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2D SESSION

H. R. 4517

To provide for greater transparency in and user control over the treatment of data collected by mobile applications and to enhance the security of such data.

IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 10, 2016

Mr. JOHNSON of Georgia (for himself, Mr. BARTON, Mr. CHABOT, Ms. JACKSON LEE, Mr. CICILLINE, and Mr. COHEN) introduced the following bill; which was referred to the Committee on Energy and Commerce

A BILL

To provide for greater transparency in and user control over the treatment of data collected by mobile applications and to enhance the security of such data.

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 “Application Privacy,
5 Protection, and Security Act of 2016” or the “APPS Act
6 of 2016”.

7 **SEC. 2. TRANSPARENCY, USER CONTROL, AND SECURITY.**

8 (a) CONSENT TO TERMS AND CONDITIONS.—

1 (1) IN GENERAL.—Before a mobile application
2 collects personal data about a user of the applica-
3 tion, the developer of the application shall—

4 (A) provide the user with notice of the
5 terms and conditions governing the collection,
6 use, storage, and sharing of the personal data;
7 and

8 (B) obtain the consent of the user to such
9 terms and conditions.

10 (2) REQUIRED CONTENT.—The notice required
11 by paragraph (1)(A) shall include the following:

12 (A) The categories of personal data that
13 will be collected.

14 (B) The categories of purposes for which
15 the personal data will be used.

16 (C) The categories of third parties with
17 which the personal data will be shared.

18 (D) A data retention policy that governs
19 the length for which the personal data will be
20 stored and the terms and conditions applicable
21 to storage, including a description of the rights
22 of the user under subsection (b) and the proc-
23 ess by which the user may exercise such rights.

24 (3) ADDITIONAL SPECIFICATIONS AND FLEXI-
25 BILITY.—The Commission shall by regulation specify

1 the format, manner, and timing of the notice re-
2 quired by paragraph (1)(A). In promulgating the
3 regulations, the Commission shall consider how to
4 ensure the most effective and efficient communica-
5 tion to the user regarding the treatment of personal
6 data.

7 (4) DIRECT ACCESS TO DATA BY THIRD PAR-
8 TIES.—For purposes of this Act, if the developer of
9 a mobile application allows a third party to access
10 personal data collected by the application, such per-
11 sonal data shall be considered to be shared with the
12 third party, whether or not such personal data are
13 first transmitted to the developer.

14 (b) WITHDRAWAL OF CONSENT.—The developer of a
15 mobile application shall—

16 (1) provide a user of the application with a
17 means of—

18 (A) notifying the developer that the user
19 intends to stop using the application; and

20 (B) requesting the developer—

21 (i) to refrain from any further collec-
22 tion of personal data through the applica-
23 tion; and

24 (ii) at the option of the user, either—

1 (I) to the extent practicable, to
2 delete any personal data collected by
3 the application that is stored by the
4 developer; or

5 (II) to refrain from any further
6 use or sharing of such data; and

7 (2) within a reasonable and appropriate time
8 after receiving a request under paragraph (1)(B),
9 comply with such request.

10 (c) SECURITY OF PERSONAL DATA AND DE-IDENTI-
11 FIED DATA.—The developer of a mobile application shall
12 take reasonable and appropriate measures to prevent un-
13 authorized access to personal data and de-identified data
14 collected by the application.

15 (d) EXCEPTION.—Nothing in this Act prohibits the
16 developer of a mobile application from disclosing or pre-
17 serving personal data or de-identified data as required
18 by—

19 (1) other Federal law (including a court order);
20 or

21 (2) except as provided in section 6, the law of
22 a State or a political subdivision of a State (includ-
23 ing a court order).

1 **SEC. 3. APPLICATION AND ENFORCEMENT.**

2 (a) GENERAL APPLICATION.—The requirements of
3 this Act and the regulations promulgated under this Act
4 apply, according to their terms, to those persons, partner-
5 ships, and corporations over which the Commission has
6 authority pursuant to section 5(a)(2) of the Federal Trade
7 Commission Act (15 U.S.C. 45(a)(2)).

8 (b) ENFORCEMENT BY FEDERAL TRADE COMMIS-
9 SION.—

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

17 (2) POWERS OF COMMISSION.—The Commis-
18 sion shall enforce this Act and the regulations pro-
19 mulgated under this Act in the same manner, by the
20 same means, and with the same jurisdiction, powers,
21 and duties as though all applicable terms and provi-
22 sions of the Federal Trade Commission Act (15
23 U.S.C. 41 et seq.) were incorporated into and made
24 a part of this Act. Any person who violates this Act
25 or a regulation promulgated under this Act shall be
26 subject to the penalties and entitled to the privileges

1 and immunities provided in the Federal Trade Com-
2 mission Act.

3 (c) ACTIONS BY STATES.—

4 (1) IN GENERAL.—In any case in which the at-
5 torney general of a State, or an official or agency of
6 a State, has reason to believe that an interest of the
7 residents of such State has been or is threatened or
8 adversely affected by an act or practice in violation
9 of this Act or a regulation promulgated under this
10 Act, the State, as *parens patriae*, may bring a civil
11 action on behalf of the residents of the State in an
12 appropriate district court of the United States to—

13 (A) enjoin such act or practice;

14 (B) enforce compliance with this Act or
15 such regulation;

16 (C) obtain damages, restitution, or other
17 compensation on behalf of residents of the
18 State; or

19 (D) obtain such other legal and equitable
20 relief as the court may consider to be appro-
21 priate.

