

116TH CONGRESS
1ST SESSION

S. 2637

To amend the Federal Trade Commission Act to establish requirements and responsibilities for entities that use, store, or share personal information, to protect personal information, and for other purposes.

IN THE SENATE OF THE UNITED STATES

OCTOBER 17, 2019

Mr. WYDEN introduced the following bill; which was read twice and referred to the Committee on Finance

A BILL

To amend the Federal Trade Commission Act to establish requirements and responsibilities for entities that use, store, or share personal information, to protect personal information, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Mind Your Own Busi-
5 ness Act of 2019”.

6 **SEC. 2. DEFINITIONS.**

7 In this Act:

1 (1) AUTOMATED DECISION SYSTEM.—The term
 2 “automated decision system” means a computational
 3 process, including one derived from machine learn-
 4 ing, statistics, or other data processing or artificial
 5 intelligence techniques, that makes a decision or fa-
 6 cilitates human decision making, that impacts con-
 7 sumers.

8 (2) AUTOMATED DECISION SYSTEM IMPACT AS-
 9 SESSMENT.—The term “automated decision system
 10 impact assessment” means a study evaluating an
 11 automated decision system and the automated deci-
 12 sion system’s development process, including the de-
 13 sign and training data of the automated decision
 14 system, for impacts on accuracy, fairness, bias, dis-
 15 crimination, privacy, and security that includes, at a
 16 minimum—

17 (A) a detailed description of the automated
 18 decision system, its design, its training, data,
 19 and its purpose;

20 (B) an assessment of the relative benefits
 21 and costs of the automated decision system in
 22 light of its purpose, taking into account rel-
 23 evant factors, including—

24 (i) data minimization practices;

1 (ii) the duration for which personal
2 information and the results of the auto-
3 mated decision system are stored;

4 (iii) what information about the auto-
5 mated decision system is available to con-
6 sumers;

7 (iv) the extent to which consumers
8 have access to the results of the automated
9 decision system and may correct or object
10 to its results; and

11 (v) the recipients of the results of the
12 automated decision system;

13 (C) an assessment of the risks posed by
14 the automated decision system to the privacy or
15 security of personal information of consumers
16 and the risks that the automated decision sys-
17 tem may result in or contribute to inaccurate,
18 unfair, biased, or discriminatory decisions im-
19 pacting consumers; and

20 (D) the measures the covered entity will
21 employ to minimize the risks described in sub-
22 paragraph (C), including technological and
23 physical safeguards.

24 (3) COMMISSION.—The term “Commission”
25 means Federal Trade Commission.

1 (4) CONSUMER.—The term “consumer” means
2 an individual.

3 (5) COVERED ENTITY.—The term “covered en-
4 tity”—

5 (A) means any person, partnership, or cor-
6 poration over which the Commission has juris-
7 diction under section 5(a)(2) of the Federal
8 Trade Commission Act (15 U.S.C. 45(a)(2))
9 that—

10 (i) had greater than \$50,000,000 in
11 average annual gross receipts for the 3-
12 taxable-year period preceding the most re-
13 cent fiscal year, as determined in accord-
14 ance with paragraphs (2) and (3) of sec-
15 tion 448(c) of the Internal Revenue Code
16 of 1986;

17 (ii) possesses or controls personal in-
18 formation on more than—

19 (I) 1,000,000 consumers; or

20 (II) 1,000,000 consumer devices;

21 (iii) is substantially owned, operated,
22 or controlled by a person, partnership, or
23 corporation that meets the requirements
24 under clauses (i) or (ii); or

(iv) is a data broker or other commercial entity that, as a substantial part of their business, collects, assembles, or maintains personal information concerning an individual who is not a customer or an employee of that entity in order to sell or trade the information or provide third-party access to the information.

(6) DATA PROTECTION IMPACT ASSESSMENT.—

The term “data protection impact assessment” means a study evaluating the extent to which an information system protects the privacy and security of personal information the system processes.

(7) EXECUTIVE CAPACITY.—The term “executive capacity” means an assignment within an organization in which the employee primarily—

(A) directs the management of the organization or a major component or function of the organization;

(B) establishes the goals and policies of the organization, component, or function;

(C) exercises wide latitude in discretionary decision making; and

1 (D) receives only general supervision or di-
2 rection from higher level executives, the board
3 of directors, or stockholders of the organization.

4 (8) HIGH-RISK AUTOMATED DECISION SYS-
5 TEM.—The term “high-risk automated decision sys-
6 tem” means an automated decision system that—

7 (A) taking into account the novelty of the
8 technology used and the nature, scope, context,
9 and purpose of the automated decision system,
10 poses a significant risk—

11 (i) to the privacy or security of per-
12 sonal information of consumers; or

13 (ii) of resulting in or contributing to
14 inaccurate, unfair, biased, or discrimina-
15 tory decisions impacting consumers;

16 (B) makes decisions, or facilitates human
17 decision making, based on systematic and ex-
18 tensive evaluations of consumers, including at-
19 tempts to analyze or predict sensitive aspects of
20 their lives, such as their work performance, eco-
21 nomic situation, health, personal preferences,
22 interests, behavior, location, or movements,
23 that—

24 (i) alter legal rights of consumers; or

1 (ii) otherwise significantly impact con-
2 sumers;

3 (C) involves the personal information of a
4 significant number of consumers regarding
5 race, color, national origin, political opinions,
6 religion, trade union membership, genetic data,
7 biometric data, health, gender, gender identity,
8 sexuality, sexual orientation, criminal convic-
9 tions, or arrests;

10 (D) systematically monitors a large, pub-
11 licly accessible physical place; or

12 (E) meets any other criteria established by
13 the Commission in regulations issued under sec-
14 tion 7(b)(1).

