

115TH CONGRESS  
2D SESSION

# H. R. 6864

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

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## IN THE HOUSE OF REPRESENTATIVES

SEPTEMBER 24, 2018

Ms. DELBENE (for herself and Mr. JEFFRIES) introduced the following bill;  
which was referred to the Committee on Energy and Commerce

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## 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 “Information Trans-  
5 parency & Personal Data Control Act”.

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

8 (a) REGULATIONS.—Not later than 1 year after the  
9 date of the enactment of this Act, the Federal Trade Com-  
10 mission shall promulgate regulations under section 553 of

1 title 5, United States Code, to require, except as provided  
2 in subsection (b), any operator that provides services to  
3 the public involving the collection, storage, processing,  
4 sale, sharing with third parties, or other use of sensitive  
5 personal information from United States persons or per-  
6 sons located in the United States when the data is col-  
7 lected, to meet the following requirements:

8           (1) AFFIRMATIVE, EXPRESS, AND OPT IN CON-  
9           SENT.—Provide users with notice through a privacy  
10           and data use policy of a specific request to use their  
11           data and require that users provide affirmative, ex-  
12           press, and opt in consent to any functionality that  
13           involves the collection, storage, processing, sale,  
14           sharing, or other use of sensitive personal informa-  
15           tion, including sharing personal data with third par-  
16           ties.

17           (2) PRIVACY AND DATA USE POLICY.—Provide  
18           users with an up-to-date, transparent privacy, secu-  
19           rity, and data use policy that meets general require-  
20           ments, including that such policy, presented to users  
21           in the context where it applies—

22                   (A) is concise and intelligible;

23                   (B) is clear and prominent in appearance;

24                   (C) uses clear and plain language;

1 (D) uses visualizations where appropriate  
2 to make complex information understandable by  
3 the ordinary user; and

4 (E) is provided free of charge.

5 (3) ADDITIONAL REQUIREMENTS FOR PRIVACY  
6 AND DATA USE POLICY.—The privacy, security, and  
7 data use policy required under paragraph (2) shall  
8 include the following:

9 (A) Identity and contact information of the  
10 entity collecting the sensitive personal informa-  
11 tion.

12 (B) The purpose or use for collecting, stor-  
13 ing, processing, selling, sharing, or otherwise  
14 using the personal information, including how  
15 the sensitive personal information is shared  
16 with third parties.

17 (C) Third parties with whom the sensitive  
18 personal information will be shared and for  
19 what purposes.

20 (D) The storage period for how long the  
21 personal information will be retained by the op-  
22 erator and any third party, as applicable.

23 (E) How consent to collecting, storing,  
24 processing, selling, sharing, or otherwise using

1 the sensitive personal information, including  
2 sharing with third parties, may be withdrawn.

3 (F) How a user can view the sensitive per-  
4 sonal information that they have provided to an  
5 operator and whether it can be exported to  
6 other web-based platforms.

7 (G) What kind of sensitive personal infor-  
8 mation is collected.

9 (H) Whether the sensitive personal infor-  
10 mation will be used to create profiles about  
11 users.

12 (I) How sensitive personal information is  
13 protected from unauthorized access or acquisi-  
14 tion.

15 (4) OPT OUT CONSENT.—For any collection,  
16 storage, processing, selling, sharing, or other use of  
17 non-sensitive personal information, including sharing  
18 with third parties, Operators shall provide users with  
19 the ability to opt out at any time.

20 (5) PRIVACY AUDITS.—

21 (A) IN GENERAL.—Annually, Operators  
22 collecting, storing, processing, selling, sharing,  
23 or otherwise using sensitive personal informa-  
24 tion shall obtain a privacy audit from an objec-  
25 tive, independent third-party professional with

1 substantial experience in the field of privacy  
2 and data protection, who uses procedures and  
3 standards generally accepted in such field.

4 (B) AUDIT REQUIREMENTS.—Each such  
5 audit shall—

6 (i) set forth the privacy, security, and  
7 data use controls that the operator has im-  
8 plemented and maintained during the re-  
9 porting period;

10 (ii) describe whether such controls are  
11 appropriate to the size and complexity of  
12 the operator, the nature and scope of the  
13 activities of the operator, and the nature of  
14 the sensitive personal information or be-  
15 havioral data collected by the operator;

16 (iii) certify whether the privacy and  
17 security controls operate with sufficient ef-  
18 fectiveness to provide reasonable assurance  
19 to protect the privacy and security of sen-  
20 sitive personal information or behavioral  
21 data and that the controls have so oper-  
22 ated throughout the reporting period;

23 (iv) be prepared and completed within  
24 60 days after the end of the reporting pe-  
25 riod to which the audit applies; and

1 (v) be provided to the Federal Trade  
2 Commission or to the attorney general of  
3 a State, or other authorized State officer,  
4 within 10 days of notification by the Com-  
5 mission or the attorney general of a State,  
6 or other authorized State officer where  
7 such person has presented to the Operator  
8 allegations that a violation of this Act or  
9 any regulation issued under this Act has  
10 been committed by the Operator.

