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(Original Signature of Member)

118TH CONGRESS  
1ST SESSION

# H. R.

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To require covered entities to issue a short-form terms of service summary statement, and for other purposes.

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## IN THE HOUSE OF REPRESENTATIVES

Mrs. TRAHAN introduced the following bill; which was referred to the Committee on \_\_\_\_\_

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# A BILL

To require covered entities 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, with  
3 regard to a covered entity that publishes or has published  
4 a terms of service—

5 (1) that requires the covered entity to include  
6 a truthful and non-misleading short-form terms of  
7 service summary statement on the website of the en-  
8 tity;

9 (2) that requires the covered entity to include  
10 a truthful and non-misleading graphic data flow dia-  
11 gram on the website of the entity; and

12 (3) that requires the covered entity to display  
13 the full terms of service of the entity in an inter-  
14 active data format.

15 (b) NO NEW CONTRACTUAL OBLIGATION.—The re-  
16 quirement to include a summary statement described in  
17 subsection (a) does not create any new contractual obliga-  
18 tion.

19 (c) REQUIREMENTS FOR SHORT-FORM TERMS OF  
20 SERVICE SUMMARY STATEMENT.—

21 (1) IN GENERAL.—The short-form terms of  
22 service summary statement described in subsection  
23 (a)—

24 (A) shall be accessible to individuals with  
25 low levels of literacy and individuals with dis-

1 abilities, machine readable, and shall include ta-  
2 bles, graphic icons, hyperlinks, or other means  
3 as the Commission may require; and

4 (B) may be presented differently depend-  
5 ing on the interface or type of device on which  
6 the statement is being accessed by the user.

7 (2) LOCATION OF SUMMARY STATEMENT AND  
8 GRAPHIC DATA FLOW DIAGRAM.—The summary  
9 statement shall be placed at the top of the perma-  
10 nent terms of service page of the covered entity and  
11 any graphic data flow diagram shall be located im-  
12 mediately below the statement.

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

15 (A) The categories of sensitive information  
16 that the covered entity processes.

17 (B) The sensitive information that is re-  
18 quired for the basic functioning of the service  
19 and what sensitive information is needed for ad-  
20 ditional features and future feature develop-  
21 ment.

22 (C) A summary of the legal liabilities of a  
23 user and any rights transferred from the user  
24 to the covered entity, such as mandatory arbi-  
25 tration, class action waiver, any licensing or

1 sale by the covered entity of the content of the  
2 user, and any waiver of moral rights.

3 (D) Historical versions of the terms of  
4 service and change logs.

5 (E) If the covered entity provides user de-  
6 letion services, directions for how the user can  
7 delete sensitive information or discontinue the  
8 use of sensitive information.

9 (F) A list of data breaches from the pre-  
10 vious 3 years reported to consumers under ex-  
11 isting Federal and State laws.

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

16 (H) Any other information the Commission  
17 determines to be necessary if that information  
18 is included in the terms of service by the cov-  
19 ered entity.

20 (4) ADDITIONAL INFORMATION REQUIRED BY  
21 THE COMMISSION.—The Commission shall include in  
22 the rule a list of other information the Commission  
23 determines to be necessary under paragraph (3)(H).

24 (d) GUIDANCE ON GRAPHIC DATA FLOW DIA-  
25 GRAMS.—Not later than 360 days after the date of the

1 enactment of this Act, the Commission shall publish guide-  
2 lines on how a covered entity can graphically display how  
3 sensitive information of a user is shared with a subsidiary  
4 or corporate affiliate of such entity and how sensitive in-  
5 formation is shared with third parties.

6 (e) INTERACTIVE DATA FORMAT TERMS OF SERV-  
7 ICE.—Not later than 360 days after the date of the enact-  
8 ment of this Act, the Commission shall issue a rule under  
9 section 553 of title 5, United States Code, that requires  
10 a covered entity to tag portions of the terms of services  
11 of the entity according to an interactive data format.

12 (f) ENFORCEMENT.—

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

20 (2) POWERS OF THE COMMISSION.—The Com-  
21 mission shall enforce this section and the regulations  
22 promulgated under this section in the same manner,  
23 by the same means, and with the same jurisdiction,  
24 powers, and duties as though all applicable terms  
25 and provisions of the Federal Trade Commission Act

1 (15 U.S.C. 41 et seq.) were incorporated into and  
2 made a part of this section, and any person who vio-  
3 lates this section or a regulation promulgated under  
4 this section shall be subject to the penalties and en-  
5 titled to the privileges and immunities provided in  
6 the Federal Trade Commission Act.