15 (9) HIGH-RISK INFORMATION SYSTEM.—The
16 term “high-risk information system” means an in-
17 formation system that—

18 (A) taking into account the novelty of the
19 technology used and the nature, scope, context,
20 and purpose of the information system, poses a
21 significant risk to the privacy or security of per-
22 sonal information of consumers;

23 (B) involves the personal information of a
24 significant number of consumers regarding
25 race, color, national origin, political opinions,

1 religion, trade union membership, genetic data,
2 biometric data, health, gender, gender identity,
3 sexuality, sexual orientation, criminal convictions,
4 or arrests;

5 (C) systematically monitors a large, publicly
6 accessible physical place; or

7 (D) meets any other criteria established by
8 the Commission in regulations issued under section
9 7(b)(1).

10 (10) INFORMATION SYSTEM.—The term “information
11 system”—

12 (A) means a process, automated or not,
13 that involves personal information, such as the
14 collection, recording, organization, structuring,
15 storage, alteration, retrieval, consultation, use,
16 sharing, disclosure, dissemination, combination,
17 restriction, erasure, or destruction of personal
18 information; and

19 (B) does not include automated decision
20 systems.

21 (11) JOURNALISM.—The term “journalism”
22 means the gathering, preparing, collecting,
23 photographing, recording, writing, editing, reporting,
24 or publishing of news or information that concerns
25 local, national, or international events or other mat-

1 ters of public interest for dissemination to the pub-
2 lic.

3 (12) PERSONAL INFORMATION.—The term
4 “personal information” means any information, re-
5 gardless of how the information is collected, in-
6 ferred, or obtained that is reasonably linkable to a
7 specific consumer or consumer device.

8 (13) SHARE.—The term “share”—

9 (A) means the actions of a person, part-
10 nership, or corporation transferring information
11 to another person, partnership, or corporation;
12 and

13 (B) includes actions to knowingly—

14 (i) share, exchange, transfer, sell,
15 lease, rent, provide, disclose, or otherwise
16 permit access to information;

17 (ii) enable or facilitate the collection
18 of personal information by a third party;
19 or

20 (iii) use personal information substan-
21 tially at the direction of or substantially
22 for the benefit of a third party.

23 (14) STORE.—The term “store”—

1 (A) means the actions of a person, part-
2 nership, or corporation to retain information;
3 and

4 (B) includes actions to store, collect, as-
5 semble, possess, control, or maintain informa-
6 tion.

7 (15) THIRD PARTY.—The term “third party”
8 means any person, partnership, or corporation that
9 is not—

10 (A) the person, partnership, or corpora-
11 tion, whether a covered entity or not, that is
12 sharing the personal information;

13 (B) solely performing an outsourced func-
14 tion of the person, partnership, or corporation
15 sharing the personal information if—

16 (i) the person, partnership, or cor-
17 poration is contractually or legally prohib-
18 ited from using, storing, or sharing the
19 personal information after the conclusion
20 of the outsourced function; and

21 (ii) the person, partnership, or cor-
22 poration is complying with regulations pro-
23 mulgated under subparagraphs (A) and
24 (B) of section 7(b)(1), regardless of wheth-

1 er the person, partnership, or corporation
 2 is a covered entity; or

3 (C) a person, partnership, or corporation
 4 for whom the consumer gave opt-in consent for
 5 the covered entity to disclose the personal infor-
 6 mation of the consumer.

7 (16) USE.—The term “use” means the actions
 8 of a person, partnership, or corporation in using in-
 9 formation, including actions to use, process, or ac-
 10 cess information.

11 **SEC. 3. NONECONOMIC INJURY.**

12 The first sentence of section 5(n) of the Federal
 13 Trade Commission Act (15 U.S.C. 45(n)) is amended by
 14 inserting “, including those involving noneconomic impacts
 15 and those creating a significant risk of unjustified expo-
 16 sure of personal information,” after “cause substantial in-
 17 jury”.

18 **SEC. 4. CIVIL PENALTY AUTHORITY.**

19 Section 5 of the Federal Trade Commission Act (15
 20 U.S.C. 45) is amended—

21 (1) in subsection (b)—

22 (A) in the fifth sentence, by inserting “,
 23 and it may, in its discretion depending on the
 24 nature and severity of the violation, include in
 25 the cease and desist order an assessment of a

1 civil penalty, which shall be not more than an
2 amount that is the greater of \$50,000 per viola-
3 tion, taken as an aggregate sum of all viola-
4 tions, and 4 percent of the total annual gross
5 revenue of the person, partnership, or corpora-
6 tion for the prior fiscal year” before the period
7 at the end;

8 (2) in subsection (l)—

9 (A) in the first sentence, by striking “of
10 not more than \$10,000 for each violation” and
11 inserting “, which shall be not more than an
12 amount that is the greater of \$50,000 per viola-
13 tion, taken as an aggregate sum of all viola-
14 tions, and 4 percent of the total annual gross
15 revenue of the person, partnership, or corpora-
16 tion for the prior fiscal year”; and

17 (3) in subsection (m)(1)—

18 (A) in subparagraph (A), in the second
19 sentence, by striking “of not more than
20 \$10,000 for each violation” and inserting “,
21 which shall be not more than an amount that
22 is the greater of \$50,000 per violation, taken as
23 an aggregate sum of all violations, and 4 per-
24 cent of the total annual gross revenue of the

1 person, partnership, or corporation for the prior
 2 fiscal year”; and

3 (B) in subparagraph (B), in the matter
 4 following paragraph (2), by striking “of not
 5 more than \$10,000 for each violation” and in-
 6 serting “, which shall be not more than an
 7 amount that is the greater of \$50,000 per viola-
 8 tion, taken as an aggregate sum of all viola-
 9 tions, and 4 percent of the total annual gross
 10 revenue of the person, partnership, or corpora-
 11 tion for the prior fiscal year”.

