

116TH CONGRESS
2D SESSION

H. R. 5703

To amend the Children’s Online Privacy Protection Act of 1998 to update and expand the coverage of such Act, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

JANUARY 29, 2020

Ms. CASTOR of Florida introduced the following bill; which was referred to the Committee on Energy and Commerce

A BILL

To amend the Children’s Online Privacy Protection Act of 1998 to update and expand the coverage of such Act, 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; TABLE OF CONTENTS.**

4 This Act may be cited as the “Protecting the Infor-
5 mation of our Vulnerable Children and Youth Act” or the
6 “PRIVCY ACT”.

7 **SEC. 2. DEFINITIONS.**

8 Section 1302 of the Children’s Online Privacy Protec-
9 tion Act of 1998 (15 U.S.C. 6501) is amended—

10 (1) in paragraph (1)—

1 (A) by inserting “or ‘children’” after
2 “child”; and

3 (B) by inserting “or individuals, respec-
4 tively,” after “individual”;

5 (2) by striking paragraph (10);

6 (3) by redesignating paragraphs (2) through
7 (9) as paragraphs (3) through (10), respectively;

8 (4) inserting after paragraph (1) the following:

9 “(2) YOUNG CONSUMER.—The term ‘young
10 consumer’ means an individual over the age of 12
11 and under the age of 18.”;

12 (5) by amending paragraph (3) (as so redesign-
13 nated) to read as follows:

14 “(3) COVERED ENTITY.—The term ‘covered en-
15 tity’ means—

16 “(A) any organization, corporation, trust,
17 partnership, sole proprietorship, unincorporated
18 association, or venture over which the Commis-
19 sion has authority pursuant to section 5(a)(2)
20 of the Federal Trade Commission Act (15
21 U.S.C. 45(a)(2));

22 “(B) notwithstanding section 5(a)(2) of
23 the Federal Trade Commission Act (15 U.S.C.
24 45(a)(2)), common carriers; and

1 “(C) notwithstanding sections 4 and
2 5(a)(2) of the Federal Trade Commission Act
3 (15 U.S.C. 44 and 45(a)(2)), any nonprofit or-
4 ganization, including any organization described
5 in section 501(c) of the Internal Revenue Code
6 of 1986 that is exempt from taxation under sec-
7 tion 501(a) of the Internal Revenue Code of
8 1986.”;

9 (6) by amending paragraph (5) (as so redesign-
10 nated) to read as follows:

11 “(5) DISCLOSE.—The term ‘disclose’ means to
12 intentionally or unintentionally release, transfer, sell,
13 disseminate, share, publish, lease, license, make
14 available, allow access to, fail to restrict access to,
15 or otherwise communicate covered information.”;

16 (7) by amending paragraph (9) (as so redesign-
17 nated) to read as follows:

18 “(9) COVERED INFORMATION.—The term ‘cov-
19 ered information’—

20 “(A) means any information, linked or rea-
21 sonably linkable to a specific young consumer
22 or child, or consumer device of a young con-
23 sumer or child;

24 “(B) may include—

1 “(i) a name, alias, home or other
2 physical address, online identifier, Internet
3 Protocol address, email address, account
4 name, Social Security number, physical
5 characteristics or description, telephone
6 number, State identification card number,
7 driver’s license number, where applicable,
8 passport number, or other similar identi-
9 fier;

10 “(ii) race, religion, sex, sexual orienta-
11 tion, sexual behavior, familial status, gen-
12 der identity, disability, age, political affili-
13 ation, or national origin;

14 “(iii) commercial information, includ-
15 ing records relating to personal property,
16 products or services purchased, obtained,
17 or considered, or other purchasing or con-
18 suming histories or tendencies;

19 “(iv) biometric information;

20 “(v) Internet or other electronic net-
21 work activity information, including brows-
22 ing history, search history, and informa-
23 tion regarding a young consumer’s or
24 child’s interaction with an Internet
25 website, application, or advertisement;

- 1 “(vi) geolocation information;
- 2 “(vii) audio, electronic, visual, ther-
- 3 mal, olfactory, or similar information;
- 4 “(viii) education information;
- 5 “(ix) health information;
- 6 “(x) facial recognition information;
- 7 “(xi) contents of and parties to infor-
- 8 mation, including with respect to electronic
- 9 mail, text messages, picture messages,
- 10 voicemails, audio conversations, and video
- 11 conversations;
- 12 “(xii) financial information, including
- 13 bank account numbers, credit card num-
- 14 bers, debit card numbers, or insurance pol-
- 15 icy numbers, where applicable;
- 16 “(xiii) inferences drawn from any of
- 17 the information described in this para-
- 18 graph to create a profile about a young
- 19 consumer or child reflecting the young con-
- 20 sumer’s or child’s preferences, characteris-
- 21 ties, psychological trends, predispositions,
- 22 behavior, attitudes, intelligence, abilities,
- 23 and aptitudes; and
- 24 “(C) does not include—

