

117TH CONGRESS
2D SESSION

H. R. 8543

To require notice regarding the collection of ambient noise by certain internet-connected devices, to limit the disclosure and retention of information collected through such noise, and to require a mechanism by which such collection may be deactivated and reactivated, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

JULY 27, 2022

Mr. SCALISE introduced the following bill; which was referred to the
Committee on Energy and Commerce

A BILL

To require notice regarding the collection of ambient noise by certain internet-connected devices, to limit the disclosure and retention of information collected through such noise, and to require a mechanism by which such collection may be deactivated and reactivated, 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 “Earning Approval of
5 Voice External Sound Databasing Retained on People
6 Act” or the “EAVESDROP Act”.

1 **SEC. 2. NOTICES REQUIRED FOR COLLECTION OF AMBIENT**
2 **NOISE BY COVERED DEVICE.**

3 (a) ONE-TIME NOTICE AT FIRST POWER-ON.—A
4 manufacturer of a covered device shall provide to the user
5 who powers on the device for the first time a notice that
6 contains—

7 (1) a description of how and under what cir-
8 cumstances covered information is collected by the
9 manufacturer through the covered device; and

10 (2) a description of the purposes for which the
11 manufacturer processes such covered information,
12 including—

13 (A) a description of how long and the cir-
14 cumstances under which the manufacturer re-
15 tains such covered information; and

16 (B) whether the manufacturer discloses
17 such covered information to third parties or
18 processes such covered information for targeted
19 advertising.

20 (b) NOTICE WHEN MATERIAL CHANGE TO OPER-
21 ATING SYSTEM OR FIRMWARE.—When there is a material
22 change to the operating system or firmware of a covered
23 device, the manufacturer of the covered device shall pro-
24 vide a notice that the covered device collects covered infor-
25 mation. Such notice shall include—

1 (1) a statement informing the user that the cov-
2 ered device is collecting covered information;

3 (2) a description of—

4 (A) the covered information collected by
5 the manufacturer through the covered device;
6 and

7 (B) the covered information collected by
8 the manufacturer through the covered device
9 that the manufacturer processes; and

10 (3) instructions on how an owner of the covered
11 device can deactivate the collection of covered infor-
12 mation by the covered device using the mechanism
13 required by section 3.

14 (c) FORM.—The notices required by subsections (a)
15 and (b)—

16 (1) shall be provided electronically in—

17 (A) audio format; and

18 (B) text format, which may include pro-
19 viding a link to a website or other means for ac-
20 cessing the notices online;

21 (2) shall be clear, easily understood, and pro-
22 vided in plain and concise language; and

23 (3) when a covered device is powered on for the
24 first time, may be provided to the user as a single,
25 combined notice.

1 (d) SUBSEQUENT AVAILABILITY OF INFORMATION
2 PROVIDED IN NOTICES.—The manufacturer of a covered
3 device shall ensure that the notices required by subsections
4 (a) and (b) are accessible at any time after being provided
5 under such subsections.

6 **SEC. 3. DEACTIVATION AND REACTIVATION OF COLLEC-**
7 **TION OF AMBIENT NOISE.**

8 A manufacturer of a covered device shall provide a
9 reasonable and easy mechanism by which an owner of the
10 device may—

11 (1) deactivate the ability of the device to collect
12 covered information; and

13 (2) if the ability of the device to collect covered
14 information has been deactivated under paragraph
15 (1), reactivate such ability.

16 **SEC. 4. AUTHORIZED DISCLOSURES OF COVERED INFOR-**
17 **MATION.**

18 (a) IN GENERAL.—A manufacturer of a covered de-
19 vice may disclose covered information to a third party only
20 if the manufacturer is acting in good faith and only for
21 the following purposes:

22 (1) To respond to or comply with a valid sub-
23 poena, court order, or warrant (including a subpoena
24 or court order obtained by a person that is not a

1 government entity), or to provide information as oth-
2 erwise required by law.

3 (2) To respond to a circumstance that would
4 cause a reasonable person to believe that disclosure
5 of the covered information to the third party is nec-
6 essary to prevent physical harm to an individual.

7 (b) NOTICE OF DISCLOSURE.—

8 (1) REQUIREMENT.—Unless prohibited by law,
9 a manufacturer of a covered device shall notify a
10 user of such device whose covered information is dis-
11 closed to a third party by such manufacturer.

12 (2) CONTENTS.—The notice required by para-
13 graph (1) shall include—

14 (A) a description of the covered informa-
15 tion disclosed;

16 (B) a justification for the necessity of the
17 disclosure; and

18 (C) the name of the third party to which
19 the manufacturer disclosed the covered informa-
20 tion.

21 (3) TIMING.—The notice required by paragraph
22 (1) shall be provided to the user not later than 7
23 days after such notice can be legally, safely, and
24 practicably provided.

