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(Original Signature of Member)

116TH CONGRESS
1ST SESSION

H. R. _____

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

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IN THE HOUSE OF REPRESENTATIVES

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

_____

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".

1 **SEC. 2. DEFINITIONS.**

2   Section 1302 of the Children's Online Privacy Protec-

3 tion Act of 1998 (15 U.S.C. 6501) is amended—

4   (1) in paragraph (1)—

5   (A) by inserting "or 'children'" after

6   "child"; and

7   (B) by inserting "or individuals, respec-

8   tively," after "individual";

9   (2) by striking paragraph (10);

10   (3) by redesignating paragraphs (2) through

11   (9) as paragraphs (3) through (10), respectively;

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

13   "(2) YOUNG CONSUMER.—The term 'young

14   consumer' means an individual over the age of 12

15   and under the age of 18.";

16   (5) by amending paragraph (3) (as so redesig-

17   nated) to read as follows:

18   "(3) COVERED ENTITY.—The term 'covered en-

19   tity' means—

20   "(A) any organization, corporation, trust,

21   partnership, sole proprietorship, unincorporated

22   association, or venture over which the Commis-

23   sion has authority pursuant to section 5(a)(2)

24   of the Federal Trade Commission Act (15

25   U.S.C. 45(a)(2));

1   "(B) notwithstanding section 5(a)(2) of

2   the Federal Trade Commission Act (15 U.S.C.

3   45(a)(2)), common carriers; and

4   "(C) notwithstanding sections 4 and

5   5(a)(2) of the Federal Trade Commission Act

6   (15 U.S.C. 44 and 45(a)(2)), any nonprofit or-

7   ganization, including any organization described

8   in section 501(c) of the Internal Revenue Code

9   of 1986 that is exempt from taxation under sec-

10   tion 501(a) of the Internal Revenue Code of

11   1986.";

12   (6) by amending paragraph (5) (as so redesig-

13   nated) to read as follows:

14   "(5) DISCLOSE.—The term 'disclose' means to

15   intentionally or unintentionally release, transfer, sell,

16   disseminate, share, publish, lease, license, make

17   available, allow access to, fail to restrict access to,

18   or otherwise communicate covered information.";

19   (7) by amending paragraph (9) (as so redesig-

20   nated) to read as follows:

21   "(9) COVERED INFORMATION.—The term 'cov-

22   ered information'—

23   "(A) means any information, linked or rea-

24   sonably linkable to a specific young consumer

1   or child, or consumer device of a young con-

2   sumer or child;

3   ''(B) may include—

4   ''(i) a name, alias, home or other

5   physical address, online identifier, Internet

6   Protocol address, email address, account

7   name, Social Security number, physical

8   characteristics or description, telephone

9   number, State identification card number,

10   driver's license number, where applicable,

11   passport number, or other similar identi-

12   fier;

13   ''(ii) race, religion, sex, sexual orienta-

14   tion, sexual behavior, familial status, gen-

15   der identity, disability, age, political affili-

16   ation, or national origin;

17   ''(iii) commercial information, includ-

18   ing records relating to personal property,

19   products or services purchased, obtained,

20   or considered, or other purchasing or con-

21   suming histories or tendencies;

22   ''(iv) biometric information;

23   ''(v) Internet or other electronic net-

24   work activity information, including brows-

25   ing history, search history, and informa-

1 tion regarding a young consumer's or

2 child's interaction with an Internet

3 website, application, or advertisement;

4 "(vi) geolocation information;

5 "(vii) audio, electronic, visual, ther-

6 mal, olfactory, or similar information;

7 "(viii) education information;

8 "(ix) health information;

9 "(x) facial recognition information;

10 "(xi) contents of and parties to infor-

11 mation, including with respect to electronic

12 mail, text messages, picture messages,

13 voicemails, audio conversations, and video

14 conversations;