1 “(i) information that is processed
2 solely for the purpose of employment of a
3 young consumer;

4 “(ii) de-identified information.”;

5 (8) by amending paragraph (10) (as so redesignated)
6 to read as follows:

7 “(10) VERIFIABLE CONSENT.—The term
8 ‘verifiable consent’ means express, affirmative consent
9 freely given by a young consumer, or by the
10 parent of a child, to the processing of covered information
11 of that young consumer or child, respectively—
12 tively—

13 “(A) that is specific, informed, and unambiguous;
14 biguous;

15 “(B) that is given separately for each process
16 of specific types of covered information;

17 “(C) where the young consumer or parent
18 of a child, as applicable, has not received any
19 financial or other incentive in exchange for such
20 consent; and

21 “(D) that is given before any processing
22 occurs, at a time and in a context in which the
23 young consumer or parent of a child, as applicable,
24 would reasonably expect to make choices
25 concerning such processing.”;

1 (9) by redesignating paragraphs (11) and (12)
2 as paragraphs (12) and (13), respectively; and

3 (10) by adding at the end the following:

4 “(14) PROCESS.—The term ‘process’ means
5 any operation or set of operations which is per-
6 formed on covered information, whether or not by
7 automated means, including collecting, creating, ac-
8 quiring, disclosing, recording, deriving, inferring, ob-
9 taining, assembling, organizing, structuring, storing,
10 retaining, adapting or altering, using, or retrieving
11 covered information.

12 “(15) DE-IDENTIFIED INFORMATION AND RE-
13 LATED TERMS.—

14 “(A) The term ‘de-identified information’
15 means information that has been de-identified
16 by a covered entity, where the covered entity
17 publicly discloses the methods it uses to de-
18 identify information.

19 “(B) The term ‘de-identify’ means the re-
20 moval of identifying information from informa-
21 tion such that the information is not reasonably
22 linkable to a specific young consumer or child
23 or consumer device of a young consumer or
24 child.

1 “(C) The term ‘re-identify’ means to link
2 information that has been de-identified to a
3 specific young consumer or child or consumer
4 device of a young consumer or child.

5 “(16) STATE.—The term ‘State’ means each of
6 the several States, the District of Columbia, each
7 territory of the United States, and each federally
8 recognized Indian Tribe.

9 “(17) SERVICE PROVIDER.—The term ‘service
10 provider’ means a covered entity that processes cov-
11 ered information at the direction of, and for the sole
12 benefit of, another covered entity, and—

13 “(A) is contractually or legally prohibited
14 from processing such covered information for
15 any other purpose; and

16 “(B) complies with all of the requirements
17 of this Act.”.

18 **SEC. 3. UNFAIR OR DECEPTIVE ACTS OR PRACTICES.**

19 Section 1303 of the Children’s Online Privacy Protec-
20 tion Act of 1998 (15 U.S.C. 6502) is amended—

21 (1) in the section heading, by striking “**COL-**
22 **LECTION AND USE OF PERSONAL INFORMA-**
23 **TION FROM AND ABOUT CHILDREN ON THE**
24 **INTERNET**” and inserting “**PROCESSING OF COV-**

1 **ERED INFORMATION FROM AND ABOUT YOUNG**
2 **CONSUMERS OR CHILDREN”;**

3 (2) by amending subsection (a) to read as fol-
4 lows:

5 “(a) **ACTS PROHIBITED.**—It is unlawful for a covered
6 entity that has actual or constructive knowledge that such
7 covered entity is processing covered information about a
8 young consumer or child to process such information in
9 a manner that violates the regulations prescribed under
10 subsection (b).”;

11 (3) by amending subsection (b) to read as fol-
12 lows:

13 “(b) **IN GENERAL.**—Not later than 1 year after the
14 date of enactment of the Protecting the Information of
15 our Vulnerable Children and Youth Act, the Commission
16 shall, under section 553 of title 5, United States Code,
17 revise regulations issued under this Act prior to such date
18 of enactment and issue additional regulations as necessary
19 that implement the requirements and prohibitions set
20 forth in paragraphs (1) through (7). The Commission
21 shall have the authority to revise such regulations every
22 7 years or as it determines necessary due to changes in
23 or emerging technology.

