

118TH CONGRESS
1ST SESSION

S. 1656

To protect the privacy of personal reproductive or sexual health information,
and for other purposes.

IN THE SENATE OF THE UNITED STATES

MAY 17, 2023

Ms. HIRONO (for herself, Mr. WYDEN, Ms. BALDWIN, Mr. BLUMENTHAL, Mr. BROWN, Ms. CANTWELL, Ms. DUCKWORTH, Mrs. GILLIBRAND, Ms. KLOBUCHAR, Mr. MERKLEY, Mr. MENENDEZ, Mrs. SHAHEEN, and Ms. SMITH) 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 personal reproductive or sexual
health 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 “My Body, My Data
5 Act of 2023”.

6 **SEC. 2. MINIMIZATION.**

7 (a) MINIMIZATION OF COLLECTING, RETAINING,
8 USING, AND DISCLOSING.—A regulated entity may not
9 collect, retain, use, or disclose personal reproductive or

1 sexual health information, except as is strictly necessary
 2 to provide a product or service that the individual to whom
 3 such information relates has requested from such regu-
 4 lated entity.

5 (b) MINIMIZATION OF EMPLOYEE ACCESS.—A regu-
 6 lated entity shall restrict access to personal reproductive
 7 or sexual health information by the employees or service
 8 providers of such regulated entity to such employees or
 9 service providers for which access is necessary to provide
 10 a product or service that the individual to whom such in-
 11 formation relates has requested from such regulated enti-
 12 ty.

13 **SEC. 3. RIGHT OF ACCESS, CORRECTION, AND DELETION.**

14 (a) RIGHT OF ACCESS.—

15 (1) IN GENERAL.—A regulated entity shall
 16 make available a reasonable mechanism by which an
 17 individual, upon a verified request, may access—

18 (A) any personal reproductive or sexual
 19 health information relating to such individual
 20 that is retained by such regulated entity, in-
 21 cluding—

22 (i) in the case of such information
 23 that such regulated entity collected from
 24 third parties, how and from which specific

1 third parties such regulated entity collected
2 such information; and

3 (ii) such information that such regu-
4 lated entity inferred about such individual;
5 and

6 (B) a list of the specific third parties to
7 which such regulated entity has disclosed any
8 personal reproductive or sexual health informa-
9 tion relating to such individual.

10 (2) FORMAT.—A regulated entity shall make
11 the information described in paragraph (1) available
12 in both a human-readable format and a structured,
13 interoperable, and machine-readable format.

14 (b) RIGHT OF CORRECTION.—A regulated entity
15 shall make available a reasonable mechanism by which an
16 individual, upon a verified request, may direct the correc-
17 tion of any inaccurate personal reproductive or sexual
18 health information relating to such individual that is re-
19 tained by such regulated entity or the service providers
20 of such regulated entity, including any such information
21 that such regulated entity collected from a third party or
22 inferred from other information retained by such regu-
23 lated entity.

24 (c) RIGHT OF DELETION.—A regulated entity shall
25 make available a reasonable mechanism by which an indi-

1 vidual, upon a verified request, may direct the deletion of
2 any personal reproductive or sexual health information re-
3 lating to such individual that is retained by such regulated
4 entity and the service providers of such regulated entity,
5 including any such information that such regulated entity
6 collected from a third party or inferred from other infor-
7 mation retained by such regulated entity.

8 (d) GENERAL PROVISIONS.—

9 (1) REASONABLE MECHANISM DEFINED.—In
10 this section, the term “reasonable mechanism”
11 means, with respect to a regulated entity and a right
12 under this section, a mechanism that—

13 (A) is provided in the primary manner
14 through which such regulated entity provides
15 the goods or services of such regulated entity;

16 (B) is easy to use and prominently avail-
17 able; and

18 (C) includes an online means of exercising
19 such right.

20 (2) TIMELINE FOR COMPLYING WITH RE-
21 QUESTS.—A regulated entity shall comply with a
22 verified request received under this section without
23 undue delay and not later than 15 days after the
24 date on which the requesting individual submits the
25 verified request.

1 (3) FEES PROHIBITED.—A regulated entity
2 may not charge a fee to an individual for a request
3 made under this section.

4 (4) RULES OF CONSTRUCTION.—Nothing in
5 this section shall be construed to require a regulated
6 entity to—

7 (A) take an action that would convert in-
8 formation that is not personal information into
9 personal information;

10 (B) collect or retain personal information
11 that such regulated entity would otherwise not
12 collect or retain; or

13 (C) retain personal information longer
14 than such regulated entity would otherwise re-
15 tain such information.