1 (4) FORM.—The notice required by paragraph
2 (1) shall be provided to the user in a written form
3 (such as by mail or e-mail), if the manufacturer has
4 the necessary contact information for the user. If
5 the manufacturer does not have such contact infor-
6 mation, the manufacturer shall provide such notice
7 in a manner consistent with how a typical user inter-
8 acts with the covered device.

9 (5) RULE OF CONSTRUCTION.—Nothing in this
10 subsection shall be construed to require a manufac-
11 turer of a covered device to—

12 (A) take an action that would convert in-
13 formation that is not covered information into
14 covered information;

15 (B) collect or retain information that the
16 manufacturer would otherwise not collect or re-
17 tain; or

18 (C) retain covered information longer than
19 the manufacturer would otherwise retain such
20 information.

21 **SEC. 5. RETENTION OF COVERED INFORMATION.**

22 A manufacturer of a covered device may not retain
23 covered information for longer than is reasonably nec-
24 essary for the express purposes for which the covered in-
25 formation is collected.

1 **SEC. 6. SAFE HARBOR.**

2 (a) DEEMED COMPLIANCE.—A manufacturer of a
3 covered device shall be deemed to be in compliance with
4 the requirements of this Act if such manufacturer com-
5 plies with a set of self-regulatory guidelines, issued by rep-
6 resentatives of the marketing or covered devices indus-
7 tries, or by other persons, that is approved under sub-
8 section (b).

9 (b) APPROVAL OF GUIDELINES.—

10 (1) IN GENERAL.—Not later than 180 days
11 after receiving a request for approval of a set of self-
12 regulatory guidelines described in subsection (a),
13 after notice and comment, the Commission shall—

14 (A) if the Commission determines that
15 such set of guidelines meets the requirements of
16 this Act, approve such set of guidelines; and

17 (B) if the Commission determines that
18 such set of guidelines does not meet the re-
19 quirements of this Act, deny approval of such
20 set of guidelines.

21 (2) WRITTEN CONCLUSIONS.—The Commission
22 shall set forth in writing its conclusions relating to
23 a determination under paragraph (1).

24 (c) APPEALS.—Final action by the Commission on a
25 request for approval of a set of self-regulatory guidelines
26 described in subsection (a), or the failure of the Commis-

1 sion to act on such a request by the time required by sub-
2 section (b)(1), may be appealed to a district court of the
3 United States of appropriate jurisdiction as provided for
4 in section 706 of title 5, United States Code.

5 **SEC. 7. ENFORCEMENT.**

6 (a) **ENFORCEMENT BY FEDERAL TRADE COMMIS-**
7 **SION.—**

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

14 (2) **ACTIONS BY THE COMMISSION.—**The Com-
15 mission shall enforce this Act in the same manner,
16 by the same means, and with the same jurisdiction,
17 powers, and duties as though all applicable terms
18 and provisions of the Federal Trade Commission Act
19 (15 U.S.C. 41 et seq.) were incorporated into and
20 made a part of this Act, and any person who violates
21 this Act shall be subject to the penalties and entitled
22 to the privileges and immunities provided in the
23 Federal Trade Commission Act.

24 (b) **ENFORCEMENT BY STATE ATTORNEYS GEN-**
25 **ERAL.—**

1 (1) IN GENERAL.—If the attorney general of a
2 State has reason to believe that any person has com-
3 mitted or is committing a violation of this Act that
4 affects one or more residents of such State, such at-
5 torney general may bring a civil action exclusively in
6 an appropriate district court of the United States
7 to—

8 (A) enjoin further such violation by the de-
9 fendant;

10 (B) enforce compliance with this Act;

11 (C) obtain civil penalties in the amount
12 provided for under subsection (a);

13 (D) obtain other remedies permitted under
14 State law; or

15 (E) obtain damages, restitution, or other
16 compensation on behalf of residents of such
17 State.

18 (2) RULE OF CONSTRUCTION.—For purposes of
19 bringing a civil action under paragraph (1), nothing
20 in this subsection may be construed to prevent the
21 attorney general of a State from exercising the pow-
22 ers conferred on such attorney general by the laws
23 of such State to conduct investigations, administer
24 oaths or affirmations, or compel the attendance of

1 witnesses or the production of documentary and
2 other evidence.

3 (3) ACTIONS BY OTHER STATE OFFICIALS.—

4 (A) IN GENERAL.—In addition to civil ac-
5 tions brought by attorneys general under para-
6 graph (1), any other officer of a State who is
7 authorized by such State to do so, except for
8 any private person on behalf of such State, may
9 bring a civil action under paragraph (1), sub-
10 ject to the same requirements and limitations
11 that apply under this subsection to civil actions
12 brought by attorneys general.

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

19 **SEC. 8. DEFINITIONS.**

20 In this Act:

21 (1) AMBIENT NOISE.—The term “ambient
22 noise” means human dialogue or any other sound
23 that occurs in the range of the microphone of a cov-
24 ered device, other than during a period that—

1 (A) begins when a user of the device says
2 a wake word or uses another mechanism (such
3 as pressing a button on the device) to activate
4 any electronic function of the device; and

5 (B) ends—

6 (i) when the performance of the task
7 or assistance requested by the user has
8 been completed; or

9 (ii) if the user activates an electronic
10 function of the device as described in sub-
11 paragraph (A) but does not request the
12 performance of a task or assistance within
13 a reasonable time thereafter, at the expira-
14 tion of such reasonable time.

