

117TH CONGRESS
1ST SESSION

S. 1667

To protect the privacy of users of social media and other online platforms.

IN THE SENATE OF THE UNITED STATES

MAY 18, 2021

Ms. KLOBUCHAR (for herself, Mr. KENNEDY, Mr. MANCHIN, and Mr. BURR)
introduced the following bill; which was read twice and referred to the
Committee on Commerce, Science, and Transportation

A BILL

To protect the privacy of users of social media and other
online platforms.

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 “Social Media Privacy
5 Protection and Consumer Rights Act of 2021”.

6 **SEC. 2. DEFINITIONS.**

7 In this Act:

8 (1) COMMISSION.—The term “Commission”
9 means the Federal Trade Commission.

1 (2) COVERED ONLINE PLATFORM.—The term
 2 “covered online platform” means an online platform
 3 that collects personal data during the online behav-
 4 ior of a user of the online platform.

5 (3) GEOLOCATION INFORMATION.—The term
 6 “geolocation information” means, with respect to an
 7 individual, any information that is not the content of
 8 a communication, concerning the location of a wire-
 9 less communication device that—

10 (A) in whole or in part, is generated by or
 11 derived from the operation of that device; and

12 (B) could be used to determine or infer in-
 13 formation regarding the location of the indi-
 14 vidual.

15 (4) ONLINE PLATFORM.—The term “online
 16 platform”—

17 (A) means any public-facing website, web
 18 application, or digital application (including a
 19 mobile application); and

20 (B) includes a social network, an ad net-
 21 work, a mobile operating system, a search en-
 22 gine, an email service, or an internet access
 23 service.

24 (5) OPERATOR.—The term “operator” has the
 25 meaning given the term in section 1302 of the Chil-

dren’s Online Privacy Protection Act of 1998 (15 U.S.C. 6501).

(6) **PERSONAL DATA.**—The term “personal data” means individually identifiable information about an individual collected online, including—

(A) location information sufficient to identify the name of a street and a city or town, including a physical address;

(B) an email address;

(C) a telephone number;

(D) a government identifier, such as a Social Security number;

(E) geolocation information;

(F) the content of a message;

(G) protected health information, as defined in section 160.103 of title 45, Code of Federal Regulations, or any successor regulation; and

(H) nonpublic personal information, as defined in section 509 of the Gramm-Leach-Bliley Act (15 U.S.C. 6809).

SEC. 3. PRIVACY PROTECTIONS.

(a) **TRANSPARENCY AND TERMS OF SERVICE.**—

(1) **DISCLOSURE AND OBTAINING INITIAL CONSENT AND PRIVACY PREFERENCES.**—

1 (A) IN GENERAL.—Before a user creates
2 an account with, or otherwise begins to use, a
3 covered online platform, the operator of the on-
4 line platform shall—

5 (i) inform the user that, unless the
6 user makes an election under clause
7 (ii)(II), personal data of the user produced
8 during the online behavior of the user,
9 whether on the online platform or other-
10 wise, will be collected and used by the op-
11 erator and third parties; and

12 (ii) provide the user the option to
13 specify the privacy preferences of the user,
14 including by—

15 (I) agreeing to the terms of serv-
16 ice for use of the online platform, in-
17 cluding, except as provided in sub-
18 clause (II), the collection and use of
19 personal data described in clause (i);
20 and

21 (II) prohibiting, if the user so
22 elects, the collection and use of per-
23 sonal data described in clause (i), sub-
24 ject to subparagraph (B).

1 (B) CONSEQUENCE OF PROHIBITION OF
2 DATA COLLECTION.—If the election of a user
3 under subparagraph (A)(ii)(II) creates inoper-
4 ability in the online platform, the operator of
5 the online platform may deny certain services or
6 completely deny access to the user.

7 (C) FORM OF DISCLOSURE.—An operator
8 of a covered online platform shall provide a user
9 of the online platform with the terms of service
10 for use of the online platform, including the col-
11 lection and use of personal data described in
12 subparagraph (A)(i), in a form that—

13 (i) is—

14 (I) easily accessible;

15 (II) of reasonable length; and

16 (III) clearly distinguishable from
17 other matters; and

18 (ii) uses language that is clear, con-
19 cise, and well organized, and follows other
20 best practices appropriate to the subject
21 and intended audience.

22 (D) PRIVACY OR SECURITY PROGRAM.—An
23 operator of a covered online platform shall—

1 (i) establish and maintain a privacy or
 2 security program for the online platform;
 3 and

4 (ii) publish a description of the pri-
 5 vacy or security program that—

6 (I) details how the operator will
 7 use the personal data of a user of the
 8 online platform, including require-
 9 ments for how the operator will ad-
 10 dress privacy risks associated with the
 11 development of new products and
 12 services; and

13 (II) includes details of the access
 14 that employees and contractors of the
 15 operator have to the personal data of
 16 a user of the online platform, and in-
 17 ternal policies for the use of that per-
 18 sonal data.