22 (2) NOTICE.—Before filing an action under this
23 subsection, the attorney general, official, or agency
24 of the State involved shall provide to the Commis-
25 sion a written notice of such action and a copy of

1 the complaint for such action. If the attorney gen-
2 eral, official, or agency determines that it is not fea-
3 sible to provide the notice described in this para-
4 graph before the filing of the action, the attorney
5 general, official, or agency shall provide written no-
6 tice of the action and a copy of the complaint to the
7 Commission immediately upon the filing of the ac-
8 tion.

9 (3) AUTHORITY OF COMMISSION.—

10 (A) IN GENERAL.—On receiving notice
11 under paragraph (2) of an action under this
12 subsection, the Commission shall have the
13 right—

14 (i) to intervene in the action;

15 (ii) upon so intervening, to be heard
16 on all matters arising therein; and

17 (iii) to file petitions for appeal.

18 (B) LIMITATION ON STATE ACTION WHILE
19 FEDERAL ACTION IS PENDING.—If the Commis-
20 sion or the Attorney General of the United
21 States has instituted a civil action for violation
22 of this Act or a regulation promulgated under
23 this Act (referred to in this subparagraph as
24 the “Federal action”), no State attorney gen-
25 eral, official, or agency may bring an action

1 under this subsection during the pendency of
2 the Federal action against any defendant
3 named in the complaint in the Federal action
4 for any violation of this Act or such regulation
5 alleged in such complaint.

6 (4) **RULE OF CONSTRUCTION.**—For purposes of
7 bringing a civil action under this subsection, nothing
8 in this Act shall be construed to prevent an attorney
9 general, official, or agency of a State from exercising
10 the powers conferred on the attorney general, offi-
11 cial, or agency by the laws of such State to conduct
12 investigations, administer oaths and affirmations, or
13 compel the attendance of witnesses or the production
14 of documentary and other evidence.

15 **SEC. 4. REGULATIONS.**

16 Not later than 1 year after the date of the enactment
17 of this Act, the Commission shall promulgate regulations
18 in accordance with section 553 of title 5, United States
19 Code, to implement and enforce this Act.

20 **SEC. 5. SAFE HARBOR.**

21 (a) **IN GENERAL.**—The developer of a mobile applica-
22 tion may satisfy the requirements of this Act and the regu-
23 lations promulgated under this Act by adopting and fol-
24 lowing a code of conduct for consumer data privacy (inso-
25 far as such code relates to data collected by a mobile appli-

1 cation) that the Commission has approved as meeting the
2 requirements of the regulations promulgated under section
3 4.

4 (b) REGULATIONS.—The Commission shall promul-
5 gate regulations in accordance with section 553 of title
6 5, United States Code, to govern the consideration and
7 approval of codes of conduct under subsection (a).

8 **SEC. 6. RELATIONSHIP TO STATE LAW.**

9 This Act and the regulations promulgated under this
10 Act supercede a provision of law of a State or a political
11 subdivision of a State only to the extent that such provi-
12 sion—

13 (1) conflicts with this Act or such regulations,
14 as determined without regard to section 2(d)(2);

15 (2) specifically relates to the treatment of per-
16 sonal data or de-identified data; and

17 (3) provides a level of transparency, user con-
18 trol, or security in the treatment of personal data or
19 de-identified data that is less than the level provided
20 by this Act and such regulations.

21 **SEC. 7. PRESERVATION OF FTC AUTHORITY.**

22 Nothing in this Act may be construed in any way to
23 limit or affect the authority of the Commission under any
24 other provision of law.

1 **SEC. 8. DEFINITIONS.**

2 In this Act:

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

5 (2) DE-IDENTIFIED DATA.—The term “de-iden-
6 tified data” means data that cannot reasonably be
7 used to identify or infer information about, or other-
8 wise be linked to, a particular individual or mobile
9 device, as determined with a reasonable level of jus-
10 tified confidence based on the available methods and
11 technologies, the nature of the data at issue, and the
12 purposes for which the data will be used.

13 (3) DEVELOPER.—The term “developer” shall
14 have the meaning given such term by the Commis-
15 sion by regulation.

16 (4) MOBILE APPLICATION.—The term “mobile
17 application” means a software program that—

18 (A) runs on the operating system of a mo-
19 bile device; and

20 (B) collects data from a user.

21 (5) MOBILE DEVICE.—The term “mobile de-
22 vice” means a smartphone, tablet computer, or simi-
23 lar portable computing device that transmits data
24 over a wireless connection.

25 (6) PERSONAL DATA.—The term “personal
26 data” shall have the meaning given such term by the

1 Commission by regulation, except that such term
2 shall not include de-identified data.

3 (7) STATE.—The term “State” means each of
4 the several States, the District of Columbia, each
5 commonwealth, territory, or possession of the United
6 States, and each federally recognized Indian tribe.

7 (8) THIRD PARTY.—The term “third party”
8 means, with respect to the developer of an applica-
9 tion, an entity that holds itself out to the public as
10 separate from the developer such that a user of the
11 application acting reasonably under the cir-
12 cumstances would not expect the entity to be related
13 to the developer or to have access to personal data
14 the user provides to the developer. Such term in-
15 cludes an affiliate of the developer unless the affili-
16 ation is reasonably clear to users of the application.

17 **SEC. 9. EFFECTIVE DATE.**

18 This Act shall apply with respect to any collection,
19 use, storage, or sharing of personal data or de-identified
20 data that occurs after the date that is 30 days after the
21 promulgation of final regulations under section 4.

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