15 "(xii) financial information, including

16 bank account numbers, credit card num-

17 bers, debit card numbers, or insurance pol-

18 icy numbers, where applicable;

19 "(xiii) inferences drawn from any of

20 the information described in this para-

21 graph to create a profile about a young

22 consumer or child reflecting the young con-

23 sumer's or child's preferences, characteris-

24 tics, psychological trends, predispositions,

6

1   behavior, attitudes, intelligence, abilities,

2   and aptitudes; and

3   ''(C) does not include—

4   ''(i) information that is processed

5   solely for the purpose of employment of a

6   young consumer;

7   ''(ii) de-identified information.'';

8   (8) by amending paragraph (10) (as so redesig-

9   nated) to read as follows:

10   ''(10) VERIFIABLE CONSENT.—The term

11   'verifiable consent' means express, affirmative con-

12   sent freely given by a young consumer, or by the

13   parent of a child, to the processing of covered infor-

14   mation of that young consumer or child, respec-

15   tively—

16   ''(A) that is specific, informed, and unam-

17   biguous;

18   ''(B) that is given separately for each proc-

19   ess of specific types of covered information;

20   ''(C) where the young consumer or parent

21   of a child, as applicable, has not received any

22   financial or other incentive in exchange for such

23   consent;

24   ''(D) that is given before any processing

25   occurs, at a time and in a context in which the

1 young consumer or parent of a child, as appli-

2 cable, would reasonably expect to make choices

3 concerning such processing.'';

4 (9) by redesignating paragraphs (11) and (12)

5 as paragraphs (12) and (13), respectively; and

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

7 ''(14) PROCESS.—The term 'process' means

8 any operation or set of operations which is per-

9 formed on covered information, whether or not by

10 automated means, including collecting, creating, ac-

11 quiring, disclosing, recording, deriving, inferring, ob-

12 taining, assembling, organizing, structuring, storing,

13 retaining, adapting or altering, using, or retrieving

14 covered information.

15 ''(15) DE-IDENTIFIED INFORMATION AND RE-

16 LATED TERMS.—

17 ''(A) The term 'de-identified information'

18 means information that has been de-identified

19 by a covered entity, where the covered entity

20 publicly discloses the methods it uses to de-

21 identify information.

22 ''(B) The term 'de-identify' means the re-

23 moval of identifying information from informa-

24 tion such that the information is not reasonably

25 linkable to a specific young consumer or child

1 or consumer device of a young consumer or

2 child.

3 ''(C) The term 're-identify' means to link

4 information that has been de-identified to a

5 specific young consumer or child or consumer

6 device of a young consumer or child.

7 ''(16) STATE.—The term 'State' means each of

8 the several States, the District of Columbia, each

9 territory of the United States, and each federally

10 recognized Indian Tribe.

11 ''(17) SERVICE PROVIDER.—The term 'service

12 provider' means a covered entity that processes cov-

13 ered information at the direction of, and for the sole

14 benefit of, another covered entity, and—

15 ''(A) is contractually or legally prohibited

16 from processing such covered information for

17 any other purpose; and

18 ''(B) complies with all of the requirements

19 of this Act.''.

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

21 Section 1303 of the Children's Online Privacy Protec-

22 tion Act of 1998 (15 U.S.C. 6502) is amended—

23 (1) in the section heading, by striking "**COL-**

24 **LECTION AND USE OF PERSONAL INFORMA-**

25 **TION FROM AND ABOUT CHILDREN ON THE**

1 **INTERNET**'' and inserting ''**PROCESSING OF COV-**

2 **ERED INFORMATION FROM AND ABOUT YOUNG**

3 **CONSUMERS OR CHILDREN**'';

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

5 lows:

6 ''(a) ACTS PROHIBITED.—It is unlawful for a covered

7 entity that has actual or constructive knowledge that such

8 covered entity is processing covered information about a

9 young consumer or child to process such information in

10 a manner that violates the regulations prescribed under

11 subsection (b).'';

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

13 lows:

14 ''(b) IN GENERAL.—Not later than 1 year after the

15 date of enactment of the Protecting the Information of

16 our Vulnerable Children and Youth Act, the Commission

17 shall, under section 553 of title 5, United States Code,

18 revise regulations issued under this Act prior to such date

19 of enactment and issue additional regulations as necessary

20 that implement the requirements and prohibitions set

21 forth in paragraphs (1) through (7). The Commission

22 shall have the authority to revise such regulations every

23 7 years or as it determines necessary due to changes in

24 or emerging technology.