24 “(1) **TRANSPARENCY.**—Such regulations shall
25 require a covered entity to develop and make pub-

1 licily available at all times and in a machine-readable
2 format, a privacy policy, in a manner that is clear,
3 easily understood, and written in plain and concise
4 language, that includes—

5 “(A) the categories of covered information
6 that the covered entity processes about young
7 consumers and children;

8 “(B) how and under what circumstances
9 covered information is collected directly from a
10 young consumer or child;

11 “(C) the categories and the sources of any
12 covered information processed by a covered en-
13 tity that is not collected directly from a young
14 consumer or child;

15 “(D) a description of the purposes for
16 which the covered entity processes covered in-
17 formation, including—

18 “(i) a description of whether and how
19 the covered entity customizes products or
20 services, or adjusts the prices of products
21 or services for young consumers or chil-
22 dren or based in any part on processing of
23 covered information;

24 “(ii) a description of whether and how
25 the covered entity, or the covered entity’s

1 affiliates or service providers, de-identifies
2 information, including the methods used to
3 de-identify such information; and

4 “(iii) a description of whether and
5 how the covered entity, or the covered enti-
6 ty’s affiliates or service providers, gen-
7 erates or uses any consumer score to make
8 decisions concerning a young consumer or
9 child, and the source or sources of any
10 such consumer score;

11 “(E) a description of how long and the cir-
12 cumstances under which the covered entity re-
13 tains covered information;

14 “(F) a description of all of the purposes
15 for which the covered entity discloses covered
16 information with service providers and, on a bi-
17 ennial basis, the categories of service providers;

18 “(G) a description of whether and for what
19 purposes the covered entity discloses informa-
20 tion to third parties;

21 “(H) whether a covered entity sells or oth-
22 erwise shares covered information with data
23 brokers or processes covered information for
24 targeted advertising;

1 “(I) whether a covered entity collects cov-
2 ered information about young consumers or
3 children over time and across different websites
4 or mobile applications when a young consumer
5 or child uses the covered entity’s website or mo-
6 bile application;

7 “(J) how a young consumer or a parent of
8 a child can exercise their rights to access, cor-
9 rect, and delete such young consumer’s or
10 child’s covered information as set forth under
11 paragraph (5);

12 “(K) how a young consumer or a parent of
13 a child can grant, withhold, or withdraw the
14 consent required under paragraph (2), including
15 how to modify consent for the processing of
16 covered information, and the consequences of
17 withholding, withdrawing, or modifying such
18 consent;

19 “(L) the effective date of the notice; and

20 “(M) how the covered entity will commu-
21 nicate material changes of the privacy policy to
22 the young consumer or the parent of a child.

23 “(2) CONSENT REQUIRED.—

24 “(A) IN GENERAL.—Such regulations shall
25 require a covered entity that has actual or con-

1 structive knowledge that such covered entity is
2 processing covered information about a young
3 consumer or child—

4 “(i) to provide clear and concise no-
5 tice to a young consumer or the parent of
6 a child of the items of covered information
7 about such young consumer or child, re-
8 spectively, that is processed by such cov-
9 ered entity and how such covered entity
10 processes such covered information and ob-
11 tain verifiable consent for such processing;
12 and

13 “(ii) if such covered entity determines,
14 including through constructive knowledge,
15 that such covered entity has not obtained
16 verifiable consent for the processing of cov-
17 ered information about a young consumer
18 or child, to, not later than 48 hours after
19 such determination—

20 “(I) obtain verifiable consent; or

21 “(II) delete all covered informa-
22 tion about such young consumer or
23 child.

24 “(B) WHEN CONSENT NOT REQUIRED.—

25 Such regulations shall provide that verifiable

1 consent under this paragraph is not required in
2 the case of—

3 “(i) online contact information col-
4 lected from a young consumer or child
5 that—

6 “(I) is used only to respond di-
7 rectly on a one-time basis to a specific
8 request from the young consumer or
9 child;

10 “(II) is not used to re-contact the
11 young consumer or child; and

12 “(III) is not retained by the cov-
13 ered entity after responding as de-
14 scribed in subclause (I);

15 “(ii) a request for the name or online
16 contact information of a young consumer
17 or the parent of a child that is used for the
18 sole purpose of obtaining verifiable consent
19 or providing notice under subparagraph
20 (A)(i) and where such information is not
21 retained by the covered entity if verifiable
22 consent is not obtained within 48 hours; or

23 “(iii) the processing of such informa-
24 tion by the covered entity is necessary—

1 “(I) to respond to judicial proc-
2 ess; or

3 “(II) to the extent permitted
4 under other provisions of law, to pro-
5 vide information to law enforcement
6 agencies or for an investigation on a
7 matter related to public safety.

