

119TH CONGRESS
1ST SESSION

S. _____

To establish duties for online service providers with respect to end user
data that such providers collect and use.

IN THE SENATE OF THE UNITED STATES

Mr. SCHATZ introduced the following bill; which was read twice and referred
to the Committee on _____

A BILL

To establish duties for online service providers with respect
to end user data that such providers collect and use.

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 “Data Care Act of
5 2025”.

6 **SEC. 2. DEFINITIONS.**

7 In this Act:

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

1 (2) END USER.—The term “end user” means
2 an individual who engages with an online service
3 provider or logs into or uses services provided by the
4 online service provider over the internet or any other
5 digital network.

6 (3) INDIVIDUAL IDENTIFYING DATA.—The term
7 “individual identifying data” means any data that
8 is—

9 (A) collected over the internet or any other
10 digital network; and

11 (B) linked, or reasonably linkable, to—

12 (i) a specific end user; or

13 (ii) a computing device that is associ-
14 ated with or routinely used by an end user.

15 (4) ONLINE SERVICE PROVIDER.—The term
16 “online service provider” means an entity that—

17 (A) is engaged in interstate commerce over
18 the internet or any other digital network; and

19 (B) in the course of business, collects indi-
20 vidual identifying data about end users, includ-
21 ing in a manner that is incidental to the busi-
22 ness conducted.

23 (5) SENSITIVE DATA.—The term “sensitive
24 data” means any data that includes—

25 (A) a social security number;

1 (B) personal information (as defined in
2 section 1302 of the Children's Online Privacy
3 Protection Act of 1998 (15 U.S.C. 6501)) col-
4 lected from a child (as defined in such section
5 1302);

6 (C) a driver's license number, passport
7 number, military identification number, or any
8 other similar number issued on a government
9 document used to verify identity;

10 (D) a financial account number, credit or
11 debit card number, or any required security
12 code, access code, or password that is necessary
13 to permit access to a financial account of an in-
14 dividual;

15 (E) unique biometric data such as a finger
16 print, voice print, a retina or iris image, or any
17 other unique physical representation;

18 (F) information sufficient to access an ac-
19 count of an individual, such as user name and
20 password or email address and password;

21 (G) the first and last name of an indi-
22 vidual, or first initial and last name, or other
23 unique identifier in combination with—

24 (i) the month, day, and year of birth
25 of the individual;

1 (ii) the maiden name of the mother of
2 the individual; or

3 (iii) the past or present precise
4 geolocation of the individual;

5 (H) information that relates to—

6 (i) the past, present, or future phys-
7 ical or mental health or condition of an in-
8 dividual; or

9 (ii) the provision of health care to an
10 individual; and

11 (I) the nonpublic communications or other
12 nonpublic user-created content of an individual.

13 **SEC. 3. PROVIDER DUTIES.**

14 (a) IN GENERAL.—An online service provider shall
15 fulfill the duties of care, loyalty, and confidentiality under
16 paragraphs (1), (2), and (3), respectively, of subsection
17 (b).

18 (b) DUTIES.—

19 (1) DUTY OF CARE.—An online service provider
20 shall—

21 (A) reasonably secure individual identifying
22 data from unauthorized access; and

23 (B) subject to subsection (d), promptly in-
24 form an end user of any breach of the duty de-

1 scribed in subparagraph (A) of this paragraph
2 with respect to sensitive data of that end user.

3 (2) DUTY OF LOYALTY.—An online service pro-
4 vider may not use individual identifying data, or
5 data derived from individual identifying data, in any
6 way that—

7 (A) will benefit the online service provider
8 to the detriment of an end user; and

9 (B)(i) will result in reasonably foreseeable
10 and material physical or financial harm to an
11 end user; or

12 (ii) would be unexpected and highly offen-
13 sive to a reasonable end user.

14 (3) DUTY OF CONFIDENTIALITY.—An online
15 service provider—

16 (A) may not disclose or sell individual
17 identifying data to, or share individual identi-
18 fying data with, any other person except as con-
19 sistent with the duties of care and loyalty under
20 paragraphs (1) and (2), respectively;

21 (B) may not disclose or sell individual
22 identifying data to, or share individual identi-
23 fying data with, any other person unless that
24 person enters into a contract with the online
25 service provider that imposes on the person the

1 same duties of care, loyalty, and confidentiality
2 toward the applicable end user as are imposed
3 on the online service provider under this sub-
4 section; and

5 (C) shall take reasonable steps to ensure
6 that the practices of any person to whom the
7 online service provider discloses or sells, or with
8 whom the online service provider shares, indi-
9 vidual identifying data fulfill the duties of care,
10 loyalty, and confidentiality assumed by the per-
11 son under the contract described in subpara-
12 graph (B), including by auditing, on a regular
13 basis, the data security and data information
14 practices of any such person.