10

1 ''(1) TRANSPARENCY.—Such regulations shall

2 require a covered entity to develop and make pub-

3 licly available at all times and in a machine-readable

4 format, a privacy policy, in a manner that is clear,

5 easily understood, and written in plain and concise

6 language, that includes—

7   ''(A) the categories of covered information

8   that the covered entity processes about young

9   consumers and children;

10   ''(B) how and under what circumstances

11   covered information is collected directly from a

12   young consumer or child;

13   ''(C) the categories and the sources of any

14   covered information processed by a covered en-

15   tity that is not collected directly from a young

16   consumer or child;

17   ''(D) a description of the purposes for

18   which the covered entity processes covered in-

19   formation, including—

20   ''(i) a description of whether and how

21   the covered entity customizes products or

22   services, or adjusts the prices of products

23   or services for young consumers or chil-

24   dren or based in any part on processing of

25   covered information;

11

1 ''(ii) a description of whether and how

2 the covered entity, or the covered entity's

3 affiliates or service providers, de-identifies

4 information, including the methods used to

5 de-identify such information; and

6 ''(iii) a description of whether and

7 how the covered entity, or the covered enti-

8 ty's affiliates or service providers, gen-

9 erates or uses any consumer score to make

10 decisions concerning a young consumer or

11 child, and the source or sources of any

12 such consumer score;

13 ''(E) a description of how long and the cir-

14 cumstances under which the covered entity re-

15 tains covered information;

16 ''(F) a description of all of the purposes

17 for which the covered entity discloses covered

18 information with service providers and, on a bi-

19 ennial basis, the categories of service providers;

20 ''(G) a description of whether and for what

21 purposes the covered entity discloses informa-

22 tion to third parties;

23 ''(H) whether a covered entity sells or oth-

24 erwise shares covered information with data

1 brokers or processes covered information for

2 targeted advertising;

3 ''(I) whether a covered entity collects cov-

4 ered information about young consumers or

5 children over time and across different websites

6 or mobile applications when a young consumer

7 or child uses the covered entity's website or mo-

8 bile application;

9 ''(J) how a young consumer or a parent of

10 a child can exercise their rights to access, cor-

11 rect, and delete such young consumer's or

12 child's covered information as set forth under

13 paragraph (5);

14 ''(K) how a young consumer or a parent of

15 a child can grant, withhold, or withdraw the

16 consent required under paragraph (2), including

17 how to modify consent for the processing of

18 covered information, and the consequences of

19 withholding, withdrawing, or modifying such

20 consent;

21 ''(L) the effective date of the notice; and

22 ''(M) how the covered entity will commu-

23 nicate material changes of the privacy policy to

24 the young consumer or the parent of a child.

25 ''(2) CONSENT REQUIRED.—

1   ''(A) IN GENERAL.—Such regulations shall
2   require a covered entity that has actual or con-
3   structive knowledge that such covered entity is
4   processing covered information about a young
5   consumer or child—

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

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

22   ''(I) obtain verifiable consent; or
23   ''(II) delete all covered informa-
24   tion about such young consumer or
25   child.

