

117TH CONGRESS
1ST SESSION

S. 2499

To establish data privacy and data security protections for consumers in
the United States.

IN THE SENATE OF THE UNITED STATES

JULY 28, 2021

Mr. WICKER (for himself and Mrs. BLACKBURN) introduced the following bill;
which was read twice and referred to the Committee on Commerce,
Science, and Transportation

A BILL

To establish data privacy and data security protections for
consumers in the United States.

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; TABLE OF CONTENTS.**

4 (a) **SHORT TITLE.**—This Act may be cited as the
5 “Setting an American Framework to Ensure Data Access,
6 Transparency, and Accountability Act” or the “SAFE
7 DATA Act”.

8 (b) **TABLE OF CONTENTS.**—The table of contents for
9 this Act is as follows:

Sec. 1. Short title; table of contents.
Sec. 2. Definitions.

Sec. 3. Effective date.

TITLE I—INDIVIDUAL CONSUMER DATA RIGHTS

- Sec. 101. Consumer loyalty.
- Sec. 102. Transparency.
- Sec. 103. Individual control.
- Sec. 104. Rights to consent.
- Sec. 105. Minimizing data collection, processing, and retention.
- Sec. 106. Service providers and third parties.
- Sec. 107. Privacy impact assessments.
- Sec. 108. Scope of coverage.

TITLE II—DATA TRANSPARENCY, INTEGRITY, AND SECURITY

- Sec. 201. Civil rights, algorithm bias, detection, and mitigation.
- Sec. 202. Data brokers.
- Sec. 203. Protection of covered data.

TITLE III—CORPORATE ACCOUNTABILITY

- Sec. 301. Designation of data privacy officer and data security officer.
- Sec. 302. Internal controls.
- Sec. 303. Whistleblower protections.

TITLE IV—ENFORCEMENT AUTHORITY AND NEW PROGRAMS

- Sec. 401. Enforcement by the Federal Trade Commission.
- Sec. 402. Enforcement by State attorneys general.
- Sec. 403. Approved certification programs.
- Sec. 404. Relationship between Federal and State law.
- Sec. 405. Constitutional avoidance.
- Sec. 406. Severability.

1 **SEC. 2. DEFINITIONS.**

2 In this Act:

3 (1) **AFFIRMATIVE EXPRESS CONSENT.**—The
 4 term “affirmative express consent” means, upon
 5 being presented with a clear and conspicuous de-
 6 scription of an act or practice for which consent is
 7 sought, an affirmative act by the individual clearly
 8 communicating the individual’s authorization for the
 9 act or practice.

10 (2) **ALGORITHM.**—The term “algorithm” means
 11 a computational process derived from machine learn-

1 ing, statistics, or other data processing or artificial
2 intelligence techniques, that processes covered data
3 for the purpose of making a decision or facilitating
4 human decision-making.

5 (3) COLLECTION.—The term “collection”
6 means buying, renting, gathering, obtaining, receiv-
7 ing, or accessing any covered data of an individual
8 by any means.

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

11 (5) COMMON BRANDING.—The term “common
12 branding” means a shared name, servicemark, or
13 trademark.

14 (6) COVERED DATA.—

15 (A) IN GENERAL.—The term “covered
16 data” means information that identifies or is
17 linked or reasonably linkable to an individual or
18 a device that is linked or reasonably linkable to
19 an individual.

20 (B) LINKED OR REASONABLY LINKABLE.—

21 For purposes of subparagraph (A), information
22 held by a covered entity is linked or reasonably
23 linkable to an individual or a device if, as a
24 practical matter, it can be used on its own or
25 in combination with other information held by,

1 or readily accessible to, the covered entity to
2 identify such individual or such device.

3 (C) EXCLUSIONS.—Such term does not in-
4 clude—

5 (i) aggregated data;

6 (ii) de-identified data;

7 (iii) employee data; or

8 (iv) publicly available information.

9 (D) AGGREGATED DATA.—For purposes of
10 subparagraph (C), the term “aggregated data”
11 means information that relates to a group or
12 category of individuals or devices that does not
13 identify and is not linked or reasonably linkable
14 to any individual or device.

15 (E) DE-IDENTIFIED DATA.—For purposes
16 of subparagraph (C), the term “de-identified
17 data” means information held by a covered en-
18 tity that—

19 (i) does not identify, and is not linked
20 or reasonably linkable to, an individual or
21 device;

22 (ii) does not contain any persistent
23 identifier or other information that could
24 readily be used to reidentify the individual

1 to whom, or the device to which, the identi-
2 fier or information pertains;

3 (iii) is subject to a public commitment
4 by the covered entity—

5 (I) to refrain from attempting to
6 use such information to identify any
7 individual or device; and

8 (II) to adopt technical and orga-
9 nizational measures to ensure that
10 such information is not linked to any
11 individual or device; and

12 (iv) is not disclosed by the covered en-
13 tity to any other party unless the disclo-
14 sure is subject to a contractually or other
15 legally binding requirement that—

16 (I) the recipient of the informa-
17 tion shall not use the information to
18 identify any individual or device; and

19 (II) all onward disclosures of the
20 information shall be subject to the re-
21 quirement described in subclause (I).

22 (F) EMPLOYEE DATA.—For purposes of
23 subparagraph (C), the term “employee data”
24 means—

1 (i) information relating to an indi-
2 vidual collected by a covered entity in the
3 course of the individual acting as a job ap-
4 plicant to, or employee (regardless of
5 whether such employee is paid or unpaid,
6 or employed on a temporary basis), owner,
7 director, officer, staff member, trainee,
8 vendor, visitor, volunteer, intern, or con-
9 tractor of, the entity, provided that such
10 information is collected, processed, or
11 transferred by the covered entity solely for
12 purposes related to the individual's status
13 as a current or former job applicant to, or
14 an employee, owner, director, officer, staff
15 member, trainee, vendor, visitor, volunteer,
16 intern, or contractor of, that covered enti-
17 ty;

18 (ii) business contact information of an
19 individual, including the individual's name,
20 position or title, business telephone num-
21 ber, business address, business email ad-
22 dress, qualifications, and other similar in-
23 formation, that is provided to a covered en-
24 tity by an individual who is acting in a
25 professional capacity, provided that such

1 information is collected, processed, or
2 transferred solely for purposes related to
3 such individual's professional activities;

4 (iii) emergency contact information
5 collected by a covered entity that relates to
6 an individual who is acting in a role de-
7 scribed in clause (i) with respect to the
8 covered entity, provided that such informa-
9 tion is collected, processed, or transferred
10 solely for the purpose of having an emer-
11 gency contact on file for the individual; or

12 (iv) information relating to an indi-
13 vidual (or a relative or beneficiary of such
14 individual) that is necessary for the cov-
15 ered entity to collect, process, or transfer
16 for the purpose of administering benefits
17 to which such individual (or relative or
18 beneficiary of such individual) is entitled
19 on the basis of the individual acting in a
20 role described in clause (i) with respect to
21 the entity, provided that such information
22 is collected, processed, or transferred solely
23 for the purpose of administering such ben-
24 efits.

1 (G) PUBLICLY AVAILABLE INFORMA-
2 TION.—

3 (i) IN GENERAL.—For the purposes of
4 subparagraph (C), the term “publicly
5 available information” means any informa-
6 tion that a covered entity has a reasonable
7 basis to believe—

8 (I) has been lawfully made avail-
9 able to the general public from Fed-
10 eral, State, or local government
11 records;

12 (II) is widely available to the
13 general public, including information
14 from—

15 (aa) a telephone book or on-
16 line directory;

17 (bb) television, internet, or
18 radio content or programming; or

19 (cc) the news media or a
20 website that is lawfully available
21 to the general public on an unre-
22 stricted basis (for purposes of
23 this subclause a website is not re-
24 stricted solely because there is a
25 fee or log-in requirement associ-

1 ated with accessing the website);

2 or

3 (III) is a disclosure to the gen-
4 eral public that is required to be made
5 by Federal, State, or local law.