7 (3) ENFORCEMENT BY STATE ATTORNEYS GEN-  
8 ERAL.—In any case in which the attorney general of  
9 a State has reason to believe that an interest of at  
10 least 1,000 residents of that State has been or is  
11 threatened or adversely affected by the engagement  
12 of any person in a practice that violates this section  
13 or a regulation promulgated under this section, the  
14 State, as *parens patriae*, may bring a civil action on  
15 behalf of the residents of the State in a district  
16 court of the United States of appropriate jurisdic-  
17 tion to—

18 (A) enjoin that practice;

19 (B) enforce compliance with the regulation;

20 (C) obtain damage, restitution, or other  
21 compensation on behalf of residents of the  
22 State; or

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

25 (4) NOTICE.—

1 (A) IN GENERAL.—Before filing an action  
2 under paragraph (3), the attorney general of  
3 the State involved shall provide to the Commis-  
4 sion—

5 (i) written notice of that action; and

6 (ii) a copy of the complaint for that  
7 action.

8 (B) EXEMPTION.—

9 (i) IN GENERAL.—Subparagraph (A)  
10 shall not apply with respect to the filing of  
11 an action by an attorney general of a State  
12 under this subsection, if the attorney gen-  
13 eral determines that it is not feasible to  
14 provide the notice described in that sub-  
15 paragraph before the filing of the action.

16 (ii) NOTIFICATION.—In an action de-  
17 scribed in clause (i), the attorney general  
18 of a State shall provide notice and a copy  
19 of the complaint to the Commission at the  
20 same time as the attorney general files the  
21 action.

22 (5) INTERVENTION BY THE COMMISSION.—

23 (A) AUTHORITY TO INTERVENE.—The  
24 Commission may intervene in any action  
25 brought under paragraph (3).

1 (B) EFFECT OF INTERVENTION.—If the  
2 Commission intervenes in an action under para-  
3 graph (3), the Commission shall have the  
4 right—

5 (i) to be heard with respect to any  
6 matter that arises in that action; and

7 (ii) to file a petition for appeal.

8 (6) CONSTRUCTION.—For purposes of bringing  
9 any civil action under paragraph (3), nothing in this  
10 section may be construed to prevent an attorney  
11 general of a State from exercising the powers con-  
12 ferred on the attorney general by the laws of that  
13 State to—

14 (A) conduct investigations;

15 (B) administer oaths or affirmations; or

16 (C) compel the attendance of witnesses or  
17 the production of documentary and other evi-  
18 dence.

19 (7) ACTIONS BY THE COMMISSION.—In any  
20 case in which an action is instituted by or on behalf  
21 of the Commission for a violation of this section or  
22 a regulation promulgated under this section, a State  
23 may not, during the pendency of that action, insti-  
24 tute a separate action under paragraph (3) against  
25 any defendant named in the complaint in the action



1       instituted by or on behalf of the Commission for  
2       that violation.

3       (g) RULE OF CONSTRUCTION.—Nothing in this sec-  
4       tion shall be construed to limit the authority of the Com-  
5       mission under any other provision of law.

6       (h) DEFINITIONS.—In this section:

7           (1) COMMISSION.—The term “Commission”  
8       means the Federal Trade Commission.

9           (2) COVERED ENTITY.—The term “covered en-  
10      tity”—

11           (A) means any person or entity that oper-  
12      ates a website located on the internet or an on-  
13      line service, that is operated for commercial  
14      purposes; and

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

18           (3) DISABILITY.—The term “disability” has the  
19      meaning given the term in section 3 of the Ameri-  
20      cans with Disabilities Act of 1990 (42 U.S.C.  
21      12102).

22           (4) INTERACTIVE DATA FORMAT.—The term  
23      “interactive data format” means an electronic data  
24      format in which pieces of information are identified  
25      using an interactive data standard, such as eXten-

1       sible Markup Language (XML), that is a standard-  
2       ized list of electronic tags that mark the information  
3       described in subsection (c)(3) within the terms of  
4       service of a covered entity.

5           (5) MORAL RIGHTS.—The term “moral rights”  
6       means the rights conferred by section 106A(a) of  
7       title 17, United States Code.

8           (6) PROCESS.—The term “process” means any  
9       operation or set of operations performed on sensitive  
10      information, including collection, analysis, organiza-  
11      tion, structuring, retaining, using, or otherwise han-  
12      dling sensitive information.

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

15           (A) Health information.

16           (B) Biometric information.

17           (C) Precise geolocation information.

18           (D) Social security number.

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

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

24           (G) Audio and video recordings captured  
25      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, which means  
5 information revealing online activities over time  
6 or across websites or online services not owned  
7 or operated by the covered entity.

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

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

14 (A) to which the covered entity disclosed  
15 sensitive information; and

16 (B) that is not—

17 (i) the covered entity;

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

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