16 **SEC. 4. PRIVACY POLICY.**

17 (a) POLICY REQUIRED.—A regulated entity shall
18 maintain a privacy policy relating to the practices of such
19 regulated entity regarding the collecting, retaining, using,
20 and disclosing of personal reproductive or sexual health
21 information.

22 (b) PUBLICATION REQUIRED.—A regulated entity
23 shall prominently publish the privacy policy required by
24 subsection (a) on the website of such regulated entity.

1 (c) CONTENTS.—The privacy policy required by sub-
2 section (a) shall be clear and conspicuous and shall con-
3 tain, at a minimum, the following:

4 (1) A description of the practices of the regu-
5 lated entity regarding the collecting, retaining,
6 using, and disclosing of personal reproductive or sex-
7 ual health information.

8 (2) A concise statement of the categories of
9 such information collected, retained, used, or dis-
10 closed by the regulated entity.

11 (3) A concise statement, for each such category,
12 of the purposes of such regulated entity for the col-
13 lecting, retaining, using, or disclosing of such infor-
14 mation.

15 (4) A list of the specific third parties to which
16 such regulated entity discloses such information, and
17 a concise statement of the purposes for which such
18 regulated entity discloses such information, including
19 how such information may be used by each such
20 third party.

21 (5) A list of the specific third parties from
22 which such regulated entity has collected such infor-
23 mation, and a concise statement of the purposes for
24 which such regulated entity collects such informa-
25 tion.

1 (6) A concise statement describing the extent to
2 which individuals may exercise control over the col-
3 lecting, retaining, using, and disclosing of personal
4 reproductive or sexual health information by such
5 regulated entity, the steps an individual is required
6 to take to implement such controls, and direct links
7 to such controls.

8 (7) A concise statement describing the efforts
9 of the regulated entity to protect personal reproduc-
10 tive or sexual health information from unauthorized
11 disclosure.

12 **SEC. 5. PROHIBITION AGAINST RETALIATION.**

13 A regulated entity may not retaliate against an indi-
14 vidual because the individual exercises a right of the indi-
15 vidual under this Act, including by—

16 (1) denying goods or services to the individual;

17 (2) charging the individual different prices or
18 rates for goods or services, including by using dis-
19 counts or other benefits or imposing penalties;

20 (3) providing a different level or quality of
21 goods or services to the individual; or

22 (4) suggesting that the individual will receive a
23 different price or rate for goods or services or a dif-
24 ferent level or quality of goods or services.

1 **SEC. 6. ENFORCEMENT.**

2 (a) ENFORCEMENT BY FEDERAL TRADE COMMIS-
3 SION.—

4 (1) UNFAIR OR DECEPTIVE ACTS OR PRAC-
5 TICES.—A violation of this Act or a regulation pro-
6 mulgated under this Act shall be treated as a viola-
7 tion of a regulation under section 18(a)(1)(B) of the
8 Federal Trade Commission Act (15 U.S.C.
9 57a(a)(1)(B)) regarding unfair or deceptive acts or
10 practices.

11 (2) POWERS OF COMMISSION.—Except as pro-
12 vided in section 7(6)(A)(ii), the Commission shall
13 enforce this Act and the regulations promulgated
14 under this Act in the same manner, by the same
15 means, and with the same jurisdiction, powers, and
16 duties as though all applicable terms and provisions
17 of the Federal Trade Commission Act (15 U.S.C. 41
18 et seq.) were incorporated into and made a part of
19 this Act, and any regulated entity that violates this
20 Act or a regulation promulgated under this Act shall
21 be subject to the penalties and entitled to the privi-
22 leges and immunities provided in the Federal Trade
23 Commission Act.

24 (3) RULEMAKING AUTHORITY.—The Commis-
25 sion may promulgate regulations under section 553

1 of title 5, United States Code, to implement this
2 Act.

3 (b) ENFORCEMENT BY INDIVIDUALS.—

4 (1) IN GENERAL.—Any individual alleging a
5 violation of this Act or a regulation promulgated
6 under this Act may bring a civil action in any court
7 of competent jurisdiction.

8 (2) RELIEF.—In a civil action brought under
9 paragraph (1) in which the plaintiff prevails, the
10 court may award—

11 (A) an amount not less than \$100 and not
12 greater than \$1,000 per violation per day, or
13 actual damages, whichever is greater;

14 (B) punitive damages;

15 (C) reasonable attorney's fees and litiga-
16 tion costs; and

17 (D) any other relief, including equitable or
18 declaratory relief, that the court determines ap-
19 propriate.

20 (3) INJURY IN FACT.—A violation of this Act,
21 or a regulation promulgated under this Act, with re-
22 spect to personal reproductive or sexual health infor-
23 mation constitutes a concrete and particularized in-
24 jury in fact to the individual to whom such informa-
25 tion relates.

