To preempt State data security vulnerability mandates and decryption requirements.

IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 10, 2016

Mr. Ted Lieu of California (for himself, Mr. Faustenhold, Ms. DelBene, and Mr. Bishop of Michigan) introduced the following bill; which was referred to the Committee on the Judiciary, and in addition to the Committee on Energy and Commerce, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned.

A BILL

To preempt State data security vulnerability mandates and decryption requirements.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the “Ensuring National Constitutional Rights for Your Private Telecommunications Act of 2016” or the “ENCRYPT Act of 2016.”
SEC. 2. PREEMPTION OF STATE DATA SECURITY VULNERABILITY MANDATES AND DECRYPTION REQUIREMENTS.

(a) In General.—A State or political subdivision of a State may not—

(1) mandate or request that a manufacturer, developer, seller, or provider of covered products or services—

(A) design or alter the security functions in its product or service to allow the surveillance of any user of such product or service, or to allow the physical search of such product, by any agency or instrumentality of a State, a political subdivision of a State, or the United States; or

(B) have the ability to decrypt or otherwise render intelligible information that is encrypted or otherwise rendered unintelligible using its product or service; or

(2) prohibit the manufacture, sale or lease, offering for sale or lease, or provision to the general public of a covered product or service because such product or service uses encryption or a similar security function.

(b) Definitions.—In this section:
(1) Covered Product or Service.—The term “covered product or service” means any computer hardware, computer software, electronic device, or online service that—

(A) has traveled in interstate or foreign commerce or otherwise affects interstate or foreign commerce; and

(B) is made available to the general public.

(2) Online Service.—The term “online service” means a service provided over the Internet that makes available to users—

(A) the ability to send or receive communications, such as emails, text messages, photos, and audio and video communications;

(B) the ability to share data files with other users; or

(C) remote computer processing or storage.

(3) State.—The term “State” means each of the several States, the District of Columbia, each commonwealth, territory, or possession of the United States, and each federally recognized Indian tribe.