12 **SEC. 5. ANNUAL DATA PROTECTION REPORTS.**

13 (a) REPORTS.—

14 (1) IN GENERAL.—Each covered entity that has
 15 not less than \$1,000,000,000 per year in revenue
 16 and stores, shares, or uses personal information on
 17 more than 1,000,000 consumers or consumer devices
 18 or any covered entity that stores, shares, or uses
 19 personal information on more than 50,000,000 con-
 20 sumers or consumer devices shall submit to the
 21 Commission an annual data protection report de-
 22 scribing in detail whether, during the reporting pe-
 23 riod, the covered entity complied with the regula-
 24 tions promulgated in accordance with subparagraphs
 25 (A) and (B) of section 7(b)(1). To the extent that

1 the covered entity did not comply with these regula-
 2 tions, this statement shall include a description of
 3 which regulations were violated and the number of
 4 consumers whose personal information was im-
 5 pacted.

6 (2) REGULATIONS.—Not later than 2 years
 7 after the date of enactment of this Act, the Federal
 8 Trade Commission shall promulgate regulations in
 9 accordance with section 553 of title 5, United States
 10 Code, carrying out this subsection.

11 (b) FAILURE OF CORPORATE OFFICERS TO CERTIFY
 12 PRIVACY AND DATA SECURITY REPORTS.—

13 (1) IN GENERAL.—Chapter 63 of title 18,
 14 United States Code, is amended by adding at the
 15 end the following:

16 **“§ 1352. Failure of corporate officers to certify data**
 17 **protection reports**

18 “(a) DEFINITIONS.—In this section:

19 “(1) COVERED ENTITY.—The term ‘covered en-
 20 tity’ has the meaning given the term in section 2 of
 21 the Mind Your Own Business Act of 2019.

22 “(2) WILLFULLY.—The term ‘willfully’ means
 23 the voluntary, intentional violation of a known legal
 24 duty.

1 “(b) CERTIFICATION OF ANNUAL DATA PROTECTION
2 REPORTS.—Each annual report filed by a company with
3 the Federal Trade Commission pursuant to section 5(a)
4 of the Mind Your Own Business Act of 2019 shall be ac-
5 companied by a written statement by the chief executive
6 officer and chief privacy officer (or equivalent thereof) of
7 the company.

8 “(c) CONTENT.—The statement required under sub-
9 section (b) shall certify that the annual report fully com-
10 plies with the requirements of section 5(a) of the Mind
11 Your Own Business Act of 2019.

12 “(d) CRIMINAL PENALTIES.—Whoever—

13 “(1) certifies any statement as set forth in sub-
14 sections (b) and (c) of this section knowing that the
15 annual report accompanying the statement does not
16 comport with all the requirements set forth in this
17 section shall be fined not more than the greater of
18 \$1,000,000 or 5 percent of the largest amount of
19 annual compensation the person received during the
20 previous 3-year period from the covered entity, im-
21 prisoned not more than 10 years, or both; or

22 “(2) willfully certifies any statement as set
23 forth in subsections (b) and (c) of this section know-
24 ing that the annual report accompanying the state-
25 ment does not comport with all the requirements set

1 forth in this section shall be fined not more than
 2 \$5,000,000 or 25 percent of the largest amount of
 3 annual compensation the person received during the
 4 previous 3-year period from the covered entity, im-
 5 prisoned not more than 20 years, or both.”.

6 (2) TECHNICAL AND CONFORMING AMEND-
 7 MENT.—The table of sections for chapter 63 of title
 8 18, United States Code, is amended by adding at
 9 the end the following:

“1352. Failure of corporate officers to certify data protection reports.”.

10 **SEC. 6. “DO NOT TRACK” DATA SHARING OPT OUT.**

11 (a) REGULATIONS.—Not later than 2 years after the
 12 date of enactment of this Act, the Commission shall pro-
 13 mulgate regulations, in accordance with section 553 of
 14 title 5, United States Code, to—

15 (1) implement and maintain a “Do Not Track”
 16 data sharing opt-out website—

17 (A) that allows consumers to opt out of
 18 data sharing with 1 click after the consumer is
 19 logged into the website, view their opt-out sta-
 20 tus, and change their opt-out status;

21 (B) the effect of which opt out is to pre-
 22 vent—

23 (i) covered entities from sharing the
 24 personal information of the consumer with
 25 third parties, including personal informa-

1 tion shared with or stored by the covered
2 entity prior to the opt out unless—

3 (I) the sharing is necessary for
4 the primary purpose for which the
5 consumer provided the personal infor-
6 mation; and

7 (II) the third party with whom
8 the personal information was shared
9 does not retain or use the personal in-
10 formation for secondary purposes; and

11 (ii) covered entities from storing or
12 using personal information of the con-
13 sumer that has been shared with them by
14 non-covered entities, not including personal
15 information shared with or stored by the
16 covered entity prior to the opt out;

17 (C) that is reasonably accessible and usa-
18 ble by consumers; and

19 (D) that enables consumers to make use of
20 the features described in subparagraph (A)
21 through an Application Programming Interface;

22 (2) as part of the implementation of the opt-out
23 website described in paragraph (1)—

24 (A) maintain a record of the opt-out status
25 of consumers enrolled through the opt-out

1 website, including the date and time when the
2 consumer opted out;

3 (B) enable consumers to convey their opt-
4 out status to covered entities in 1 or more pri-
5 vacy-protecting ways through technological
6 means determined by the Commission, such as
7 through a consumer's web browser or operating
8 system;

