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S. 113

To require providers of broadband internet access service and edge services to clearly and conspicuously notify users of the privacy policies of those providers, to give users opt-in or opt-out approval rights with respect to the use of, disclosure of, and access to user information collected by those providers based on the level of sensitivity of the information, and for other purposes.

IN THE SENATE OF THE UNITED STATES

JANUARY 28, 2021

Mrs. BLACKBURN introduced the following bill; which was read twice and referred to the Committee on Commerce, Science, and Transportation

A BILL

To require providers of broadband internet access service and edge services to clearly and conspicuously notify users of the privacy policies of those providers, to give users opt-in or opt-out approval rights with respect to the use of, disclosure of, and access to user information collected by those providers based on the level of sensitivity of the 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,*

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Balancing the Rights
3 Of Web Surfers Equally and Responsibly Act of 2021”
4 or the “BROWSER Act of 2021”.

5 **SEC. 2. DEFINITIONS.**

6 In this Act:

7 (1) **BROADBAND INTERNET ACCESS SERVICE.**—

8 (A) **IN GENERAL.**—The term “broadband
9 internet access service” means a mass-market
10 retail service by wire or radio that provides the
11 capability to transmit data to and receive data
12 from all or substantially all internet endpoints,
13 including any capabilities that are incidental to
14 and enable the operation of the communications
15 service, but excluding dial-up internet access
16 service.

17 (B) **FUNCTIONAL EQUIVALENT; EVA-**
18 **SION.**—The term “broadband internet access
19 service” includes any service that—

20 (i) the Commission finds to be pro-
21 viding a functional equivalent of the service
22 described in subparagraph (A); or

23 (ii) is used to evade the protections
24 set forth in this Act.

25 (2) **COMMISSION.**—The term “Commission”
26 means the Federal Trade Commission.

1 (3) COVERED SERVICE.—The term “covered
2 service” means—

3 (A) broadband internet access service; or

4 (B) an edge service.

5 (4) EDGE SERVICE.—The term “edge serv-
6 ice”—

7 (A) means a service provided over the
8 internet—

9 (i) for which the provider requires the
10 user to subscribe or establish an account in
11 order to use the service;

12 (ii) that the user purchases from the
13 provider of the service without a subscrip-
14 tion or account;

15 (iii) by which a program searches for
16 and identifies items in a database that cor-
17 respond to keywords or characters speci-
18 fied by the user, used especially for finding
19 particular sites on the world wide web; or

20 (iv) by which the user divulges sen-
21 sitive user information; and

22 (B) includes a service described in sub-
23 paragraph (A) that is provided through a soft-
24 ware program, including a mobile application.

1 (5) EMERGENCY SERVICES.—The term “emer-
2 gency services” has the meaning given the term in
3 section 222 of the Communications Act of 1934 (47
4 U.S.C. 222).

5 (6) MATERIAL.—The term “material” means,
6 with respect to a change in a privacy policy of a pro-
7 vider of a covered service, any change in the policy
8 that a user of the service, acting reasonably under
9 the circumstances, would consider important to the
10 decisions of the user regarding the privacy of the
11 user, including any change to information required
12 to be included in a privacy notice under section 3.

13 (7) MOBILE APPLICATION.—The term “mobile
14 application” means a software program that runs on
15 the operating system of a mobile device.

16 (8) NON-SENSITIVE USER INFORMATION.—The
17 term “non-sensitive user information” means any
18 user information that is not sensitive user informa-
19 tion.

20 (9) OPT-IN APPROVAL.—The term “opt-in ap-
21 proval” means a method for obtaining from a user
22 of a covered service consent to use, disclose, or per-
23 mit access to sensitive user information under which
24 the provider of the service obtains express consent

1 allowing the requested usage of, disclosure of, or ac-
2 cess to the sensitive user information.

3 (10) OPT-OUT APPROVAL.—The term “opt-out
4 approval” means a method for obtaining from a user
5 of a covered service consent to use, disclose, or per-
6 mit access to non-sensitive user information under
7 which the user is deemed to have consented to the
8 use of, disclosure of, or access to the non-sensitive
9 user information if the user has failed to object to
10 the use, disclosure, or access.

11 (11) PUBLIC SAFETY ANSWERING POINT.—The
12 term “public safety answering point” has the mean-
13 ing given the term in section 222 of the Communica-
14 tions Act of 1934 (47 U.S.C. 222).

15 (12) SENSITIVE USER INFORMATION.—The
16 term “sensitive user information” includes any of
17 the following:

18 (A) Financial information.

