

118TH CONGRESS
2D SESSION

S. 3975

To require companies to receive consent from consumers to having their data used to train an artificial intelligence system.

IN THE SENATE OF THE UNITED STATES

MARCH 19, 2024

Mr. WELCH (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 companies to receive consent from consumers to having their data used to train an artificial intelligence system.

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 “Artificial Intelligence
5 Consumer Opt-in, Notification, Standards, and Ethical
6 Norms for Training Act” or the “AI CONSENT Act”.

7 **SEC. 2. DEFINITIONS.**

8 In this Act:

1 (1) ARTIFICIAL INTELLIGENCE SYSTEM.—The
2 term “artificial intelligence system” means a ma-
3 chine-based system that—

4 (A) is capable of influencing the environ-
5 ment by producing an output, including pre-
6 dictions, recommendations or decisions, for a
7 given set of objectives; and

8 (B) uses machine or human-based data
9 and inputs to—

10 (i) perceive real or virtual environ-
11 ments;

12 (ii) abstract these perceptions into
13 models through analysis in an automated
14 manner (such as by using machine learn-
15 ing) or manually; and

16 (iii) use model inference to formulate
17 options for outcomes.

18 (2) COMMISSION.—The term “Commission”
19 means the Federal Trade Commission.

20 (3) COVERED DATA.—The term “covered data”
21 means information relating to an individual that—

22 (A) is collected by a covered entity in the
23 course of the individual using a product, tool,
24 platform, or service offered by the covered enti-
25 ty; and

1 (B) identifies or is linked or reasonably
2 linkable, alone or in combination with other in-
3 formation, to the individual or a device that
4 identifies or is linked or reasonably linkable to
5 the individual, and shall include derived data
6 and unique persistent identifiers.

7 (4) COVERED ENTITY.—The term “covered en-
8 tity” means a person, partnership, or corporation
9 subject to the jurisdiction of the Commission under
10 section 5(a)(2) of the Federal Trade Commission
11 Act (15 U.S.C. 45(a)(2)).

12 (5) DE-IDENTIFIED DATA.—The term “de-iden-
13 tified data” means information that has been proc-
14 essed such that the information does not identify
15 and is not linked or reasonably linkable to a distinct
16 individual or a device, regardless of whether the in-
17 formation is aggregated, and if the covered entity
18 holding such information—

19 (A) takes reasonable technical measures to
20 ensure that the information cannot, at any
21 point, be used to re-identify any individual or
22 device that identifies or is linked or reasonably
23 linkable to an individual;

24 (B) publicly commits in a clear and con-
25 spicuous manner—

1 (i) to process and transfer the infor-
2 mation solely in a de-identified form with-
3 out any reasonable means for re-identifica-
4 tion; and

5 (ii) to not attempt to re-identify the
6 information with any individual or device
7 that identifies or is linked or reasonably
8 linkable to an individual; and

9 (C) contractually obligates any person or
10 entity that receives the information from the
11 covered entity—

12 (i) to comply with all of the provisions
13 of this paragraph with respect to the infor-
14 mation; and

15 (ii) to require that such contractual
16 obligations be included contractually in all
17 subsequent instances for which the data
18 may be received.

19 (6) DERIVED DATA.—The term “derived data”
20 means covered data that is created by the derivation
21 of information, data, assumptions, correlations, in-
22 ferences, predictions, or conclusions from facts, evi-
23 dence, or another source of information or data
24 about an individual or an individual’s device.

1 (7) DEVICE.—The term “device” means any
2 electronic equipment capable of collecting, proc-
3 essing, or transferring covered data that is used by
4 one or more individuals.

5 (8) TRANSFER.—The term “transfer” means to
6 disclose, release, disseminate, make available, li-
7 cense, rent, or share covered data orally, in writing,
8 electronically, or by any other means.

9 (9) UNIQUE PERSISTENT IDENTIFIER.—The
10 term “unique persistent identifier”—

11 (A) means an identifier to the extent that
12 such identifier is reasonably linkable to an indi-
13 vidual or device that identifies or is linked or
14 reasonably linkable to 1 or more individuals, in-
15 cluding a device identifier, Internet Protocol ad-
16 dress, cookie, beacon, pixel tag, mobile ad iden-
17 tifier, or similar technology, customer number,
18 unique pseudonym, user alias, telephone num-
19 ber or other form of persistent or probabilistic
20 identifier that is linked or reasonably linkable
21 to an individual or device; and

22 (B) does not include an identifier assigned
23 by a covered entity for the specific purpose of
24 giving effect to an individual’s exercise of ex-
25 press informed consent or revocation of consent

1 to the collection of covered data to train an ar-
2 tificial intelligence system.

3 **SEC. 3. DISCLOSURE AND OPT-IN REQUIREMENTS FOR EN-**
4 **TITIES THAT USE DATA TO TRAIN ARTIFICIAL**
5 **INTELLIGENCE SYSTEMS.**

6 (a) PROHIBITION.—Not later than 1 year after the
7 date of enactment of this Act, the Commission shall pro-
8 mulgate regulations under section 553 of title 5, United
9 States Code, to prohibit covered entities from using or sell-
10 ing or transferring to a third party any covered data of
11 an individual that is collected by the covered entity to train
12 an artificial intelligence system except as provided in sub-
13 section (b).