9 (C) enable covered entities to determine
10 whether a particular consumer is enrolled in the
11 opt-out website in a privacy-preserving way that
12 does not result in the disclosure of any personal
13 information other than a consumer's opt-out
14 status to that covered entity; and

15 (D) enable covered entities to make use of
16 the mechanism described in subparagraph (C)
17 through an Application Programming Interface,
18 for which the Commission may charge a reason-
19 able fee to cover the costs of operating the opt-
20 out registry and access to the system;

21 (3) require that a covered entity be bound by
22 the opt out of a consumer when the opt out is con-
23 veyed through the opt-out website implemented and
24 maintained by the Commission—

25 (A) immediately for new customers; and

1 (B) within 30 days for existing customers
2 or consumers who are not customers, unless,
3 after the consumer has opted out in the manner
4 described in paragraph (1)(A), the covered enti-
5 ty receives, in accordance with the procedures
6 described in paragraph (10), consent from the
7 consumer to not be bound by the consumer's
8 opt out;

9 (4) require covered entities that store or use
10 personal data on consumers with which they—

11 (A) do not have a direct relationship; or

12 (B) otherwise do not have the ability to de-
13 termine the consumer's opt-out preference
14 through one of the technological means estab-
15 lished pursuant to paragraph (2)(B),

16 to make a good-faith effort to determine the con-
17 sumer's opt-out status at least as frequently as de-
18 termined by the Commission, through the Applica-
19 tion Programming Interface maintained by the Com-
20 mission pursuant to paragraph (2)(D);

21 (5) permit covered entities to not be bound by
22 the consumer's opt out for—

23 (A) disclosures made to the government
24 that are either required or permitted by law;

1 (B) disclosures made pursuant to an order
2 of a court or administrative tribunal;

3 (C) disclosures made in response to a sub-
4 poena, discovery request, or other lawful proc-
5 ess provided that such process is accompanied
6 by a protective order that—

7 (i) prohibits the parties from using or
8 disclosing the personal information for any
9 purpose other than the litigation or pro-
10 ceeding for which such personal informa-
11 tion was requested; and

12 (ii) requires the return to the covered
13 entity or destruction of the personal infor-
14 mation (including all copies made) at the
15 end of the litigation or proceeding; or

16 (D) disclosures made to investigate, pro-
17 tect themselves and their customers from, or re-
18 cover from fraud, cyber attacks, or other unlaw-
19 ful activity;

20 (6) establish standards and procedures, includ-
21 ing through an Application Programming Interface,
22 for a covered entity to request, not more frequently
23 than once per calendar year unless a consumer is
24 signing up for a product or service, and obtain con-
25 sent from a consumer who has opted out in the

1 manner described in paragraph (1)(A) for the cov-
2 ered entity to not be bound by the opt out, provided
3 such standards and procedures—

4 (A) require the covered entity to provide
5 the consumer, at the time the covered entity is
6 seeking consent, in accordance with paragraph
7 (10), and in a form that is understandable to
8 a reasonable consumer—

9 (i) a list of each third party with
10 whom the personal information of the con-
11 sumer will or may be shared by the covered
12 entity;

13 (ii) a description of the personal infor-
14 mation of that consumer that will or may
15 be shared; and

16 (iii) a description of the purposes for
17 which the personal information of that con-
18 sumer will or may be shared;

19 (B) if the covered entity requires consent
20 as a condition for providing a product or serv-
21 ice, require the covered entity to—

22 (i) notify the consumer that he or she
23 can obtain a substantially similar product
24 or service in exchange for monetary pay-
25 ment or other compensation rather than by

1 permitting the covered entity to share the
2 consumer's personal information, as pro-
3 vided in subsection (b)(1)(B); and

4 (ii) with respect to the notice de-
5 scribed in clause (i)—

6 (I) make the notice in a clear
7 and conspicuous manner; and

8 (II) include the cost of the fee, if
9 any, and instructions for obtaining
10 the substantially similar product or
11 service described in clause (i);

12 (C) if the covered entity does not require
13 consent as a condition for providing a product
14 or service, require the covered entity to clearly
15 and conspicuously notify the consumer that the
16 consumer may refuse to provide consent but
17 still obtain the product or service; and

18 (D) require the covered entity to notify the
19 consumer of his or her right, and how to exer-
20 cise that right, to later withdraw consent for
21 the covered entity to not be bound by the con-
22 sumer's opt out;

23 (7) not less frequently than every 2 years, ex-
24 amine the information that is presented to con-
25 sumers in accordance with the procedures described

1 in paragraph (6) to make sure that the information
2 is useful, understandable, and to the extent possible,
3 does not result in notification and consent fatigue;

4 (8) establish standards and procedures requir-
5 ing that when a non-covered entity that is not the
6 consumer shares personal information about that
7 consumer with a covered entity, the covered entity
8 shall make reasonable efforts to verify the opt-out
9 status of the consumer whose personal information
10 has been shared with the covered entity, after which
11 the covered entity may only store or use that per-
12 sonal information for the benefit of the covered enti-
13 ty—

14 (A) if the consumer has not opted out in
15 the manner described in paragraph (2)(A); or

16 (B)(i) if the non-covered entity knowingly
17 enabled or facilitated the collection of personal
18 information by the covered entity and the cov-
19 ered entity itself receives consent from the con-
20 sumer to store or use the consumer's personal
21 information in accordance with paragraph (9);

22 or

23 (ii) if the non-covered entity otherwise
24 shares the information with the covered entity
25 and the consumer has given consent in accord-

1 ance with paragraph (9) to the covered entity
2 or non-covered entity for the non-covered entity
3 to share the consumer's personal information
4 with the specific covered entity;

