

119TH CONGRESS
1ST SESSION

S. _____

To establish a Federal tort relating to the appropriation, use, collection, processing, sale, or other exploitation of individuals' data without express, prior consent.

IN THE SENATE OF THE UNITED STATES

Mr. HAWLEY (for himself and Mr. BLUMENTHAL) introduced the following bill; which was read twice and referred to the Committee on

A BILL

To establish a Federal tort relating to the appropriation, use, collection, processing, sale, or other exploitation of individuals' data without express, prior consent.

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 “AI Accountability and
5 Personal Data Protection Act”.

6 **SEC. 2. DEFINITIONS.**

7 In this Act:

8 (1) APPROPRIATE, USE, COLLECT, PROCESS,
9 SELL, OR OTHERWISE EXPLOIT.—The term “appro-

1 appropriate, use, collect, process, sell, or otherwise ex-
2 ploit” includes—

3 (A) the training of a generative artificial
4 intelligence system that is sold, rented, licensed,
5 or otherwise used by the provider of the genera-
6 tive artificial intelligence system; and

7 (B) the generation, by a generative artifi-
8 cial intelligence system, of any covered data
9 that pertains to an individual, including content
10 that imitates, replicates, or is substantially de-
11 rived from the covered data of the individual.

12 (2) ARTIFICIAL INTELLIGENCE.—The term “ar-
13 tificial intelligence” has the meaning given that term
14 in section 5002 of the National Artificial Intelligence
15 Initiative Act of 2020 (15 U.S.C. 9401).

16 (3) ARTIFICIAL INTELLIGENCE SYSTEM.—The
17 term “artificial intelligence system” means any data
18 system, software, hardware, application, tool, or util-
19 ity that operates, in whole or in part, using artificial
20 intelligence.

21 (4) COVERED DATA.—The term “covered
22 data”—

23 (A) means any information, data, or mate-
24 rial, regardless of form or format, that—

1 (i) identifies, relates to, describes, is
2 capable of being associated with, or can
3 reasonably be linked, directly or indirectly,
4 with a specific individual;

5 (ii) is derived, inferred, or generated
6 from information described in clause (i), or
7 is used to derive, infer, or generate infor-
8 mation described in clause (i); or

9 (iii) is generated by an individual and
10 is protected by copyright, regardless of
11 whether the copyright has been registered
12 with the United States Copyright Office or
13 any other registration authority; and

14 (B) includes—

15 (i) personally identifiable information;

16 (ii) unique identifiers, such as device
17 IDs, advertising IDs, or IP addresses;

18 (iii) geolocation data;

19 (iv) biometric information;

20 (v) behavioral data, such as browsing
21 history or purchasing patterns; or

22 (vi) inferred, derived, or predicted
23 data used to create a profile about an indi-
24 vidual or group of individuals.

1 (5) EXPRESS, PRIOR CONSENT.—The term “ex-
2 press, prior consent” means a clear, affirmative act
3 by an individual, made in advance of any appropria-
4 tion, use, collection, processing, sale, or other exploi-
5 tation of covered data, indicating a freely given, in-
6 formed, and unambiguous consent to the specific ap-
7 propriation, use, collection, processing, sale, or other
8 exploitation of covered data of the individual.

9 (6) GENERATIVE ARTIFICIAL INTELLIGENCE
10 SYSTEM.—The term “generative artificial intel-
11 ligence system” means an artificial intelligence sys-
12 tem that is capable of generating novel text, video,
13 images, audio, and other media based on prompts or
14 other forms of data provided by an individual.

15 (7) PERSONALLY IDENTIFIABLE INFORMA-
16 TION.—The term “personally identifiable informa-
17 tion” means information that can be used to distin-
18 guish or trace the identity of an individual, either
19 alone or when combined with other personal or iden-
20 tifying information that is linked or linkable to a
21 specific individual.

22 (8) PREDISPUTE ARBITRATION AGREEMENT.—
23 The term “predispute arbitration agreement” means
24 an agreement to arbitrate a dispute that has not yet
25 arisen at the time of the making of the agreement.

1 (9) PREDISPUTE JOINT-ACTION WAIVER.—The
2 term “predispute joint-action waiver” means an
3 agreement, whether or not part of a predispute arbi-
4 tration agreement, that would prohibit, or waive the
5 right of, one of the parties to the agreement to par-
6 ticipate in a joint, class, or collective action in a ju-
7 dicial, arbitral, administrative, or other forum, con-
8 cerning a dispute that has not yet arisen at the time
9 of the making of the agreement.

10 **SEC. 3. FEDERAL TORT FOR MISUSE OF COVERED DATA.**

11 (a) LIABILITY.—Any person who, in or affecting
12 interstate or foreign commerce, appropriates, uses, col-
13 lects, processes, sells, or otherwise exploits the covered
14 data of an individual, without the express, prior consent
15 of the individual, shall be liable to the individual in accord-
16 ance with this section.

17 (b) PRIVATE RIGHT OF ACTION.—

18 (1) IN GENERAL.—Any individual whose cov-
19 ered data is appropriated, used, collected, processed,
20 sold, or otherwise exploited without the express,
21 prior consent of the individual as described in sub-
22 section (a) may bring a civil action in an appropriate
23 district court of the United States or a State court
24 of competent jurisdiction against any person who—

1 (A) engaged in the appropriation, use, col-
2 lection, processing, sale, or other exploitation of
3 the covered data; or

4 (B) aided and abetted another person in
5 the appropriation, use, collection, processing,
6 sale, or other exploitation of the covered data.

