

116TH CONGRESS  
2D SESSION

**S.** \_\_\_\_\_

To protect the privacy of consumers' personal health information, proximity data, and geolocation data during the coronavirus public health crisis.

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IN THE SENATE OF THE UNITED STATES

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Mr. WICKER (for himself, Mr. THUNE, Mr. MORAN, and Mrs. BLACKBURN) introduced the following bill; which was read twice and referred to the Committee on \_\_\_\_\_

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**A BILL**

To protect the privacy of consumers' personal health information, proximity data, and geolocation data during the coronavirus public health crisis.

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 "COVID-19 Consumer  
5 Data Protection Act of 2020".

6 **SEC. 2. DEFINITIONS.**

7 In this Act:

8 (1) **AGGREGATED DATA.**—The term "aggre-  
9 gated data" means information that—

1 (A) relates to a group or category of indi-  
2 viduals; and

3 (B) does not identify, and is not linked or  
4 reasonably linkable to, any individual.

5 (2) AFFIRMATIVE EXPRESS CONSENT.—

6 (A) IN GENERAL.—The term “affirmative  
7 express consent” means an affirmative act by  
8 an individual that—

9 (i) clearly communicates the individ-  
10 ual’s authorization of an act or practice;  
11 and

12 (ii) is taken after the individual has  
13 been presented with a clear and con-  
14 spicuous description of such act or prac-  
15 tice.

16 (B) NO INFERENCE FROM INACTION.—For  
17 purposes of subparagraph (A), the affirmative  
18 express consent of an individual cannot be in-  
19 ferred from inaction.

20 (3) COLLECTION.—The term “collection”  
21 means buying, renting, gathering, accessing, or oth-  
22 erwise acquiring any covered data of an individual  
23 by any means.

24 (4) COMMISSION.—The term “Commission”  
25 means the Federal Trade Commission.

1           (5) COVERED DATA.—The term “covered data”  
2 means precise geolocation data, proximity data, and  
3 personal health information.

4           (6) COVERED ENTITY.—The term “covered en-  
5 tity” means any entity or person that—

6           (A) is—

7           (i) subject to the Federal Trade Com-  
8 mission Act (15 U.S.C. 41 et seq.); or

9           (ii) a common carrier or nonprofit or-  
10 ganization described in section 4(a)(3);

11           and

12           (B) collects, processes, or transfers covered  
13 data.

14           (7) COVID–19 PUBLIC HEALTH EMERGENCY.—  
15 The term “COVID–19 public health emergency”  
16 means the period—

17           (A) beginning on the date of enactment of  
18 this Act; and

19           (B) ending on the last day of the public  
20 health emergency declared by the Secretary of  
21 Health and Human Services pursuant to sec-  
22 tion 319 of the Public Health Service Act (42  
23 U.S.C. 247d) on January 31, 2020, entitled  
24 “Determination that a Public Health Emer-  
25 gency Exists Nationwide as the Result of the

1           2019 Novel Coronavirus” (including any re-  
2           newal of such declaration pursuant to such sec-  
3           tion 319).

4           (8) DE-IDENTIFIED DATA.—The term “de-iden-  
5           tified data” means information held by a covered en-  
6           tity that—

7                   (A) does not identify and is not reasonably  
8           linkable to an individual;

9                   (B) does not contain any personal identi-  
10          fiers or other information that could be readily  
11          used to re-identify the individual to whom the  
12          information pertains;

13                  (C) is subject to a public commitment by  
14          the covered entity—

15                   (i) to refrain from attempting to use  
16          such information to identify any individual;  
17          and

18                   (ii) to adopt technical and organiza-  
19          tional measures to ensure that such infor-  
20          mation is not linked to any individual; and

21                  (D) is not disclosed by the covered entity  
22          to any other party unless the disclosure is sub-  
23          ject to a contractually or other legally binding  
24          requirement that—

1 (i) the recipient of the information  
2 shall not use the information to identify  
3 any individual; and

4 (ii) all onward disclosures of the infor-  
5 mation shall be subject to the requirement  
6 described in clause (i).

7 (9) DELETE.—The term “delete” means to re-  
8 move or destroy information such that it is not  
9 maintained in human or machine readable form and  
10 cannot be retrieved or utilized in the normal course  
11 of business.

