



MEMORANDUM

June 21, 2022

To: Subcommittee on Consumer Protection and Commerce Members and Staff

Fr: Committee on Energy and Commerce Staff

Re: Subcommittee Markup of Eight Consumer Protection and Commerce Bills

On Thursday, June 23, 2022, at 10:30 a.m. (EDT), in the John D. Dingell Room, 2123 of the Rayburn House Office Building, and via Cisco Webex online video conferencing, the Subcommittee on Consumer Protection and Commerce will hold a markup of the following eight bills:

H.R. 8152, the “American Data Privacy and Protection Act”; **H.R. 3355**, the “Save America’s Forgotten Equines (SAFE) Act”; **H.R. 3962**, “Securing and Enabling Commerce Using Remote and Electronic Notarization Act of 2021”; **H.R. 4081**, “Informing Consumers About Smart Devices Act”; **H.R. 4551**, the “Reporting Attacks from Nations Selected for Oversight and Monitoring Web Attacks and Ransomware from Enemies (RANSOMWARE) Act”; **H.R. 5313**, “Reese’s Law”; **H.R. 5441**, the “Preventing All Soaring Tactics (PAST) Act”; and **H.R. 6290**, the “Manufacturing.gov Act.”

I. H.R. 8152, THE “AMERICAN DATA PRIVACY AND PROTECTION ACT”

Reps. Pallone (D-NJ), Rodgers (R-WA), Schakowsky (D-IL), and Bilirakis (R-FL) introduced H.R. 8152 on June 21, 2022. The “American Data Privacy and Protection Act” is the first bipartisan, bicameral national comprehensive privacy and data security proposal with support from leaders on the House Energy and Commerce Committee and the Senate Commerce, Science, and Transportation Committee. The Act establishes a national standard to protect consumer data privacy, imposes obligations on covered entities, and allows for federal, state, and individual enforcement. The bill establishes the Federal Trade Commission (FTC) as the regulator to enforce the bill at the federal level.

Under the bill, covered entities and service providers may not collect, process, or transfer covered data beyond what is necessary and proportionate to provide specifically requested products or services or communicate with individuals in a manner they reasonably anticipate. This duty applies irrespective of any consent from an individual.

Individuals have the right to access, correct, delete, and export their covered data. Further, sensitive covered data like health, financial, biometric, genetic, and precise geolocation information may not be transferred to a third party without an individual’s express affirmative consent. Other covered data activities are restricted in their uses, such as Social Security

numbers and password information. Individuals may opt out of the transfer of any covered data to a third party. Individuals may opt out of targeted advertising. The bill requires that any consent or decisions whether to opt-out may not be obtained through manipulative or misleading means, such as dark patterns. It also provides a mechanism by which individuals may exercise universal opt-outs rather than making such decisions on any entity-by-entity basis. Deceptive marketing of products and services is prohibited.

Broad anti-discrimination protections prohibit discrimination on the basis of race, color, religion, national origin, sex, or disability. The bill also requires large data holders to submit annual algorithmic impact assessments of certain algorithms to the FTC. These assessments must describe the design process and methodologies of the algorithm, foreseeable capabilities outside of the proposed use of the algorithm, a detailed description of the data used by algorithms, a description of the outputs produced by the algorithm, and steps the entity has taken or will take to mitigate potential harms from algorithms.

Separately, the FTC must establish an online, public, and searchable registry of registered third-party collecting entities, sometimes called data brokers. Individuals may elect to have all covered data about them held by such entities deleted within 30 days.

First-of-its-kind federal protections for kids and teens are also included. Targeted advertising is flatly prohibited for any individual under 17 years of age. The legislation creates a new Youth Privacy and Marketing Division at the FTC that is responsible for addressing privacy and marketing concerns with respect to children and minors. The division must submit annual reports to Congress and hire staff that includes experts in youth development, data protection, digital advertising, and data analytics regarding children. Any information related to individuals under 17 is considered sensitive covered data under the Act. The risks to those under 17 must be factored into entities' privacy policies, practices, and procedures.

All covered entities must designate officers to implement privacy and data security programs and ensure ongoing compliance. Large data holders are subject to additional requirements, including annual executive certifications, direct reporting to executives, biennial audits, and privacy impact assessments. The legislation provides three means of enforcement—the FTC, state attorneys general and state privacy authorities, and a private right of action. The FTC may obtain civil penalties for all violations of the Act. State attorneys general and privacy authorities may bring cases pertaining to violations of the Act in federal court for injunctive relief; to obtain damages, penalties, restitution, or other compensation; and to obtain reasonable attorney's fees and other litigation costs.

Starting four years after the Act takes effect, persons or classes of persons may bring civil actions in federal court seeking compensatory damages, injunctive relief, declaratory relief, and reasonable attorney's fees and litigation costs for most provisions of the Act. This right does not apply to data minimization, privacy by design, or data security requirements. Pre-dispute joint action waivers for arbitration related to minors are precluded.

To bring a private claim, the FTC and relevant attorneys general must be notified of the intent to sue and may take up the case as an intervenor at their discretion. Improper demand

letters sent by counsel seeking monetary payment that do not include a specified disclaimer will prevent suits from proceeding. For claims in which injunctive relief is sought, the bill includes a right to cure the alleged violation.