15 (2) COLLECT.—The term “collect” means, with
16 respect to covered information, obtaining such infor-
17 mation in any manner, except when solely transmit-
18 ting, routing, providing intermediate storage for, or
19 providing connections for such covered information
20 through a system or network.

21 (3) COMMISSION.—The term “Commission”
22 means the Federal Trade Commission.

23 (4) CONTENTS.—The term “contents”, when
24 used with respect to a communication, has the

1 meaning given such term in section 2510 of title 18,
2 United States Code.

3 (5) COVERED DEVICE.—The term “covered de-
4 vice”—

5 (A) means an internet-connected device—

6 (i) a component of which is a micro-
7 phone; and

8 (ii) that collects covered information;
9 and

10 (B) does not include any device that is
11 solely marketed as a microphone.

12 (6) COVERED INFORMATION.—The term “cov-
13 ered information” means any information (including
14 contents of a communication, date of birth, sex,
15 height, weight, and geolocation information) that—

16 (A) is obtained through the collection of
17 ambient noise by a covered device; and

18 (B) is linked or reasonably linkable to an
19 individual.

20 (7) DATA BROKER.—The term “data broker”
21 means a person whose principal source of revenue is
22 derived from processing or transferring the covered
23 information of individuals with whom the person
24 does not have a direct relationship on behalf of third
25 parties and for the use of third parties.

1 (8) DISCLOSE.—The term “disclose” means,
2 with respect to covered information, to sell, release,
3 transfer, share, disseminate, make available, or oth-
4 erwise communicate or cause to be communicated
5 such information to a third party.

6 (9) GOVERNMENT ENTITY.—The term “govern-
7 ment entity” means a Federal agency, State, local
8 government, or other organization, as such terms
9 are defined in section 3371 of title 5, United States
10 Code.

11 (10) MATERIAL.—The term “material” means,
12 with respect to a change to the operating system or
13 firmware of a covered device, that—

14 (A) the change affects the treatment of
15 covered information by the covered device or the
16 manufacturer; and

17 (B) knowledge of the change may affect
18 the decision of an average consumer of whether
19 or not to continue using the device.

20 (11) OWNER.—The term “owner” means, with
21 respect to a covered device, any individual who is in
22 possession of the device.

23 (12) PROCESS.—The term “process” means to
24 perform or cause to be performed any operation or

1 set of operations on covered information, whether or
2 not by automated means.

3 (13) RETAIN.—The term “retain” means, with
4 respect to covered information, to store, secure, or
5 otherwise maintain or cause the maintenance of such
6 information.

7 (14) SERVICE PROVIDER.—

8 (A) IN GENERAL.—The term “service pro-
9 vider” means a person who collects, uses, or
10 discloses covered information for the sole pur-
11 pose of, and only to the extent that such person
12 is, conducting business activities on behalf of,
13 for the benefit of, under instruction of, and
14 under contractual agreement with another per-
15 son.

16 (B) LIMITATION OF APPLICATION.—A per-
17 son shall only be considered a service provider
18 in the course of activities described in subpara-
19 graph (A).

20 (C) EXCLUSION.—The term “service pro-
21 vider” does not include a data broker.

22 (15) STATE.—The term “State” means each
23 State of the United States, the District of Columbia,
24 each commonwealth, territory, or possession of the

1 United States, and each federally recognized Indian
2 Tribe.

3 (16) **THIRD PARTY.**—The term “third party”
4 means, with respect to a person, another person (in-
5 cluding a government entity) that—

6 (A) does not (directly or indirectly) control,
7 is not (directly or indirectly) controlled by, and
8 is not (directly or indirectly) under common
9 control with the first person; and

10 (B) is not a service provider of the first
11 person.

12 (17) **WAKE WORD.**—The term “wake word”
13 means a word or phrase used to initiate an elec-
14 tronic function of a covered device.

15 **SEC. 9. EFFECTIVE DATE.**

16 This Act (except for section 6) shall take effect—

17 (1) if the Commission first approves a set of
18 self-regulatory guidelines under section 6 before the
19 date that is 1 year after the date of the enactment
20 of this Act, on the date that is 1 year after the date
21 of the enactment of this Act;

22 (2) if the Commission first approves a set of
23 self-regulatory guidelines under section 6 on or after
24 the date that is 1 year after the date of the enact-
25 ment of this Act but before the date that is 2 years

1 after the date of the enactment of this Act, on the
2 date on which the Commission approves such set of
3 guidelines; or

4 (3) if the Commission does not approve a set of
5 self-regulatory guidelines under section 6 before the
6 date that is 2 years after the date of the enactment
7 of this Act, on the date that is 2 years after the date
8 of the enactment of this Act.

○