14

1 ''(B) WHEN CONSENT NOT REQUIRED.—
2 Such regulations shall provide that verifiable
3 consent under this paragraph is not required in
4 the case of—

5 ''(i) online contact information col-
6 lected from a young consumer or child
7 that—

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

12 ''(II) is not used to re-contact the
13 young consumer or child; and

14 ''(III) is not retained by the cov-
15 ered entity after responding as de-
16 scribed in subclause (I);

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

1 ''(iii) the processing of such informa-

2 tion by the covered entity is necessary—

3 ''(I) to respond to judicial proc-

4 ess; or

5 ''(II) to the extent permitted

6 under other provisions of law, to pro-

7 vide information to law enforcement

8 agencies or for an investigation on a

9 matter related to public safety.

10 ''(C) WITHDRAWAL OF CONSENT.—Such

11 regulations shall further provide a young con-

12 sumer or the parent of a child, as applicable, a

13 mechanism to withdraw his or her consent at

14 any time in a manner that is as easy as the

15 mechanism to give consent. Such withdrawal of

16 consent shall not be construed to affect the law-

17 fulness of any processing based on verifiable

18 consent before such withdrawal.

19 ''(E) PROHIBITION ON LIMITING OR DIS-

20 CONTINUING SERVICE.—Such regulations shall

21 prohibit a covered entity from refusing to pro-

22 vide a service, or discontinuing a service pro-

23 vided, to a young consumer or child, if the

24 young consumer or parent of the child, as appli-

25 cable, refuses to consent, or withdraws consent,

16

1 to the processing of any covered information
2 not essential to the covered entity to provide
3 such service.

4 ''(3) RETENTION OF DATA.—

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

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

18 ''(i) compliance with laws, regulations,
19 or other legal obligations;

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

23 ''(iii) repairing errors that impair ex-
24 isting functionality.

1 ''(4) LIMITATION ON DISCLOSING COVERED IN-
2 FORMATION TO THIRD PARTIES.—

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

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

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

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

19 ''(C) RESPONSIBILITIES OF COVERED EN-
20 TITIES REGARDING THIRD PARTIES.—Such reg-
21 ulations shall require a covered entity—

22 ''(i) to perform reasonable due dili-
23 gence in selecting any third party to enter
24 into an agreement under subparagraph (A)
25 and to exercise reasonable oversight over

1 all such third parties to assure compliance

2 with the requirements of this Act; and

3 ''(ii) if the covered entity has actual

4 or constructive knowledge that a third

5 party has violated the agreement described

6 in subparagraph (A) to—

7 ''(I) to the extent practicable,

8 promptly take steps to ensure compli-

9 ance with such agreement; and

10 ''(II) promptly report to the

11 Commission that such a violation oc-

12 curred.

13 ''(5) RIGHT TO ACCESS, CORRECT, AND DELETE

14 COVERED INFORMATION.—

15 ''(A) ACCESS.—Such regulations shall re-

16 quire a covered entity, upon request of a young

17 consumer or the parent of a child and after

18 proper identification of such young consumer or

19 parent, to promptly provide to such young con-

20 sumer or parent, as applicable—

21 ''(i) access to all covered information

22 pertaining to such young consumer or child

23 including a description of—

24 ''(I) each type of covered infor-

25 mation processed by the covered enti-

1 ty pertaining to the young consumer

2 or child, as applicable;

3 ''(II) each purpose for which the

4 covered entity processes each category

5 of covered information pertaining to

6 the young consumer or child, as appli-

7 cable;

8 ''(III) the names of each third

9 party to which the covered entity dis-

10 closed the covered information;

11 ''(IV) each source other than the

12 young consumer or child, as applica-

13 ble, from which the covered entity ob-

14 tained covered information pertaining

15 to that young consumer or child, as

16 applicable;

17 ''(V) how long the covered infor-

18 mation will be retained or stored by

19 the covered entity and, if not known,

20 the criteria the covered entity uses to

21 determine how long the covered infor-

22 mation will be retained or stored by

23 the covered entity; and

24 ''(VI) with respect to any con-

25 sumer score of the young consumer or

1 child, as applicable, processed by the

2 covered entity, of—

3 ''(aa) how such consumer

4 score is used by the covered enti-

5 ty to make decisions with respect

6 to that young consumer or child,

7 as applicable; and

8 ''(bb) the source that cre-

9 ated the consumer score if not

10 created by the covered entity;

11 and

12 ''(ii) a simple and reasonable mecha-

13 nism by which a young consumer or parent

14 of a child may request access to the infor-

15 mation described under clause (i), as appli-

16 cable.

