

117TH CONGRESS  
2D SESSION

# S. 4434

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

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## IN THE SENATE OF THE UNITED STATES

JUNE 16, 2022

Ms. HIRONO (for herself, Mr. WYDEN, Mrs. GILLIBRAND, Ms. SMITH, Mr. WHITEHOUSE, Mr. BLUMENTHAL, Ms. BALDWIN, Mr. BROWN, Ms. DUCKWORTH, Ms. KLOBUCHAR, and Mr. BOOKER) introduced the following bill; which was read twice and referred to the Committee on Commerce, Science, and Transportation

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## 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 2022”.

6       **SEC. 2. MINIMIZATION.**

7       (a) MINIMIZATION OF COLLECTING, RETAINING,  
8       USING, AND DISCLOSING.—A regulated entity may not

1 collect, retain, use, or disclose personal reproductive or  
 2 sexual health information except—

3 (1) with the express consent of the individual to  
 4 whom such information relates; or

5 (2) as is strictly necessary to provide a product  
 6 or service that the individual to whom such informa-  
 7 tion relates has requested from such regulated enti-  
 8 ty.

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

17 **SEC. 3. RIGHT OF ACCESS AND DELETION.**

18 (a) RIGHT OF ACCESS.—

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

22 (A) any personal reproductive or sexual  
 23 health information relating to such individual  
 24 that is retained by such regulated entity, in-  
 25 cluding—

1 (i) in the case of such information  
2 that such regulated entity collected from  
3 third parties, how and from which specific  
4 third parties such regulated entity collected  
5 such information; and

6 (ii) such information that such regu-  
7 lated entity inferred about such individual;  
8 and

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

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

17 (b) RIGHT OF DELETION.—A regulated entity shall  
18 make available a reasonable mechanism by which an indi-  
19 vidual, upon a verified request, may request the deletion  
20 of any personal reproductive or sexual health information  
21 relating to such individual that is retained by such regu-  
22 lated entity, including any such information that such regu-  
23 lated entity collected from a third party or inferred from  
24 other information retained by such regulated entity.

25 (c) GENERAL PROVISIONS.—

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

5                   (A) is equivalent in availability and ease of  
 6                   use to that of other mechanisms for commu-  
 7                   nicating or interacting with such regulated enti-  
 8                   ty; and

9                   (B) includes an online means of exercising  
 10                  such right.

11          (2) TIMELINE FOR COMPLYING WITH RE-  
 12          QUESTS.—A regulated entity shall comply with a  
 13          verified request received under this section without  
 14          undue delay but not later than 15 days after the  
 15          date on which such regulated entity receives such  
 16          verified request.

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

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

23                   (A) take an action that would convert in-  
 24                   formation that is not personal information into  
 25                   personal information;

1 (B) collect or retain personal information  
2 that such regulated entity would otherwise not  
3 collect or retain; or

4 (C) retain personal information longer  
5 than such regulated entity would otherwise re-  
6 tain such information.

7 **SEC. 4. PRIVACY POLICY.**

8 (a) **POLICY REQUIRED.**—A regulated entity shall  
9 maintain a privacy policy relating to the practices of such  
10 regulated entity regarding the collecting, retaining, using,  
11 and disclosing of personal reproductive or sexual health  
12 information.

13 (b) **PUBLICATION REQUIRED.**—If a regulated entity  
14 has a website, such regulated entity shall prominently pub-  
15 lish the privacy policy required by subsection (a) on such  
16 website.

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

20 (1) A description of the practices of the regu-  
21 lated entity regarding the collecting, retaining,  
22 using, and disclosing of personal reproductive or sex-  
23 ual health information.

1           (2) A clear and concise statement of the cat-  
2           egories of such information collected, retained, used,  
3           or disclosed by the regulated entity.

4           (3) A clear and concise statement of the pur-  
5           poses of the regulated entity for the collecting, re-  
6           taining, using, or disclosing of such information.

7           (4) A list of the specific third parties to which  
8           the regulated entity discloses such information, and  
9           a clear and concise statement of the purposes for  
10          which the regulated entity discloses such informa-  
11          tion, including how the information may be used by  
12          each such third party.

13          (5) A list of the specific third parties from  
14          which the regulated entity has collected such infor-  
15          mation, and a clear and concise statement of the  
16          purposes for which the regulated entity collects such  
17          information.

18          (6) A clear and concise statement describing  
19          the extent to which individuals may exercise control  
20          over the collecting, retaining, using, and disclosing  
21          of personal reproductive or sexual health information  
22          by the regulated entity, and the steps an individual  
23          must take to implement such controls.

