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(Original Signature of Member)

117TH CONGRESS
2D SESSION

H. R.

To protect the privacy of personal reproductive or sexual health information,
and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

Ms. JACOBS of California introduced the following bill; which was referred to
the Committee on _____

A BILL

To protect the privacy of personal reproductive or sexual
health information, 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 “My Body, My Data
5 Act of 2022”.

6 **SEC. 2. MINIMIZATION.**

7 (a) MINIMIZATION OF COLLECTING, RETAINING,
8 USING, AND DISCLOSING.—A regulated entity may not

1 collect, retain, use, or disclose personal reproductive or
2 sexual health information except—

3 (1) with the express consent of the individual to
4 whom such information relates; or

5 (2) as is strictly necessary to provide a product
6 or service that the individual to whom such informa-
7 tion relates has requested from such regulated enti-
8 ty.

9 (b) MINIMIZATION OF EMPLOYEE ACCESS.—A regu-
10 lated entity shall restrict access to personal reproductive
11 or sexual health information by the employees or service
12 providers of such regulated entity to such employees or
13 service providers for which access is necessary to provide
14 a product or service that the individual to whom such in-
15 formation relates has requested from such regulated enti-
16 ty.

17 **SEC. 3. RIGHT OF ACCESS AND DELETION.**

18 (a) RIGHT OF ACCESS.—

19 (1) IN GENERAL.—A regulated entity shall
20 make available a reasonable mechanism by which an
21 individual, upon a verified request, may access—

22 (A) any personal reproductive or sexual
23 health information relating to such individual
24 that is retained by such regulated entity, in-
25 cluding—

1 (i) in the case of such information
2 that such regulated entity collected from
3 third parties, how and from which specific
4 third parties such regulated entity collected
5 such information; and

6 (ii) such information that such regu-
7 lated entity inferred about such individual;
8 and

9 (B) a list of the specific third parties to
10 which such regulated entity has disclosed any
11 personal reproductive or sexual health informa-
12 tion relating to such individual.

13 (2) FORMAT.—A regulated entity shall make
14 the information described in paragraph (1) available
15 in both a human-readable format and a structured,
16 interoperable, and machine-readable format.

17 (b) RIGHT OF DELETION.—A regulated entity shall
18 make available a reasonable mechanism by which an indi-
19 vidual, upon a verified request, may request the deletion
20 of any personal reproductive or sexual health information
21 relating to such individual that is retained by such regu-
22 lated entity, including any such information that such regu-
23 lated entity collected from a third party or inferred from
24 other information retained by such regulated entity.

25 (c) GENERAL PROVISIONS.—

1 (1) REASONABLE MECHANISM DEFINED.—In
2 this section, the term “reasonable mechanism”
3 means, with respect to a regulated entity and a right
4 under this section, a mechanism that—

5 (A) is equivalent in availability and ease of
6 use to that of other mechanisms for commu-
7 nicating or interacting with such regulated enti-
8 ty; and

9 (B) includes an online means of exercising
10 such right.

11 (2) TIMELINE FOR COMPLYING WITH RE-
12 QUESTS.—A regulated entity shall comply with a
13 verified request received under this section without
14 undue delay but not later than 15 days after the
15 date on which such regulated entity receives such
16 verified request.

17 (3) FEES PROHIBITED.—A regulated entity
18 may not charge a fee to an individual for a request
19 made under this section.

20 (4) RULES OF CONSTRUCTION.—Nothing in
21 this section shall be construed to require a regulated
22 entity to—

23 (A) take an action that would convert in-
24 formation that is not personal information into
25 personal information;

1 (B) collect or retain personal information
2 that such regulated entity would otherwise not
3 collect or retain; or

4 (C) retain personal information longer
5 than such regulated entity would otherwise re-
6 tain such information.

7 **SEC. 4. PRIVACY POLICY.**

8 (a) **POLICY REQUIRED.**—A regulated entity shall
9 maintain a privacy policy relating to the practices of such
10 regulated entity regarding the collecting, retaining, using,
11 and disclosing of personal reproductive or sexual health
12 information.

13 (b) **PUBLICATION REQUIRED.**—If a regulated entity
14 has a website, such regulated entity shall prominently pub-
15 lish the privacy policy required by subsection (a) on such
16 website.

17 (c) **CONTENTS.**—The privacy policy required by sub-
18 section (a) shall be clear and conspicuous and shall con-
19 tain, at a minimum, the following:

20 (1) A description of the practices of the regu-
21 lated entity regarding the collecting, retaining,
22 using, and disclosing of personal reproductive or sex-
23 ual health information.

1 (2) A clear and concise statement of the cat-
2 egories of such information collected, retained, used,
3 or disclosed by the regulated entity.