12 (10) INDIVIDUAL.—The term “individual”  
13 means a natural person residing in the United  
14 States.

15 (11) PERSONAL HEALTH INFORMATION.—

16 (A) IN GENERAL.—The term “personal  
17 health information” means information relating  
18 to an individual that—

19 (i) is—

20 (I) genetic information of the in-  
21 dividual; or

22 (II) information relating to the  
23 diagnosis or treatment of past,  
24 present, or future physical, mental

1 health, or disability of the individual;  
2 and

3 (ii) identifies, or is reasonably linkable  
4 to, the individual.

5 (B) EXCLUSIONS.—Such term does not in-  
6 clude the following:

7 (i) Information from education  
8 records that are subject to the require-  
9 ments of section 444 of the General Edu-  
10 cation Provisions Act (20 U.S.C. 1232g,  
11 commonly referred to as the “Family Edu-  
12 cational Rights and Privacy Act of 1974”)  
13 or from records described in subsection  
14 (a)(4)(B)(iv) of such section.

15 (ii) Information subject to regulations  
16 promulgated pursuant to section 264(c) of  
17 the Health Insurance Portability and Ac-  
18 countability Act of 1996 (42 U.S.C.  
19 1320d–2 note).

20 (iii) Aggregated data.

21 (iv) De-identified data.

22 (v) Publicly available information.

23 (12) PRECISE GEOLOCATION DATA.—

24 (A) IN GENERAL.—The term “precise  
25 geolocation data” means technologically derived

1 information capable of determining with reason-  
2 able specificity the past or present actual phys-  
3 ical location of an individual at a specific point  
4 in time.

5 (B) EXCLUSIONS.—Such term does not in-  
6 clude the following:

7 (i) Aggregated data.

8 (ii) De-identified data.

9 (iii) Publicly available information.

10 (13) PROCESS.—The term “process” means  
11 any operation or set of operations performed on cov-  
12 ered data, including analyzing, organizing, struc-  
13 turing, retaining, using, or otherwise handling such  
14 data.

15 (14) PROXIMITY DATA.—The term “proximity  
16 data” means technologically derived information that  
17 identifies with reasonable specificity the past or  
18 present proximity of one individual to another.

19 (15) PUBLICLY AVAILABLE INFORMATION.—  
20 The term “publicly available information” means  
21 any information that—

22 (A) has been lawfully made available to the  
23 general public from Federal, State, or local gov-  
24 ernment records; or

1 (B) is widely available to the general pub-  
2 lic, including information from—

3 (i) a telephone book or online direc-  
4 tory;

5 (ii) video, internet, or audio content;

6 or

7 (iii) the news media or a website that  
8 is available to the general public on an un-  
9 restricted basis (for purposes of this sub-  
10 clause a website is not restricted solely be-  
11 cause there is a fee or log-in requirement  
12 associated with accessing the website).

13 (16) TRANSFER.—The term “transfer” means  
14 to disclose, release, share, disseminate, or otherwise  
15 make available covered data by any means.

16 **SEC. 3. PRIVACY OF COVERED DATA.**

17 (a) IN GENERAL.—During the COVID–19 public  
18 health emergency, it shall be unlawful for a covered entity  
19 to collect, process, or transfer the covered data of an indi-  
20 vidual for a purpose described in subsection (b) unless—

21 (1) the covered entity provides the individual  
22 with prior notice of the purpose for such collection,  
23 processing, and transfer; and

24 (2) the individual has given affirmative express  
25 consent to such collection, processing, or transfer.

1 (b) COVERED PURPOSES.—The purposes described in  
2 this subsection are the following:

3 (1) Collecting, processing, or transferring the  
4 covered data of an individual to track the spread,  
5 signs, or symptoms of COVID–19.

6 (2) Collecting, processing, or transferring the  
7 covered data of an individual to measure compliance  
8 with social distancing guidelines or other require-  
9 ments related to COVID–19 that are imposed on in-  
10 dividuals under a Federal, State, or local govern-  
11 ment order.