11 (C) SMALL BUSINESS EXEMPTION.—Not-  
12 withstanding other authorities of the FTC, the  
13 audit requirements set forth above shall not  
14 apply to Operators with 500 or fewer employ-  
15 ees.

16 (D) NON-SENSITIVE PERSONAL INFORMA-  
17 TION EXEMPTION.—The audit requirements set  
18 forth above shall not apply to Operators who do  
19 not collect, store, process, sell, share, or other-  
20 wise use sensitive personal information.

21 (b) EXEMPTIONS.—

22 (1) NECESSARY OPERATIONS AND SECURITY  
23 PURPOSES.—Subsection (a) shall not apply to the  
24 processing, collecting, storing, sharing, selling of

1 sensitive personal information for the following pur-  
2 poses:

3 (A) Preventing or detecting fraud.

4 (B) Protecting the security of people, de-  
5 vices, networks, or facilities.

6 (C) Protecting the health, safety, rights, or  
7 property of the covered entity or another per-  
8 son.

9 (D) Responding in good faith to valid legal  
10 process or providing information as otherwise  
11 required or authorized by law.

12 (E) Monitoring or enforcing agreements  
13 between the covered entity and an individual,  
14 including but not limited to, terms of service,  
15 terms of use, user agreements, or agreements  
16 concerning monitoring criminal activity.

17 (2) REASONABLE EXPECTATION OF USERS.—

18 The regulations promulgated pursuant to subsection  
19 (a) with respect to the requirement to provide opt in  
20 consent shall not apply to the processing of sensitive  
21 personal information or behavioral data in which  
22 such processing does not deviate from purposes con-  
23 sistent with an operator's relationship with users as  
24 understood by the reasonable user.

1 **SEC. 3. APPLICATION AND ENFORCEMENT BY THE FED-**  
2 **ERAL TRADE COMMISSION.**

3 (a) GENERAL APPLICATION.—This Act applies, ac-  
4 cording to its terms, to those persons, partnerships, and  
5 corporations over which the Federal Trade Commission  
6 has authority pursuant to section 5(a)(2) of the Federal  
7 Trade Commission Act (15 U.S.C. 45(a)(2)). Notwith-  
8 standing the limitations in the Federal Trade Commission  
9 Act on Commission authority with respect to common car-  
10 riers, this Act also applies, according to its terms, to com-  
11 mon carriers subject to the Communications Act of 1934  
12 (47 U.S.C. 151 et seq.) and Acts amendatory thereof and  
13 supplementary thereto.

14 (b) ENFORCEMENT.—

15 (1) UNFAIR OR DECEPTIVE ACTS OR PRAC-  
16 TICES.—A violation of this Act or a regulation pro-  
17 mulgated under this Act shall be treated as a viola-  
18 tion of a regulation under section 18(a)(1)(B) of the  
19 Federal Trade Commission Act (15 U.S.C.  
20 57a(a)(1)(B)) regarding unfair or deceptive acts or  
21 practices.

22 (2) POWERS OF COMMISSION.—Except as pro-  
23 vided in subsection (a), the Federal Trade Commis-  
24 sion shall enforce this Act and the regulations pro-  
25 mulgated under this Act in the same manner, by the  
26 same means, and with the same jurisdiction, powers,

1 and duties as though all applicable terms and provi-  
2 sions of the Federal Trade Commission Act (15  
3 U.S.C. 41 et seq.) were incorporated into and made  
4 a part of this Act. Any person who violates this Act  
5 or a regulation promulgated under this Act shall be  
6 subject to the penalties and entitled to the privileges  
7 and immunities provided in the Federal Trade Com-  
8 mission Act.

9 (c) CONSTRUCTION.—Nothing in this Act shall be  
10 construed to limit the authority of the Federal Trade  
11 Commission under any other provision of law.

12 **SEC. 4. DEFINITIONS.**

13 In this Act:

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

16 (A) means session-identifying information  
17 (including an originating or terminating tele-  
18 phone number, an International Mobile Sub-  
19 scriber Identity number, or an International  
20 Mobile Station Equipment Identity number), a  
21 telephone calling card number, or the time or  
22 duration of a call;

23 (B) does not include—

1 (i) the contents (as defined in section  
2 2510(8) of title 18, United States Code) of  
3 any communication;

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

6 (iii) cell site location or global posi-  
7 tioning system information.

8 (2) CLEAR AND PROMINENT.—The term “clear  
9 and prominent” means in any communication me-  
10 dium, the required disclosure is—

11 (A) of a type, size, and location sufficiently  
12 noticeable for an ordinary consumer to read  
13 and comprehend the communication;

14 (B) provided in a manner such that an or-  
15 dinary consumer is able to read and com-  
16 prehend the communication;

17 (C) is presented in an understandable lan-  
18 guage and syntax;

19 (D) includes nothing contrary to, incon-  
20 sistent with, or that mitigates any statement  
21 contained within the disclosure or within any  
22 document linked to or referenced therein; and

23 (E) includes an option that is compliant  
24 with applicable obligations of the operator

1 under title III of the Americans with Disabil-  
2 ities Act of 1990 (42 U.S.C. 12181 et seq.).