4 (3) A clear and concise statement of the pur-
5 poses of the regulated entity for the collecting, re-
6 taining, using, or disclosing of such information.

7 (4) A list of the specific third parties to which
8 the regulated entity discloses such information, and
9 a clear and concise statement of the purposes for
10 which the regulated entity discloses such informa-
11 tion, including how the information may be used by
12 each such third party.

13 (5) A list of the specific third parties from
14 which the regulated entity has collected such infor-
15 mation, and a clear and concise statement of the
16 purposes for which the regulated entity collects such
17 information.

18 (6) A clear and concise statement describing
19 the extent to which individuals may exercise control
20 over the collecting, retaining, using, and disclosing
21 of personal reproductive or sexual health information
22 by the regulated entity, and the steps an individual
23 must take to implement such controls.

24 (7) A clear and concise statement describing
25 the efforts of the regulated entity to protect personal

1 reproductive or sexual health information from un-
2 authorized disclosure.

3 **SEC. 5. ENFORCEMENT.**

4 (a) ENFORCEMENT BY FEDERAL TRADE COMMIS-
5 SION.—

6 (1) UNFAIR OR DECEPTIVE ACTS OR PRAC-
7 TICES.—A violation of this Act or a regulation pro-
8 mulgated under this Act shall be treated as a viola-
9 tion of a regulation under section 18(a)(1)(B) of the
10 Federal Trade Commission Act (15 U.S.C.
11 57a(a)(1)(B)) regarding unfair or deceptive acts or
12 practices.

13 (2) POWERS OF COMMISSION.—Except as pro-
14 vided in section 6(7)(A)(ii), the Commission shall
15 enforce this Act and the regulations promulgated
16 under this Act in the same manner, by the same
17 means, and with the same jurisdiction, powers, and
18 duties as though all applicable terms and provisions
19 of the Federal Trade Commission Act (15 U.S.C. 41
20 et seq.) were incorporated into and made a part of
21 this Act, and any regulated entity that violates this
22 Act or a regulation promulgated under this Act shall
23 be subject to the penalties and entitled to the privi-
24 leges and immunities provided in the Federal Trade
25 Commission Act.

1 (3) RULEMAKING AUTHORITY.—The Commis-
2 sion may promulgate regulations under section 553
3 of title 5, United States Code, to implement this
4 Act.

5 (b) ENFORCEMENT BY INDIVIDUALS.—

6 (1) IN GENERAL.—Any individual alleging a
7 violation of this Act or a regulation promulgated
8 under this Act may bring a civil action in any court
9 of competent jurisdiction.

10 (2) RELIEF.—In a civil action brought under
11 paragraph (1) in which the plaintiff prevails, the
12 court may award—

13 (A) an amount not less than \$100 and not
14 greater than \$1,000 per violation per day, or
15 actual damages, whichever is greater;

16 (B) punitive damages;

17 (C) reasonable attorney's fees and litiga-
18 tion costs; and

19 (D) any other relief, including equitable or
20 declaratory relief, that the court determines ap-
21 propriate.

22 (3) INJURY IN FACT.—A violation of this Act,
23 or a regulation promulgated under this Act, with re-
24 spect to personal reproductive or sexual health infor-
25 mation constitutes a concrete and particularized in-

1 jury in fact to the individual to whom such informa-
2 tion relates.

3 (4) INVALIDITY OF PRE-DISPUTE ARBITRATION
4 AGREEMENTS AND PRE-DISPUTE JOINT ACTION
5 WAIVERS.—

6 (A) IN GENERAL.—Notwithstanding any
7 other provision of law, no pre-dispute arbitra-
8 tion agreement or pre-dispute joint-action waiv-
9 er shall be valid or enforceable with respect to
10 a dispute arising under this Act.

11 (B) APPLICABILITY.—Any determination
12 as to whether or how this paragraph applies to
13 any dispute shall be made by a court, rather
14 than an arbitrator, without regard to whether
15 such agreement purports to delegate such deter-
16 mination to an arbitrator.

17 (C) DEFINITIONS.—For purposes of this
18 paragraph:

19 (i) PRE-DISPUTE ARBITRATION
20 AGREEMENT.—The term “pre-dispute arbi-
21 tration agreement” means any agreement
22 to arbitrate a dispute that has not arisen
23 at the time of the making of the agree-
24 ment.

1 (ii) PRE-DISPUTE JOINT-ACTION
2 WAIVER.—The term “pre-dispute joint-ac-
3 tion waiver” means an agreement that
4 would prohibit a party from participating
5 in a joint, class, or collective action in a ju-
6 dicial, arbitral, administrative, or other
7 forum, concerning a dispute that has not
8 yet arisen at the time of the making of the
9 agreement.

10 **SEC. 6. DEFINITIONS.**

11 In this Act:

12 (1) COLLECT.—The term “collect” means, with
13 respect to personal reproductive or sexual health in-
14 formation, for a regulated entity to obtain such in-
15 formation in any manner.