7 (2) REMEDIES.—An individual prevailing in a
8 civil action brought under paragraph (1) may re-
9 cover—

10 (A) compensatory damages in an amount
11 equal to the greater of—

12 (i) actual damages;

13 (ii) treble any profits from the appro-
14 priation, use, collection, processing, sale, or
15 other exploitation of the covered data of
16 the individual as described in subsection
17 (a); or

18 (iii) \$1,000;

19 (B) punitive damages;

20 (C) injunctive relief; and

21 (D) attorney's fees and costs.

22 (3) AFFIRMATIVE DEFENSE OF CONSENT.—

23 (A) IN GENERAL.—It shall be an affirma-
24 tive defense to a civil action under paragraph
25 (1) brought by or on behalf of an individual

1 whose covered data was appropriated, used, col-
2 lected, processed, sold, or otherwise exploited if
3 the defendant demonstrates that the individual
4 provided express, prior consent for such appro-
5 priation, use, collection, processing, sale, or
6 other exploitation of the covered data of the in-
7 dividual.

8 (B) INVALID GROUNDS FOR CONSENT.—

9 Consent to the appropriation, use, collection,
10 processing, sale, or other exploitation of covered
11 data shall not be deemed valid if such consent
12 was obtained—

13 (i) through coercion or deception; or

14 (ii) as a condition of using a product
15 or service through which the appropriation,
16 use, collection, processing, sale, or other
17 exploitation of the covered data exceeds
18 what is reasonably necessary to provide
19 that product or service.

20 (c) INAPPLICABILITY OF THE FEDERAL ARBITRA-
21 TION ACT.—

22 (1) IN GENERAL.—Notwithstanding any other
23 provision of law, including chapter 1 of title 9,
24 United States Code (commonly known as the “Fed-
25 eral Arbitration Act”), a predispute arbitration

1 agreement or predispute joint-action waiver shall not
2 be valid or enforceable with respect to any claim
3 arising under this Act.

4 (2) UNENFORCEABLE AGREEMENTS.—Any
5 agreement purporting to waive, limit, or preclude the
6 right of an individual to bring an action in a court
7 of law or to participate in a joint, class, collective,
8 or representative action concerning any claim arising
9 under this Act shall be deemed contrary to public
10 policy and shall be null, void, and unenforceable.

11 (3) DETERMINATION UNDER FEDERAL LAW BY
12 FEDERAL COURT.—An issue as to whether this Act
13 applies with respect to a dispute shall be determined
14 under Federal law. The applicability of this Act to
15 an agreement to arbitrate and the validity and en-
16 forceability of an agreement to which this Act ap-
17 plies shall be determined by a court, rather than an
18 arbitrator, irrespective of whether the party resisting
19 arbitration challenges the arbitration agreement spe-
20 cifically or in conjunction with other terms of the
21 contract containing such agreement, and irrespective
22 of whether the agreement purports to delegate such
23 determinations to an arbitrator.

24 (4) COLLECTIVE BARGAINING AGREEMENTS.—
25 Nothing in this Act shall apply to any arbitration

1 provision in a contract between an employer and a
2 labor organization or between labor organizations,
3 except that no such arbitration provision shall have
4 the effect of waiving the right of a worker to seek
5 judicial enforcement of a right arising under a provi-
6 sion of the Constitution of the United States, a
7 State constitution, or a Federal or State statute, or
8 public policy arising therefrom.

9 (d) SPECIFIC DISCLOSURE OF THIRD PARTIES RE-
10 QUIRED.—

11 (1) IN GENERAL.—Consent required under sub-
12 section (a) shall not be valid for the appropriation,
13 use, collection, processing, sale, or other exploitation
14 of covered data by or to any third party unless—

15 (A) each third party is specifically and
16 clearly disclosed to the individual to whom the
17 covered data pertains at the time consent is
18 sought; and

19 (B) the disclosure described in subpara-
20 graph (A) is affirmatively presented to the indi-
21 vidual to whom the covered data pertains in a
22 manner that ensures the disclosure is seen and
23 acknowledged.

24 (2) PRESENTATION.—Any disclosure described
25 in paragraph (1)—

1 (A) shall be presented distinctly and sepa-
2 rately from any privacy policy, terms of service,
3 or other general conditions or agreements; and

4 (B) shall not be satisfied by the mere in-
5 clusion of a hyperlink or general reference to a
6 privacy policy, user agreement, or other similar
7 document.

8 (3) INVALID CONSENT.—Any purported consent
9 for the appropriation, use, collection, processing,
10 sale, or other exploitation of covered data by or to
11 any third party obtained solely by inclusion within
12 such general documents described in paragraph (2)
13 or via non-specific or passive disclosure shall be in-
14 valid and unenforceable.

15 **SEC. 4. RELATIONSHIP TO EXISTING LAW.**

16 (a) NO PREEMPTION OF EXISTING STATE LAWS.—
17 Nothing in this Act shall be construed to preempt or limit
18 any law, rule, regulation, or common law doctrine of any
19 State that is in effect as of the date of enactment of this
20 Act.

21 (b) MINIMUM STANDARD.—This Act shall be con-
22 strued as establishing a minimum standard for the tort
23 described in section 3(a), and nothing in this Act shall
24 be deemed to prohibit or restrict the application of any
25 State law, rule, regulation, or common law doctrine that

1 provides greater or additional rights, remedies, or protec-
2 tions than the rights, remedies, and protections provided
3 under this Act.