8 “(C) WITHDRAWAL OF CONSENT.—Such
9 regulations shall further provide a young con-
10 sumer or the parent of a child, as applicable, a
11 mechanism to withdraw his or her consent at
12 any time in a manner that is as easy as the
13 mechanism to give consent. Such withdrawal of
14 consent shall not be construed to affect the law-
15 fulness of any processing based on verifiable
16 consent before such withdrawal.

17 “(D) PROHIBITION ON LIMITING OR DIS-
18 CONTINUING SERVICE.—Such regulations shall
19 prohibit a covered entity from refusing to pro-
20 vide a service, or discontinuing a service pro-
21 vided, to a young consumer or child, if the
22 young consumer or parent of the child, as appli-
23 cable, refuses to consent, or withdraws consent,
24 to the processing of any covered information

1 not essential to the covered entity to provide
2 such service.

3 “(3) RETENTION OF DATA.—

4 “(A) RETENTION LIMITATIONS.—Subject
5 to the exceptions provided in subparagraph (B),
6 such regulations shall prohibit a covered entity
7 from keeping, retaining, or otherwise storing
8 covered information for longer than is reason-
9 ably necessary for the purposes for which the
10 covered information is processed.

11 “(B) EXCEPTIONS.—Further retention of
12 covered information shall not be considered to
13 be incompatible with the purposes of processing
14 described in subparagraph (A) if such proc-
15 essing is necessary and done solely for the pur-
16 poses of—

17 “(i) compliance with laws, regulations,
18 or other legal obligations;

19 “(ii) preventing risks to the health or
20 safety of a child or young adults or groups
21 of children or young adults; or

22 “(iii) repairing errors that impair ex-
23 isting functionality.

24 “(4) LIMITATION ON DISCLOSING COVERED IN-
25 FORMATION TO THIRD PARTIES.—

1 “(A) DISCLOSURES.—Such regulations
2 shall prohibit a covered entity from disclosing
3 covered information to a third party unless the
4 covered entity has a written agreement with
5 such third party that—

6 “(i) specifies all of the purposes for
7 which the third party may process the cov-
8 ered information for which the covered en-
9 tity has verifiable consent;

10 “(ii) prohibits the third party from
11 processing covered information for any
12 purpose other than the purposes specified
13 under clause (i); and

14 “(iii) requires the third party to pro-
15 vide at least the same privacy and security
16 protections as the covered entity; or

17 “(B) RESPONSIBILITIES OF COVERED EN-
18 TITIES REGARDING THIRD PARTIES.—Such reg-
19 ulations shall require a covered entity—

20 “(i) to perform reasonable due dili-
21 gence in selecting any third party to enter
22 into an agreement under subparagraph (A)
23 and to exercise reasonable oversight over
24 all such third parties to assure compliance
25 with the requirements of this Act; and

1 “(ii) if the covered entity has actual
2 or constructive knowledge that a third
3 party has violated the agreement described
4 in subparagraph (A) to—

5 “(I) to the extent practicable,
6 promptly take steps to ensure compli-
7 ance with such agreement; and

8 “(II) promptly report to the
9 Commission that such a violation oc-
10 curred.

11 “(5) RIGHT TO ACCESS, CORRECT, AND DELETE
12 COVERED INFORMATION.—

13 “(A) ACCESS.—Such regulations shall re-
14 quire a covered entity, upon request of a young
15 consumer or the parent of a child and after
16 proper identification of such young consumer or
17 parent, to promptly provide to such young con-
18 sumer or parent, as applicable—

19 “(i) access to all covered information
20 pertaining to such young consumer or child
21 including a description of—

22 “(I) each type of covered infor-
23 mation processed by the covered enti-
24 ty pertaining to the young consumer
25 or child, as applicable;

1 “(II) each purpose for which the
2 covered entity processes each category
3 of covered information pertaining to
4 the young consumer or child, as appli-
5 cable;

6 “(III) the names of each third
7 party to which the covered entity dis-
8 closed the covered information;

9 “(IV) each source other than the
10 young consumer or child, as applica-
11 ble, from which the covered entity ob-
12 tained covered information pertaining
13 to that young consumer or child, as
14 applicable;

15 “(V) how long the covered infor-
16 mation will be retained or stored by
17 the covered entity and, if not known,
18 the criteria the covered entity uses to
19 determine how long the covered infor-
20 mation will be retained or stored by
21 the covered entity; and

22 “(VI) with respect to any con-
23 sumer score of the young consumer or
24 child, as applicable, processed by the
25 covered entity, of—

1 “(aa) how such consumer
2 score is used by the covered enti-
3 ty to make decisions with respect
4 to that young consumer or child,
5 as applicable; and

6 “(bb) the source that cre-
7 ated the consumer score if not
8 created by the covered entity;
9 and

10 “(ii) a simple and reasonable mecha-
11 nism by which a young consumer or parent
12 of a child may request access to the infor-
13 mation described under clause (i), as appli-
14 cable.