19 (2) NEW PRODUCTS; CHANGES TO PRIVACY OR
 20 SECURITY PROGRAM.—An operator of a covered on-
 21 line platform may not introduce a new product, or
 22 implement any material change to the privacy or se-
 23 curity program of the online platform that overrides
 24 the privacy preferences of a user of the online plat-

1 form, as specified under paragraph (1)(A)(ii), unless
2 the operator has—

3 (A) informed the user that the new prod-
4 uct or change will result in the collection and
5 use of personal data described in paragraph
6 (1)(A)(i), if that is the case;

7 (B) provided the user the option under
8 paragraph (1)(A)(ii); and

9 (C) obtained affirmative express consent
10 from the user to the introduction of the new
11 product or the implementation of the change.

12 (3) WITHDRAWAL OF CONSENT.—An operator
13 of a covered online platform shall ensure that—

14 (A) a user of the online platform is able to
15 withdraw consent to the terms of service for use
16 of the online platform, including the collection
17 and use of personal data described in para-
18 graph (1)(A)(i), as easily as the user is able to
19 give such consent; and

20 (B) except as otherwise required by law, no
21 person is able to access the personal data of a
22 user of the online platform later than 30 days
23 after the date on which the user closes his or
24 her account or otherwise terminates his or her
25 use of the online platform.

1 (b) RIGHT TO ACCESS.—An operator of a covered on-
 2 line platform shall offer a user of the online platform a
 3 copy of the personal data of the user that the operator
 4 has processed, free of charge and in an electronic and eas-
 5 ily accessible format, including a list of each person that
 6 received the personal data from the operator for business
 7 purposes, whether through sale or other means.

8 (c) VIOLATIONS OF PRIVACY.—

9 (1) IN GENERAL.—Not later than 72 hours
 10 after an operator of a covered online platform be-
 11 comes aware that the personal data of a user of the
 12 online platform has been transmitted in violation of
 13 the privacy or security program of the online plat-
 14 form, including the privacy preferences specified by
 15 the user under subsection (a)(1)(A)(ii), the operator
 16 shall—

17 (A) notify the user of the transmission;

18 (B) offer the user the option to elect to
 19 prohibit the operator from collecting and using
 20 the personal data of the user, subject to para-
 21 graph (2);

22 (C) except as provided in paragraph (3),
 23 offer the user the option to have the operator—

24 (i) erase all personal data of the user
 25 tracked by the operator; and

1 (ii) cease further dissemination of per-
 2 sonal data of the user tracked by the oper-
 3 ator;

4 (D) offer the user a copy of the personal
 5 data of the user in accordance with subsection
 6 (b); and

7 (E) offer the user the option to close his
 8 or her account or otherwise terminate his or her
 9 use of the online platform.

10 (2) CONSEQUENCE OF PROHIBITION OF DATA
 11 COLLECTION.—If the election of a user under para-
 12 graph (1)(B) creates inoperability in the online plat-
 13 form, the operator of the online platform may deny
 14 certain services or completely deny access to the
 15 user.

16 (3) PUBLIC SAFETY EXCEPTION.—If the oper-
 17 ator of a covered online platform, in good faith, be-
 18 lieves that an emergency involving danger of death
 19 or serious physical injury to any individual requires
 20 disclosure without delay of specific personal data of
 21 a user of the online platform that relates to the
 22 emergency, the operator shall—

23 (A) retain the specific personal data; and

24 (B) notify the proper authorities.

1 (d) COMPLIANCE.—Not less frequently than once
2 every 2 years, the operator of a covered online platform
3 shall audit the privacy or security program of the online
4 platform.

5 (e) SAFE HARBOR.—Subsections (a), (b), and (c)
6 shall not apply with respect to the development of privacy-
7 enhancing technology by an operator of an online plat-
8 form.

9 **SEC. 4. ENFORCEMENT.**

10 (a) ENFORCEMENT BY COMMISSION.—

11 (1) UNFAIR OR DECEPTIVE ACTS OR PRAC-
12 TICES.—A violation of section 3 shall be treated as
13 a violation of a rule defining an unfair or deceptive
14 act or practice prescribed under section 18(a)(1)(B)
15 of the Federal Trade Commission Act (15 U.S.C.
16 57a(a)(1)(B)).

17 (2) POWERS OF COMMISSION.—

18 (A) IN GENERAL.—Except as provided in
19 subparagraph (C), the Commission shall enforce
20 this Act in the same manner, by the same
21 means, and with the same jurisdiction, powers,
22 and duties as though all applicable terms and
23 provisions of the Federal Trade Commission
24 Act (15 U.S.C. 41 et seq.) were incorporated
25 into and made a part of this Act.

1 (B) PRIVILEGES AND IMMUNITIES.—Ex-
2 cept as provided in subparagraph (C), any per-
3 son who violates this Act shall be subject to the
4 penalties and entitled to the privileges and im-
5 munities provided in the Federal Trade Com-
6 mission Act (15 U.S.C. 41 et seq.).