19 (B) Health information.

20 (C) Information pertaining to children
21 under the age of 13.

22 (D) Social Security number.

23 (E) Precise geolocation information.

24 (F) Content of communications.

1 (G) Web browsing history, history of usage
2 of a software program (including a mobile ap-
3 plication), and the functional equivalents of ei-
4 ther.

5 (13) STATE.—The term “State” means each of
6 the several States, the District of Columbia, the
7 Commonwealth of Puerto Rico, Guam, American
8 Samoa, the United States Virgin Islands, the Com-
9 monwealth of the Northern Mariana Islands, any
10 other territory or possession of the United States,
11 and each federally recognized Indian Tribe.

12 (14) USER.—The term “user” means, with re-
13 spect to a covered service, a person who—

14 (A) is a current or former—

15 (i) subscriber to the service; or

16 (ii) holder of an account for the serv-
17 ice;

18 (B) purchases the service without a sub-
19 scription or account;

20 (C) is an applicant for the service; or

21 (D) in the case of a service described in
22 clause (iii) or (iv) of paragraph (4)(A), uses the
23 service.

24 (15) USER INFORMATION.—The term “user in-
25 formation” means any information that—

1 (A) a provider of a covered service acquires
2 in connection with the provision of the service;
3 and

4 (B) is linked or reasonably linkable to an
5 individual.

6 **SEC. 3. NOTICE OF PRIVACY POLICIES.**

7 (a) IN GENERAL.—A provider of a covered service
8 shall provide a user of the service with clear and con-
9 spicuous notice of the privacy policies of the provider with
10 respect to the service.

11 (b) AVAILABILITY TO PROSPECTIVE USERS.—The
12 notice required by subsection (a) shall be made available
13 to a prospective user of a covered service—

14 (1) at the point of sale of, subscription to, or
15 establishment of an account for the covered service,
16 prior to that sale, subscription, or establishment,
17 without regard to whether the point of sale, sub-
18 scription, or establishment is in person, online, over
19 the telephone, or through another means; or

20 (2) if there is no such sale, subscription, or es-
21 tablishment, before the user uses the service.

22 (c) PERSISTENT AVAILABILITY.—The notice required
23 by subsection (a) shall be made persistently available.

24 (d) MATERIAL CHANGES.—A provider of a covered
25 service shall provide a user of the service with clear and

1 conspicuous advance notice of any material change to the
 2 privacy policies of the provider with respect to the service.

3 **SEC. 4. USER OPT-IN OR OPT-OUT APPROVAL RIGHTS**
 4 **BASED ON SENSITIVITY OF INFORMATION.**

5 (a) **OPT-IN APPROVAL REQUIRED FOR SENSITIVE**
 6 **USER INFORMATION.**—Except as provided in subsection
 7 (c), a provider of a covered service shall obtain opt-in ap-
 8 proval from a user to use, disclose, or permit access to
 9 the sensitive user information of the user.

10 (b) **OPT-OUT APPROVAL REQUIRED FOR NON-SEN-**
 11 **SITIVE USER INFORMATION.**—Except as provided in sub-
 12 section (c), a provider of a covered service—

13 (1) shall obtain opt-out approval from a user to
 14 use, disclose, or permit access to any of the non-sen-
 15 sitive user information of the user; or

16 (2) if the provider so chooses, may comply with
 17 the requirement of paragraph (1) by obtaining opt-
 18 in approval from the user to use, disclose, or permit
 19 access to any of the non-sensitive user information
 20 of the user.

21 (c) **LIMITATIONS AND EXCEPTIONS.**—A provider of
 22 a covered service may use, disclose, or permit access to
 23 user information without user approval for the following
 24 purposes:

1 (1) In providing the covered service from which
2 the information is derived, or in providing services
3 necessary to, or used in, the provision of the service.

4 (2) To initiate, render, bill for, and collect for
5 the covered service.

6 (3) To protect the rights or property of the pro-
7 vider, or to protect users of the covered service and
8 other service providers from fraudulent, abusive, or
9 unlawful use of the service.

10 (4) To provide location information or non-sen-
11 sitive user information—

12 (A) to a public safety answering point,
13 emergency medical service provider or emer-
14 gency dispatch provider, public safety, fire serv-
15 ice, or law enforcement official, or hospital
16 emergency or trauma care facility, in order to
17 respond to the request of the user for emer-
18 gency services;

19 (B) to inform the legal guardian of the
20 user, or members of the immediate family of
21 the user, of the location of the user in an emer-
22 gency situation that involves the risk of death
23 or serious physical harm; or

24 (C) to providers of information or database
25 management services solely for purposes of as-

1 sisting in the delivery of emergency services in
2 response to an emergency.