15 “(B) DELETION.—Such regulations shall
16 require a covered entity, subject to the excep-
17 tions established under subparagraph (D)—

18 “(i) to establish a simple and reason-
19 able mechanism by which a young con-
20 sumer or parent of a child with respect to
21 whom the covered entity processes covered
22 information may request the covered entity
23 to delete any covered information (or any
24 component thereof); and

1 “(ii) to delete such covered informa-
2 tion not later than 45 days after receiving
3 such request.

4 “(C) CORRECTION.—Such regulations shall
5 require a covered entity, subject to the excep-
6 tions established under subparagraph (D)—

7 “(i) to provide each young consumer
8 or parent of a child with respect to whom
9 the covered entity processes covered infor-
10 mation, as applicable, a simple and reason-
11 able mechanism by which that young con-
12 sumer or parent may submit a request to
13 the entity—

14 “(I) to dispute the accuracy or
15 completeness of that covered informa-
16 tion, or part or component thereof;
17 and

18 “(II) to request that such cov-
19 ered information, or part or compo-
20 nent thereof, be corrected for accuracy
21 or completeness; and

22 “(ii) not later than 45 days after re-
23 ceiving a request under clause (i)—

24 “(I) to determine whether the
25 covered information disputed or re-

1 requested to be corrected is inaccurate
2 or incomplete; and

3 “(II) to correct the accuracy or
4 completeness of any covered informa-
5 tion determined by the covered entity
6 to be inaccurate or incomplete.

7 “(D) EXCEPTIONS.—Such regulations
8 shall permit a covered entity to deny a request
9 made under subparagraphs (A), (B), or (C) if—

10 “(i) the covered entity is unable to
11 verify the identity of the young consumer
12 or parent of a child making the request
13 after making a reasonable effort to verify
14 the identity of such young consumer or
15 parent; or

16 “(ii) with respect to the request made,
17 the covered entity determines that—

18 “(I) the entity is limited from
19 doing so by law, legally recognized
20 privilege, or other legal obligation; or

21 “(II) fulfilling the request would
22 create a legitimate risk to the privacy,
23 security, or safety of someone other
24 than the young consumer or child, as
25 applicable; or

1 “(iii) with respect to a request to cor-
2 rect covered information made under sub-
3 paragraph (C) or a request to delete cov-
4 ered information made under subpara-
5 graph (D), the covered entity determines
6 that the retention of the covered informa-
7 tion is necessary to—

8 “(I) complete the transaction
9 with the young consumer or child, as
10 applicable, for which the covered in-
11 formation was collected;

12 “(II) provide a product or service
13 affirmatively requested by the young
14 consumer or parent of a child, as ap-
15 plicable;

16 “(III) perform a contract with
17 the young consumer or a parent of a
18 child, as applicable, including a con-
19 tract for billing, financial reporting, or
20 accounting;

21 “(IV) to keep a record of the cov-
22 ered information for law enforcement
23 purposes; or

1 “(V) identify and repair errors
2 that impair the functionality of the
3 Internet website or online service; or

4 “(iv) the covered information is used
5 in public or peer-reviewed scientific, med-
6 ical, or statistical research in the public in-
7 terest that adheres to commonly accepted
8 ethical standards or laws, with informed
9 consent consistent with section 50.20 of
10 title 21, Code of Federal Regulations, pro-
11 vided that the research must already be in
12 progress at the time of request to access,
13 correct, or delete is made under subpara-
14 graphs (A), (B), or (C).

15 “(E) PROHIBITION ON LIMITING OR DIS-
16 CONTINUING SERVICE.—Such regulations shall
17 prohibit a covered entity from refusing to pro-
18 vide a service, or discontinuing a service pro-
19 vided, to a young consumer or child, if the
20 young consumer or parent of the child, as appli-
21 cable, exercises any of the rights set forth in
22 regulations under this paragraph.