5 (9) establish standards and procedures for a
6 person, partnership, or corporation to request and
7 obtain consent from a consumer, in accordance with
8 paragraph (8)(B) that clearly identifies the covered
9 entity that will be storing or using the personal in-
10 formation and provides the consumer, at the time
11 the person, partnership, or corporation is seeking
12 consent, in accordance with paragraph (10), and in
13 a form that is understandable to a reasonable con-
14 sumer—

15 (A) the name and contact information of
16 the person, partnership, or corporation from
17 whom the personal information of that con-
18 sumer is to be obtained;

19 (B) a description of the personal informa-
20 tion of that consumer that will be shared; and

21 (C) a description of the purposes for which
22 the personal information of that consumer will
23 be shared;

24 (10) detail the standardized form and manner
25 in which certain information related to sharing shall

1 be disclosed to consumers, which shall, to the extent
 2 that the Commission determines to be practicable
 3 and appropriate, be in the form of a table that—

4 (A) contains clear and concise headings for
 5 each item of such information; and

6 (B) provides a clear and concise form for
 7 stating each item of information required to be
 8 disclosed under each such heading; and

9 (11) permit a consumer to withdraw his or her
 10 consent to a covered entity to not be bound by the
 11 consumer's opt out at any time, including through
 12 an Application Programming Interface.

13 (b) ACTS PROHIBITED.—

14 (1) IN GENERAL.—It shall be unlawful for any
 15 covered entity to condition its products or services
 16 upon a requirement that consumers—

17 (A) change their opt-out status through
 18 the opt-out website maintained by the Commis-
 19 sion pursuant to subsection (a)(2); or

20 (B) give the covered entity consent to not
 21 be bound by the consumer's opt-out status, un-
 22 less the consumer is also given an option to pay
 23 a fee to use a substantially similar service that
 24 is not conditioned upon a requirement that the

1 consumer give the covered entity consent to not
2 be bound by the consumer's opt-out status.

3 (2) FEE.—

4 (A) DISCLOSURE.—Each covered entity
5 shall disclose to a consumer the amount of the
6 fee described in paragraph (1)(B), including the
7 amount that the covered entity—

8 (i) would have charged the consumer
9 if the consumer had not opted out; and

10 (ii) the amount that the covered entity
11 is charging to recoup the cost of providing
12 service to low-income consumers.

13 (B) AMOUNT.—Except as provided in sub-
14 paragraph (C), the fee described in paragraph
15 (1)(B) shall not be greater than the amount of
16 monetary gain the covered entity would have
17 earned had the average consumer not opted out.

18 (C) EXCEPTION.—No covered entity may
19 charge a fee to any consumer that meets the re-
20 quirements described in subsection (a) or (b) of
21 section 54.409 of title 47, Code of Federal Reg-
22 ulations (or successor regulation).

23 (D) RULEMAKING.—The Commission may
24 promulgate regulations to facilitate and ensure

1 that covered entities are complying with sub-
2 paragraph (C).

3 (c) ENFORCEMENT BY THE COMMISSION.—A viola-
4 tion of subsection (b) shall be treated as a violation of
5 a rule defining an unfair or deceptive act or practice under
6 section 18(a)(1)(B) of the Federal Trade Commission Act
7 (15 U.S.C. 57a(a)(1)(B)).

8 **SEC. 7. DATA PROTECTION AUTHORITY.**

9 (a) ACTS PROHIBITED.—It is unlawful for any cov-
10 ered entity to—

11 (1) violate a regulation promulgated under sub-
12 section (b); or

13 (2) knowingly provide substantial assistance to
14 any person, partnership, or corporation whose ac-
15 tions violate this Act.

16 (b) REGULATIONS.—

17 (1) IN GENERAL.—Not later than 2 years after
18 the date of enactment of this section, the Commis-
19 sion shall promulgate regulations, in accordance with
20 section 553 of title 5, United States Code, that—

21 (A) require each covered entity to establish
22 and implement reasonable cyber security and
23 privacy policies, practices, and procedures to
24 protect personal information used, stored, or

1 shared by the covered entity from improper ac-
2 cess, disclosure, exposure, or use;

3 (B) require each covered entity to imple-
4 ment reasonable physical, technical, and organi-
5 zational measures to ensure that technologies or
6 products used, produced, sold, offered, or leased
7 by the covered entity that the covered entity
8 knows or has reason to believe store, process, or
9 otherwise interact with personal information are
10 built and function consistently with reasonable
11 data protection practices;

12 (C) require each covered entity to des-
13 ignate at least 1 employee who reports directly
14 to an employee acting in an executive capacity
15 in the covered entity, to coordinate its efforts to
16 comply with and carry out its responsibilities
17 under this Act, including any request or chal-
18 lenge related to the sharing of personal infor-
19 mation;

20 (D) require each covered entity to provide
21 once per calendar year, at no cost, not later
22 than 30 business days after receiving a written
23 request from a verified consumer about whom
24 the covered entity stores personal information—

1 (i) a reasonable means to review any
2 stored personal information of that verified
3 consumer, including the manner in which
4 the information was collected and the date
5 of collection, in a form that is understand-
6 able to a reasonable consumer;

7 (ii) a reasonable means to challenge
8 the accuracy of any stored personal infor-
9 mation of that verified consumer, includ-
10 ing—

11 (I) by providing publicly acces-
12 sible contact information for any em-
13 ployee responsible for overseeing such
14 a challenge; and

15 (II) implementing a reasonable
16 process for responding to such chal-
17 lenges, including the ability of the cov-
18 ered entity to terminate an investiga-
19 tion of information disputed by a con-
20 sumer under this clause, and pro-
21 viding notice to the consumer of such
22 termination, if the covered entity rea-
23 sonably determines that the dispute
24 by the consumer is frivolous or irrele-
25 vant, including by reason of a failure