3 (5) As otherwise required or authorized by law.

4 (d) MECHANISM FOR EXERCISING USER AP-
5 PROVAL.—

6 (1) IN GENERAL.—A provider of a covered serv-
7 ice shall make available a simple, easy-to-use mecha-
8 nism for a user to grant, deny, or withdraw opt-in
9 approval or opt-out approval at any time.

10 (2) FORM AND MANNER.—The mechanism re-
11 quired by paragraph (1) shall be—

12 (A) clear and conspicuous; and

13 (B) made available—

14 (i) at no additional cost to the user;

15 and

16 (ii) in a language other than English,

17 if the provider transacts business with the

18 user in that other language.

19 (3) EFFECT.—The grant, denial, or withdrawal
20 of opt-in approval or opt-out approval by a user
21 shall—

22 (A) be given effect promptly; and

23 (B) remain in effect until the user revokes

24 or limits the grant, denial, or withdrawal of ap-
25 proval.

1 **SEC. 5. SERVICE OFFERS CONDITIONED ON WAIVERS OF**
2 **PRIVACY RIGHTS.**

3 A provider of a covered service may not—

4 (1) condition, or effectively condition, provision
5 of the service on agreement by a user to waive pri-
6 vacy rights guaranteed by law or regulation, includ-
7 ing this Act; or

8 (2) terminate the service or otherwise refuse to
9 provide the service as a direct or indirect con-
10 sequence of the refusal of a user to waive any pri-
11 vacy rights described in paragraph (1).

12 **SEC. 6. ENFORCEMENT BY FEDERAL TRADE COMMISSION.**

13 (a) **GENERAL APPLICATION.**—The requirements of
14 this Act apply, according to their terms, to—

15 (1) those persons, partnerships, and corpora-
16 tions over which the Commission has authority pur-
17 suant to section 5(a)(2) of the Federal Trade Com-
18 mission Act (15 U.S.C. 45(a)(2)); and

19 (2) providers of broadband internet access serv-
20 ice, notwithstanding the exception in such section
21 5(a)(2) for common carriers subject to the Commu-
22 nications Act of 1934 (47 U.S.C. 151 et seq.).

23 (b) **UNFAIR OR DECEPTIVE ACTS OR PRACTICES.**—

24 A violation of this Act shall be treated as an unfair or
25 deceptive act or practice in or affecting commerce for pur-

1 poses of section 5(a)(2) of the Federal Trade Commission
2 Act (15 U.S.C. 45(a)(2)).

3 (c) POWERS OF COMMISSION.—Except as provided in
4 subsection (a)(2) of this section—

5 (1) the Commission shall enforce this Act in the
6 same manner, by the same means, and with the
7 same jurisdiction, powers, and duties as though all
8 applicable terms and provisions of the Federal Trade
9 Commission Act (15 U.S.C. 41 et seq.) were incor-
10 porated into and made a part of this Act; and

11 (2) any person who violates this Act shall be
12 subject to the penalties and entitled to the privileges
13 and immunities provided in the Federal Trade Com-
14 mission Act.

15 **SEC. 7. RELATIONSHIP TO OTHER LAW.**

16 (a) PREEMPTION OF STATE LAW.—No State or polit-
17 ical subdivision of a State shall, with respect to a provider
18 of a covered service subject to this Act, adopt, maintain,
19 enforce, or impose or continue in effect any law, rule, reg-
20 ulation, duty, requirement, standard, or other provision
21 having the force and effect of law relating to or with re-
22 spect to the privacy of user information.

23 (b) OTHER FEDERAL LAW.—

24 (1) IN GENERAL.—Except as provided in para-
25 graph (2), nothing in this Act shall be construed to

1 supersede any Federal statute or regulation relating
2 to information privacy.

3 (2) COMMUNICATIONS ACT OF 1934.—Insofar as
4 any provision of the Communications Act of 1934
5 (47 U.S.C. 151 et seq.) or any regulations promul-
6 gated under that Act apply to any person, partner-
7 ship, or corporation subject to this Act with respect
8 to privacy policies, terms of service, and practices
9 covered by this Act, the provision or regulations
10 shall have no force or effect, unless the regulations
11 pertain to emergency services.

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