7 (C) COMMON CARRIERS AND NONPROFIT
8 ORGANIZATIONS.—Notwithstanding section 4,
9 5(a)(2), or 6 of the Federal Trade Commission
10 Act (15 U.S.C. 44, 45(a)(2), 46) or any juris-
11 dictional limitation of the Commission, the
12 Commission shall also enforce this Act, in the
13 same manner provided in subparagraphs (A)
14 and (B) of this paragraph, with respect to—

15 (i) common carriers subject to the
16 Communications Act of 1934 (47 U.S.C.
17 151 et seq.) and Acts amendatory thereof
18 and supplementary thereto; and

19 (ii) organizations not organized to
20 carry on business for their own profit or
21 that of their members.

22 (D) AUTHORITY PRESERVED.—Nothing in
23 this Act shall be construed to limit the author-
24 ity of the Commission under any other provi-
25 sion of law.

1 (b) ENFORCEMENT BY STATES.—

2 (1) AUTHORIZATION.—Subject to paragraph
3 (2), in any case in which the attorney general of a
4 State has reason to believe, based on a legitimate
5 consumer complaint, that an interest of the residents
6 of the State has been or is threatened or adversely
7 affected by the engagement of any person subject to
8 section 3 in a practice that violates that section, the
9 attorney general of the State may, as *parens patriae*,
10 bring a civil action on behalf of the residents of the
11 State in an appropriate district court of the United
12 States to obtain appropriate relief.

13 (2) RIGHTS OF FEDERAL TRADE COMMIS-
14 SION.—

15 (A) NOTICE TO FEDERAL TRADE COMMIS-
16 SION.—

17 (i) IN GENERAL.—Except as provided
18 in clause (iii), the attorney general of a
19 State shall notify the Commission in writ-
20 ing that the attorney general intends to
21 bring a civil action under paragraph (1)
22 before initiating the civil action against a
23 person subject to this Act.

24 (ii) CONTENTS.—The notification re-
25 quired by clause (i) with respect to a civil

1 action shall include a copy of the complaint
2 to be filed to initiate the civil action.

3 (iii) EXCEPTION.—If it is not feasible
4 for the attorney general of a State to pro-
5 vide the notification required by clause (i)
6 before initiating a civil action under para-
7 graph (1), the attorney general shall notify
8 the Commission immediately upon insti-
9 tuting the civil action.

10 (B) INTERVENTION BY FEDERAL TRADE
11 COMMISSION.—The Commission may—

12 (i) intervene in any civil action
13 brought by the attorney general of a State
14 under paragraph (1); and

15 (ii) upon intervening—

16 (I) be heard on all matters aris-
17 ing in the civil action; and

18 (II) file petitions for appeal of a
19 decision in the civil action.

20 (3) INVESTIGATORY POWERS.—Nothing in this
21 subsection may be construed to prevent the attorney
22 general of a State from exercising the powers con-
23 ferred on the attorney general by the laws of the
24 State to conduct investigations, to administer oaths
25 or affirmations, or to compel the attendance of wit-

1 nesses or the production of documentary or other
2 evidence.

3 (4) ACTION BY FEDERAL TRADE COMMIS-
4 SION.—If the Commission institutes a civil action or
5 an administrative action with respect to a violation
6 of section 3, the attorney general of a State may
7 not, during the pendency of the action, bring a civil
8 action under paragraph (1) against any defendant
9 named in the complaint of the Commission for the
10 violation with respect to which the Commission insti-
11 tuted such action.

12 (5) VENUE; SERVICE OF PROCESS.—

13 (A) VENUE.—Any action brought under
14 paragraph (1) may be brought in—

15 (i) the district court of the United
16 States that meets applicable requirements
17 relating to venue under section 1391 of
18 title 28, United States Code; or

19 (ii) another court of competent juris-
20 diction.

21 (B) SERVICE OF PROCESS.—In an action
22 brought under paragraph (1), process may be
23 served in any district in which the defendant—

24 (i) is an inhabitant; or

25 (ii) may be found.

1 (6) ACTIONS BY OTHER STATE OFFICIALS.—

2 (A) IN GENERAL.—In addition to civil ac-
 3 tions brought by attorneys general under para-
 4 graph (1), any other consumer protection offi-
 5 cer of a State who is authorized by the State
 6 to do so may bring a civil action under para-
 7 graph (1), subject to the same requirements
 8 and limitations that apply under this subsection
 9 to civil actions brought by attorneys general.

10 (B) SAVINGS PROVISION.—Nothing in this
 11 subsection may be construed to prohibit an au-
 12 thorized official of a State from initiating or
 13 continuing any proceeding in a court of the
 14 State for a violation of any civil or criminal law
 15 of the State.

16 **SEC. 5. EFFECTIVE DATE.**

17 (a) IN GENERAL.—This Act shall take effect 180
 18 days after the date of enactment of this Act.

19 (b) APPLICABILITY TO EXISTING USERS OF ONLINE
 20 PLATFORMS.—An individual who becomes a user of a cov-
 21 ered online platform before the effective date under sub-
 22 section (a) shall be treated as if he or she had become
 23 a user of the online platform on that effective date.

1 (c) NO RETROACTIVE APPLICABILITY.—This Act
2 shall not apply to any conduct that occurred before the
3 effective date under subsection (a).

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