16 (2) COMMISSION.—The term “Commission”
17 means the Federal Trade Commission.

18 (3) DISCLOSE.—The term “disclose” means,
19 with respect to personal reproductive or sexual
20 health information, for a regulated entity to release,
21 transfer, sell, provide access to, license, or divulge
22 such information in any manner to a third party or
23 government entity.

24 (4) EXPRESS CONSENT.—

1 (A) IN GENERAL.—The term “express con-
2 sent” means, with respect to the collecting, re-
3 taining, using, or disclosing of personal repro-
4 ductive or sexual health information, informed,
5 opt-in, voluntary, specific, and unambiguous
6 written consent (which may include written con-
7 sent provided by electronic means) to such col-
8 lecting, retaining, using, or disclosing of such
9 information.

10 (B) EXCLUSIONS.—The term “express
11 consent” does not include any of the following:

12 (i) Consent secured without first pro-
13 viding to the individual a clear and con-
14 spicuous disclosure, apart from any privacy
15 policy, terms of service, terms of use, gen-
16 eral release, user agreement, or other simi-
17 lar document, of all information material
18 to the provision of consent.

19 (ii) Hovering over, muting, pausing,
20 or closing a given piece of content.

21 (iii) Agreement obtained through the
22 use of a user interface designed or manipu-
23 lated with the substantial effect of sub-
24 verting or impairing user autonomy, deci-
25 sion-making, or choice.

1 (5) PERSONAL INFORMATION.—The term “per-
2 sonal information” means information that identi-
3 fies, relates to, describes, is reasonably capable of
4 being associated with, or could reasonably be linked,
5 directly or indirectly, with a particular individual.

6 (6) PERSONAL REPRODUCTIVE OR SEXUAL
7 HEALTH INFORMATION.—The term “personal repro-
8 ductive or sexual health information” means per-
9 sonal information relating to the past, present, or
10 future reproductive or sexual health of an individual,
11 including—

12 (A) efforts to research or obtain reproduc-
13 tive or sexual information services or supplies,
14 including location information that might indi-
15 cate an attempt to acquire or receive such in-
16 formation services or supplies;

17 (B) reproductive or sexual health condi-
18 tions, status, diseases, or diagnoses, including
19 pregnancy, menstruation, ovulation, ability to
20 conceive a pregnancy, whether such individual
21 is sexually active, and whether such individual
22 is engaging in unprotected sex;

23 (C) reproductive- and sexual-health-related
24 surgeries or procedures, such as termination of
25 a pregnancy;

1 (D) use or purchase of contraceptives,
2 birth control, or any medication related to re-
3 productive health, including abortifacients;

4 (E) bodily functions, vital signs, measure-
5 ment, or symptoms related to menstruation or
6 pregnancy, such as basal temperature, cramps,
7 bodily discharge, or hormone levels;

8 (F) any information about diagnoses or di-
9 agnostic testing, treatment, medications, or the
10 use of any product or service relating to the
11 matters described in subparagraphs (A)
12 through (E); and

13 (G) any information described in subpara-
14 graphs (A) through (F) that is derived or ex-
15 trapolated from non-health information (such as
16 proxy, derivative, inferred, emergent, or algo-
17 rithmic data).

18 (7) REGULATED ENTITY.—

19 (A) IN GENERAL.—The term “regulated
20 entity” means any entity (to the extent such en-
21 tity is engaged in activities in or affecting com-
22 merce (as defined in section 4 of the Federal
23 Trade Commission Act (15 U.S.C. 44))) that
24 is—

1 (i) a person, partnership, or corpora-
2 tion subject to the jurisdiction of the Com-
3 mission under section 5(a)(2) of the Fed-
4 eral Trade Commission Act (15 U.S.C.
5 45(a)(2)); or

6 (ii) notwithstanding section 4, 5(a)(2),
7 or 6 of the Federal Trade Commission Act
8 (15 U.S.C. 44; 45(a)(2); 46) or any juris-
9 dictional limitation of the Commission—

10 (I) a common carrier subject to
11 the Communications Act of 1934 (47
12 U.S.C. 151 et seq.) and all Acts
13 amendatory thereof and supple-
14 mentary thereto; or

15 (II) an organization not orga-
16 nized to carry on business for its own
17 profit or that of its members.