23 “(6) ADDITIONAL PROHIBITED PRACTICES
24 WITH RESPECT TO YOUNG CONSUMERS AND CHIL-
25 DREN.—

1 “(A) IN GENERAL.—Such regulations shall
2 prohibit a covered entity from—

3 “(i) processing any covered informa-
4 tion in a manner that is inconsistent with
5 what a reasonable young consumer or par-
6 ent of a child would expect in the context
7 of a particular transaction or the young
8 consumer’s or parent’s relationship with
9 such covered entity or seeking to obtain
10 verifiable consent for such processing;

11 “(ii) providing targeting advertise-
12 ments or engaging in other marketing to a
13 specific child, based on that child’s covered
14 information or behavior, or based on the
15 covered information or behavior of children
16 who are similar to that child in gender, in-
17 come level, age, race, or ethnicity; and

18 “(iii) conditioning the participation of
19 a child in a game, sweepstakes, or other
20 contest on consenting to the processing of
21 more covered information than is necessary
22 for such child to participate.

23 “(B) EXCEPTIONS.—Nothing in subpara-
24 graph (A) shall prohibit a covered entity from

1 processing covered information if necessary
2 solely for purposes of—

3 “(i) detecting and preventing security
4 incidents;

5 “(ii) preventing imminent danger to
6 the personal safety of an individual or
7 group of individuals;

8 “(iii) identifying and repairing errors
9 that impair the functionality of the Inter-
10 net website or online service; or

11 “(iv) complying with any Federal,
12 State, or local law, rule, regulation, or
13 other legal obligation, including civil, crimi-
14 nal, or regulatory inquiries, investigations,
15 subpoenas, disclosures of information re-
16 quired by a court order or other properly
17 executed compulsory process.

18 “(C) DE-IDENTIFIED INFORMATION.—

19 Such regulations shall prohibit a covered entity
20 that de-identifies information, and any third
21 party with which the covered entity discloses
22 such de-identified information, from re-identi-
23 fying, or attempting to re-identify, any informa-
24 tion that the covered entity has de-identified.

25 Such regulations shall also require a covered

1 entity to contractually prohibit any third party
2 with which the covered entity discloses such de-
3 identified information from re-identifying or at-
4 tempting to re-identify such information.

5 “(7) SECURITY REQUIREMENTS.—

6 “(A) IN GENERAL.—Such regulations shall
7 require a covered entity to establish and imple-
8 ment reasonable security policies, practices, and
9 procedures for the treatment and protection of
10 covered information, taking into consider-
11 ation—

12 “(i) the size, nature, scope, and com-
13 plexity of the activities engaged in by such
14 covered entity;

15 “(ii) the sensitivity of any covered in-
16 formation at issue;

17 “(iii) the state of the art in adminis-
18 trative, technical, and physical safeguards
19 for protecting such information; and

20 “(iv) the cost of implementing such
21 policies, practices, and procedures.

22 “(B) SPECIFIC REQUIREMENTS.—Such
23 regulations shall require the policies, practices,
24 and procedures established pursuant to regula-

1 tions issued under subparagraph (A) to include
2 the following:

3 “(i) A written security policy with re-
4 spect to the processing of such covered in-
5 formation.

6 “(ii) The identification of an officer or
7 other individual as the point of contact
8 with responsibility for the management of
9 information security.

10 “(iii) A process for identifying and as-
11 sessing any reasonably foreseeable
12 vulnerabilities in the system or systems
13 maintained by such covered entity that
14 contains such covered information, includ-
15 ing regular monitoring for a breach of se-
16 curity of such system or systems.

17 “(iv) A process for taking preventive
18 and corrective action to mitigate against
19 any vulnerabilities identified in the process
20 required by clause (iii), which may in-
21 clude—

22 “(I) implementing any changes to
23 the security practices, architecture, in-
24 stallation, or implementation of net-
25 work or operating software; and

1 “(II) regular testing or otherwise
2 monitoring the effectiveness of the
3 safeguards.

4 “(v) A process for determining if the
5 covered information is no longer needed
6 and deleting such covered information by
7 shredding, permanently erasing, or other-
8 wise modifying the covered information
9 contained in such data to make such cov-
10 ered information permanently unreadable
11 or indecipherable.

12 “(vi) A process for overseeing persons
13 who have access to covered information, in-
14 cluding through Internet-connected devices,
15 by—

16 “(I) taking reasonable steps to
17 select and retain persons that are ca-
18 pable of maintaining appropriate safe-
19 guards for the covered information or
20 Internet-connected devices at issue;
21 and

22 “(II) requiring all such persons
23 to implement and maintain such secu-
24 rity measures.