6 (ii) EXCLUSIONS.—Such term does
7 not include an obscene visual depiction (as
8 defined for purposes of section 1460 of
9 title 18, United States Code).

10 (7) COVERED ENTITY.—The term “covered en-
11 tity” means any person that—

12 (A) is subject to the Federal Trade Com-
13 mission Act (15 U.S.C. 41 et seq.) or is—

14 (i) a common carrier described in sec-
15 tion 5(a)(2) of such Act (15 U.S.C.
16 45(a)(2)); or

17 (ii) an organization not organized to
18 carry on business for their own profit or
19 that of their members;

20 (B) collects, processes, or transfers covered
21 data; and

22 (C) determines the purposes and means of
23 such collection, processing, or transfer.

24 (8) DATA BROKER.—

1 (A) IN GENERAL.—The term “data
2 broker” means a covered entity whose principal
3 source of revenue is derived from processing or
4 transferring the covered data of individuals with
5 whom the entity does not have a direct relation-
6 ship on behalf of third parties for such third
7 parties’ use.

8 (B) EXCLUSION.—Such term does not in-
9 clude a service provider.

10 (9) DELETE.—The term “delete” means to re-
11 move or destroy information such that it is not
12 maintained in human or machine readable form and
13 cannot be retrieved or utilized in such form in the
14 normal course of business.

15 (10) EXECUTIVE AGENCY.—The term “Execu-
16 tive agency” has the meaning set forth in section
17 105 of title 5, United States Code.

18 (11) INDIVIDUAL.—The term “individual”
19 means a natural person residing in the United
20 States.

21 (12) LARGE DATA HOLDER.—The term “large
22 data holder” means a covered entity that in the
23 most recent calendar year—

24 (A) processed or transferred the covered
25 data of more than 8,000,000 individuals; or

1 (B) processed or transferred the sensitive
2 covered data of more than 300,000 individuals
3 or devices that are linked or reasonably linkable
4 to an individual (excluding any instance where
5 the covered entity processes the log-in informa-
6 tion of an individual or device to allow the indi-
7 vidual or device to log in to an account adminis-
8 tered by the covered entity).

9 (13) MATERIAL.—The term “material” means,
10 with respect to an act, practice, or representation of
11 a covered entity (including a representation made by
12 the covered entity in a privacy policy or similar dis-
13 closure to individuals), that such act, practice, or
14 representation is likely to affect an individual’s deci-
15 sion or conduct regarding a product or service.

16 (14) PROCESS.—The term “process” means
17 any operation or set of operations performed on cov-
18 ered data including analysis, organization, struc-
19 turing, retaining, using, or otherwise handling cov-
20 ered data.

21 (15) PROCESSING PURPOSE.—The term “proc-
22 essing purpose” means a reason for which a covered
23 entity processes covered data.

24 (16) RESEARCH.—The term “research” means
25 the scientific analysis of information, including cov-

1 ered data, by a covered entity or those with whom
2 the covered entity is cooperating or others acting at
3 the direction or on behalf of the covered entity, that
4 is conducted for the primary purpose of advancing
5 scientific knowledge and may be for the commercial
6 benefit of the covered entity.

7 (17) SENSITIVE COVERED DATA.—

8 (A) IN GENERAL.—The term “sensitive
9 covered data” means any of the following forms
10 of covered data of an individual:

11 (i) A unique, government-issued iden-
12 tifier, such as a Social Security number,
13 passport number, or driver’s license num-
14 ber, that is not required to be displayed to
15 the public.

16 (ii) Any covered data that describes or
17 reveals the diagnosis or treatment of the
18 past, present, or future physical health,
19 mental health, or disability of an indi-
20 vidual.

21 (iii) A financial account number, debit
22 card number, credit card number, or any
23 required security or access code, password,
24 or credentials allowing access to any such
25 account.

- 1 (iv) Covered data that is biometric in-
2 formation.
- 3 (v) Precise geolocation information.
- 4 (vi) A persistent identifier.
- 5 (vii) The contents of an individual's
6 private communications, such as emails,
7 texts, direct messages, or mail, or the iden-
8 tity of the parties subject to such commu-
9 nications, unless the covered entity is the
10 intended recipient of the communication.
- 11 (viii) Account log-in credentials such
12 as a user name or email address, in com-
13 bination with a password or security ques-
14 tion and answer that would permit access
15 to an online account.
- 16 (ix) Covered data revealing an individ-
17 ual's racial or ethnic origin, or religion in
18 a manner inconsistent with the individual's
19 reasonable expectation regarding the proc-
20 essing or transfer of such information.
- 21 (x) Covered data revealing the sexual
22 orientation or sexual behavior of an indi-
23 vidual in a manner inconsistent with the
24 individual's reasonable expectation regard-

1 ing the processing or transfer of such in-
2 formation.

3 (xi) Covered data about the online ac-
4 tivities of an individual that addresses or
5 reveals a category of covered data de-
6 scribed in another clause of this subpara-
7 graph.

8 (xii) Covered data that is calendar in-
9 formation, address book information,
10 phone or text logs, photos, or videos main-
11 tained for private use on an individual's
12 device.

13 (xiii) Any covered data collected or
14 processed by a covered entity for the pur-
15 pose of identifying covered data described
16 in another clause of this subparagraph.

17 (xiv) Any other category of covered
18 data designated by the Commission pursu-
19 ant to a rulemaking under section 553 of
20 title 5, United States Code.

21 (B) BIOMETRIC INFORMATION.—For pur-
22 poses of subparagraph (A), the term “biometric
23 information”—

24 (i) means the physiological or biologi-
25 cal characteristics of an individual, includ-

1 ing deoxyribonucleic acid, that are used,
2 singly or in combination with each other or
3 with other identifying data, to establish the
4 identity of an individual; and

5 (ii) includes—

6 (I) imagery of the iris, retina,
7 fingerprint, face, hand, palm, vein
8 patterns, and voice recordings, from
9 which an identifier template, such as
10 a faceprint, a minutiae template, or a
11 voiceprint, can be extracted; and

12 (II) keystroke patterns or
13 rhythms, gait patterns or rhythms,
14 and sleep, health, or exercise data
15 that contain identifying information.

16 (C) PERSISTENT IDENTIFIER.—For pur-
17 poses of subparagraph (A), the term “persistent
18 identifier” means a technologically derived iden-
19 tifier that identifies an individual, or is linked
20 or reasonably linkable to an individual over
21 time and across services and platforms, which
22 may include a customer number held in a cook-
23 ie, a static Internet Protocol address, a proc-
24 essor or device serial number, or another unique
25 device identifier.

1 (D) PRECISE GEOLOCATION INFORMA-
2 TION.—For purposes of subparagraph (A), the
3 term “precise geolocation information” means
4 technologically derived information capable of
5 determining the past or present actual physical
6 location of an individual or an individual’s de-
7 vice at a specific point in time to within 1,750
8 feet.

9 (18) SERVICE PROVIDER.—The term “service
10 provider” means, with respect to a set of covered
11 data, a covered entity that processes or transfers
12 such covered data for the purpose of performing 1
13 or more services or functions on behalf of, and at
14 the direction of, a covered entity that—

15 (A) is not related to the covered entity pro-
16 viding the service or function by common own-
17 ership or corporate control; and

18 (B) does not share common branding with
19 the covered entity providing the service or func-
20 tion.

21 (19) SERVICE PROVIDER DATA.—The term
22 “service provider data” means covered data that is
23 collected by the service provider on behalf of a cov-
24 ered entity or transferred to the service provider by
25 a covered entity for the purpose of allowing the serv-

1 ice provider to perform a service or function on be-
2 half of, and at the direction of, such covered entity.

3 (20) THIRD PARTY.—The term “third party”
4 means, with respect to a set of covered data, a cov-
5 ered entity—

6 (A) that is not a service provider with re-
7 spect to such covered data; and

8 (B) that received such covered data from
9 another covered entity—

10 (i) that is not related to the covered
11 entity by common ownership or corporate
12 control; and

13 (ii) that does not share common
14 branding with the covered entity.

