

118TH CONGRESS
1ST SESSION

S. _____

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

IN THE SENATE OF THE UNITED STATES

Mr. CASSIDY (for himself and Mr. LUJÁN) introduced the following bill; which was read twice and 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
10 the enactment of this Act, the Commission shall issue a

1 rule under section 553 of title 5, United States Code, with
2 regard to a covered entity that publishes or has published
3 a terms of service—

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

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

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

14 (b) NO NEW CONTRACTUAL OBLIGATION.—The re-
15 quirement to include a summary statement described in
16 subsection (a)(1) does not create any new contractual obli-
17 gation.

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

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

23 (A) shall be accessible to individuals with
24 low levels of literacy and individuals with dis-
25 abilities, be machine readable, and include ta-

1 bles, graphic icons, hyperlinks, or other means
2 as the Commission may require; and

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

6 (2) LOCATION OF SUMMARY STATEMENT AND
7 GRAPHIC DATA FLOW DIAGRAM.—The summary
8 statement described in subsection (a)(1) shall be
9 placed at the top of the permanent terms of service
10 page of the covered entity, and the graphic data flow
11 diagram described in subsection (a)(2) shall be lo-
12 cated immediately below such summary statement.

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

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

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

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

1 tration, class action waiver, any licensing or
2 sale by the covered entity of the content of the
3 user, and any waiver of moral rights.

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

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

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

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

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

21 (4) ADDITIONAL INFORMATION REQUIRED BY
22 THE COMMISSION.—In the rule issued under sub-
23 section (a), the Commission shall include a list of
24 other information the Commission determines to be
25 necessary under paragraph (3)(H).

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

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

14 (f) ENFORCEMENT.—

15 (1) ENFORCEMENT BY THE COMMISSION.—

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

23 (B) POWERS OF THE COMMISSION.—

24 (i) IN GENERAL.—The Commission
25 shall enforce this section and the regula-

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

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

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

20 (2) ENFORCEMENT BY STATES.—

21 (A) IN GENERAL.—In any case in which
22 the attorney general of a State has reason to
23 believe that an interest of at least 1,000 resi-
24 dents of that State has been or is threatened or
25 adversely affected by the engagement of any

1 person in a practice that violates this section or
2 a regulation promulgated under this section, the
3 attorney general of the State, as *parens patriae*,
4 may bring a civil action on behalf of the resi-
5 dents of the State in a district court of the
6 United States of appropriate jurisdiction—

7 (i) to enjoin that practice;

8 (ii) to enforce compliance with this
9 section;

10 (iii) to obtain damages, restitution, or
11 other compensation on behalf of such resi-
12 dents; and

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

15 (B) RIGHTS OF THE COMMISSION.—

16 (i) NOTICE TO THE COMMISSION.—

17 (I) IN GENERAL.—Except as pro-
18 vided in subclause (III), the attorney
19 general of a State shall notify the
20 Commission in writing that the attor-
21 ney general intends to bring a civil ac-
22 tion under subparagraph (A) before
23 initiating the civil action.

24 (II) CONTENTS.—The notifica-
25 tion required by subclause (I) with re-

1 spect to a civil action shall include a
2 copy of the complaint to be filed to
3 initiate the civil action.

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

12 (ii) INTERVENTION BY THE COMMIS-
13 SION.—The Commission may—

14 (I) intervene in any civil action
15 brought by the attorney general of a
16 State under subparagraph (A); and

17 (II) upon intervening—

18 (aa) be heard on all matters
19 arising in the civil action; and

20 (bb) file petitions for appeal.

21 (C) CONSTRUCTION.—Nothing in this
22 paragraph may be construed to prevent an at-
23 torney general of a State from exercising the
24 powers conferred on the attorney general by the
25 laws of that State to—

- 1 (i) conduct investigations;
- 2 (ii) administer oaths or affirmations;
- 3 or
- 4 (iii) compel the attendance of wit-
- 5 nesses or the production of documentary
- 6 and other evidence.

7 (D) ACTIONS BY THE COMMISSION.—In

8 any case in which an action is instituted by or

9 on behalf of the Commission for a violation of

10 this section or a regulation promulgated under

11 this section, a State may not, during the pend-

12 ency of that action, institute a separate action

13 under subparagraph (A) against any defendant

14 named in the complaint in the action instituted

15 by or on behalf of the Commission for that vio-

16 lation.

17 (E) VENUE; SERVICE OF PROCESS.—

18 (i) VENUE.—Any action brought

19 under subparagraph (A) may be brought

20 in—

21 (I) the district court of the

22 United States that meets applicable

23 requirements relating to venue under

24 section 1391 of title 28, United States

25 Code; or

1 (II) another court of competent
2 jurisdiction.

3 (ii) SERVICE OF PROCESS.—In an ac-
4 tion brought under paragraph (1), process
5 may be served in any district in which the
6 defendant—

7 (I) is an inhabitant; or

8 (II) may be found.

9 (g) DEFINITIONS.—In this section:

10 (1) COMMISSION.—The term “Commission”
11 means the Federal Trade Commission.

12 (2) COVERED ENTITY.—The term “covered en-
13 tity”—

14 (A) means any person that operates a
15 website located on the internet or an online
16 service that is operated for commercial pur-
17 poses; and

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

21 (3) DISABILITY.—The term “disability” has the
22 meaning given the term in section 3 of the Ameri-
23 cans with Disabilities Act of 1990 (42 U.S.C.
24 12102).

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

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

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

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

20 (A) Health information.

21 (B) Biometric information.

22 (C) Precise geolocation information.

23 (D) Social security number.

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

4 (F) The content and parties to a commu-
5 nication.

6 (G) Audio and video recordings captured
7 through a consumer device.

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

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

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

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

21 (A) to which the covered entity disclosed
22 sensitive information; and

23 (B) that is not—

24 (i) the covered entity;

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