15 (c) APPLICATION OF DUTIES TO THIRD PARTIES.—
16 If an online service provider transfers or otherwise pro-
17 vides access to individual identifying data to another per-
18 son, the requirements of paragraphs (1), (2), and (3) of
19 subsection (b) shall apply to such person with respect to
20 such data in the same manner that such requirements
21 apply to the online service provider.

22 (d) EXPANSION OF DUTY TO INFORM REGARDING
23 BREACHES.—The Commission may promulgate regula-
24 tions under section 553 of title 5, United States Code,
25 to apply the breach notification requirement under sub-

1 section (b)(1)(B) with respect to specific categories of in-
2 dividual identifying data other than sensitive data, as the
3 Commission determines necessary.

4 (e) EXCEPTIONS.—

5 (1) REGULATIONS.—The Commission may pro-
6 mulgate regulations under section 553 of title 5,
7 United States Code, to exempt categories of online
8 service providers or persons described in subsection
9 (c) from the requirement under subsection (a) or
10 subsection (c) (as applicable).

11 (2) CONSIDERATIONS.—In promulgating regu-
12 lations under paragraph (1), the Commission shall
13 consider, among other factors—

14 (A) the privacy risks posed by the use of
15 individual identifying data by an online service
16 provider or person described in subsection (c)
17 based on—

18 (i) the size of the provider or person;

19 (ii) the complexity of the offerings of
20 the provider;

21 (iii) the nature and scope of the ac-
22 tivities of the provider or person; and

23 (iv) the sensitivity of the consumer in-
24 formation handled by the provider or per-
25 son; and

1 (B) the costs and benefits of applying the
2 requirement under subsection (a) or subsection
3 (c) (as applicable) to online service providers or
4 persons with particular combinations of charac-
5 teristics considered under subparagraph (A) of
6 this paragraph.

7 **SEC. 4. ENFORCEMENT.**

8 (a) ENFORCEMENT BY COMMISSION.—

9 (1) UNFAIR OR DECEPTIVE ACTS OR PRAC-
10 TICES.—A violation of section 3 by an online service
11 provider or a person described in section 3(c) shall
12 be treated as a violation of a rule defining an unfair
13 or deceptive act or practice prescribed under section
14 18(a)(1)(B) of the Federal Trade Commission Act
15 (15 U.S.C. 57a(a)(1)(B)).

16 (2) POWERS OF COMMISSION.—

17 (A) IN GENERAL.—Except as provided in
18 subparagraph (C), the Commission shall enforce
19 this Act in the same manner, by the same
20 means, and with the same jurisdiction, powers,
21 and duties as though all applicable terms and
22 provisions of the Federal Trade Commission
23 Act (15 U.S.C. 41 et seq.) were incorporated
24 into and made a part of this Act.

1 (B) PRIVILEGES AND IMMUNITIES.—Ex-
2 cept as provided in subparagraph (C), any per-
3 son who violates section 3 shall be subject to
4 the penalties and entitled to the privileges and
5 immunities provided in the Federal Trade Com-
6 mission Act (15 U.S.C. 41 et seq.).

7 (C) NONPROFIT ORGANIZATIONS AND COM-
8 MON CARRIERS.—Notwithstanding section 4 or
9 5(a)(2) of the Federal Trade Commission Act
10 (15 U.S.C. 44, 45(a)(2)) or any jurisdictional
11 limitation of the Commission, the Commission
12 shall also enforce this Act, in the same manner
13 provided in subparagraphs (A) and (B) of this
14 paragraph, with respect to—

15 (i) organizations not organized to
16 carry on business for their own profit or
17 that of their members; and

18 (ii) common carriers subject to the
19 Communications Act of 1934 (47 U.S.C.
20 151 et seq.).

21 (3) RULEMAKING AUTHORITY.—The Commis-
22 sion shall promulgate regulations under this Act in
23 accordance with section 553 of title 5, United States
24 Code.

25 (b) ENFORCEMENT BY STATES.—

(1) AUTHORIZATION.—Subject to paragraph (3), in any case in which the attorney general of a State has reason to believe that an interest of the residents of the State has been or is threatened or adversely affected by the engagement of an online service provider or a person described in section 3(c) in a practice that violates section 3, the attorney general of the State may, as *parens patriae*, bring a civil action against the online service provider or person on behalf of the residents of the State in an appropriate district court of the United States to obtain appropriate relief, including civil penalties in the amount determined under paragraph (2).

