

117TH CONGRESS
2D SESSION

S. 3501

To require the Federal Trade Commission to issue a short-form terms of service summary statement, and for other purposes.

IN THE SENATE OF THE UNITED STATES

JANUARY 13 (legislative day, JANUARY 10), 2022

Mr. CASSIDY (for himself and Mr. LUJÁN) introduced the following bill; which was read twice and referred to the Committee on Commerce, Science, and Transportation

A BILL

To require the Federal Trade Commission to issue a short-form terms of service summary statement, 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 “Terms-of-service La-
5 beling, Design, and Readability Act” or the “TLDR Act”.

6 **SEC. 2. STANDARD TERMS OF SERVICE SUMMARY STATE-**
7 **MENT.**

8 (a) DEADLINE FOR TERMS OF SERVICE SUMMARY
9 STATEMENT.—Not later than 360 days after the date of

1 the enactment of this Act, the Commission shall issue a
 2 rule under section 553 of title 5, United States Code—

3 (1) that requires a covered entity to include a
 4 short-form terms of service summary statement on
 5 the website of the entity;

6 (2) that requires a covered entity to include
 7 graphic data flow diagram on the website of the en-
 8 tity and includes guidance for such diagram; and

9 (3) that requires a covered entity to display the
 10 full terms of service of the entity in an interactive
 11 data format.

12 (b) REQUIREMENTS FOR SHORT-FORM TERMS OF
 13 SERVICE SUMMARY STATEMENT.—

14 (1) IN GENERAL.—The short-form terms of
 15 service summary statement described in subsection

16 (a)—

17 (A) shall be easy to understand, machine
 18 readable, and may include tables, graphic icons,
 19 hyperlinks, or other means determined by the
 20 Commission; and

21 (B) may be established separately depend-
 22 ing on the interface or type of device on which
 23 the statement is being accessed by the user.

24 (2) LOCATION OF SUMMARY STATEMENT AND
 25 GRAPHIC DATA FLOW DIAGRAM.—The summary

statement shall be placed at the top of the permanent terms of service page of the covered entity and any graphic data flow diagram shall be located immediately below the statement.

(3) CONTENTS OF SUMMARY STATEMENT.—The summary statement shall disclose the following:

(A) The effort required by a user to read the entire terms of service text, such as through the total word count and approximate time to read the statement.

(B) The categories of sensitive information that the covered entity processes.

(C) The sensitive information that is required for the basic functioning of the service and what sensitive information is needed for additional features and future feature development.

(D) A summary of the legal liabilities of a user and any rights transferred from the user to the covered entity, such as mandatory arbitration, class action waiver, any licensing by the covered entity of the content of the user, and any waiver of moral rights.

(E) Historical versions of the terms of service and change logs.

1 (F) If the covered entity provides user de-
 2 letion services, directions for how the user can
 3 delete sensitive information or discontinue the
 4 use of sensitive information.

5 (G) A list of data breaches from the pre-
 6 vious 3 years reported to consumers under ex-
 7 isting Federal and State laws.

8 (H) Anything else determined to be nec-
 9 essary by the Commission.

10 (c) GUIDANCE ON GRAPHIC DATA FLOW DIA-
 11 GRAMS.—Not later than 360 days after the date of the
 12 enactment of this Act, the Commission shall publish guide-
 13 lines on how a covered entity can graphically display how
 14 sensitive information of a user is shared with a subsidiary
 15 or corporate affiliate of such the entity and how sensitive
 16 information is shared with third parties.

17 (d) INTERACTIVE DATA FORMAT TERMS OF SERV-
 18 ICE.—Not later than 360 days after the date of the enact-
 19 ment of this Act, the Commission shall issue a rule under
 20 section 553 of title 5, United States Code, that requires
 21 a covered entity to tag portions of the terms of services
 22 of the entity according to an interactive data format.

23 (e) ENFORCEMENT.—

24 (1) UNFAIR OR DECEPTIVE ACTS OR PRAC-
 25 TICES.—A violation of this section or a regulation

1 promulgated under this section shall be treated as a
2 violation of a regulation under section 18(a)(1)(B)
3 of the Federal Trade Commission Act (15 U.S.C.
4 57a(a)(1)(B)) regarding unfair or deceptive acts or
5 practices.