15 (21) THIRD PARTY DATA.—The term “third
16 party data” means, with respect to a third party,
17 covered data that has been transferred to the third
18 party by a covered entity.

19 (22) TRANSFER.—The term “transfer” means
20 to disclose, release, share, disseminate, make avail-
21 able, or license in writing, electronically, or by any
22 other means for consideration of any kind or for a
23 commercial purpose.

1 **SEC. 3. EFFECTIVE DATE.**

2 Except as otherwise provided in this Act, this Act
3 shall take effect 18 months after the date of enactment
4 of this Act.

5 **TITLE I—INDIVIDUAL**
6 **CONSUMER DATA RIGHTS**

7 **SEC. 101. CONSUMER LOYALTY.**

8 (a) PROHIBITION ON THE DENIAL OF PRODUCTS OR
9 SERVICES.—

10 (1) IN GENERAL.—Subject to paragraph (2), a
11 covered entity shall not deny products or services to
12 an individual because the individual exercises a right
13 established under subparagraph (A), (B), or (D) of
14 section 103(a)(1).

15 (2) RULES OF APPLICATION.—A covered enti-
16 ty—

17 (A) shall not be in violation of paragraph
18 (1) with respect to a product or service and an
19 individual if the exercise of a right described in
20 such paragraph by the individual precludes the
21 covered entity from providing such product or
22 service to such individual; and

23 (B) may offer different types of pricing
24 and functionalities with respect to a product or
25 service based on an individual's exercise of a
26 right described in such paragraph.

1 (b) NO WAIVER OF INDIVIDUAL CONTROLS.—The
2 rights and obligations created under section 103 may not
3 be waived in an agreement between a covered entity and
4 an individual.

5 **SEC. 102. TRANSPARENCY.**

6 (a) IN GENERAL.—A covered entity that processes
7 covered data shall, with respect to such data, publish a
8 privacy policy that is—

9 (1) disclosed, in a clear and conspicuous man-
10 ner, to an individual prior to or at the point of the
11 collection of covered data from the individual; and

12 (2) made available, in a clear and conspicuous
13 manner, to the public.

14 (b) CONTENT OF PRIVACY POLICY.—The privacy pol-
15 icy required under subsection (a) shall include the fol-
16 lowing:

17 (1) The identity and the contact information of
18 the covered entity (including the covered entity's
19 points of contact for privacy and data security in-
20 quiries) and the identity of any affiliate to which
21 covered data may be transferred by the covered enti-
22 ty.

23 (2) The categories of covered data the covered
24 entity collects.

1 (3) The processing purposes for each category
2 of covered data the covered entity collects.

3 (4) Whether the covered entity transfers cov-
4 ered data, the categories of recipients to whom the
5 covered entity transfers covered data, and the pur-
6 poses of the transfers.

7 (5) A general description of the covered entity's
8 data retention practices for covered data and the
9 purposes for such retention.

10 (6) How individuals can exercise their rights
11 under section 103.

12 (7) A general description of the covered entity's
13 data security practices.

14 (8) The effective date of the privacy policy.

15 (c) LANGUAGES.—A privacy policy required under
16 subsection (a) shall be made available in all of the lan-
17 guages in which the covered entity provides a product or
18 service that is subject to the policy, or carries out activities
19 related to such product or service.

20 (d) MATERIAL CHANGES.—If a covered entity makes
21 a material change to its privacy policy, it shall notify the
22 individuals affected before further processing or transfer-
23 ring of previously collected covered data and, except as
24 provided in section 108, provide an opportunity to with-
25 draw consent to further processing or transferring of the

1 covered data under the changed policy. The covered entity
2 shall provide direct notification, where possible, regarding
3 a material change to the privacy policy to affected individ-
4 uals, taking into account available technology and the na-
5 ture of the relationship.

6 (e) APPLICATION TO INDIRECT TRANSFERS.—Where
7 the ownership of an individual’s device is transferred di-
8 rectly from one individual to another individual, a covered
9 entity may satisfy its obligation to disclose a privacy policy
10 prior to or at the point of collection of covered data by
11 making the privacy policy available under subsection
12 (a)(2).

13 **SEC. 103. INDIVIDUAL CONTROL.**

14 (a) ACCESS TO, AND CORRECTION, DELETION, AND
15 PORTABILITY OF, COVERED DATA.—

16 (1) IN GENERAL.—Subject to paragraphs (2)
17 and (3) and section 108, a covered entity shall pro-
18 vide an individual, immediately or as quickly as pos-
19 sible and in no case later than 90 days after receiv-
20 ing a verified request from the individual, with the
21 right to reasonably—

22 (A) access—

23 (i) the covered data of the individual,
24 or an accurate representation of the cov-
25 ered data of the individual, that is or has

1 been processed by the covered entity or any
2 service provider on behalf of the covered
3 entity;

4 (ii) if applicable, a list of categories of
5 third parties and service providers to whom
6 the covered entity has transferred the cov-
7 ered data of the individual; and

8 (iii) if a covered entity transfers cov-
9 ered data, a description of the purpose for
10 which the covered entity transferred the
11 covered data of the individual to a service
12 provider or third party;

13 (B) request that the covered entity—

14 (i) correct inaccuracies or incomplete
15 information with respect to the covered
16 data of the individual that is maintained
17 by the covered entity; and

18 (ii) notify any service provider or
19 third party to which the covered entity
20 transferred such covered data of the cor-
21 rected information;

22 (C) request that the covered entity—

23 (i) either delete or deidentify covered
24 data of the individual that is or has been
25 maintained by the covered entity; and

1 (ii) notify any service provider or
2 third party to which the covered entity
3 transferred such covered data of the indi-
4 vidual's request under clause (i), unless the
5 transfer of such data to the third party
6 was made at the direction of the indi-
7 vidual; and

8 (D) to the extent that is technically fea-
9 sible, provide covered data of the individual that
10 is or has been generated and submitted to the
11 covered entity by the individual and maintained
12 by the covered entity in a portable, structured,
13 and machine-readable format that is not subject
14 to licensing restrictions.

15 (2) FREQUENCY AND COST OF ACCESS.—A cov-
16 ered entity shall—

17 (A) provide an individual with the oppor-
18 tunity to exercise the rights described in para-
19 graph (1) not less than twice in any 12-month
20 period; and

21 (B) with respect to the first 2 times that
22 an individual exercises the rights described in
23 paragraph (1) in any 12-month period, allow
24 the individual to exercise such rights free of
25 charge.

1 (3) EXCEPTIONS.—A covered entity—

2 (A) shall not comply with a request to ex-
3 ercise the rights described in paragraph (1) if
4 the covered entity cannot verify—

5 (i) that the individual making the re-
6 quest is the individual to whom the covered
7 data that is the subject of the request re-
8 lates; or

9 (ii) the individual's assertion under
10 paragraph (1)(B) that such information is
11 inaccurate or incomplete;

12 (B) may decline to comply with a request
13 that would—

14 (i) require the covered entity to retain
15 any covered data for the sole purpose of
16 fulfilling the request;

17 (ii) be impossible or demonstrably im-
18 practicable to comply with;

19 (iii) require the covered entity to com-
20 bine, relink, or otherwise reidentify covered
21 data that has been deidentified;

22 (iv) result in the release of trade se-
23 crets, or other proprietary or confidential
24 data or business practices;

1 (v) interfere with law enforcement, ju-
2 dicial proceedings, investigations, or rea-
3 sonable efforts to guard against, detect, or
4 investigate malicious or unlawful activity,
5 or enforce contracts;

6 (vi) require disproportionate effort,
7 taking into consideration available tech-
8 nology, or would not be reasonably feasible
9 on technical grounds;

10 (vii) compromise the privacy, security,
11 or other rights of the covered data of an-
12 other individual;

13 (viii) be excessive or abusive to an-
14 other individual; or

15 (ix) violate Federal or State law or
16 the rights and freedoms of another indi-
17 vidual, including under the Constitution of
18 the United States; and

19 (C) may delete covered data instead of pro-
20 viding access and correction rights under sub-
21 paragraphs (A) and (B) of paragraph (1) if
22 such covered data—

23 (i) is not sensitive covered data; and

1 (ii) is used only for the purposes of
2 contacting individuals with respect to mar-
3 keting communications.