1 “(vii) A process for employee training
2 and supervision for implementation of the
3 policies, practices, and procedures required
4 by this subsection.

5 “(viii) A written plan or protocol for
6 internal and public response in the event of
7 a breach of security.

8 “(C) PERIODIC ASSESSMENT AND CON-
9 SUME PRIVACY AND DATA SECURITY MOD-
10 ERNIZATION.—Such regulations shall require a
11 covered entity, not less frequently than every 12
12 months, to monitor, evaluate, and adjust, as ap-
13 propriate, the policies, practices, and procedures
14 of such covered entity in light of any relevant
15 changes in—

16 “(i) technology;

17 “(ii) internal or external threats and
18 vulnerabilities to covered information; and

19 “(iii) the changing business arrange-
20 ments of the covered entity.

21 “(D) SUBMISSION OF POLICIES TO THE
22 FTC.—Such regulations shall require a covered
23 entity to submit the policies, practices, and pro-
24 cedures of the covered entity to the Commission
25 in conjunction with a notification of a breach of

1 security required by any Federal or State statute or regulation or upon request of the Commission.”; and

2
3
4 (4) in subsection (c)—

5 (A) by inserting “subsection (a)(2) or” after “violation of”; and

6
7 (B) by striking “under subsection (a)” and inserting “under subsection (b)”.

8
9 **SEC. 4. REPEAL OF SAFE HARBORS PROVISION AND CON-**
10 **FORMING AMENDMENTS.**

11 (a) IN GENERAL.—Section 1304 of the Children’s
12 Online Privacy Protection Act of 1998 (15 U.S.C. 6503)
13 is repealed.

14 (b) CONFORMING AMENDMENTS.—The Children’s
15 Online Privacy Protection Act of 1998 (15 U.S.C. 6501
16 et seq.) is amended—

17 (1) by striking “operator” each place it appears
18 and inserting “covered entity”;

19 (2) in section 1303(c), by striking “sections
20 1304 and 1306” and inserting “section 1306”; and

21 (3) in section 1305(b), by striking paragraph
22 (3).

1 **SEC. 5. ADMINISTRATION AND APPLICABILITY OF ACT.**

2 (a) ENFORCEMENT BY FEDERAL TRADE COMMIS-
3 SION.—Section 1306(d) of the Children’s Online Privacy
4 Protection Act of 1998 (15 U.S.C. 6505(d)) is amended—

5 (1) in the first sentence, by striking “this title.
6 Any entity” and inserting “this title, and any enti-
7 ty”;

8 (2) by striking “The Commission shall prevent”
9 and inserting the following:

10 “(1) IN GENERAL.—Except as provided in para-
11 graphs (2) through (4), the Commission shall pre-
12 vent”; and

13 (3) by adding at the end the following:

14 “(2) INCREASED CIVIL PENALTY AMOUNT.—In
15 the case of a civil penalty under subsection (l) or
16 (m) of section 5 of the Federal Trade Commission
17 Act (15 U.S.C. 45) relating to acts or practices in
18 violation of any provision of this title or a regulation
19 prescribed under this title, the maximum dollar
20 amount per violation shall be \$63,795.

21 “(3) NATURE OF RELIEF AVAILABLE.—In any
22 action commenced by the Commission under section
23 19(a) of the Federal Trade Commission Act (15
24 U.S.C. 57a(a)) to enforce this title, the Commission
25 shall seek all appropriate relief described in sub-
26 section (b) of such section, and may, notwith-

1 standing such subsection, seek any exemplary or pu-
2 nitive damages.”.

3 (b) ENFORCEMENT BY CERTAIN OTHER AGEN-
4 CIES.—Section 1306 of the Children’s Online Privacy Pro-
5 tection Act of 1998 (15 U.S.C. 6505) is further amend-
6 ed—

7 (1) in subsection (b)—

8 (A) in paragraph (1), by striking “, in the
9 case of” and all that follows and inserting the
10 following: “by the appropriate Federal banking
11 agency, with respect to any insured depository
12 institution (as those terms are defined in sec-
13 tion 3 of that Act (12 U.S.C. 1813));”;

14 (B) in paragraph (6), by striking “Federal
15 land bank, Federal land bank association, Fed-
16 eral intermediate credit bank, or production
17 credit association” and inserting “Farm Credit
18 Bank, Agricultural Credit Bank (to the extent
19 exercising the authorities of a Farm Credit
20 Bank), Federal Land Credit Association, or ag-
21 ricultural credit association”; and

22 (C) by striking paragraph (2) and redesign-
23 ating paragraphs (3) through (6) as para-
24 graphs (2) through (5), respectively; and

1 (2) in subsection (c), by striking “subsection
2 (a)” each place it appears and inserting “subsection
3 (b)”.