24          (7) A clear and concise statement describing  
25          the efforts of the regulated entity to protect personal

1 reproductive or sexual health information from un-  
2 authorized disclosure.

3 **SEC. 5. ENFORCEMENT.**

4 (a) ENFORCEMENT BY FEDERAL TRADE COMMIS-  
5 SION.—

6 (1) UNFAIR OR DECEPTIVE ACTS OR PRAC-  
7 TICES.—A violation of this Act or a regulation pro-  
8 mulgated under this Act shall be treated as a viola-  
9 tion of a regulation under section 18(a)(1)(B) of the  
10 Federal Trade Commission Act (15 U.S.C.  
11 57a(a)(1)(B)) regarding unfair or deceptive acts or  
12 practices.

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

1           (3) RULEMAKING AUTHORITY.—The Commis-  
 2           sion may promulgate regulations under section 553  
 3           of title 5, United States Code, to implement this  
 4           Act.

5           (b) ENFORCEMENT BY INDIVIDUALS.—

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

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

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

16                (B) punitive damages;

17                (C) reasonable attorney’s fees and litiga-  
 18                tion costs; and

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

22          (3) INJURY IN FACT.—A violation of this Act,  
 23          or a regulation promulgated under this Act, with re-  
 24          spect to personal reproductive or sexual health infor-  
 25          mation constitutes a concrete and particularized in-



1 jury in fact to the individual to whom such informa-  
 2 tion relates.

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

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

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

17 (C) DEFINITIONS.—For purposes of this  
 18 paragraph:

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

1 (ii) PRE-DISPUTE JOINT-ACTION  
2 WAIVER.—The term “pre-dispute joint-ac-  
3 tion waiver” means an agreement that  
4 would prohibit a party from participating  
5 in a joint, class, or collective action in a ju-  
6 dicial, arbitral, administrative, or other  
7 forum, concerning a dispute that has not  
8 yet arisen at the time of the making of the  
9 agreement.

10 **SEC. 6. DEFINITIONS.**

11 In this Act:

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

16 (2) COMMISSION.—The term “Commission”  
17 means the Federal Trade Commission.

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

24 (4) EXPRESS CONSENT.—

1 (A) IN GENERAL.—The term “express con-  
2 sent” means, with respect to the collecting, re-  
3 taining, using, or disclosing of personal repro-  
4 ductive or sexual health information, informed,  
5 opt-in, voluntary, specific, and unambiguous  
6 written consent (which may include written con-  
7 sent provided by electronic means) to such col-  
8 lecting, retaining, using, or disclosing of such  
9 information.

10 (B) EXCLUSIONS.—The term “express  
11 consent” does not include any of the following:

12 (i) Consent secured without first pro-  
13 viding to the individual a clear and con-  
14 spicuous disclosure, apart from any privacy  
15 policy, terms of service, terms of use, gen-  
16 eral release, user agreement, or other simi-  
17 lar document, of all information material  
18 to the provision of consent.

19 (ii) Hovering over, muting, pausing,  
20 or closing a given piece of content.

21 (iii) Agreement obtained through the  
22 use of a user interface designed or manipu-  
23 lated with the substantial effect of sub-  
24 verting or impairing user autonomy, deci-  
25 sion making, or choice.

1           (5) PERSONAL INFORMATION.—The term “per-  
2       sonal information” means information that identi-  
3       fies, relates to, describes, is reasonably capable of  
4       being associated with, or could reasonably be linked,  
5       directly or indirectly, with a particular individual.

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

12           (A) efforts to research or obtain reproduc-  
13      tive or sexual information services or supplies,  
14      including location information that might indi-  
15      cate an attempt to acquire or receive such in-  
16      formation services or supplies;

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

23           (C) reproductive- and sexual-health-related  
24      surgeries or procedures, such as termination of  
25      a pregnancy;

1 (D) use or purchase of contraceptives,  
 2 birth control, or any medication related to re-  
 3 productive health, including abortifacients;

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

8 (F) any information about diagnoses or di-  
 9 agnostic testing, treatment, medications, or the  
 10 use of any product or service relating to the  
 11 matters described in subparagraphs (A)  
 12 through (E); and

13 (G) any information described in subpara-  
 14 graphs (A) through (F) that is derived or ex-  
 15 trapolated from non-health information (such as  
 16 proxy, derivative, inferred, emergent, or algo-  
 17 rithmic data).

18 (7) REGULATED ENTITY.—

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

(i) a person, partnership, or corporation subject to the jurisdiction of the Commission under section 5(a)(2) of the Federal Trade Commission Act (15 U.S.C. 45(a)(2)); or

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

(I) a common carrier subject to the Communications Act of 1934 (47 U.S.C. 151 et seq.) and all Acts amendatory thereof and supplementary thereto; or

(II) an organization not organized to carry on business for its own profit or that of its members.