4 (b) REGULATIONS.—Not later than 1 year after the
5 date of enactment of this Act, the Commission shall pro-
6 mulgate regulations under section 553 of title 5, United
7 States Code, establishing processes by which covered enti-
8 ties may verify requests to exercise rights described in sub-
9 section (a)(1).

10 **SEC. 104. RIGHTS TO CONSENT.**

11 (a) CONSENT.—Except as provided in section 108, a
12 covered entity shall not, without the prior, affirmative ex-
13 press consent of an individual—

14 (1) transfer sensitive covered data of the indi-
15 vidual to a third party; or

16 (2) process sensitive covered data of the indi-
17 vidual.

18 (b) REQUIREMENTS FOR AFFIRMATIVE EXPRESS
19 CONSENT.—In obtaining the affirmative express consent
20 of an individual to process the sensitive covered data of
21 the individual as required under subsection (a)(2), a cov-
22 ered entity shall provide the individual with notice that
23 shall—

1 (1) include a clear description of the processing
2 purpose for which the sensitive covered data will be
3 processed;

4 (2) clearly identify any processing purpose that
5 is necessary to fulfill a request made by the indi-
6 vidual;

7 (3) include a prominent heading that would en-
8 able a reasonable individual to easily identify the
9 processing purpose for which consent is sought; and

10 (4) clearly explain the individual's right to pro-
11 vide or withhold consent.

12 (c) REQUIREMENTS RELATED TO MINORS.—A cov-
13 ered entity shall not transfer the covered data of an indi-
14 vidual to a third-party without affirmative express consent
15 from the individual or the individual's parent or guardian
16 if the covered entity has actual knowledge that the indi-
17 vidual is between 13 and 16 years of age.

18 (d) RIGHT TO OPT OUT.—Except as provided in sec-
19 tion 108, a covered entity shall provide an individual with
20 the ability to opt out of the collection, processing, or trans-
21 fer of such individual's covered data before such collection,
22 processing, or transfer occurs.

23 (e) PROHIBITION ON INFERRED CONSENT.—A cov-
24 ered entity shall not infer that an individual has provided
25 affirmative express consent to a processing purpose from

1 the inaction of the individual or the individual's continued
2 use of a service or product provided by the covered entity.

3 (f) WITHDRAWAL OF CONSENT.—A covered entity
4 shall provide an individual with a clear and conspicuous
5 means to withdraw affirmative express consent.

6 (g) RULEMAKING.—The Commission may promul-
7 gate regulations under section 553 of title 5, United
8 States Code, to establish clear and conspicuous procedures
9 for allowing individuals to provide or withdraw affirmative
10 express consent for the collection of sensitive covered data.

11 **SEC. 105. MINIMIZING DATA COLLECTION, PROCESSING,**
12 **AND RETENTION.**

13 (a) IN GENERAL.—Except as provided in section 108,
14 a covered entity shall not collect, process, or transfer cov-
15 ered data beyond—

16 (1) what is reasonably necessary, proportionate,
17 and limited to provide or improve a product, service,
18 or a communication about a product or service, in-
19 cluding what is reasonably necessary, proportionate,
20 and limited to provide a product or service specifi-
21 cally requested by an individual or reasonably antici-
22 pated within the context of the covered entity's on-
23 going relationship with an individual;

24 (2) what is reasonably necessary, proportionate,
25 or limited to otherwise process or transfer covered

1 data in a manner that is described in the privacy
2 policy that the covered entity is required to publish
3 under section 102(a); or

4 (3) what is expressly permitted by this Act or
5 any other applicable Federal law.

6 (b) BEST PRACTICES.—Not later than 1 year after
7 the date of enactment of this Act, the Commission shall
8 issue guidelines recommending best practices for covered
9 entities to minimize the collection, processing, and trans-
10 fer of covered data in accordance with this section.

11 (c) RULE OF CONSTRUCTION.—Notwithstanding sec-
12 tion 404 of this Act, nothing in this section supersedes
13 any other provision of this Act or other applicable Federal
14 law.

15 **SEC. 106. SERVICE PROVIDERS AND THIRD PARTIES.**

16 (a) SERVICE PROVIDERS.—A service provider—

17 (1) shall not process service provider data for
18 any processing purpose that is not performed on be-
19 half of, and at the direction of, the covered entity
20 that transferred the data to the service provider;

21 (2) shall not transfer service provider data to a
22 third party for any purpose other than a purpose
23 performed on behalf of, or at the direction of, the
24 covered entity that transferred the data to the serv-
25 ice provider;

1 (3) at the direction of the covered entity that
2 transferred service provider data to the service pro-
3 vider, shall delete or deidentify such data—

4 (A) as soon as practicable after the service
5 provider has completed providing the service or
6 function for which the data was transferred to
7 the service provider; or

8 (B) as soon as practicable after the end of
9 the period during which the service provider is
10 to provide services with respect to such data, as
11 agreed to by the service provider and the cov-
12 ered entity that transferred the data;

13 (4) is exempt from the requirements of section
14 103 with respect to service provider data, but shall,
15 to the extent practicable—

16 (A) assist the covered entity from which it
17 received the service provider data in fulfilling
18 requests to exercise rights under section 103(a);
19 and

20 (B) upon receiving notice from a covered
21 entity of a verified request made under section
22 103(a)(1) to delete, deidentify, or correct serv-
23 ice provider data held by the service provider,
24 delete, deidentify, or correct such data; and

1 (5) is exempt from the requirements of sections
2 104 and 105.

3 (b) THIRD PARTIES.—A third party—

4 (1) shall not process third party data for a
5 processing purpose inconsistent with the reasonable
6 expectation of the individual to whom such data re-
7 lates;

8 (2) for purposes of paragraph (1), may reason-
9 ably rely on representations made by the covered en-
10 tity that transferred third party data regarding the
11 reasonable expectations of individuals to whom such
12 data relates, provided that the third party conducts
13 reasonable due diligence on the representations of
14 the covered entity and finds those representations to
15 be credible; and

16 (3) is exempt from the requirements of sections
17 104 and 105.

18 (c) BANKRUPTCY.—In the event that a covered entity
19 enters into a bankruptcy proceeding which would lead to
20 the disclosure of covered data to a third party, the covered
21 entity shall in a reasonable time prior to the disclosure—

22 (1) provide notice of the proposed disclosure of
23 covered data, including the name of the third party
24 and its policies and practices with respect to the cov-
25 ered data, to all affected individuals; and

1 (2) provide each affected individual with the op-
 2 portunity to withdraw any previous affirmative ex-
 3 press consent related to the covered data of the indi-
 4 vidual or request the deletion or deidentification of
 5 the covered data of the individual.

6 (d) **ADDITIONAL OBLIGATIONS ON COVERED ENTI-**
 7 **TIES.—**

8 (1) **IN GENERAL.—**A covered entity shall exer-
 9 cise reasonable due diligence to ensure compliance
 10 with this section before—

11 (A) selecting a service provider; or

12 (B) deciding to transfer covered data to a
 13 third party.

14 (2) **GUIDANCE.—**Not later than 2 years after
 15 the effective date of this Act, the Commission shall
 16 publish guidance regarding compliance with this sub-
 17 section. Such guidance shall, to the extent prac-
 18 ticable, minimize unreasonable burdens on small-
 19 and medium-sized covered entities.