12 (3) Collecting, processing, or transferring the  
13 covered data of an individual to conduct contact  
14 tracing for COVID–19 cases.

15 (c) TRANSPARENCY.—

16 (1) PRIVACY POLICY.—A covered entity that  
17 collects, processes, or transfers covered data for a  
18 purpose described in subsection (b) shall, not later  
19 than 14 days after the enactment of this Act, pub-  
20 lish a privacy policy that—

21 (A) is disclosed in a clear and conspicuous  
22 manner to an individual prior to or at the point  
23 of the collection of covered data for such a pur-  
24 pose from the individual;

1 (B) is made available in a clear and con-  
2 spicuous manner to the public;

3 (C) includes whether, subject to the affirm-  
4 ative express consent requirement of subsection  
5 (a), the covered entity transfers covered data  
6 for such a purpose and the categories of recipi-  
7 ents to whom the covered entity transfers cov-  
8 ered data for such purpose;

9 (D) includes a general description of the  
10 covered entity's data retention practices for cov-  
11 ered data used for a purpose described in sub-  
12 section (b) and the purposes for such retention;  
13 and

14 (E) includes a general description of the  
15 covered entity's data security practices.

16 (2) REPORTING.—During the COVID–19 public  
17 health emergency, a covered entity that collects,  
18 processes, or transfers covered data for a purpose  
19 described in subsection (b) shall, not less frequently  
20 than once every 30 days, issue a public report—

21 (A) stating in aggregate terms the number  
22 of individuals whose covered data the entity has  
23 collected, processed, or transferred for such a  
24 purpose; and

1 (B) describing the categories of covered  
2 data collected, processed, or transferred by the  
3 entity, the specific purposes for which each such  
4 category of covered data is collected, processed,  
5 or transferred, and, in the case of transferred  
6 covered data, to whom such data was trans-  
7 ferred.

8 (d) RIGHT TO OPT-OUT.—During the COVID–19  
9 public health emergency, each covered entity that collects,  
10 processes, or transfers covered data for a purpose de-  
11 scribed in subsection (b) shall do the following:

12 (1) The covered entity shall provide an effective  
13 mechanism for an individual who has consented pur-  
14 suant to subsection (a) to the collection, processing,  
15 or transfer of the individual’s covered data for such  
16 a purpose to revoke such consent.

17 (2) A covered entity that receives a revocation  
18 of consent from an individual described in paragraph  
19 (1) shall, as soon as practicable but in no case later  
20 than 14 days after receiving such revocation, stop  
21 collecting, processing, or transferring the covered  
22 data of such individual for a purpose described in  
23 subsection (b), or shall de-identify all such data.

24 (e) DATA DELETION.—A covered entity shall delete  
25 or de-identify all covered data collected, processed, or

1 transferred for a purpose described in subsection (b) when  
2 it is no longer being used for such purpose.

3 (f) DATA MINIMIZATION.—

4 (1) IN GENERAL.—During the COVID–19 pub-  
5 lic health emergency, a covered entity that collects,  
6 processes, or transfers covered data for a purpose  
7 described in subsection (b) shall not collect, process,  
8 or transfer covered data beyond what is reasonably  
9 necessary, proportionate, and limited to carry out  
10 such purpose.

11 (2) GUIDELINES.—Not later than 30 days after  
12 the date of enactment of this Act, the Commission  
13 shall issue guidelines recommending best practices  
14 for covered entities to minimize the collection, proc-  
15 essing, and transfer of covered data in accordance  
16 with this subsection.

17 (g) PROTECTION OF COVERED DATA.—During the  
18 COVID–19 public health emergency, a covered entity that  
19 collects, processes, or transfers covered data for a purpose  
20 described in subsection (b) shall establish, implement, and  
21 maintain reasonable administrative, technical, and phys-  
22 ical data security policies and practices to protect against  
23 risks to the confidentiality, security, and integrity of such  
24 data.

1 (h) EXCEPTION.—Notwithstanding subsection (a), a  
2 covered entity may collect, process, or transfer the covered  
3 data of an individual or group of individuals for a purpose  
4 described in subsection (b) during the COVID–19 public  
5 health emergency without obtaining the affirmative ex-  
6 press consent of the individual if such collection, proc-  
7 essing, or transfer is necessary to allow the covered entity  
8 to comply with a legal obligation.

