT.—The term “clear
2 and prominent” means—

3 (A) in a textual communication (such as a
4 printed publication or words displayed on the
5 screen of a computer or mobile device), the re-
6 quired disclosure is—

7 (i) of a type, size, and location suffi-
8 ciently noticeable for an ordinary consumer
9 to read and comprehend the communica-
10 tion; and

11 (ii) in print that contrasts highly with
12 the background on which the communica-
13 tion appears;

14 (B) in a communication disseminated oral-
15 ly or through audible means (such as radio or
16 streaming audio), the required disclosure is de-
17 livered in a volume and cadence sufficient for
18 an ordinary consumer to hear and comprehend
19 the communication;

20 (C) in a communication disseminated
21 through video, the required disclosure is—

22 (i) in writing in a form consistent
23 with subparagraph (A);

24 (ii) appears on the screen for a dura-
25 tion sufficient for an ordinary consumer to

1 read and comprehend the communication;
2 and

3 (iii) in the same language as the pre-
4 dominant language that is used in the
5 communication; and

6 (D) in each instance, the required disclo-
7 sure—

8 (i) is presented in an understandable
9 language and syntax;

10 (ii) includes nothing contrary to, in-
11 consistent with, or that mitigates any
12 statement contained within the disclosure
13 or within any document linked to or ref-
14 erenced therein; and

15 (iii) includes an alternative that is
16 compliant with applicable obligations of the
17 operator under title III of the Americans
18 with Disabilities Act of 1990 (42 U.S.C.
19 12181 et seq.).

20 (3) COMMISSION.—The term “Commission”
21 means the Federal Trade Commission.

22 (4) OPERATOR.—The term “operator” means
23 any entity who operates a website located on the
24 internet or an online service and who collects or
25 maintains personal information from or about indi-

1 individuals, or on whose behalf such information is col-
2 lected or maintained, where such website or online
3 service is operated for commercial purposes, includ-
4 ing any entity offering products or services for sale
5 through that website or online service, involving
6 commerce among the States or with 1 or more for-
7 eign nations.

8 (5) SENSITIVE PERSONAL INFORMATION OR BE-
9 HAVIORAL DATA.—The term “sensitive personal in-
10 formation or behavioral data” means information re-
11 lating to an identified or identifiable individual, in-
12 cluding the following:

13 (A) A first and last name.

14 (B) A home or other physical address in-
15 cluding street name and name of a city or town.

16 (C) IP address or other network identifier

17 (D) Financial information.

18 (E) An e-mail address or functional equiv-
19 alent.

20 (F) A telephone number.

21 (G) Health information.

22 (H) Relationships.

23 (I) Information pertaining to children
24 under 18 years of age.

25 (J) Social Security numbers.

1 (K) Driver’s license or other government-
2 issued identification number.

3 (L) Authentication credentials, such as a
4 username and password.

5 (M) Geolocation information.

6 (N) Content of communications.

7 (O) Any information about who a commu-
8 nication is sent to.

9 (P) Call detail records.

10 (Q) Web browsing history, application
11 usage history, and the functional equivalent of
12 either.

13 (R) Device identifiers.

14 (S) Biometric information.

15 (T) Sexual orientation.

16 (U) Political preferences.

17 (V) Religious beliefs.

18 (W) Any other personal or behavioral in-
19 formation that the Commission determines to
20 be sensitive.

21 (6) STATE.—The term “State” means each
22 State of the United States, the District of Columbia,
23 and each commonwealth, territory, or possession of
24 the United States.

1 (7) THIRD PARTY.—The term “third party”
2 means an individual or entity that uses or receives
3 sensitive personal information or behavioral data ob-
4 tained by or on behalf of an operator, other than—

5 (A) a service provider of an operator
6 that—

7 (i) uses such data for and at the di-
8 rection of an operator (and no other indi-
9 vidual or entity) and for no other purpose;
10 and

11 (ii) does not disclose such data, or any
12 individually identifiable information derived
13 from such data, except for, and at the di-
14 rection of, an operator, for the purpose of
15 providing services requested by a user and
16 for no other purpose; or

17 (B) any entity that uses such data only as
18 reasonably necessary—

19 (i) to comply with applicable law, reg-
20 ulation, or legal process;

21 (ii) to enforce an operator’s terms of
22 use; or

23 (iii) to detect, prevent, or mitigate
24 fraud or security vulnerabilities.

1 **SEC. 5. RULE OF CONSTRUCTION.**

2 Nothing in this Act shall be construed to preclude
3 the acquisition by the Federal Government of—

4 (1) the contents of a wire or electronic commu-
5 nication pursuant to other lawful authorities, includ-
6 ing the authorities under chapter 119 of title 18,
7 United States Code (commonly known as the “Wire-
8 tap Act”), the Foreign Intelligence Surveillance Act
9 of 1978 (50 U.S.C. 1801 et seq.), or any other pro-
10 vision of Federal law not specifically amended by
11 this Act; or

12 (2) records or other information relating to a
13 subscriber or customer of any electronic communica-
14 tion service or remote computing service (not includ-
15 ing the content of such communications) pursuant to
16 the Foreign Intelligence Surveillance Act of 1978
17 (50 U.S.C. 1801 et seq.), chapter 119 of title 18,
18 United States Code (commonly known as the “Wire-
19 tap Act”), or any other provision of Federal law not
20 specifically amended by this Act.

21 **SEC. 6. EFFECTIVE DATE.**

22 This Act shall take effect 180 days after the date of
23 the enactment of this Act.