1 (4) INVALIDITY OF PRE-DISPUTE ARBITRATION
2 AGREEMENTS AND PRE-DISPUTE JOINT ACTION
3 WAIVERS.—

4 (A) IN GENERAL.—Notwithstanding any
5 other provision of law, no pre-dispute arbitra-
6 tion agreement or pre-dispute joint-action waiv-
7 er shall be valid or enforceable with respect to
8 a dispute arising under this Act.

9 (B) APPLICABILITY.—Any determination
10 as to whether or how this paragraph applies to
11 any dispute shall be made by a court, rather
12 than an arbitrator, without regard to whether
13 such agreement purports to delegate such deter-
14 mination to an arbitrator.

15 (C) DEFINITIONS.—For purposes of this
16 paragraph:

17 (i) PRE-DISPUTE ARBITRATION
18 AGREEMENT.—The term “pre-dispute arbi-
19 tration agreement” means any agreement
20 to arbitrate a dispute that has not arisen
21 at the time of the making of the agree-
22 ment.

23 (ii) PRE-DISPUTE JOINT-ACTION
24 WAIVER.—The term “pre-dispute joint-ac-
25 tion waiver” means an agreement that

1 would prohibit a party from participating
2 in a joint, class, or collective action in a ju-
3 dicial, arbitral, administrative, or other
4 forum, concerning a dispute that has not
5 arisen at the time of the making of the
6 agreement.

7 **SEC. 7. DEFINITIONS.**

8 In this Act:

9 (1) COLLECT.—The term “collect” means, with
10 respect to personal reproductive or sexual health in-
11 formation, for a regulated entity to obtain such in-
12 formation in any manner.

13 (2) COMMISSION.—The term “Commission”
14 means the Federal Trade Commission.

15 (3) DISCLOSE.—The term “disclose” means,
16 with respect to personal reproductive or sexual
17 health information, for a regulated entity to release,
18 transfer, sell, provide access to, license, or divulge
19 such information in any manner to a third party or
20 government entity.

21 (4) PERSONAL INFORMATION.—The term “per-
22 sonal information” means information that identi-
23 fies, relates to, describes, is reasonably capable of
24 being associated with, or could reasonably be linked,

1 directly or indirectly, with a particular individual,
2 household, or device.

3 (5) PERSONAL REPRODUCTIVE OR SEXUAL
4 HEALTH INFORMATION.—The term “personal repro-
5 ductive or sexual health information” means per-
6 sonal information relating to the past, present, or
7 future reproductive or sexual health of an individual,
8 including—

9 (A) efforts to research or obtain reproduc-
10 tive or sexual health information, services, or
11 supplies, including location information that
12 might indicate an attempt to acquire or receive
13 such information, services, or supplies;

14 (B) reproductive or sexual health condi-
15 tions, status, diseases, or diagnoses, including
16 pregnancy and pregnancy-related conditions,
17 menstruation, ovulation, ability to conceive a
18 pregnancy, whether such individual is sexually
19 active, and whether such individual is engaging
20 in unprotected sex;

21 (C) reproductive- and sexual-health-related
22 surgeries or procedures, including abortion;

23 (D) use or purchase of contraceptives,
24 medication abortion, or any other drug, device,
25 or materials related to reproductive health;

1 (E) bodily functions, vital signs, measure-
2 ment, or symptoms related to menstruation or
3 pregnancy, such as basal temperature, cramps,
4 bodily discharge, or hormone levels;

5 (F) any information about diagnoses or di-
6 agnostic testing, treatment, medications, or the
7 purchase or use of any product or service relat-
8 ing to the matters described in subparagraphs
9 (A) through (E); and

10 (G) any information described in subpara-
11 graphs (A) through (F) that is derived or ex-
12 trapolated from non-health information, includ-
13 ing proxy, derivative, inferred, emergent, and
14 algorithmic data.

15 (6) REGULATED ENTITY.—

16 (A) IN GENERAL.—The term “regulated
17 entity” means any entity (to the extent such en-
18 tity is engaged in activities in or affecting com-
19 merce (as defined in section 4 of the Federal
20 Trade Commission Act (15 U.S.C. 44)) that
21 is—

22 (i) a person, partnership, or corpora-
23 tion subject to the jurisdiction of the Com-
24 mission under section 5(a)(2) of the Fed-

1 eral Trade Commission Act (15 U.S.C.
2 45(a)(2)); or

3 (ii) notwithstanding section 4, 5(a)(2),
4 or 6 of the Federal Trade Commission Act
5 (15 U.S.C. 44; 45(a)(2); 46) or any juris-
6 dictional limitation of the Commission—

7 (I) a common carrier subject to
8 the Communications Act of 1934 (47
9 U.S.C. 151 et seq.) and all Acts
10 amendatory thereof and supple-
11 mentary thereto; or

12 (II) an organization not orga-
13 nized to carry on business for its own
14 profit or that of its members.