1 by a consumer to provide sufficient in-
2 formation to investigate the disputed
3 information;

4 (iii) a list of each person, partnership,
5 or corporation with whom the personal in-
6 formation of that verified consumer was
7 shared by the covered entity that—

8 (I) does not include—

9 (aa) disclosures to govern-
10 mental entities pursuant to a
11 court order or law that prohibits
12 the covered entity from revealing
13 that disclosure to the consumer;

14 (bb) disclosures of personal
15 information to third parties when
16 the personal information of the
17 consumer was made available to
18 and readily accessible by the gen-
19 eral public with the consent of
20 the verified consumer and shared
21 with the third party through a
22 mechanism available to any mem-
23 ber of the general public; or

24 (cc) disclosures of informa-
25 tion about the verified consumer

1 that the covered entity did not
2 obtain from that consumer, if re-
3 vealing that disclosure of infor-
4 mation would expose another
5 consumer to likely harm; and

6 (II) except as provided in sub-
7 paragraph (I), includes, at a min-
8 imum—

9 (aa) the name and contact
10 information of each person, part-
11 nership, or corporation with
12 whom the personal information of
13 that verified consumer was
14 shared;

15 (bb) a description of the per-
16 sonal information of that verified
17 consumer that was shared, in a
18 form that is understandable to a
19 reasonable consumer;

20 (cc) a statement of the pur-
21 poses for which the personal in-
22 formation of that verified con-
23 sumer was shared;

24 (dd) if the covered entity
25 claims consent from the con-

- 1 consumer as the basis for sharing, a
2 statement of the circumstances
3 surrounding that consumer con-
4 sent, specifically when, where,
5 and how the consent was ob-
6 tained and by whom the consent
7 was obtained; and
- 8 (ee) a statement of when the
9 personal information of that
10 verified consumer was shared;
11 and
- 12 (iv) for any personal information
13 about that verified consumer stored by the
14 covered entity that the covered entity did
15 not obtain directly from that verified con-
16 sumer, a list identifying—
- 17 (I) the name and contact infor-
18 mation of each person, partnership, or
19 corporation from whom the personal
20 information of that verified consumer
21 was obtained;
- 22 (II) a description of the personal
23 information, in a form that is under-
24 standable to a reasonable consumer;

1 (III) a statement of the purposes
 2 for which the personal information of
 3 that verified consumer was obtained
 4 by the covered entity; and

5 (IV) a statement of the purposes
 6 for which the personal information of
 7 that verified consumer was shared
 8 with the covered entity;

9 (E) detail the standardized form and man-
 10 ner in which the information in subparagraph
 11 (D) shall be disclosed to consumers which shall,
 12 to the extent the Commission determines to be
 13 practicable and appropriate, be in the form of
 14 a table that—

15 (i) contains clear and concise headings
 16 for each item of information; and

17 (ii) provides a clear and concise form
 18 for stating each item of information re-
 19 quired to be disclosed under each such
 20 heading;

21 (F) require each covered entity to correct
 22 the stored personal information of the verified
 23 consumer if, after investigating a challenge by
 24 a verified consumer under subparagraph (D),

1 the covered entity determines that the personal
2 information is inaccurate;

3 (G) require each covered entity to conduct
4 automated decision system impact assessments
5 of—

6 (i) existing high-risk automated deci-
7 sion systems, as frequently as the Commis-
8 sion determines is necessary; and

9 (ii) new high-risk automated decision
10 systems, prior to implementation,
11 provided that a covered entity may evaluate
12 similar high-risk automated decision systems
13 that present similar risks in a single assess-
14 ment;

15 (H) require each covered entity to conduct
16 data protection impact assessments of—

17 (i) existing high-risk information sys-
18 tems, as frequently as the Commission de-
19 termines is necessary; and

20 (ii) new high-risk information sys-
21 tems, prior to implementation,
22 provided that a covered entity may evaluate
23 similar high-risk information systems that
24 present similar risks in a single assessment;

1 (I) require each covered entity to conduct
2 the impact assessments under subparagraphs
3 (G) and (H), if reasonably possible, in consulta-
4 tion with external third parties, including inde-
5 pendent auditors and independent technology
6 experts; and

7 (J) require each covered entity to reason-
8 ably address in a timely manner the results of
9 the impact assessments under subparagraphs
10 (G) and (H).

11 (2) CONSULTATION.—The Commission shall
12 promulgate regulations under subparagraphs (A)
13 and (B) of paragraph (1) in consultation with the
14 National Institute of Standards and Technology.

15 (3) OPTIONAL PUBLICATION OF IMPACT AS-
16 SESSMENTS.—The impact assessments under sub-
17 paragraphs (G) and (H) may be made public by the
18 covered entity at its sole discretion.

19 (4) APPLICABILITY.—The regulations promul-
20 gated under subparagraphs (D) and (F) of para-
21 graph (1) shall only apply to information stored by
22 a covered entity for the covered entity and not on
23 behalf of another entity.

24 (5) REASONABLE FEE.—A covered entity may
25 charge a consumer a reasonable fee to cover the cost

1 of any additional request described in paragraph
 2 (1)(D).

3 (c) PREEMPTION OF PRIVATE CONTRACTS.—It shall
 4 be unlawful for any covered entity to commit the acts pro-
 5 hibited in subsection (a), regardless of specific agreements
 6 between entities or consumers.

7 (d) ENFORCEMENT BY THE COMMISSION.—

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

14 (2) POWERS OF THE COMMISSION.—

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

22 (B) PRIVILEGES AND IMMUNITIES.—Any
 23 person who violates subsection (a) shall be sub-
 24 ject to the penalties and entitled to the privi-

1 leges and immunities provided in the Federal
2 Trade Commission Act (15 U.S.C. 41 et seq.).