20 **SEC. 107. PRIVACY IMPACT ASSESSMENTS.**

21 (a) **PRIVACY IMPACT ASSESSMENTS OF NEW OR MA-**
 22 **TERIAL CHANGES TO PROCESSING OF COVERED DATA.—**

23 (1) **IN GENERAL.—**Not later than 1 year after
 24 the date of enactment of this Act (or, if later, not
 25 later than 1 year after a covered entity first meets

1 the definition of a large data holder (as defined in
2 section 2)), each covered entity that is a large data
3 holder shall conduct a privacy impact assessment of
4 each of its processing activities involving covered
5 data that present a heightened risk of harm to indi-
6 viduals, and each such assessment shall weigh the
7 benefits of the covered entity's covered data collec-
8 tion, processing, and transfer practices against the
9 potential adverse consequences to individual privacy
10 of such practices.

11 (2) ASSESSMENT REQUIREMENTS.—A privacy
12 impact assessment required under paragraph (1)—

13 (A) shall be reasonable and appropriate in
14 scope given—

15 (i) the nature of the covered data col-
16 lected, processed, or transferred by the
17 covered entity;

18 (ii) the volume of the covered data
19 collected, processed, or transferred by the
20 covered entity;

21 (iii) the size of the covered entity; and

22 (iv) the potential risks posed to the
23 privacy of individuals by the collection,
24 processing, or transfer of covered data by
25 the covered entity;

1 (B) shall be documented in written form
2 and maintained by the covered entity unless
3 rendered out of date by a subsequent assess-
4 ment conducted under subsection (b); and

5 (C) shall be approved by the data privacy
6 officer of the covered entity.

7 (b) ONGOING PRIVACY IMPACT ASSESSMENTS.—

8 (1) IN GENERAL.—A covered entity that is a
9 large data holder shall, not less frequently than once
10 every 2 years after the covered entity conducted the
11 privacy impact assessment required under subsection
12 (a), conduct a privacy impact assessment of the col-
13 lection, processing, and transfer of covered data by
14 the covered entity to assess the extent to which—

15 (A) the ongoing practices of the covered
16 entity are consistent with the covered entity's
17 published privacy policies;

18 (B) any customizable privacy settings in-
19 cluded in a service or product offered by the
20 covered entity are adequately accessible to indi-
21 viduals who use the service or product and are
22 effective in meeting the privacy preferences of
23 such individuals;

1 (C) the practices and privacy settings de-
2 scribed in subparagraphs (A) and (B), respec-
3 tively—

4 (i) meet the expectations of a reason-
5 able individual; and

6 (ii) provide an individual with ade-
7 quate control over the individual's covered
8 data;

9 (D) the covered entity could enhance the
10 privacy and security of covered data through
11 technical or operational safeguards such as
12 encryption, deidentification, and other privacy-
13 enhancing technologies; and

14 (E) the processing of covered data is com-
15 patible with the stated purposes for which it
16 was collected.

17 (2) APPROVAL BY DATA PRIVACY OFFICER.—

18 The data privacy officer of a covered entity shall ap-
19 prove the findings of an assessment conducted by
20 the covered entity under this subsection.

21 **SEC. 108. SCOPE OF COVERAGE.**

22 (a) GENERAL EXCEPTIONS.—Notwithstanding any
23 provision of this title other than subsections (a) through
24 (c) of section 102, a covered entity may collect, process
25 or transfer covered data for any of the following purposes,

1 provided that the collection, processing, or transfer is rea-
2 sonably necessary, proportionate, and limited to such pur-
3 pose:

4 (1) To initiate or complete a transaction or to
5 fulfill an order or provide a service specifically re-
6 quested by an individual, including associated rou-
7 tine administrative activities such as billing, ship-
8 ping, financial reporting, and accounting.

9 (2) To perform internal system maintenance,
10 diagnostics, product or service management, inven-
11 tory management, and network management.

12 (3) To prevent, detect, or respond to a security
13 incident or trespassing, provide a secure environ-
14 ment, or maintain the safety and security of a prod-
15 uct, service, network, or individual.

16 (4) To protect against malicious, deceptive,
17 fraudulent, or illegal activity.

18 (5) To comply with a legal obligation or the es-
19 tablishment, exercise, analysis, or defense of legal
20 claims or rights, or as required or specifically au-
21 thorized by law.

22 (6) To comply with a civil, criminal, or regu-
23 latory inquiry, investigation, subpoena, or summons
24 by an Executive agency.

1 (7) To cooperate with an Executive agency or
2 a law enforcement official acting under the authority
3 of an Executive or State agency concerning conduct
4 or activity that the Executive agency or law enforce-
5 ment official reasonably and in good faith believes
6 may violate Federal, State, or local law, or pose a
7 threat to public safety or national security.

8 (8) To address risks to the safety of an indi-
9 vidual or group of individuals, or to ensure customer
10 safety, including by authenticating individuals in
11 order to provide access to large venues open to the
12 public.

13 (9) To effectuate a product recall pursuant to
14 Federal or State law.

15 (10) To conduct public or peer-reviewed sci-
16 entific, historical, or statistical research that—

17 (A) is in the public interest;

18 (B) adheres to all applicable ethics and
19 privacy laws; and

20 (C) is approved, monitored, and governed
21 by an institutional review board or other over-
22 sight entity that meets standards promulgated
23 by the Commission pursuant to section 553 of
24 title 5, United States Code.

1 (11) To transfer covered data to a service pro-
2 vider.

3 (12) For a purpose identified by the Commis-
4 sion pursuant to a regulation promulgated under
5 subsection (b).

6 (b) ADDITIONAL PURPOSES.—The Commission may
7 promulgate regulations under section 553 of title 5,
8 United States Code, identifying additional purposes for
9 which a covered entity may collect, process or transfer cov-
10 ered data.

11 (c) SMALL BUSINESS EXCEPTION.—Sections 103,
12 105, and 301 shall not apply in the case of a covered enti-
13 ty that can establish that, for the 3 preceding calendar
14 years (or for the period during which the covered entity
15 has been in existence if such period is less than 3 years)—

16 (1) the covered entity's average annual gross
17 revenues did not exceed \$50,000,000;

18 (2) on average, the covered entity annually
19 processed the covered data of less than 1,000,000
20 individuals;

21 (3) the covered entity never employed more
22 than 500 individuals at any one time; and

23 (4) the covered entity derived less than 50 per-
24 cent of its revenues from transferring covered data.

1 **TITLE II—DATA TRANSPARENCY,**
2 **INTEGRITY, AND SECURITY**

3 **SEC. 201. CIVIL RIGHTS, ALGORITHM BIAS, DETECTION,**
4 **AND MITIGATION.**

5 (a) CIVIL RIGHTS PROTECTIONS.—A covered entity,
6 service provider, or third party may not collect, process,
7 or transfer covered data in violation of Federal civil rights
8 laws.

9 (b) FTC ENFORCEMENT ASSISTANCE.—

10 (1) IN GENERAL.—Whenever the Commission
11 obtains information that a covered entity may have
12 processed or transferred covered data in violation of
13 Federal civil rights laws, the Commission shall
14 transmit such information (excluding any such infor-
15 mation that is a trade secret as defined by section
16 1839 of title 18, United States Code) to the appro-
17 priate Executive agency or State agency with au-
18 thority to initiate proceedings relating to such viola-
19 tion.

20 (2) ANNUAL REPORT.—Beginning in 2022, the
21 Commission shall submit an annual report to Con-
22 gress that includes—

23 (A) a summary of the types of information
24 the Commission transmitted to Executive agen-

1 cies or State agencies during the preceding year
2 pursuant to this subsection; and

3 (B) a summary of how such information
4 relates to Federal civil rights laws.

5 (3) COOPERATION WITH OTHER AGENCIES.—

6 The Commission may implement this subsection by
7 executing agreements or memoranda of under-
8 standing with the appropriate Executive agencies.

9 (4) RELATIONSHIP TO OTHER LAWS.—Notwith-
10 standing section 404, nothing in this subsection
11 shall supersede any other provision of law.

