

117TH CONGRESS
2D SESSION

S. 4738

To protect the privacy of personally-identifiable health data, and for other purposes.

IN THE SENATE OF THE UNITED STATES

AUGUST 2, 2022

Ms. KLOBUCHAR (for herself and Mr. WHITEHOUSE) 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 personally-identifiable health data,
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 “Stop Commercial Use
5 of Health Data Act”.

6 **SEC. 2. PRIVACY OF PERSONALLY-IDENTIFIABLE HEALTH**
7 **DATA.**

8 (a) PROHIBITION ON THE USE OF PERSONALLY-
9 IDENTIFIABLE HEALTH DATA IN COMMERCIAL ADVER-
10 TISING.—

1 (1) IN GENERAL.—It shall be unlawful for any
2 covered entity to use the personally-identifiable
3 health data of an individual that is collected from
4 any source (including data volunteered by an indi-
5 vidual, medical center-derived data, data from a
6 wearable fitness tracker, data from web browsing
7 history, or any other source determined appropriate
8 by the Commission) for commercial advertising.

9 (2) EXCEPTION FOR PUBLIC HEALTH CAM-
10 PAIGNS.—The prohibition under paragraph (1) shall
11 not apply to any public health campaign directed to-
12 ward individuals or subpopulations of individuals.

13 (b) RIGHT OF ACCESS AND DELETION.—

14 (1) RIGHT OF ACCESS.—

15 (A) IN GENERAL.—A covered entity shall
16 make available an easy-to-use mechanism by
17 which an individual, upon verified request, may
18 access any personally-identifiable health data
19 relating to such individual that is retained by
20 such covered entity.

21 (B) FORMAT.—A covered entity shall make
22 the information described in subparagraph (A)
23 available in both a human-readable and a ma-
24 chine-readable format.

1 (2) RIGHT OF DELETION.—A covered entity
2 shall make available an easy-to-use mechanism by
3 which an individual, upon verified request, may re-
4 quest the deletion of any personally-identifiable
5 health data relating to such individual that is re-
6 tained by such covered entity.

7 (3) REQUIREMENTS FOR ACCESS AND DELE-
8 TION.—

9 (A) TIMELINE FOR COMPLYING WITH RE-
10 QUESTS.—A covered entity shall comply with a
11 verified request received under this subsection
12 without undue delay, but not later than 45 days
13 after the date on which such covered entity re-
14 ceives such verified request.

15 (B) FEES PROHIBITED.—A covered entity
16 may not charge a fee to an individual for a re-
17 quest made under this subsection.

18 (C) RULES OF CONSTRUCTION.—Nothing
19 in this section shall be construed—

20 (i) as supplanting or abrogating any
21 provision of the Health Insurance Port-
22 ability and Accountability Act of 1996
23 (Public Law 104–191); or

24 (ii) to require a covered entity to—

1 (I) take an action that would
 2 convert information that is not per-
 3 sonally-identifiable health data into
 4 personally-identifiable health data;

5 (II) collect or retain personally-
 6 identifiable health data that such cov-
 7 ered entity would not otherwise collect
 8 or retain; or

9 (III) retain personally-identifiable
 10 health data longer than such covered
 11 entity would otherwise retain such
 12 data.

13 **SEC. 3. ENFORCEMENT.**

14 (a) ENFORCEMENT BY THE COMMISSION.—

15 (1) UNFAIR AND DECEPTIVE ACTS OR PRAC-
 16 TICES.—A violation of section 2 or a regulation pro-
 17 mulgated thereunder shall be treated as an unfair
 18 and deceptive act or practice proscribed under sec-
 19 tion 5(a) of the Federal Trade Commission Act (15
 20 U.S.C. 45(a)).

21 (2) POWERS OF THE COMMISSION.—

22 (A) IN GENERAL.—The Commission shall
 23 enforce this Act in the same manner, by the
 24 same means, and with the same jurisdiction,
 25 powers, and duties as though all applicable

1 terms and provisions of the Federal Trade
2 Commission Act (15 U.S.C. 41 et seq.) were in-
3 corporated into and made a part of this Act.

4 (B) PRIVILEGES AND IMMUNITIES.—Any
5 person who violates this Act shall be subject to
6 the penalties and entitled to the privileges and
7 immunities provided in the Federal Trade Com-
8 mission Act (15 U.S.C. 41 et seq.).

9 (C) AUTHORITY PRESERVED.—Nothing in
10 this Act shall be construed to limit the author-
11 ity of the Commission under any other provi-
12 sion of law.

13 (3) RULEMAKING.—The Commission shall pro-
14 mulgate in accordance with section 553 of title 5,
15 United States Code, such rules as may be necessary
16 to carry out this Act.

17 (b) ENFORCEMENT BY INDIVIDUALS.—

18 (1) IN GENERAL.—Any individual who suffers
19 an injury (including the denial of a right established
20 under this Act) as a result of a violation of this Act
21 or a regulation promulgated thereunder by a covered
22 entity may bring a civil action against such covered
23 entity in Federal district court.

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

(A) for a—

(i) violation of section 2(a), an amount equal to the greater of—

(I) \$1,000 in statutory damages

per commercial advertisement generated in violation of such subsection;

or

(II) the sum of any actual damages sustained; or

(ii) violation of section 2(b), an amount equal to the sum of any actual damages sustained; and

(B) reasonable attorney’s fees and litigation costs.

SEC. 4. DEFINITIONS.

(a) IN GENERAL.—In this Act:

(1) COLLECT.—The term “collect” means, with respect to personally-identifiable health data, to obtain such information in any manner.

(2) COMMERCIAL ADVERTISING.—The term “commercial advertising” means communications that promote the sale of or interest in goods or serv-

1 ices, including goods or services that are published
2 digitally, via video or audio, or in print.

3 (3) COMMISSION.—The term “Commission”
4 means the Federal Trade Commission.

5 (4) COVERED ENTITY.—The term “covered en-
6 tity” means a person that—

7 (A) is subject to the Federal Trade Com-
8 mission Act (15 U.S.C. 41 et seq.); and

9 (B) collects, on an annual basis, the per-
10 sonally-identifiable health data of not less than
11 1,000 individuals in the United States.

12 (b) RULEMAKING.—Not later than 180 days after the
13 date of enactment of this Act, the Commission shall con-
14 duct a rulemaking pursuant to section 553 of title 5,
15 United States Code, to define the terms “public health
16 campaign” and “personally-identifiable health data” for
17 purposes of this Act.

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