14 (b) USE OF COVERED DATA TO TRAIN ARTIFICIAL
15 INTELLIGENCE SYSTEMS PURSUANT TO EXPRESS IN-
16 FORMED CONSENT.—The regulations promulgated by the
17 Commission under subsection (a) shall include the fol-
18 lowing:

19 (1) The regulations permit a covered entity to
20 use covered data of an individual to train an artifi-
21 cial intelligence system or to sell or transfer such
22 data to a third party for such purpose if the covered
23 entity first—

24 (A) provides the individual with a clear
25 and conspicuous disclosure of how the covered

1 entity or third party will use the individual's
2 covered data; and

3 (B) obtains the express informed consent
4 of the individual for the covered entity or third
5 party to use the individual's covered data for
6 such purpose.

7 (2) For purposes of the disclosure required
8 under paragraph (1)(A), the regulations shall—

9 (A) provide a standard for what con-
10 stitutes a clear and conspicuous disclosure that
11 takes into account—

12 (i) different platform types, including
13 websites, mobile applications, and search
14 engines;

15 (ii) the size, font, color, or other vis-
16 ual affects of such a disclosure;

17 (iii) the brevity, accessibility, and clar-
18 ity of such a disclosure such that it may be
19 understood by a reasonable person;

20 (iv) the medium of such a disclo-
21 sure—including text, audio, and video com-
22 ponents—and the efficacy of these media
23 to ensure the individual's attention and in-
24 formation;

1 (v) the timeliness and location of such
2 a disclosure; and

3 (vi) any other criteria determined ap-
4 propriate by the Commission;

5 (B) consider the possibility of consumer fa-
6 tigue toward such disclosures and minimize its
7 impact;

8 (C) require that the disclosure clearly ex-
9 plains the individual's applicable rights related
10 to consent, including that service shall not be
11 conditioned on the granting of consent by the
12 individual;

13 (D) require that the disclosure state how
14 an individual's covered data may be used to
15 train artificial intelligence systems by the cov-
16 ered entity or sold or transferred to third par-
17 ties that may do the same; and

18 (E) require that the disclosure offer in-
19 structions on how an individual may grant or
20 revoke consent.

21 (3) For purposes of the consent required under
22 paragraph (1)(B), the regulations shall require
23 that—

1 (A) individuals may grant or revoke con-
2 sent at any time through an accessible and eas-
3 ily navigable mechanism;

4 (B) the option to withhold or revoke con-
5 sent shall be at least as prominent as the option
6 to accept and shall take the same number of
7 steps or fewer as the option to accept;

8 (C) such consent is obtained independently
9 from the covered entities' terms of service
10 agreement;

11 (D) such consent cannot be inferred from
12 an individual's action or inaction, such as hov-
13 ering over or closing a window or piece of con-
14 tent;

15 (E) services provided by a covered entity
16 may not be reduced, restricted, or made condi-
17 tional on whether an individual withholds con-
18 sent; and

19 (F) should an individual revoke consent, all
20 covered data of the individual shall be expunged
21 from datasets used to train an artificial intel-
22 ligence system following the revocation of con-
23 sent.

1 **SEC. 4. FTC STUDY ON DATA DE-IDENTIFICATION METH-**
2 **ODS.**

3 Not later than 1 year after the date of enactment
4 of this Act, the Commission shall submit to the Committee
5 on Commerce, Science, and Technology of the Senate and
6 the Committee on Energy and Commerce of the House
7 of Representatives a report on methods used by covered
8 entities to convert covered data into de-identified data.
9 Such report shall include an evaluation of whether, given
10 advancements in artificial intelligence technology, there
11 are any reasonable technical measures covered entities
12 could take, in addition to those measures currently used
13 by covered entities, to ensure that covered data that has
14 been converted to de-identified data cannot at any point
15 be used to re-identify an individual or their device.

16 **SEC. 5. ENFORCEMENT.**

17 (a) UNFAIR AND DECEPTIVE ACTS OR PRACTICES.—
18 A violation of a regulation promulgated under this Act
19 shall be treated as a violation of a rule defining an unfair
20 or deceptive act or practice prescribed under section
21 18(a)(1)(B) of the Federal Trade Commission Act (15
22 U.S.C. 57a(a)(1)(B)).

23 (b) POWERS OF THE COMMISSION.—

24 (1) IN GENERAL.—The Commission shall en-
25 force regulations promulgated under this Act in the
26 same manner, by the same means, and with the

1 same jurisdiction, powers, and duties as though all
2 applicable terms and provisions of the Federal Trade
3 Commission Act (15 U.S.C. 41 et seq.) were incor-
4 porated into and made a part of such regulations.

5 (2) PRIVILEGES AND IMMUNITIES.—Any person
6 that violates a regulation promulgated under this
7 Act shall be subject to the penalties, and entitled to
8 the privileges and immunities, provided in the Fed-
9 eral Trade Commission Act (15 U.S.C. 41 et seq.).

10 (3) REGULATIONS.—The Commission shall,
11 pursuant to section 553 of title 5, United States
12 Code, promulgate such regulations as the Commis-
13 sion determines necessary to carry out the provisions
14 of this Act.

15 (4) AUTHORITY PRESERVED.—Nothing in this
16 Act shall be construed to limit the authority of the
17 Commission under any other provision of law.

18 **SEC. 6. PREEMPTION.**

19 (a) IN GENERAL.—Nothing in this Act shall be con-
20 strued to preempt the law of any State that provides
21 greater protections to users of the services provided by
22 covered entities and individuals generally than the protec-
23 tions provided by the regulations promulgated under this
24 Act.

1 (b) DEFINITION OF STATE.—In this section, the term
2 “State” means any of the 50 states, the District of Colum-
3 bia, the Commonwealth of Puerto Rico, the Virgin Islands
4 of the United States, Guam, American Samoa, or the
5 Commonwealth of the Northern Mariana Islands.

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