

118TH CONGRESS
1ST SESSION

H. R. 5311

To preempt State data security vulnerability mandates and decryption requirements.

IN THE HOUSE OF REPRESENTATIVES

AUGUST 29, 2023

Mr. LIEU (for himself, Ms. MACE, Ms. DELBENE, and Ms. ESHOO) 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.

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 “Ensuring National
5 Constitutional Rights for Your Private Telecommuni-
6 cations Act of 2023” or the “ENCRYPT Act of 2023”.

1 **SEC. 2. PREEMPTION OF STATE DATA SECURITY VULNER-**
2 **ABILITY MANDATES AND DECRYPTION RE-**
3 **QUIREMENTS.**

4 (a) IN GENERAL.—A State or political subdivision of
5 a State may not—

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

9 (A) design or alter the security functions
10 in its product or service to allow the surveil-
11 lance of any user of such product or service, or
12 to allow the physical search of such product, by
13 any agency or instrumentality of a State, a po-
14 litical subdivision of a State, or the United
15 States; or

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

20 (2) prohibit the manufacture, sale or lease, of-
21 fering for sale or lease, or provision to the general
22 public of a covered product or service because such
23 product or service uses encryption or a similar secu-
24 rity function.

25 (b) DEFINITIONS.—In this section:

1 (1) COVERED PRODUCT OR SERVICE.—The
2 term “covered product or service” means any com-
3 puter hardware, computer software, electronic de-
4 vice, or online service that—

5 (A) has traveled in interstate or foreign
6 commerce or otherwise affects interstate or for-
7 eign commerce; and

8 (B) is made available to the general public.

9 (2) ONLINE SERVICE.—The term “online serv-
10 ice” means a service provided over the internet that
11 makes available to users—

12 (A) the ability to send or receive commu-
13 nications, such as emails, text messages,
14 photos, and audio and video communications;

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

17 (C) remote computer processing or storage.

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

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