9 **SEC. 4. ENFORCEMENT.**

10 (a) ENFORCEMENT BY FEDERAL TRADE COMMIS-  
11 SION.—

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

19 (2) POWERS OF COMMISSION.—The Commis-  
20 sion shall enforce this Act and any regulation pro-  
21 mulgated under this Act in the same manner, by the  
22 same means, and with the same jurisdiction, powers,  
23 and duties as though all applicable terms and provi-  
24 sions of the Federal Trade Commission Act (15  
25 U.S.C. 41 et seq.) were incorporated into and made

1 a part of this Act. Any person who violates such sec-  
2 tion shall be subject to the penalties and entitled to  
3 the privileges and immunities provided in the Fed-  
4 eral Trade Commission Act.

5 (3) COOPERATION WITH OTHER AGENCIES.—  
6 Whenever the Commission obtains information that  
7 any covered entity may have processed or trans-  
8 ferred covered data in violation of Federal anti-dis-  
9 crimination laws, the Commission shall transmit the  
10 information to the appropriate Executive or State  
11 agency with authority to initiate proceedings related  
12 to such violation.

13 (4) COMMON CARRIERS AND NONPROFIT ORGA-  
14 NIZATIONS.—Notwithstanding section 4, 5(a)(2), or  
15 6 of the Federal Trade Commission Act (15 U.S.C.  
16 44, 45(a)(2), 46) or any jurisdictional limitation of  
17 the Commission, the Commission shall also enforce  
18 this Act and any regulation promulgated under this  
19 Act in the same manner provided in paragraphs (1)  
20 and (2) of this subsection with respect to—

21 (A) common carriers subject to the Com-  
22 munications Act of 1934 (47 U.S.C. 151 et  
23 seq.) and all Acts amendatory thereof and sup-  
24 plementary thereto; and

1 (B) organizations not organized to carry  
2 on business for their own profit or that of their  
3 members.

4 (b) EFFECT ON OTHER LAWS.—

5 (1) IN GENERAL.—Nothing in this Act shall be  
6 construed in any way to limit the authority of the  
7 Commission under any other provision of law.

8 (2) NONAPPLICATION OF FCC LAWS AND REGU-  
9 LATIONS TO COVERED ENTITIES.—Notwithstanding  
10 any other provision of law, neither any provision of  
11 the Communications Act of 1934 (47 U.S.C. 151 et.  
12 seq.) and all Acts amendatory thereof and supple-  
13 mentary thereto nor any regulation promulgated by  
14 the Federal Communications Commission under  
15 such Acts shall apply to any covered entity with re-  
16 spect to the collection, processing, or transferring of  
17 covered data, except to the extent that such provi-  
18 sion or regulation pertains solely to “911” lines or  
19 any other emergency line of a hospital, medical pro-  
20 vider or service office, health care facility, poison  
21 control center, fire protection agency, or law enforce-  
22 ment agency.

23 (3) STATE PREEMPTION.—No State or political  
24 subdivision of a State may adopt, maintain, enforce,  
25 or continue in effect any law, regulation, rule, re-

1        requirement, or standard related to the collection,  
2        processing, or transfer of covered data for a purpose  
3        described in section 3(b).

4        (c) ENFORCEMENT BY STATE ATTORNEYS GEN-  
5        ERAL.—In any case in which the attorney general of a  
6        State has reason to believe that an interest of the residents  
7        of that State has been or is adversely affected by the en-  
8        gagement of any covered entity that is not subject to the  
9        Commission’s enforcement authority under subsection (a)  
10       in an act or practice that violates this Act or a regulation  
11       promulgated under this Act, the attorney general of the  
12       State, as *parens patriae*, may bring a civil action on behalf  
13       of the residents of the State in an appropriate district  
14       court of the United States to—

15                (1) enjoin that act or practice;

16                (2) enforce compliance with this Act or the reg-  
17        ulation;

18                (3) obtain damages, civil penalties, restitution,  
19        or other compensation on behalf of the residents of  
20        the State; or

21                (4) obtain such other relief as the court may  
22        consider to be appropriate.