6 (2) POWERS OF THE COMMISSION.—The Com-
7 mission shall enforce this section and the regulations
8 promulgated under this section in the same manner,
9 by the same means, and with the same jurisdiction,
10 powers, and duties as though all applicable terms
11 and provisions of the Federal Trade Commission Act
12 (15 U.S.C. 41 et seq.) were incorporated into and
13 made a part of this section, and any person who vio-
14 lates this section or a regulation promulgated under
15 this section shall be subject to the penalties and en-
16 titled to the privileges and immunities provided in
17 the Federal Trade Commission Act.

18 (3) ENFORCEMENT BY STATE ATTORNEYS GEN-
19 ERAL.—In any case in which the attorney general of
20 a State has reason to believe that an interest of at
21 least 1,000 residents of that State has been or is
22 threatened or adversely affected by the engagement
23 of any person in a practice that violates this section
24 or a regulation promulgated under this section, the
25 State, as *parens patriae*, may bring a civil action on

1 behalf of the residents of the State in a district
2 court of the United States of appropriate jurisdic-
3 tion to—

4 (A) enjoin that practice;

5 (B) enforce compliance with the regulation;

6 (C) obtain damage, restitution, or other
7 compensation on behalf of residents of the
8 State; or

9 (D) obtain such other relief as the court
10 may consider to be appropriate.

11 (4) NOTICE.—

12 (A) IN GENERAL.—Before filing an action
13 under paragraph (3), the attorney general of
14 the State involved shall provide to the Commis-
15 sion—

16 (i) written notice of that action; and

17 (ii) a copy of the complaint for that
18 action.

19 (B) EXEMPTION.—

20 (i) IN GENERAL.—Subparagraph (A)
21 shall not apply with respect to the filing of
22 an action by an attorney general of a State
23 under this subsection, if the attorney gen-
24 eral determines that it is not feasible to

1 provide the notice described in that sub-
 2 paragraph before the filing of the action.

3 (ii) NOTIFICATION.—In an action de-
 4 scribed in clause (i), the attorney general
 5 of a State shall provide notice and a copy
 6 of the complaint to the Commission at the
 7 same time as the attorney general files the
 8 action.

9 (5) REMOVAL TO FEDERAL COURT.—The Com-
 10 mission may intervene in any action brought under
 11 paragraph (3) and remove the action to the appro-
 12 priate United States district court.

13 (f) RULE OF CONSTRUCTION.—Nothing in this sec-
 14 tion shall be construed to limit the authority of the Com-
 15 mission under any other provision of law.

16 (g) DEFINITIONS.—In this section:

17 (1) COMMISSION.—The term “Commission”
 18 means the Federal Trade Commission.

19 (2) COVERED ENTITY.—The term “covered en-
 20 tity”—

21 (A) means any person that operates a
 22 website located on the internet or an online
 23 service, that is operated for commercial pur-
 24 poses; and

1 (B) does not include a small business con-
2 cern (as defined in section 3 of the Small Busi-
3 ness Act (15 U.S.C. 632)).

4 (3) INTERACTIVE DATA FORMAT.—The term
5 “interactive data format” means an electronic data
6 format in which pieces of information are identified
7 using an interactive data standard, such as eXten-
8 sible Markup Language (XML), that is a standard-
9 ized list of electronic tags that mark the information
10 described in section 2(b)(3) within the terms of serv-
11 ice of a covered entity.

12 (4) SENSITIVE INFORMATION.—The term “sen-
13 sitive information” means any of the following:

14 (A) Health information.

15 (B) Biometric information.

16 (C) Precise geolocation information.

17 (D) Social security number.

18 (E) Information concerning the race, color,
19 religion, national origin, sex, age, or disability
20 of an individual.

21 (F) The content and parties to a commu-
22 nication.

23 (G) Audio and video recordings captured
24 through a consumer device.

1 (H) Financial information, including a
2 bank account number, credit card number,
3 debit card number, or insurance policy number.

4 (I) Online browsing history related to the
5 information described in subparagraphs (A)
6 through (H).

7 (5) STATE.—The term “State” means each of
8 the several States, the District of Columbia, each
9 commonwealth, territory, or possession of the United
10 States, and each federally recognized Indian Tribe.

11 (6) THIRD PARTY.—The term “third party”
12 means, with respect to a covered entity, a person—

13 (A) to whom the covered entity disclosed
14 sensitive information; and

15 (B) is not—

16 (i) the covered entity;

17 (ii) a subsidiary or corporate affiliate
18 of the covered entity; or

19 (iii) a service provider of the covered
20 entity.

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