17 ''(B) DELETION.—Such regulations shall

18 require a covered entity, subject to the excep-

19 tions established under subparagraph (D)—

20 ''(i) to establish a simple and reason-

21 able mechanism by which a young con-

22 sumer or parent of a child with respect to

23 whom the covered entity processes covered

24 information may request the covered entity

21

1 to delete any covered information (or any

2 component thereof); and

3 "(ii) to delete such covered informa-

4 tion not later than 45 days after receiving

5 such request.

6 "(C) CORRECTION.—Such regulations shall

7 require a covered entity, subject to the excep-

8 tions established under subparagraph (D)—

9 "(i) to provide each young consumer

10 or parent of a child with respect to whom

11 the covered entity processes covered infor-

12 mation, as applicable, a simple and reason-

13 able mechanism by which that young con-

14 sumer or parent may submit a request to

15 the entity—

16 "(I) to dispute the accuracy or

17 completeness of that covered informa-

18 tion, or part or component thereof;

19 and

20 "(II) to request that such cov-

21 ered information, or part or compo-

22 nent thereof, be corrected for accuracy

23 or completeness; and

24 "(ii) not later than 45 days after re-

25 ceiving a request under clause (i)—

1 ''(I) to determine whether the

2 covered information disputed or re-

3 quested to be corrected is inaccurate

4 or incomplete; and

5 ''(II) to correct the accuracy or

6 completeness of any covered informa-

7 tion determined by the covered entity

8 to be inaccurate or incomplete.

9 ''(D) EXCEPTIONS.—Such regulations

10 shall permit a covered entity to deny a request

11 made under subparagraphs (A), (B), or (C) if—

12 ''(i) the covered entity is unable to

13 verify the identity of the young consumer

14 or parent of a child making the request

15 after making a reasonable effort to verify

16 the identity of such young consumer or

17 parent; or

18 ''(ii) with respect to the request made,

19 the covered entity determines that—

20 ''(I) the entity is limited from

21 doing so by law, legally recognized

22 privilege, or other legal obligation; or

23 ''(II) fulfilling the request would

24 create a legitimate risk to the privacy,

25 security, or safety of someone other

1 than the young consumer or child, as

2 applicable; or

3 ''(iii) with respect to a request to cor-

4 rect covered information made under sub-

5 paragraph (C) or a request to delete cov-

6 ered information made under subpara-

7 graph (D), the covered entity determines

8 that the retention of the covered informa-

9 tion is necessary to—

10 ''(I) complete the transaction

11 with the young consumer or child, as

12 applicable, for which the covered in-

13 formation was collected;

14 ''(II) provide a product or service

15 affirmatively requested by the young

16 consumer or parent of a child, as ap-

17 plicable;

18 ''(III) perform a contract with

19 the young consumer or a parent of a

20 child, as applicable, including a con-

21 tract for billing, financial reporting, or

22 accounting;

23 ''(IV) to keep a record of the cov-

24 ered information for law enforcement

25 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

26

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

29

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 stat-

2 ute or regulation or upon request of the Com-

3 mission.'' '';

4 (4) in subsection (c)—

5 (A) by inserting ''subsection (a)(2) or''

6 after ''violation of''; and

7 (B) by striking ''under subsection (a)'' and

8 inserting ''under subsection (b)''.

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-

33

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 redesig-

23   nating paragraphs (3) through (6) as para-

24   graphs (2) through (5), respectively; and

34

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:

"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.—

36

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**".