18 (B) EXCLUSIONS.—The term “regulated
19 entity” does not include—

20 (i) an entity that is a covered entity,
21 as defined in section 160.103 of title 45,
22 Code of Federal Regulations (or any suc-
23 cessor to such regulation), to the extent
24 such entity is acting as a covered entity
25 under the HIPAA privacy regulations (as

1 defined in section 1180(b)(3) of the Social
2 Security Act (42 U.S.C. 1320d–9(b)(3));

3 (ii) an entity that is a business asso-
4 ciate, as defined in section 160.103 of title
5 45, Code of Federal Regulations (or any
6 successor to such regulation), to the extent
7 such entity is acting as a business asso-
8 ciate under the HIPAA privacy regulations
9 (as defined in such section 1180(b)(3)); or

10 (iii) an entity that is subject to re-
11 strictions on disclosure of records under
12 section 543 of the Public Health Service
13 Act (42 U.S.C. 290dd–2), to the extent
14 such entity is acting in a capacity subject
15 to such restrictions.

16 (8) SERVICE PROVIDER.—

17 (A) IN GENERAL.—The term “service pro-
18 vider” means a person who—

19 (i) collects, retains, uses, or discloses
20 personal reproductive or sexual health in-
21 formation for the sole purpose of, and only
22 to the extent that such person is, con-
23 ducting business activities on behalf of, for
24 the benefit of, under instruction of, and
25 under contractual agreement with a regu-

1 lated entity and not any other individual or
2 entity; and

3 (ii) does not divulge personal repro-
4 ductive or sexual health information to any
5 individual or entity other than such regu-
6 lated entity or a contractor to such service
7 provider bound to information processing
8 terms no less restrictive than terms to
9 which such service provider is bound.

10 (B) LIMITATION OF APPLICATION.—Such
11 person shall only be considered a service pro-
12 vider in the course of activities described in
13 subparagraph (A)(i).

14 (C) MINIMIZATION BY SERVICE PRO-
15 VIDERS.—For purposes of compliance with sec-
16 tion 2 by a service provider of a regulated enti-
17 ty, a request from an individual to such regu-
18 lated entity for a product or service, and an ex-
19 press consent from such individual to such reg-
20 ulated entity, shall be treated as having also
21 been provided to such service provider.

22 (9) THIRD PARTY.—The term “third party”
23 means, with respect to the disclosing or collecting of
24 personal reproductive or sexual health information,
25 any person who is not—

1 (A) the regulated entity that is disclosing
2 or collecting such information;

3 (B) the individual to whom such informa-
4 tion relates; or

5 (C) a service provider.

6 **SEC. 7. EXCEPTION FOR THE PUBLICATION OF NEWS-**
7 **WORTHY INFORMATION.**

8 Nothing in this Act, or a regulation promulgated
9 under this Act, shall apply with respect to personal repro-
10 ductive or sexual health information that is collected, re-
11 tained, used, or disclosed by a regulated entity for the pub-
12 lication of newsworthy information of legitimate public
13 concern to the public, or to the collecting, retaining, using,
14 or disclosing of such information by a regulated entity for
15 that purpose, if such regulated entity has reasonable safe-
16 guards and processes that prevent the collecting, retain-
17 ing, using, or disclosing of personal reproductive or sexual
18 health information for commercial purposes other than the
19 publication of newsworthy information of legitimate public
20 concern.

21 **SEC. 8. RELATIONSHIP TO FEDERAL AND STATE LAWS.**

22 (a) **FEDERAL LAW PRESERVATION.**—Nothing in this
23 Act, or a regulation promulgated under this Act, shall be
24 construed to limit any other provision of Federal law, ex-
25 cept as specifically provided in this Act.

1 (b) STATE LAW PRESERVATION.—

2 (1) IN GENERAL.—Nothing in this Act, or a
3 regulation promulgated under this Act, shall be con-
4 strued to preempt, displace, or supplant any State
5 law, except to the extent that a provision of State
6 law conflicts with a provision of this Act, or a regu-
7 lation promulgated under this Act, and then only to
8 the extent of the conflict.

9 (2) GREATER PROTECTION UNDER STATE
10 LAW.—For purposes of this subsection, a provision
11 of State law does not conflict with a provision of this
12 Act, or a regulation promulgated under this Act, if
13 such provision of State law provides greater privacy
14 protection than the privacy protection provided by
15 such provision of this Act or such regulation.

16 **SEC. 9. SAVINGS CLAUSE.**

17 Nothing in this Act shall be construed to limit the
18 authority of the Commission under any other provision of
19 law. Nothing in this Act, or a regulation promulgated
20 under this Act, shall be construed to prohibit a regulated
21 entity from disclosing personal reproductive or sexual
22 health information to the Commission as required by law,
23 in compliance with a court order, or in compliance with
24 a civil investigative demand or similar process authorized
25 under law.

1 **SEC. 10. SEVERABILITY CLAUSE.**

2 If any provision of this Act, or the application thereof
3 to any person or circumstance, is held invalid, the remain-
4 der of this Act, and the application of such provision to
5 other persons not similarly situated or to other cir-
6 cumstances, shall not be affected by the invalidation.