The bill does not limit existing federal law, except where specified. Entities subject to and in compliance with the related requirements of specified federal laws shall be deemed in compliance with the related provisions of the bill only to the extent that covered data is subject to the requirements in the other laws. The bill provides for non-application of specific Federal Communications Commission privacy laws and regulations as they relate to covered data activities.

State laws covered by the bill are preempted, other than specified state laws. Those laws include general consumer protection laws; civil rights laws; employee and student privacy protections; data breach notification laws; contract and tort law; certain criminal laws; laws on cyberstalking, cyberbullying, nonconsensual pornography, and sexual harassment; laws addressing certain public, financial, and tax records; facial recognition laws; certain surveillance laws; laws addressing medical information; and certain specified state provisions.

The bill establishes a new FTC privacy bureau to carry out its provisions that is comparable to the current bureaus of consumer protection and competition. The new bureau must be fully operational within a year of enactment and include an office of business mentorship to assist covered entities with compliance.

II. H.R. 3355, THE “SAVE AMERICA’S FORGOTTEN EQUINES (SAFE) ACT”

Reps. Schakowsky and Buchanan (R-FL) introduced H.R. 3355 on May 19, 2021. The legislation prohibits the shipping, transporting, moving, delivering, receiving, possessing, purchasing, selling, or donation by a person of any horse or other equine that the person has reason to believe will be slaughtered for human consumption.

An amendment in the nature of a substitute (AINS) is expected to be offered to make technical amendments to the legislation.

III. H.R. 3962, THE “SECURING AND ENABLING COMMERCE USING REMOTE AND ELECTRONIC NOTARIZATION ACT OF 2021”

Rep. Dean (D-PA) and 32 original bipartisan cosponsors introduced H.R. 3962 on June 17, 2021. The legislation permits and establishes nationwide standards and technical requirements for remote online notarization. This bill allows a notary public commissioned under state law to remotely notarize electronic records and perform notarizations for remotely-located individuals. The bill requires U.S. courts and states to recognize remote notarizations, including remote notarizations from notary publics commissioned in other states or U.S. territories, that occur in or affect interstate commerce. State laws that meet or exceed the minimum national standards and technical requirements of the bill will remain in effect.

IV. H.R. 4081, THE “INFORMING CONSUMERS ABOUT SMART DEVICES ACT”

Reps. Curtis (R-UT) and Moulton (D-MA) introduced H.R. 4081 on June 23, 2021. The legislation requires manufacturers of internet-connected devices (e.g., smart appliances) that are equipped with a camera or microphone to disclose to consumers that a camera or microphone is part of the device. The bill does not apply to mobile phones, laptops, or other devices that a consumer would reasonably expect to include a camera or microphone.

The bill requires the FTC to issue guidance to assist regulated entities with compliance and provides authority for the FTC to enforce violations, including the authority to seek civil penalties for violations.

V. H.R. 4551, THE “REPORTING ATTACKS FROM NATIONS SELECTED FOR OVERSIGHT AND MONITORING WEB ATTACKS AND RANSOMWARE FROM ENEMIES (RANSOMWARE) ACT”

Rep. Bilirakis introduced H.R. 4551 on July 20, 2021. This bill requires the FTC to report on cross-border complaints received that involve ransomware or other cyber-related attacks committed by certain foreign individuals, companies, and governments. The report must focus specifically on attacks committed by (1) Russia, China, North Korea, or Iran; or (2) individuals or companies that are located in or have ties to those countries.

VI. H.R. 5313, “REESE’S LAW”

Reps. Robin Kelly (D-IL), Arrington (R-TX), and Lieu (D-CA) introduced H.R. 5313 on September 21, 2021. The legislation requires the Consumer Product Safety Commission (CPSC) to establish mandatory safety standards to protect children from ingesting button cell batteries or coin batteries. These standards must include a performance standard requiring battery compartments for such batteries that prevent access to the batteries by children six years of age or younger and requirements for button cell battery packaging that warn of the hazards of ingestion and instruct consumers to keep new and used batteries out of the reach of children. The bill is named after Reese Hamsmith, an 18-month-old child who tragically died after ingesting a button cell battery.

An AINS is expected to be offered to make technical and conforming amendments to the legislation.

VII. H.R. 5441, THE “PREVENTING ALL SORING TACTICS (PAST) ACT”

Rep. Cohen (D-TN) and 212 original bipartisan cosponsors introduced H.R. 5441 on September 30, 2021. The legislation requires the Secretary of Agriculture to prescribe regulations for the licensing, training, assignment, and oversight of persons qualified to detect and diagnose a sore horse. The bill explicitly prohibits the use of acting devices and pads (which can intensify a horse’s pain) on horse breeds that have a history of being victims of soring and increases penalties to imprisonment up to three years and fines up to \$5,000 per violation.

An AINS is expected to be offered to make technical amendments to the legislation.

VIII. H.R. 6290, THE “MANUFACTURING.GOV ACT”

Reps. Tonko (D-NY), Axne (D-IA), and Upton (R-MI) introduced H.R. 6290 on December 14, 2021. The legislation requires the Department of Commerce to establish a section of the manufacturing.gov website to serve as the primary hub for information relating to federal manufacturing programs.