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

5 (4) OPERATOR.—The term “operator” means  
6 any entity who operates a website located on the  
7 internet or an online service and who collects or  
8 maintains personal information from or about indi-  
9 viduals, or on whose behalf such information is col-  
10 lected or maintained, where such website or online  
11 service is operated for commercial purposes, includ-  
12 ing any entity that buys and sells consumer data  
13 without direct consumer interaction, and any entity  
14 offering products or services for sale through that  
15 website or online service, involving commerce among  
16 the States or with one or more foreign nations.

17 (5) SENSITIVE PERSONAL INFORMATION.—The  
18 term “sensitive personal information” means infor-  
19 mation relating to an identified or identifiable indi-  
20 vidual, including the following:

21 (A) Financial information.

22 (B) Health information.

23 (C) Relationships.

24 (D) Information pertaining to children  
25 under 13 years of age.

1 (E) Social Security numbers.

2 (F) Driver's license or other government-  
3 issued identification number.

4 (G) Authentication credentials, such as a  
5 username and password.

6 (H) Precise geolocation information.

7 (I) Content of communications.

8 (J) Call detail records.

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

12 (L) Biometric information.

13 (M) Sexual orientation.

14 (N) Political preferences.

15 (O) Religious beliefs.

16 (P) Any other personal or behavioral infor-  
17 mation that the Commission determines to be  
18 sensitive.

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

23 (7) THIRD PARTY.—The term “third party”  
24 means an individual or entity that uses or receives

1 sensitive personal information or behavioral data ob-  
2 tained by or on behalf of an operator, other than—

3 (A) a service provider of an operator to  
4 whom the operator discloses the consumer’s  
5 sensitive personal information for an oper-  
6 ational purpose pursuant to an agreement that  
7 prohibits the person receiving the personal in-  
8 formation from using or disclosing the personal  
9 information for any purpose other than the pur-  
10 poses contemplated by the agreement; and

11 (B) any entity that uses such data only as  
12 reasonably necessary—

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

15 (ii) to enforce an operator’s terms of  
16 use; or

17 (iii) to detect, prevent, or mitigate  
18 fraud or security vulnerabilities.

19 **SEC. 5. RULE OF CONSTRUCTION.**

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

22 (1) the contents of a wire or electronic commu-  
23 nication pursuant to other lawful authorities, includ-  
24 ing the authorities under chapter 119 of title 18,  
25 United States Code (commonly known as the “Wire-

1 tap Act”), the Foreign Intelligence Surveillance Act  
2 of 1978 (50 U.S.C. 1801 et seq.), or any other pro-  
3 vision of Federal law not specifically amended by  
4 this Act; or

5 (2) records or other information relating to a  
6 subscriber or customer of any electronic communica-  
7 tion service or remote computing service (not includ-  
8 ing the content of such communications) pursuant to  
9 the Foreign Intelligence Surveillance Act of 1978  
10 (50 U.S.C. 1801 et seq.), chapter 119 of title 18,  
11 United States Code (commonly known as the “Wire-  
12 tap Act”), or any other provision of Federal law not  
13 specifically amended by this Act.

14 **SEC. 6. RIGHT OF ACTION.**

15 (a) RIGHT OF ACTION.—Except as provided in sub-  
16 section (e), the attorney general of a State, or other au-  
17 thorized State officer, alleging a violation of this Act or  
18 any regulation issued under this Act that affects or may  
19 affect such State or its residents may bring an action on  
20 behalf of the residents of the State in any United States  
21 district court for the district in which the defendant is  
22 found, resides, or transacts business, or wherever venue  
23 is proper under section 1391 of title 28, to obtain appro-  
24 priate injunctive relief.

1 (b) NOTICE TO COMMISSION REQUIRED.—A State  
2 shall provide prior written notice to the Federal Trade  
3 Commission of any civil action under subsection (a) to-  
4 gether with a copy of its complaint, except that if it is  
5 not feasible for the State to provide such prior notice, the  
6 State shall provide such notice immediately upon insti-  
7 tuting such action.

8 (c) INTERVENTION BY THE COMMISSION.—The Com-  
9 mission may intervene in such civil action and upon inter-  
10 vening—

11 (1) be heard on all matters arising in such civil  
12 action; and

13 (2) file petitions for appeal of a decision in such  
14 civil action.

15 (d) CONSTRUCTION.—Nothing in this section shall be  
16 construed—

17 (1) to prevent the attorney general of a State,  
18 or other authorized State officer, from exercising the  
19 powers conferred on the attorney general, or other  
20 authorized State officer, by the laws of such State;  
21 or

22 (2) to prohibit the attorney general of a State,  
23 or other authorized State officer, from proceeding in  
24 State or Federal court on the basis of an alleged vio-  
25 lation of any civil or criminal statute of that State.

1           (e) LIMITATION.—No separate suit shall be brought  
2 under this section if, at the time the suit is brought, the  
3 same alleged violation is the subject of a pending action  
4 by the Federal Trade Commission or the United States  
5 under this chapter.

6 **SEC. 7. EFFECTIVE DATE.**

7           This Act shall take effect 180 days after the date of  
8 the enactment of this Act.

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