12 (c) ALGORITHM TRANSPARENCY REPORTS.—

13 (1) STUDY AND REPORT.—

14 (A) STUDY.—The Commission shall con-
15 duct a study, using the Commission’s authority
16 under section 6(b) of the Federal Trade Com-
17 mission Act (15 U.S.C. 46(b)), examining the
18 use of algorithms to process covered data in a
19 manner that may violate Federal anti-discrimi-
20 nation laws.

21 (B) REPORT.—Not later than 3 years after
22 the date of enactment of this Act, the Commis-
23 sion shall publish a report containing the re-
24 sults of the study required under subparagraph
25 (A).

1 (C) GUIDANCE.—The Commission shall
2 use the results of the study described in sub-
3 paragraph (A) to develop guidance to assist
4 covered entities in avoiding the use of algo-
5 rithms to process covered data in a manner
6 that violates Federal civil rights laws.

7 (2) UPDATED REPORT.—Not later than 5 years
8 after the publication of the report required under
9 paragraph (1), the Commission shall publish an up-
10 dated report.

11 **SEC. 202. DATA BROKERS.**

12 (a) IN GENERAL.—Not later than January 31 of
13 each calendar year that follows a calendar year during
14 which a covered entity acted as a data broker, such cov-
15 ered entity shall register with the Commission pursuant
16 to the requirements of this section.

17 (b) REGISTRATION REQUIREMENTS.—In registering
18 with the Commission as required under subsection (a), a
19 data broker shall do the following:

20 (1) Pay to the Commission a registration fee of
21 \$100.

22 (2) Provide the Commission with the following
23 information:

24 (A) The name and primary physical, email,
25 and internet addresses of the data broker.

1 (B) Any additional information or expla-
2 nation the data broker chooses to provide con-
3 cerning its data collection and processing prac-
4 tices.

5 (c) PENALTIES.—A data broker that fails to register
6 as required under subsection (a) shall be liable for—

7 (1) a civil penalty of \$50 for each day it fails
8 to register, not to exceed a total of \$10,000 for each
9 year; and

10 (2) an amount equal to the fees due under this
11 section for each year that it failed to register as re-
12 quired under subsection (a).

13 (d) PUBLICATION OF REGISTRATION INFORMA-
14 TION.—The Commission shall publish on the internet
15 website of the Commission the registration information
16 provided by data brokers under this section.

17 **SEC. 203. PROTECTION OF COVERED DATA.**

18 (a) IN GENERAL.—A covered entity shall establish,
19 implement, and maintain reasonable administrative, tech-
20 nical, and physical data security policies and practices to
21 protect against risks to the confidentiality, security, and
22 integrity of covered data.

23 (b) DATA SECURITY REQUIREMENTS.—The data se-
24 curity policies and practices required under subsection (a)
25 shall be—

1 (1) appropriate to the size and complexity of
2 the covered entity, the nature and scope of the cov-
3 ered entity’s collection or processing of covered data,
4 the volume and nature of the covered data at issue,
5 and the cost of available tools to improve security
6 and reduce vulnerabilities; and

7 (2) designed to—

8 (A) identify and assess vulnerabilities to
9 covered data;

10 (B) take reasonable preventative and cor-
11 rective action to address known vulnerabilities
12 to covered data; and

13 (C) detect, respond to, and recover from
14 cybersecurity incidents related to covered data.

15 (c) RULEMAKING AND GUIDANCE.—

16 (1) RULEMAKING AUTHORITY AND SCOPE.—

17 (A) IN GENERAL.—The Commission may,
18 pursuant to a proceeding in accordance with
19 section 553 of title 5, United States Code, issue
20 regulations to identify processes for receiving
21 and assessing information regarding
22 vulnerabilities to covered data that are reported
23 to the covered entity.

24 (B) CONSULTATION WITH NIST.—In pro-
25 mulgating regulations under this paragraph, the

1 Commission shall consult with, and take into
2 consideration guidance from, the National Insti-
3 tute for Standards and Technology.

4 (2) GUIDANCE.—Not later than 1 year after
5 the date of enactment of this Act, the Commission
6 shall issue guidance to covered entities on how to—

7 (A) identify and assess vulnerabilities to
8 covered data, including—

9 (i) the potential for unauthorized ac-
10 cess to covered data;

11 (ii) vulnerabilities in the covered enti-
12 ty's collection or processing of covered
13 data;

14 (iii) the management of access rights;
15 and

16 (iv) the use of service providers to
17 process covered data;

18 (B) take reasonable preventative and cor-
19 rective action to address vulnerabilities to cov-
20 ered data; and

21 (C) detect, respond to, and recover from
22 cybersecurity incidents and events.

23 (d) APPLICABILITY OF OTHER INFORMATION SECUR-
24 ITY LAWS.—A covered entity that is required to comply
25 with title V of the Gramm-Leach-Bliley Act (15 U.S.C.

1 6801 et seq.) or the Health Information Technology for
2 Economic and Clinical Health Act (42 U.S.C. 17931 et
3 seq.), and is in compliance with the information security
4 requirements of such Act, shall be deemed to be in compli-
5 ance with the requirements of this section with respect to
6 covered data that is subject to the requirements of such
7 Act.

8 **TITLE III—CORPORATE** 9 **ACCOUNTABILITY**

10 **SEC. 301. DESIGNATION OF DATA PRIVACY OFFICER AND** 11 **DATA SECURITY OFFICER.**

12 (a) IN GENERAL.—A covered entity shall designate—

13 (1) 1 or more qualified employees or contrac-
14 tors as a data privacy officer; and

15 (2) 1 or more qualified employees or contrac-
16 tors (in addition to any employee or contractor des-
17 igned under paragraph (1)) as a data security offi-
18 cer.

19 (b) RESPONSIBILITIES OF DATA PRIVACY OFFICERS
20 AND DATA SECURITY OFFICERS.—An employee or con-
21 tractor who is designated by a covered entity as a data
22 privacy officer or a data security officer shall be respon-
23 sible for, at a minimum, coordinating the covered entity's
24 policies and practices regarding—

1 (1) in the case of a data privacy officer, compli-
2 ance with the privacy requirements with respect to
3 covered data under this Act; and

4 (2) in the case of a data security officer, the se-
5 curity requirements with respect to covered data
6 under this Act.

7 **SEC. 302. INTERNAL CONTROLS.**

8 A covered entity shall maintain internal controls and
9 reporting structures to ensure that appropriate senior
10 management officials of the covered entity are involved in
11 assessing risks and making decisions that implicate com-
12 pliance with this Act.

13 **SEC. 303. WHISTLEBLOWER PROTECTIONS.**

14 (a) DEFINITIONS.—For purposes of this section:

15 (1) WHISTLEBLOWER.—The term “whistle-
16 blower” means any employee or contractor of a cov-
17 ered entity who voluntarily provides to the Commis-
18 sion original information relating to non-compliance
19 with, or any violation or alleged violation of, this Act
20 or any regulation promulgated under this Act.

21 (2) ORIGINAL INFORMATION.—The term “origi-
22 nal information” means information that is provided
23 to the Commission by an individual and—

24 (A) is derived from the independent knowl-
25 edge or analysis of an individual;

1 (B) is not known to the Commission from
2 any other source at the time the individual pro-
3 vides the information; and

4 (C) is not exclusively derived from an alle-
5 gation made in a judicial or an administrative
6 action, in a governmental report, a hearing, an
7 audit, or an investigation, or from news media,
8 unless the individual is a source of the allega-
9 tion.

10 (b) EFFECT OF WHISTLEBLOWER RETALIATIONS ON
11 PENALTIES.—In seeking penalties under section 401 for
12 a violation of this Act or a regulation promulgated under
13 this Act by a covered entity, the Commission shall consider
14 whether the covered entity retaliated against an individual
15 who was a whistleblower with respect to original informa-
16 tion that led to the successful resolution of an administra-
17 tive or judicial action brought by the Commission or the
18 Attorney General of the United States on behalf of the
19 Commission under this Act against such covered entity.