3 (C) AUTHORITY PRESERVED.—Nothing in
4 this section shall be construed to limit the au-
5 thority of the Commission under any other pro-
6 vision of law.

7 (e) ENFORCEMENT BY STATES.—

8 (1) IN GENERAL.—If the attorney general of a
9 State has reason to believe that an interest of the
10 residents of the State has been or is being threat-
11 ened or adversely affected by a practice that violates
12 subsection (a), the attorney general of the State
13 may, as *parens patriae*, bring a civil action on behalf
14 of the residents of the State in an appropriate dis-
15 trict court of the United States to obtain appro-
16 priate relief.

17 (2) RIGHTS OF COMMISSION.—

18 (A) NOTICE TO COMMISSION.—

19 (i) IN GENERAL.—Except as provided
20 in clause (iii), the attorney general of a
21 State, before initiating a civil action under
22 paragraph (1), shall provide written notifi-
23 cation to the Commission that the attorney
24 general intends to bring such civil action.

1 (ii) CONTENTS.—The notification re-
 2 quired under clause (i) shall include a copy
 3 of the complaint to be filed to initiate the
 4 civil action.

5 (iii) EXCEPTION.—If it is not feasible
 6 for the attorney general of a State to pro-
 7 vide the notification required under clause
 8 (i) before initiating a civil action under
 9 paragraph (1), the attorney general shall
 10 notify the Commission immediately upon
 11 instituting the civil action.

12 (B) INTERVENTION BY COMMISSION.—The
 13 Commission may—

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

17 (ii) upon intervening—

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

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

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

1 State to conduct investigations, to administer oaths
 2 or affirmations, or to compel the attendance of wit-
 3 nesses or the production of documentary or other
 4 evidence.

5 (4) VENUE; SERVICE OF PROCESS.—

6 (A) VENUE.—Any action brought under
 7 paragraph (1) may be brought in—

8 (i) the district court of the United
 9 States that meets applicable requirements
 10 relating to venue under section 1391 of
 11 title 28, United States Code; or

12 (ii) another court of competent juris-
 13 diction.

14 (B) SERVICE OF PROCESS.—In an action
 15 brought under paragraph (1), process may be
 16 served in any district in which—

17 (i) the defendant is an inhabitant,
 18 may be found, or transacts business; or

19 (ii) venue is proper under section
 20 1391 of title 28, United States Code.

21 (5) ACTIONS BY OTHER STATE OFFICIALS.—

22 (A) IN GENERAL.—In addition to a civil
 23 action brought by an attorney general of a
 24 State under paragraph (1), any other officer of
 25 a State who is authorized by the attorney gen-

1 eral of the State to do so may bring a civil ac-
 2 tion under paragraph (1), subject to the same
 3 requirements and limitations that apply under
 4 this subsection to civil actions brought by State
 5 attorneys general.

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

12 (f) RIGHT OF ACTION BY PROTECTION AND ADVO-
 13 CACY ORGANIZATIONS.—

14 (1) IN GENERAL.—A protection and advocacy
 15 organization designated under paragraph (3) may
 16 bring a civil action against a covered entity that vio-
 17 lates subsection (a) in an appropriate district court
 18 of the United States to obtain appropriate relief.

19 (2) GRANTS.—

20 (A) IN GENERAL.—Of the fines collected
 21 by the Commission, the Commission may award
 22 grants to protection and advocacy organizations
 23 designated under paragraph (3).

24 (B) ALLOCATION.—The Commission shall
 25 distribute amounts under this paragraph on the

1 basis of the ratio of the population of each
 2 State represented by a designated protection
 3 and advocacy organization to the population of
 4 all States represented by designated protection
 5 and advocacy organizations.

6 (3) DESIGNATION.—Each State may designate
 7 1 protection and advocacy organization to bring a
 8 civil action under paragraph (1).

9 **SEC. 8. BUREAU OF TECHNOLOGY.**

10 (a) ESTABLISHMENT.—There is established in the
 11 Federal Trade Commission a bureau to be known as the
 12 Bureau of Technology (referred to in this section as the
 13 “Bureau”).

14 (b) CHIEF TECHNOLOGIST.—The Bureau shall be
 15 headed by a chief technologist, who shall be appointed by
 16 the Chairman of the Commission.

17 (c) STAFF.—

18 (1) IN GENERAL.—Except as provided in para-
 19 graph (2), the Director of the Bureau may, without
 20 regard to the civil service laws (including regula-
 21 tions), appoint and terminate 50 additional per-
 22 sonnel with expertise in management, technology,
 23 digital design, user experience, product management,
 24 software engineering, and other related fields to

1 technologist and management positions to enable the
2 Bureau to perform the duties of the Bureau.

3 (2) EXCEPTED SERVICE.—Not fewer than 40 of
4 the additional personnel appointed under paragraph
5 (1) shall be appointed to positions described in sec-
6 tion 213.3102(r) of title 5, Code of Federal Regula-
7 tions.

8 (d) AUTHORIZATION OF APPROPRIATIONS.—There is
9 authorized to be appropriated to the Bureau such sums
10 as are necessary to carry out this section.

11 **SEC. 9. ADDITIONAL PERSONNEL IN THE BUREAU OF CON-**
12 **SUMER PROTECTION.**

13 (a) IN GENERAL.—Notwithstanding any other provi-
14 sion of law, the Director of the Bureau of Consumer Pro-
15 tection of the Federal Trade Commission may, without re-
16 gard to the civil service laws (including regulations), ap-
17 point—

18 (1) 100 additional personnel in the Division of
19 Privacy and Identity Protection of the Bureau of
20 Consumer Protection; and

21 (2) 25 additional personnel in the Division of
22 Enforcement of the Bureau of Consumer Protection.