4 **SEC. 6. REVIEW.**

5 Section 1307 of the Children’s Online Privacy Protec-
6 tion Act of 1998 (15 U.S.C. 6506) is amended—

7 (1) in the matter preceding paragraph (1), by
8 striking “the regulations initially issued under sec-
9 tion 1303” and inserting “the regulations issued
10 under section 1303 for the initial implementation of
11 the amendments made by the Protecting the Infor-
12 mation of our Vulnerable Children and Youth Act”;
13 and

14 (2) by amending paragraph (1) to read as fol-
15 lows:

16 “(1) review the implementation of this title, in-
17 cluding the effect of the implementation of this title
18 on practices relating to the processing of covered in-
19 formation about young consumers or children and
20 young consumer’s and children’s ability to obtain ac-
21 cess to information of their choice online; and”.

22 **SEC. 7. PRIVATE RIGHT OF ACTION.**

23 The Children’s Online Privacy Protection Act of 1998
24 (15 U.S.C. 6501 et seq.) is amended—

1 (1) by redesignating sections 1307 and 1308 as
2 sections 1308 and 1309, respectively; and

3 (2) by inserting after section 1306 the fol-
4 lowing:

5 **“SEC. 1307. PRIVATE RIGHT OF ACTION.**

6 “(a) **RIGHT OF ACTION.**—Any parent of a young con-
7 sumer or parent of a child alleging a violation of this title
8 or a regulation prescribed under this title with respect to
9 the covered information of such young consumer or child
10 may bring a civil action in any court of competent jurisdic-
11 tion.

12 “(b) **INJURY IN FACT.**—A violation of this Act or a
13 regulation promulgated under this Act with respect to the
14 covered information of a young consumer or child con-
15 stitutes an injury in fact to that young consumer or child.

16 “(c) **RELIEF.**—In a civil action brought under sub-
17 section (a) in which the plaintiff prevails, the court may
18 award—

19 “(1) injunctive relief;

20 “(2) actual damages;

21 “(3) punitive damages;

22 “(4) reasonable attorney’s fees and costs; and

23 “(5) any other relief that the court determines
24 appropriate.

25 “(d) **PRE-DISPUTE ARBITRATION AGREEMENTS.**—

1 “(1) IN GENERAL.—No pre-dispute arbitration
2 agreement or pre-dispute joint-action waiver shall be
3 valid or enforceable with respect to any claim arising
4 out of this Act or the regulations issued under this
5 Act.

6 “(2) DETERMINATION.—A determination as to
7 whether and how this Act applies to an arbitration
8 agreement shall be determined under Federal law by
9 the court, rather than the arbitrator, irrespective of
10 whether the party opposing arbitration challenges
11 such agreement specifically or in conjunction with
12 any other term of the contract containing such
13 agreement.

14 “(3) DEFINITIONS.—As used in this sub-
15 section—

16 “(A) the term ‘pre-dispute arbitration
17 agreement’ means any agreement to arbitrate a
18 dispute that has not arisen at the time of the
19 making of the agreement; and

20 “(B) the term ‘pre-dispute joint-action
21 waiver’ means an agreement, whether or not
22 part of a pre-dispute arbitration agreement,
23 that would prohibit, or waive the right of, one
24 of the parties to the agreement to participate in
25 a joint, class, or collective action in a judicial,

1 arbitral, administrative, or other forum, con-
2 cerning a dispute that has not yet arisen at the
3 time of the making of the agreement.

4 “(e) NON-WAIVEABILITY.—The rights and remedies
5 provided under this Act may not be waived or limited by
6 contract or otherwise.”.

7 **SEC. 8. RELATIONSHIP TO OTHER LAW.**

8 Section 1306 of the Children’s Online Privacy Protec-
9 tion Act of 1998 (15 U.S.C. 6505) is further amended
10 by adding at the end the following:

11 “(f) RELATIONSHIP TO OTHER LAW.—Nothing in
12 this Act may be construed to modify, limit, or supersede
13 the operation of any privacy or security provision in any
14 other Federal statute or regulation.”.

15 **SEC. 9. ADDITIONAL CONFORMING AMENDMENT.**

16 The heading of title XIII of division C of the Omni-
17 bus Consolidated and Emergency Supplemental Appro-
18 priations Act, 1999 (Public Law 105–277; 112 Stat.
19 2681–728) is amended by inserting “**AND YOUNG**
20 **CONSUMER’S**” after “**CHILDREN’S**”.

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