1 **TITLE IV—ENFORCEMENT AU-**
2 **THORITY AND NEW PRO-**
3 **GRAMS**

4 **SEC. 401. ENFORCEMENT BY THE FEDERAL TRADE COM-**
5 **MISSION.**

6 (a) UNFAIR OR DECEPTIVE ACTS OR PRACTICES.—

7 A violation of this Act or a regulation promulgated under
8 this Act shall be treated as a violation of a rule defining
9 an unfair or deceptive act or practice prescribed under sec-
10 tion 18(a)(1)(B) of the Federal Trade Commission Act
11 (15 U.S.C. 57a(a)(1)(B)).

12 (b) POWERS OF COMMISSION.—

13 (1) IN GENERAL.—Except as provided in sub-
14 sections (c) and (d), the Commission shall enforce
15 this Act and the regulations promulgated under this
16 Act in the same manner, by the same means, and
17 with the same jurisdiction, powers, and duties as
18 though all applicable terms and provisions of the
19 Federal Trade Commission Act (15 U.S.C. 41 et
20 seq.) were incorporated into and made a part of this
21 Act.

22 (2) PRIVILEGES AND IMMUNITIES.—Any person
23 who violates this Act or a regulation promulgated
24 under this Act shall be subject to the penalties and
25 entitled to the privileges and immunities provided in

1 the Federal Trade Commission Act (15 U.S.C. 41 et
2 seq.).

3 (3) LIMITING CERTAIN ACTIONS UNRELATED
4 TO THIS ACT; AUTHORITY PRESERVED.—The Com-
5 mission shall not bring any action to enforce the
6 prohibition in section 5 of the Federal Trade Com-
7 mission Act (15 U.S.C. 45) on unfair or deceptive
8 acts or practices with respect to the privacy or secu-
9 rity of covered data, unless such alleged act of prac-
10 tice violates this Act.

11 (c) COMMON CARRIERS AND NONPROFIT ORGANIZA-
12 TIONS.—Notwithstanding section 4, 5(a)(2), or 6 of the
13 Federal Trade Commission Act (15 U.S.C. 44, 45(a)(2),
14 46) or any jurisdictional limitation of the Commission, the
15 Commission shall also enforce this Act and the regulations
16 promulgated under this Act, in the same manner provided
17 in subsections (a) and (b) of this subsection, with respect
18 to—

19 (1) common carriers subject to the Communica-
20 tions Act of 1934 (47 U.S.C. 151 et seq.) and all
21 Acts amendatory thereof and supplementary thereto;
22 and

23 (2) organizations not organized to carry on
24 business for their own profit or that of their mem-
25 bers.

1 (d) DATA PRIVACY AND SECURITY FUND.—

2 (1) ESTABLISHMENT OF VICTIMS RELIEF
3 FUND.—There is established in the Treasury of the
4 United States a separate fund to be known as the
5 “Data Privacy and Security Victims Relief Fund”
6 (referred to in this paragraph as the “Victims Relief
7 Fund”).

8 (2) DEPOSITS.—

9 (A) DEPOSITS FROM THE COMMISSION.—

10 The Commission shall deposit into the Victims
11 Relief Fund the amount of any civil penalty ob-
12 tained against any covered entity in any action
13 the Commission commences to enforce this Act
14 or a regulation promulgated under this Act.

15 (B) DEPOSITS FROM THE ATTORNEY GEN-
16 ERAL.—

17 The Attorney General of the United
18 States shall deposit into the Victims Relief
19 Fund the amount of any civil penalty obtained
20 against any covered entity in any action the At-
21 torney General commences on behalf of the
22 Commission to enforce this Act or a regulation
23 promulgated under this Act.

24 (3) USE OF FUND AMOUNTS.—Amounts in the
25 Victims Relief Fund shall be available to the Com-
mission, without fiscal year limitation, to provide re-

1 dress, payments or compensation, or other monetary
2 relief to individuals harmed by an act or practice for
3 which civil penalties have been imposed under this
4 Act. To the extent that individuals cannot be located
5 or such redress, payments or compensation, or other
6 monetary relief are otherwise not practicable, the
7 Commission may use such funds for the purpose of
8 consumer or business education relating to data pri-
9 vacy and security or for the purpose of engaging in
10 technological research that the Commission con-
11 sidered necessary to enforce this Act.

12 (4) AMOUNTS NOT SUBJECT TO APPORTION-
13 MENT.—Notwithstanding any other provision of law,
14 amounts in the Victims Relief Fund shall not be
15 subject to apportionment for purposes of chapter 15
16 of title 31, United States Code, or under any other
17 authority.

18 (e) AUTHORIZATION OF APPROPRIATIONS.—There is
19 authorized to be appropriated to the Commission
20 \$100,000,000 to carry out this Act.

21 **SEC. 402. ENFORCEMENT BY STATE ATTORNEYS GENERAL.**

22 (a) CIVIL ACTION.—In any case in which the attor-
23 ney general of a State has reason to believe that an inter-
24 est of the residents of that State has been or is adversely
25 affected by the engagement of any covered entity in an

1 act or practice that violates this Act or a regulation pro-
2 mulgated under this Act, the attorney general of the State,
3 as *parens patriae*, may bring a civil action on behalf of
4 the residents of the State in an appropriate district court
5 of the United States to—

6 (1) enjoin that act or practice;

7 (2) enforce compliance with this Act or the reg-
8 ulation;

9 (3) obtain damages, civil penalties, restitution,
10 or other compensation on behalf of the residents of
11 the State; or

12 (4) obtain such other relief as the court may
13 consider to be appropriate.

14 (b) RIGHTS OF THE COMMISSION.—

15 (1) IN GENERAL.—Except where not feasible,
16 the attorney general of a State shall notify the Com-
17 mission in writing prior to initiating a civil action
18 under subsection (a). Such notice shall include a
19 copy of the complaint to be filed to initiate such ac-
20 tion. Upon receiving such notice, the Commission
21 may intervene in such action and, upon inter-
22 vening—

23 (A) be heard on all matters arising in such
24 action; and

1 (B) file petitions for appeal of a decision in
2 such action.

3 (2) NOTIFICATION TIMELINE.—Where it is not
4 feasible for the attorney general of a State to pro-
5 vide the notification required by paragraph (2) be-
6 fore initiating a civil action under paragraph (1), the
7 attorney general shall notify the Commission imme-
8 diately after initiating the civil action.

9 (c) CONSOLIDATION OF ACTIONS BROUGHT BY TWO
10 OR MORE STATE ATTORNEYS GENERAL.—Whenever a
11 civil action under subsection (a) is pending and another
12 civil action or actions are commenced pursuant to such
13 subsection in a different Federal district court or courts
14 that involve 1 or more common questions of fact, a defend-
15 ant in such action or actions may request that such action
16 or actions be transferred for the purposes of consolidated
17 pretrial proceedings and trial to the United States District
18 Court for the District of Columbia; provided however, that
19 no such action shall be transferred if pretrial proceedings
20 in that action have been concluded before a subsequent
21 action is filed by the attorney general of the State.

22 (d) ACTIONS BY COMMISSION.—In any case in which
23 a civil action is instituted by or on behalf of the Commis-
24 sion for violation of this Act or a regulation promulgated
25 under this Act, no attorney general of a State may, during

1 the pendency of such action, institute a civil action against
2 any defendant named in the complaint in the action insti-
3 tuted by or on behalf of the Commission for violation of
4 this Act or a regulation promulgated under this Act that
5 is alleged in such complaint.

6 (e) INVESTIGATORY POWERS.—Nothing in this sec-
7 tion shall be construed to prevent the attorney general of
8 a State or another authorized official of a State from exer-
9 cising the powers conferred on the attorney general or the
10 State official by the laws of the State to conduct investiga-
11 tions, to administer oaths or affirmations, or to compel
12 the attendance of witnesses or the production of documen-
13 tary or other evidence.

14 (f) VENUE; SERVICE OF PROCESS.—

15 (1) VENUE.—Any action brought under sub-
16 section (a) may be brought in the district court of
17 the United States that meets applicable require-
18 ments relating to venue under section 1391 of title
19 28, United States Code.