(2) CIVIL PENALTIES.—An online service provider or person described in section 3(c) that is found, in an action brought under paragraph (1), to have knowingly or repeatedly violated section 3 shall, in addition to any other penalty otherwise applicable to a violation of section 3, be liable for a civil penalty equal to the amount calculated by multiplying—

21 (A) the greater of—

(i) the number of days during which the online service provider or person was not in compliance with that section; or

1 (ii) the number of end users who were
2 harmed as a result of the violation, by

3 (B) an amount not to exceed the maximum
4 civil penalty for which a person, partnership, or
5 corporation may be liable under section
6 5(m)(1)(A) of the Federal Trade Commission
7 Act (15 U.S.C. 45(m)(1)(A)) (including any ad-
8 justments for inflation).

9 (3) RIGHTS OF FEDERAL TRADE COMMIS-
10 SION.—

11 (A) NOTICE TO FEDERAL TRADE COMMIS-
12 SION.—

13 (i) IN GENERAL.—Except as provided
14 in clause (iii), the attorney general of a
15 State shall notify the Commission in writ-
16 ing that the attorney general intends to
17 bring a civil action under paragraph (1)
18 before initiating the civil action.

19 (ii) CONTENTS.—The notification re-
20 quired under clause (i) with respect to a
21 civil action shall include a copy of the com-
22 plaint to be filed to initiate the civil action.

23 (iii) EXCEPTION.—If it is not feasible
24 for the attorney general of a State to pro-
25 vide the notification required under clause

1 (i) before initiating a civil action under
2 paragraph (1), the attorney general shall
3 notify the Commission immediately upon
4 instituting the civil action.

5 (B) INTERVENTION BY FEDERAL TRADE
6 COMMISSION.—The Commission may—

7 (i) intervene in any civil action
8 brought by the attorney general of a State
9 under paragraph (1); and

10 (ii) upon intervening—

11 (I) be heard on all matters arising
12 in the civil action; and

13 (II) file petitions for appeal of a
14 decision in the civil action.

15 (4) INVESTIGATORY POWERS.—Nothing in this
16 subsection may be construed to prevent the attorney
17 general of a State from exercising the powers conferred
18 on the attorney general by the laws of the
19 State to—

20 (A) conduct investigations;

21 (B) administer oaths or affirmations; or

22 (C) compel the attendance of witnesses or
23 the production of documentary or other evidence.
24

1 (5) PREEMPTIVE ACTION BY FEDERAL TRADE
2 COMMISSION.—If the Commission institutes a civil
3 action or an administrative action with respect to a
4 violation of section 3, the attorney general of a State
5 may not, during the pendency of the action, bring a
6 civil action under paragraph (1) against any defend-
7 ant named in the complaint of the Commission
8 based on the same set of facts giving rise to the al-
9 leged violation with respect to which the Commission
10 instituted the action.

11 (6) VENUE; SERVICE OF PROCESS.—

12 (A) VENUE.—Any action brought under
13 paragraph (1) may be brought in—

14 (i) the district court of the United
15 States that meets applicable requirements
16 relating to venue under section 1391 of
17 title 28, United States Code; or

18 (ii) another court of competent juris-
19 diction.

20 (B) SERVICE OF PROCESS.—In an action
21 brought under paragraph (1), process may be
22 served in any district in which the defendant—

23 (i) is an inhabitant; or

24 (ii) may be found.

25 (7) ACTIONS BY OTHER STATE OFFICIALS.—

1 (A) IN GENERAL.—In addition to civil ac-
2 tions brought by attorneys general under para-
3 graph (1), any other consumer protection offi-
4 cer of a State who is authorized by the State
5 to do so may bring a civil action under para-
6 graph (1), subject to the same requirements
7 and limitations that apply under this subsection
8 to civil actions brought by attorneys general.

9 (B) SAVINGS PROVISION.—Nothing in this
10 subsection may be construed to prohibit an au-
11 thorized official of a State from initiating or
12 continuing any proceeding in a court of the
13 State for a violation of any civil or criminal law
14 of the State.

15 **SEC. 5. NONENFORCEABILITY OF CERTAIN PROVISIONS**

16 **WAIVING RIGHTS AND REMEDIES.**

17 The rights and remedies provided under this Act may
18 not be waived or limited by contract or otherwise.

19 **SEC. 6. RELATION TO OTHER PRIVACY AND SECURITY**

20 **LAWS.**

21 Nothing in this Act may be construed to—

22 (1) modify, limit, or supersede the operation of
23 any privacy or security provision in any other Fed-
24 eral or State statute or regulation; or

1 (2) limit the authority of the Commission under
2 any other provision of law.

3 **SEC. 7. EFFECTIVE DATE.**

4 (a) IN GENERAL.—This Act shall take effect on the
5 date of enactment of this Act.

6 (b) APPLICABILITY.—Section 3 shall apply with re-
7 spect to an online service provider or person described in
8 section 3(c) on and after the date that is 180 days after
9 the date of enactment of this Act.