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(Original Signature of Member)

119TH CONGRESS  
1ST SESSION

**H. R.** \_\_\_\_\_

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 \_\_\_\_\_

\_\_\_\_\_  
**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 in accordance with section 553 of title 5, United  
3 States Code, with regard to a covered entity that publishes  
4 or has published 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)(1) does not create any new contractual obli-  
18 gation.

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)(1)—

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

1           abilities, be machine readable, and 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 described in subsection (a)(1) shall be  
10          placed at the top of the permanent terms of service  
11          page of the covered entity, and the graphic data flow  
12          diagram described in subsection (a)(2) shall be lo-  
13          cated immediately below such summary statement.

14          (3) CONTENTS OF SUMMARY STATEMENT.—The  
15          summary statement described in subsection (a)(1)  
16          shall include the following:

17                   (A) The categories of sensitive information  
18           that the covered entity processes.

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

24                   (C) A summary of the legal liabilities of a  
25           user and any rights transferred from the user

1 to the covered entity, such as mandatory arbi-  
2 tration, class action waiver, any licensing or  
3 sale by the covered entity of the content of the  
4 user, and any waiver of moral rights.

5 (D) Historical versions of the terms of  
6 service and change logs.

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

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

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

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

22 (4) ADDITIONAL INFORMATION REQUIRED BY  
23 THE COMMISSION.—In the rule issued under sub-  
24 section (a), the Commission shall include a list of

1 other information the Commission determines to be  
2 necessary under paragraph (3)(H).

3 (d) GUIDANCE ON GRAPHIC DATA FLOW DIA-  
4 GRAMS.—Not later than 360 days after the date of the  
5 enactment of this Act, the Commission shall publish guide-  
6 lines on how a covered entity can graphically display how  
7 the sensitive information of a user is shared with a sub-  
8 sidiary or corporate affiliate of such entity and how such  
9 sensitive information is shared with third parties.

10 (e) INTERACTIVE DATA FORMAT TERMS OF SERV-  
11 ICE.—Not later than 360 days after the date of the enact-  
12 ment of this Act, the Commission shall issue a rule in ac-  
13 cordance with section 553 of title 5, United States Code,  
14 that requires a covered entity to tag portions of the terms  
15 of services of the entity according to an interactive data  
16 format.

17 (f) ENFORCEMENT.—

18 (1) ENFORCEMENT BY THE COMMISSION.—

19 (A) UNFAIR OR DECEPTIVE ACTS OR PRAC-  
20 TICES.—A violation of this Act or a regulation  
21 promulgated under this Act shall be treated as  
22 a violation of a rule defining an unfair or de-  
23 ceptive act or practice under section  
24 18(a)(1)(B) of the Federal Trade Commission  
25 Act (15 U.S.C. 57a(a)(1)(B)).

1 (B) POWERS OF THE COMMISSION.—

2 (i) IN GENERAL.—The Commission  
3 shall enforce this section and the regula-  
4 tions promulgated under this section in the  
5 same manner, by the same means, and  
6 with the same jurisdiction, powers, and du-  
7 ties as though all applicable terms and pro-  
8 visions of the Federal Trade Commission  
9 Act (15 U.S.C. 41 et seq.) were incor-  
10 porated into and made a part of this sec-  
11 tion.

12 (ii) PRIVILEGES AND IMMUNITIES.—  
13 Any person who violates this section or a  
14 regulation promulgated under this section  
15 shall be subject to the penalties and enti-  
16 tled to the privileges and immunities pro-  
17 vided in the Federal Trade Commission  
18 Act.

19 (iii) AUTHORITY PERSEVERED.—  
20 Nothing in this section shall be construed  
21 to limit the authority of the Commission  
22 under any other provision of law.

23 (2) ENFORCEMENT BY STATES.—

24 (A) IN GENERAL.—In any case in which  
25 the attorney general of a State has reason to

1 believe that an interest of at least 1,000 resi-  
2 dents of that State has been or is threatened or  
3 adversely affected by the engagement of any  
4 person in a practice that violates this section or  
5 a regulation promulgated under this section, the  
6 attorney general of the State, as *parens patriae*,  
7 may bring a civil action on behalf of the resi-  
8 dents of the State in a district court of the  
9 United States of appropriate jurisdiction—

10 (i) to enjoin that practice;

11 (ii) to enforce compliance with this  
12 section;

13 (iii) to obtain damages, restitution, or  
14 other compensation on behalf of such resi-  
15 dents; and

16 (iv) to obtain such other relief as the  
17 court may consider to be appropriate.

18 (B) RIGHTS OF THE COMMISSION.—

19 (i) NOTICE TO THE COMMISSION.—

20 (I) IN GENERAL.—Except as pro-  
21 vided in subclause (III), the attorney  
22 general of a State shall notify the  
23 Commission in writing that the attor-  
24 ney general intends to bring a civil ac-

1                   tion under subparagraph (A) before  
2                   initiating the civil action.