20 (2) SERVICE OF PROCESS.—In an action
21 brought under subsection (a), process may be served
22 in any district in which the defendant—

23 (A) is an inhabitant; or

24 (B) may be found.

1 (g) ACTIONS BY OTHER STATE OFFICIALS.—Any
2 State official who is authorized by the State attorney gen-
3 eral to be the exclusive authority in that State to enforce
4 this Act may bring a civil action under subsection (a), sub-
5 ject to the same requirements and limitations that apply
6 under this section to civil actions brought under such sub-
7 section by State attorneys general.

8 **SEC. 403. APPROVED CERTIFICATION PROGRAMS.**

9 (a) IN GENERAL.—The Commission shall establish a
10 program in which the Commission shall approve voluntary
11 consensus standards or certification programs that cov-
12 ered entities may use to comply with 1 or more provisions
13 in this Act.

14 (b) EFFECT OF APPROVAL.—A covered entity in com-
15 pliance with a voluntary consensus standard approved by
16 the Commission shall be deemed to be in compliance with
17 the provisions of this Act.

18 (c) TIME FOR APPROVAL.—The Commission shall
19 issue a decision regarding the approval of a proposed vol-
20 untary consensus standard not later than 180 days after
21 a request for approval is submitted.

22 (d) EFFECT OF NON-COMPLIANCE.—A covered entity
23 that claims compliance with an approved voluntary con-
24 sensus standard and is found not to be in compliance with

1 such program by the Commission or in any judicial pro-
2 ceeding shall be considered to be in violation of this Act.

3 (e) RULEMAKING.—Not later than 120 days after the
4 date of enactment of this Act, the Commission shall pro-
5 mulgate regulations under section 553 of title 5, United
6 States Code, establishing a process for review of requests
7 for approval of proposed voluntary consensus standards
8 under this section.

9 (f) REQUIREMENTS.—To be eligible for approval by
10 the Commission, a voluntary consensus standard shall
11 meet the requirements for voluntary consensus standards
12 set forth in Office of Management and Budget Circular
13 A–119, or other equivalent guidance document, ensuring
14 that they are the result of due process procedures and ap-
15 propriately balance the interests of all the stakeholders,
16 including individuals, businesses, organizations, and other
17 entities making lawful uses of the covered data covered
18 by the standard, and—

19 (1) specify clear and enforceable requirements
20 for covered entities participating in the program that
21 provide an overall level of data privacy or data secu-
22 rity protection that is equivalent to or greater than
23 that provided in the relevant provisions in this Act;

24 (2) require each participating covered entity to
25 post in a prominent place a clear and conspicuous

1 public attestation of compliance and a link to the
2 website described in paragraph (4);

3 (3) include a process for an independent assess-
4 ment of a participating covered entity's compliance
5 with the voluntary consensus standard or certifi-
6 cation program prior to certification and at reason-
7 able intervals thereafter;

8 (4) create a website describing the voluntary
9 consensus standard or certification program's goals
10 and requirements, listing participating covered enti-
11 ties, and providing a method for individuals to ask
12 questions and file complaints about the program or
13 any participating covered entity;

14 (5) take meaningful action for non-compliance
15 with the relevant provisions of this Act by any par-
16 ticipating covered entity, which shall depend on the
17 severity of the non-compliance and may include—

18 (A) removing the covered entity from the
19 program;

20 (B) referring the covered entity to the
21 Commission or other appropriate Federal or
22 State agencies for enforcement;

23 (C) publicly reporting the disciplinary ac-
24 tion taken with respect to the covered entity;

1 (D) providing redress to individuals
2 harmed by the non-compliance;

3 (E) making voluntary payments to the
4 United States Treasury; and

5 (F) taking any other action or actions to
6 ensure the compliance of the covered entity with
7 respect to the relevant provisions of this Act;
8 and

9 (6) issue annual reports to the Commission and
10 to the public detailing the activities of the program
11 and its effectiveness during the preceding year in en-
12 suring compliance with the relevant provisions of
13 this Act by participating covered entities and taking
14 meaningful disciplinary action for non-compliance
15 with such provisions by such entities.

16 **SEC. 404. RELATIONSHIP BETWEEN FEDERAL AND STATE**
17 **LAW.**

18 (a) RELATIONSHIP TO STATE LAW.—No State or po-
19 litical subdivision of a State may adopt, maintain, enforce,
20 or continue in effect any law, regulation, rule, require-
21 ment, or standard related to the data privacy or data secu-
22 rity and associated activities of covered entities.

23 (b) SAVINGS PROVISION.—Subsection (a) may not be
24 construed to preempt State laws that directly establish re-

1 requirements for the notification of consumers in the event
2 of a data breach.

3 (c) RELATIONSHIP TO OTHER FEDERAL LAWS.—

4 (1) IN GENERAL.—Except as provided in para-
5 graphs (2) and (3), the requirements of this Act
6 shall supersede any other Federal law or regulation
7 relating to the privacy or security of covered data or
8 associated activities of covered entities.

9 (2) SAVINGS PROVISION.—This Act may not be
10 construed to modify, limit, or supersede the oper-
11 ation of the following:

12 (A) The Children’s Online Privacy Protec-
13 tion Act (15 U.S.C. 6501 et seq.).

14 (B) The Communications Assistance for
15 Law Enforcement Act (47 U.S.C. 1001 et seq.).

16 (C) Section 227 of the Communications
17 Act of 1934 (47 U.S.C. 227).

18 (D) Title V of the Gramm-Leach-Bliley
19 Act (15 U.S.C. 6801 et seq.).

20 (E) The Fair Credit Reporting Act (15
21 U.S.C. 1681 et seq.).

22 (F) The Health Insurance Portability and
23 Accountability Act (Public Law 104–191).

24 (G) The Electronic Communications Pri-
25 vacy Act (18 U.S.C. 2510 et seq.).

1 (H) Section 444 of the General Education
2 Provisions Act (20 U.S.C. 1232g) (commonly
3 referred to as the “Family Educational Rights
4 and Privacy Act of 1974”).

5 (I) The Driver’s Privacy Protection Act of
6 1994 (18 U.S.C. 2721 et seq.).

7 (J) The Federal Aviation Act of 1958 (49
8 U.S.C. App. 1301 et seq.).

9 (K) The Health Information Technology
10 for Economic and Clinical Health Act (42
11 U.S.C. 17931 et seq.).

12 (3) COMPLIANCE WITH SAVED FEDERAL
13 LAWS.—To the extent that the data collection, proc-
14 essing, or transfer activities of a covered entity are
15 subject to a law listed in paragraph (2), such activi-
16 ties of such entity shall not be subject to the re-
17 quirements of this Act.

18 (4) NONAPPLICATION OF FCC LAWS AND REGU-
19 LATIONS TO COVERED ENTITIES.—Notwithstanding
20 any other provision of law, neither any provision of
21 the Communications Act of 1934 (47 U.S.C. 151 et
22 seq.) and all Acts amendatory thereof and supple-
23 mentary thereto nor any regulation promulgated by
24 the Federal Communications Commission under
25 such Acts shall apply to any covered entity with re-

1 spect to the collection, use, processing, transferring,
2 or security of individual information, except to the
3 extent that such provision or regulation pertains
4 solely to “911” lines or other emergency line of a
5 hospital, medical provider or service office, health
6 care facility, poison control center, fire protection
7 agency, or law enforcement agency.

8 **SEC. 405. CONSTITUTIONAL AVOIDANCE.**

9 The provisions of this Act shall be construed, to the
10 greatest extent possible, to avoid conflicting with the Con-
11 stitution of the United States, including the protections
12 of free speech and freedom of the press established under
13 the First Amendment to the Constitution of the United
14 States.

15 **SEC. 406. SEVERABILITY.**

16 If any provision of this Act, or an amendment made
17 by this Act, is determined to be unenforceable or invalid,
18 the remaining provisions of this Act and the amendments
19 made by this Act shall not be affected.

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