15 (B) EXCLUSIONS.—The term “regulated
16 entity” does not include—

17 (i) an entity that is a covered entity,
18 as defined in section 160.103 of title 45,
19 Code of Federal Regulations (or any suc-
20 cessor to such regulation), to the extent
21 such entity is acting as a covered entity
22 under the HIPAA privacy regulations (as
23 defined in section 1180(b)(3) of the Social
24 Security Act (42 U.S.C. 1320d–9(b)(3)));

1 (ii) an entity that is a business asso-
2 ciate, as defined in section 160.103 of title
3 45, Code of Federal Regulations (or any
4 successor to such regulation), to the extent
5 such entity is acting as a business asso-
6 ciate under the HIPAA privacy regulations
7 (as defined in such section 1180(b)(3)); or

8 (iii) an entity that is subject to re-
9 strictions on disclosure of records under
10 section 543 of the Public Health Service
11 Act (42 U.S.C. 290dd-2), to the extent
12 such entity is acting in a capacity subject
13 to such restrictions.

14 (7) SERVICE PROVIDER.—

15 (A) IN GENERAL.—The term “service pro-
16 vider” means a person who—

17 (i) collects, retains, uses, or discloses
18 personal reproductive or sexual health in-
19 formation for the sole purpose of, and only
20 to the extent that such person is, con-
21 ducting business activities on behalf of, for
22 the benefit of, under instruction of, and
23 under contractual agreement with a regu-
24 lated entity and not any other individual or
25 entity; and

1 (ii) does not divulge personal repro-
2 ductive or sexual health information to any
3 individual or entity other than such regu-
4 lated entity or a contractor to such service
5 provider bound to information processing
6 terms no less restrictive than terms to
7 which such service provider is bound.

8 (B) LIMITATION OF APPLICATION.—Such
9 person shall only be considered a service pro-
10 vider in the course of activities described in
11 subparagraph (A)(i).

12 (C) MINIMIZATION BY SERVICE PRO-
13 VIDERS.—For purposes of compliance with sec-
14 tion 2 by a service provider of a regulated enti-
15 ty, a request from an individual to such regu-
16 lated entity for a product or service shall be
17 treated as having also been provided to such
18 service provider.

19 (8) THIRD PARTY.—The term “third party”
20 means, with respect to the disclosing or collecting of
21 personal reproductive or sexual health information,
22 any person who is not—

23 (A) the regulated entity that is disclosing
24 or collecting such information;

1 (B) the individual to whom such informa-
2 tion relates; or

3 (C) a service provider.

4 **SEC. 8. RULE OF CONSTRUCTION.**

5 Nothing in this Act shall be construed to limit or di-
6 minish First Amendment freedoms guaranteed under the
7 Constitution.

8 **SEC. 9. RELATIONSHIP TO FEDERAL AND STATE LAWS.**

9 (a) FEDERAL LAW PRESERVATION.—Nothing in this
10 Act, or a regulation promulgated under this Act, shall be
11 construed to limit any other provision of Federal law, ex-
12 cept as specifically provided in this Act.

13 (b) STATE LAW PRESERVATION.—

14 (1) IN GENERAL.—Nothing in this Act, or a
15 regulation promulgated under this Act, shall be con-
16 strued to preempt, displace, or supplant any State
17 law, except to the extent that a provision of State
18 law conflicts with a provision of this Act, or a regu-
19 lation promulgated under this Act, and then only to
20 the extent of the conflict.

21 (2) GREATER PROTECTION UNDER STATE
22 LAW.—For purposes of this subsection, a provision
23 of State law does not conflict with a provision of this
24 Act, or a regulation promulgated under this Act, if
25 such provision of State law provides greater privacy

1 protection than the privacy protection provided by
2 such provision of this Act or such regulation.

3 **SEC. 10. SAVINGS CLAUSE.**

4 Nothing in this Act shall be construed to limit the
5 authority of the Commission under any other provision of
6 law. Nothing in this Act, or a regulation promulgated
7 under this Act, shall be construed to prohibit a regulated
8 entity from disclosing personal reproductive or sexual
9 health information to the Commission as required by law,
10 in compliance with a court order, or in compliance with
11 a civil investigative demand or similar process authorized
12 under law.

13 **SEC. 11. SEVERABILITY CLAUSE.**

14 If any provision of this Act, or the application thereof
15 to any person or circumstance, is held invalid, the remain-
16 der of this Act, and the application of such provision to
17 other persons not similarly situated or to other cir-
18 cumstances, shall not be affected by the invalidation.

○