3                   (II) CONTENTS.—The notifica-  
4                   tion required by subclause (I) with re-  
5                   spect to a civil action shall include a  
6                   copy of the complaint to be filed to  
7                   initiate the civil action.

8                   (III) EXEMPTION.—If it is not  
9                   feasible for the attorney general of a  
10                  State to provide the notification re-  
11                  quired by subclause (I) before initi-  
12                  ating a civil action under subpara-  
13                  graph (A), the attorney general shall  
14                  notify the Commission immediately  
15                  upon instituting the civil action.

16                  (ii) INTERVENTION BY THE COMMIS-  
17                  SION.—The Commission may—

18                         (I) intervene in any civil action  
19                         brought by the attorney general of a  
20                         State under subparagraph (A); and

21                         (II) upon intervening—

22                                 (aa) be heard on all matters  
23                                 arising in the civil action; and

24                                 (bb) file petitions for appeal.

1           (C) CONSTRUCTION.—Nothing in this  
2 paragraph may be construed to prevent an at-  
3 torney general of a State from exercising the  
4 powers conferred on the attorney general by the  
5 laws of that State to—

6                   (i) conduct investigations;

7                   (ii) administer oaths or affirmations;

8                   or

9                   (iii) compel the attendance of wit-  
10 nesses or the production of documentary  
11 and other evidence.

12           (D) ACTIONS BY THE COMMISSION.—In  
13 any case in which an action is instituted by or  
14 on behalf of the Commission for a violation of  
15 this section or a regulation promulgated under  
16 this section, a State may not, during the pend-  
17 ency of that action, institute a separate action  
18 under subparagraph (A) against any defendant  
19 named in the complaint in the action instituted  
20 by or on behalf of the Commission for that vio-  
21 lation.

22           (E) VENUE; SERVICE OF PROCESS.—

23                   (i) VENUE.—Any action brought  
24 under subparagraph (A) may be brought  
25 in—

1 (I) the district court of the  
2 United States that meets applicable  
3 requirements relating to venue under  
4 section 1391 of title 28, United States  
5 Code; or

6 (II) another court of competent  
7 jurisdiction.

8 (ii) SERVICE OF PROCESS.—In an ac-  
9 tion brought under paragraph (1), process  
10 may be served in any district in which the  
11 defendant—

12 (I) is an inhabitant; or

13 (II) may be found.

14 (g) DEFINITIONS.—In this section:

15 (1) COMMISSION.—The term “Commission”  
16 means the Federal Trade Commission.

17 (2) COVERED ENTITY.—The term “covered en-  
18 tity”—

19 (A) means any person that operates a  
20 website located on the internet or an online  
21 service that is operated for commercial pur-  
22 poses; and

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

1           (3) DISABILITY.—The term “disability” has the  
2 meaning given the term in section 3 of the Ameri-  
3 cans with Disabilities Act of 1990 (42 U.S.C.  
4 12102).

5           (4) INTERACTIVE DATA FORMAT.—The term  
6 “interactive data format” means an electronic data  
7 format in which pieces of information are identified  
8 using an interactive data standard, such as eXten-  
9 sible Markup Language (commonly known as  
10 “XML”), that is a standardized list of electronic  
11 tags that mark the information described in sub-  
12 section (c)(3) within the terms of service of a cov-  
13 ered entity.

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

17           (6) PROCESS.—The term “process” means any  
18 operation or set of operations performed on sensitive  
19 information, including collection, analysis, organiza-  
20 tion, structuring, retaining, using, or otherwise han-  
21 dling sensitive information.

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

24                   (A) Health information.

25                   (B) Biometric information.

1 (C) Precise geolocation information.

2 (D) Social security number.

3 (E) Information concerning the race, color,  
4 religion, national origin, sex, age, or disability  
5 of an individual.

6 (F) The content and parties to a commu-  
7 nication.

8 (G) Audio and video recordings captured  
9 through a consumer device.

10 (H) Financial information, including a  
11 bank account number, credit card number,  
12 debit card number, or insurance policy number.

13 (I) Online browsing history, which means  
14 information revealing online activities over time  
15 or across websites or online services not owned  
16 or operated by the covered entity.

17 (8) STATE.—The term “State” means each of  
18 the several States, the District of Columbia, each  
19 commonwealth, territory, or possession of the United  
20 States, and each Federally recognized Indian Tribe.

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

23 (A) to which the covered entity disclosed  
24 sensitive information; and

25 (B) that is not—

- 1 (i) the covered entity;
- 2 (ii) a subsidiary or corporate affiliate
- 3 of the covered entity; or
- 4 (iii) a service provider of the covered
- 5 entity.