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

(i) an entity that is a covered entity, as defined in section 160.103 of title 45, Code of Federal Regulations (or any successor to such regulation), to the extent such entity is acting as a covered entity under the HIPAA privacy regulations (as

defined in section 1180(b)(3) of the Social Security Act (42 U.S.C. 1320d–9(b)(3));

(ii) an entity that is a business associate, as defined in section 160.103 of title 45, Code of Federal Regulations (or any successor to such regulation), to the extent such entity is acting as a business associate under the HIPAA privacy regulations (as defined in such section 1180(b)(3)); or

(iii) an entity that is subject to restrictions on disclosure of records under section 543 of the Public Health Service Act (42 U.S.C. 290dd–2), to the extent such entity is acting in a capacity subject to such restrictions.

(8) SERVICE PROVIDER.—

(A) IN GENERAL.—The term “service provider” means a person who—

(i) collects, retains, uses, or discloses personal reproductive or sexual health information for the sole purpose of, and only to the extent that such person is, conducting business activities on behalf of, for the benefit of, under instruction of, and under contractual agreement with a regu-

lated entity and not any other individual or entity; and

(ii) does not divulge personal reproductive or sexual health information to any individual or entity other than such regulated entity or a contractor to such service provider bound to information processing terms no less restrictive than terms to which such service provider is bound.

(B) LIMITATION OF APPLICATION.—Such person shall only be considered a service provider in the course of activities described in subparagraph (A)(i).

(C) MINIMIZATION BY SERVICE PROVIDERS.—For purposes of compliance with section 2 by a service provider of a regulated entity, a request from an individual to such regulated entity for a product or service, and an express consent from such individual to such regulated entity, shall be treated as having also been provided to such service provider.

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



1 (A) the regulated entity that is disclosing  
2 or collecting such information;

3 (B) the individual to whom such informa-  
4 tion relates; or

5 (C) a service provider.

6 **SEC. 7. EXCEPTION FOR THE PUBLICATION OF NEWS-**  
7 **WORTHY INFORMATION.**

8 Nothing in this Act, or a regulation promulgated  
9 under this Act, shall apply with respect to personal repro-  
10 ductive or sexual health information that is collected, re-  
11 tained, used, or disclosed by a regulated entity for the pub-  
12 lication of newsworthy information of legitimate public  
13 concern to the public, or to the collecting, retaining, using,  
14 or disclosing of such information by a regulated entity for  
15 that purpose, if such regulated entity has reasonable safe-  
16 guards and processes that prevent the collecting, retain-  
17 ing, using, or disclosing of personal reproductive or sexual  
18 health information for commercial purposes other than the  
19 publication of newsworthy information of legitimate public  
20 concern.

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

22 (a) **FEDERAL LAW PRESERVATION.**—Nothing in this  
23 Act, or a regulation promulgated under this Act, shall be  
24 construed to limit any other provision of Federal law, ex-  
25 cept as specifically provided in this Act.

1 (b) STATE LAW PRESERVATION.—

2 (1) IN GENERAL.—Nothing in this Act, or a  
3 regulation promulgated under this Act, shall be con-  
4 strued to preempt, displace, or supplant any State  
5 law, except to the extent that a provision of State  
6 law conflicts with a provision of this Act, or a regu-  
7 lation promulgated under this Act, and then only to  
8 the extent of the conflict.

9 (2) GREATER PROTECTION UNDER STATE  
10 LAW.—For purposes of this subsection, a provision  
11 of State law does not conflict with a provision of this  
12 Act, or a regulation promulgated under this Act, if  
13 such provision of State law provides greater privacy  
14 protection than the privacy protection provided by  
15 such provision of this Act or such regulation.

16 **SEC. 9. SAVINGS CLAUSE.**

17 Nothing in this Act shall be construed to limit the  
18 authority of the Commission under any other provision of  
19 law. Nothing in this Act, or a regulation promulgated  
20 under this Act, shall be construed to prohibit a regulated  
21 entity from disclosing personal reproductive or sexual  
22 health information to the Commission as required by law,  
23 in compliance with a court order, or in compliance with  
24 a civil investigative demand or similar process authorized  
25 under law.

1 **SEC. 10. SEVERABILITY CLAUSE.**

2       If any provision of this Act, or the application thereof  
3 to any person or circumstance, is held invalid, the remain-  
4 der of this Act, and the application of such provision to  
5 other persons not similarly situated or to other cir-  
6 cumstances, shall not be affected by the invalidation.

○