23 (b) AUTHORIZATION OF APPROPRIATIONS.—There is
24 authorized to be appropriated to the Director of the Bu-

1 reau of Consumer Protection such sums as may be nec-
2 essary to carry out this section.

3 **SEC. 10. COMPLAINT RESOLUTION.**

4 The Commission shall create rules and guidance es-
5 tablishing procedures for the resolution of complaints by
6 consumers regarding covered entities that improperly use,
7 store, or share the personal information of consumers, in-
8 cluding procedures to—

9 (1) properly process and store complaints;

10 (2) provide a consumer with email updates re-
11 garding the status of the consumer's complaint;

12 (3) create an online portal that allows a con-
13 sumer to log in and track the status of the con-
14 sumer's complaint;

15 (4) review and forward complaints to the cor-
16 rect person, partnership, corporation, government
17 agency, or other entity; and

18 (5) process and store each response from a per-
19 son, partnership, corporation, government agency, or
20 other entity to which a complaint was forwarded.

21 **SEC. 11. APPLICATION PROGRAMMING INTERFACES.**

22 The Commission shall, in consultation with the Na-
23 tional Institute of Standards and Technology and relevant
24 stakeholders, including consumer advocates and inde-
25 pendent technology experts—

1 (1) standardize Application Programming Inter-
 2 faces necessary to permit consumers and covered en-
 3 tities to programmatically avail themselves of the
 4 rights and responsibilities created by this Act;

5 (2) permit and enable consumers to securely
 6 delegate the ability to make requests on their behalf;
 7 and

8 (3) require covered entities to implement the
 9 Application Programming Interfaces, as appropriate.

10 **SEC. 12. NEWS MEDIA PROTECTIONS.**

11 Covered entities engaged in journalism shall not be
 12 subject to the obligations imposed under this Act to the
 13 extent that those obligations directly infringe on the jour-
 14 nalism, rather than the business practices, of the covered
 15 entity.

16 **SEC. 13. EXCISE TAX.**

17 (a) IN GENERAL.—Subtitle D of the Internal Rev-
 18 enue Code of 1986 is amended by adding at the end the
 19 following new chapter:

20 **“CHAPTER 50A—FAILURE TO CERTIFY** 21 **DATA PROTECTION REPORTS**

“Sec. 5000D. Failure to certify data protection reports.

1 **“SEC. 5000D. FAILURE TO CERTIFY DATA PROTECTION RE-**
 2 **PORTS.**

3 “(a) IMPOSITION OF TAX.—In the case of any cov-
 4 ered reporting entity with respect to which a responsible
 5 executive has been convicted under section 1352(d) of title
 6 18, United States Code, there is imposed a tax equal to
 7 the amount determined under subsection (b).

8 “(b) AMOUNT OF TAX.—

9 “(1) IN GENERAL.—The amount determined
 10 under this subsection is the applicable percentage of
 11 the amount determined under paragraph (3).

12 “(2) APPLICABLE PERCENTAGE.—For purposes
 13 of paragraph (1), the applicable percentage is—

14 “(A) in the case of a covered reporting en-
 15 tity that is a corporation, the highest rate of
 16 tax in effect under section 11 for the taxable
 17 year which includes the date on which the speci-
 18 fied annual data protection report to which the
 19 conviction relates is due, and

20 “(B) in the case of any other covered re-
 21 porting entity, the highest rate of tax in effect
 22 under section 1 for such taxable year.

23 “(3) AMOUNT DETERMINED.—

24 “(A) IN GENERAL.—The amount deter-
 25 mined under this paragraph is the sum of the
 26 covered compensation amounts of each respon-

sible executive of the covered reporting entity who has been convicted under section 1352(d) of title 18, United States Code.

“(B) COVERED COMPENSATION AMOUNT.—For purposes of subparagraph (A), the covered compensation amount with respect to any responsible executive is the largest amount of annual wages (as defined in section 3121(a), determined without regard to any dollar limitation contained in such section) of the responsible executive with respect to services performed for the covered reporting entity during the 3-year period preceding the year to which the specified annual data protection report relates.

“(c) DEFINITIONS.—For purposes of this section—

“(1) COVERED REPORTING ENTITY.—

“(A) IN GENERAL.—The term ‘covered reporting entity’ means any covered entity (as defined under section 2 of the Mind Your Own Business Act of 2019) which is required to file a specified annual data protection report.

“(B) AGGREGATION RULES.—For purposes of this paragraph, all covered entities who are treated as a single employer under subsection

1 (b), (c), (m), or (o) of section 414 shall be
 2 treated as one person.

3 “(2) RESPONSIBLE EXECUTIVE.—For purposes
 4 of this subsection, the term ‘responsible executive’
 5 means, with respect to a covered reporting entity,
 6 any of the following officers:

7 “(A) The chief executive officer.

8 “(B) The chief privacy officer (or equiva-
 9 lent thereof).

10 “(3) SPECIFIED ANNUAL DATA PROTECTION
 11 REPORT.—The term ‘specified annual data protec-
 12 tion report’ means the report required to be filed
 13 under section 5(a) of the Mind Your Own Business
 14 Act of 2019.”.

15 (b) CLERICAL AMENDMENT.—The table of chapters
 16 for subtitle D of the Internal Revenue Code of 1986 is
 17 amended by adding at the end the following new item:

“CHAPTER 50A—FAILURE TO CERTIFY DATA PROTECTION REPORTS”.

18 **SEC. 14. NO PREEMPTION.**

19 Nothing in this Act may be construed to preempt any
 20 State law.

○