

115TH CONGRESS
2D SESSION

S. 2728

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

IN THE SENATE OF THE UNITED STATES

APRIL 23, 2018

Ms. KLOBUCHAR (for herself and Mr. KENNEDY) 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 2018”.

6 **SEC. 2. DEFINITIONS.**

7 In this Act—

8 (1) the term “Commission” means the Federal
9 Trade Commission;

1 (2) the term “covered online platform” means
2 an online platform that collects personal data during
3 the online behavior of a user of the online platform;

4 (3) the term “geolocation information” means,
5 with respect to an individual, any information that
6 is not the content of a communication, concerning
7 the location of a wireless communication device
8 that—

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

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

14 (4) the term “online platform”—

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

18 (B) includes a social network, an ad net-
19 work, a mobile operating system, a search en-
20 gine, an email service, or an Internet access
21 service;

22 (5) the term “operator” has the meaning given
23 the term in section 1302 of the Children’s Online
24 Privacy Protection Act of 1998 (15 U.S.C. 6501);
25 and

1 (6) the term “personal data” means individ-
2 ually identifiable information about an individual
3 collected online, including—

4 (A) location information sufficient to iden-
5 tify the name of a street and a city or town, in-
6 cluding a physical address;

7 (B) an e-mail address;

8 (C) a telephone number;

9 (D) a government identifier, such as a So-
10 cial Security number;

11 (E) geolocation information;

12 (F) the content of a message;

13 (G) protected health information, as de-
14 fined in section 160.103 of title 45, Code of
15 Federal Regulations, or any successor regula-
16 tion; and

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

20 **SEC. 3. PRIVACY PROTECTIONS.**

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

22 (1) **DISCLOSURE AND OBTAINING INITIAL CON-**
23 **SENT AND PRIVACY PREFERENCES.—**

24 (A) **IN GENERAL.—**Before a user creates
25 an account with, or otherwise begins to use, a

1 covered online platform, the operator of the on-
2 line platform shall—

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

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

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

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

23 (B) CONSEQUENCE OF PROHIBITION OF
24 DATA COLLECTION.—If the election of a user
25 under subparagraph (A)(ii)(II) creates inoper-

1 ability in the online platform, the operator of
2 the online platform may deny certain services or
3 completely deny access to the user.

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

10 (i) is—

11 (I) easily accessible;

12 (II) of reasonable length; and

13 (III) clearly distinguishable from
14 other matters; and

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

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

21 (i) establish and maintain a privacy or
22 security program for the online platform;
23 and

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

1 (I) details how the operator will
2 use the personal data of a user of the
3 online platform, including require-
4 ments for how the operator will ad-
5 dress privacy risks associated with the
6 development of new products and
7 services; and

8 (II) includes details of the access
9 that employees and contractors of the
10 operator have to the personal data of
11 a user of the online platform, and in-
12 ternal policies for the use of that per-
13 sonal data.

14 (2) NEW PRODUCTS; CHANGES TO PRIVACY OR
15 SECURITY PROGRAM.—An operator of a covered on-
16 line platform may not introduce a new product, or
17 implement any material change to the privacy or se-
18 curity program of the online platform that overrides
19 the privacy preferences of a user of the online plat-
20 form, as specified under paragraph (1)(A)(ii), unless
21 the operator has—

22 (A) informed the user that the new prod-
23 uct or change will result in the collection and
24 use of personal data described in paragraph
25 (1)(A)(i), if that is the case;

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

3 (C) obtained affirmative express consent
4 from the user to the introduction of the new
5 product or the implementation of the change.

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

8 (A) a user of the online platform is able to
9 withdraw consent to the terms of service for use
10 of the online platform, including the collection
11 and use of personal data described in para-
12 graph (1)(A)(i), as easily as the user is able to
13 give such consent; and

14 (B) except as otherwise required by law, no
15 person is able to access the personal data of a
16 user of the online platform later than 30 days
17 after the date on which the user closes his or
18 her account or otherwise terminates his or her
19 use of the online platform.

20 (b) RIGHT TO ACCESS.—An operator of a covered on-
21 line platform shall offer a user of the online platform a
22 copy of the personal data of the user that the operator
23 has processed, free of charge and in an electronic and eas-
24 ily accessible format, including a list of each person that

1 received the personal data from the operator for business
2 purposes, whether through sale or other means.

3 (c) VIOLATIONS OF PRIVACY.—

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

12 (A) notify the user of the transmission;

13 (B) offer the user the option to elect to
14 prohibit the operator from collecting and using
15 the personal data of the user, subject to para-
16 graph (2);

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

19 (i) erase all personal data of the user
20 tracked by the operator; and

21 (ii) cease further dissemination of per-
22 sonal data of the user tracked by the oper-
23 ator;

24 (D) offer the user a copy of the personal
25 data of the user that the operator has proc-

1 essed, free of charge and in an electronic and
2 easily accessible format, including a list of each
3 person that received the personal data from the
4 operator, whether through sale or other means;
5 and

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

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

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

22 (A) retain the specific personal data; and

23 (B) notify the proper authorities.

24 (d) COMPLIANCE.—Not less frequently than once
25 every 2 years, the operator of a covered online platform

1 shall audit the privacy or security program of the online
2 platform.

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

7 **SEC. 4. ENFORCEMENT.**

8 (a) ENFORCEMENT BY COMMISSION.—

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

15 (2) POWERS OF COMMISSION.—

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

24 (B) PRIVILEGES AND IMMUNITIES.—Ex-
25 cept as provided in subparagraph (C), any per-

1 son who violates this Act shall be subject to the
2 penalties and entitled to the privileges and im-
3 munities provided in the Federal Trade Com-
4 mission Act (15 U.S.C. 41 et seq.).

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

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

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

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

24 (b) ENFORCEMENT BY STATES.—

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

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

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

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

23 (ii) CONTENTS.—The notification re-
24 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) against a person de-
15 scribed in subsection (a)(1); and

16 (ii) upon intervening—

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

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

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

1 or affirmations, or to compel the attendance of wit-
2 nesses or the production of documentary or other
3 evidence.

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

13 (5) VENUE; SERVICE OF PROCESS.—

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

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

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

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

25 (i) is an inhabitant; or

1 (ii) may be found.

2 (6) ACTIONS BY OTHER STATE OFFICIALS.—

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

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

17 **SEC. 5. EFFECTIVE DATE.**

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

20 (b) APPLICABILITY TO EXISTING USERS OF ONLINE
21 PLATFORMS.—An individual who becomes a user of a cov-
22 ered online platform before the effective date under sub-
23 section (a) shall be treated as if he or she had become
24 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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