113TH CONGRESS  
1ST SESSION  
H. R.______

To provide for greater transparency in and user control over the treatment of data collected by mobile applications and to enhance the security of such data.

IN THE HOUSE OF REPRESENTATIVES

Mr. JOHNSON of Georgia introduced the following bill; which was referred to the Committee on ________________

________________________________________

A BILL

To provide for greater transparency in and user control over the treatment of data collected by mobile applications and to enhance the security of such data.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the “Application Privacy, Protection, and Security Act of 2013” or the “APPS Act of 2013”.

SEC. 2. TRANSPARENCY, USER CONTROL, AND SECURITY.

(a) CONSENT TO TERMS AND CONDITIONS.—
(1) IN GENERAL.—Before a mobile application collects personal data about a user of the application, the developer of the application shall—

(A) provide the user with notice of the terms and conditions governing the collection, use, storage, and sharing of the personal data; and

(B) obtain the consent of the user to such terms and conditions.

(2) REQUIRED CONTENT.—The notice required by paragraph (1)(A) shall include the following:

(A) The categories of personal data that will be collected.

(B) The categories of purposes for which the personal data will be used.

(C) The categories of third parties with which the personal data will be shared.

(D) A data retention policy that governs the length for which the personal data will be stored and the terms and conditions applicable to storage, including a description of the rights of the user under subsection (b) and the process by which the user may exercise such rights.

(3) ADDITIONAL SPECIFICATIONS AND FLEXIBILITY.—The Commission shall by regulation specify


the format, manner, and timing of the notice re-
quired by paragraph (1)(A). In promulgating the
regulations, the Commission shall consider how to
ensure the most effective and efficient communica-
tion to the user regarding the treatment of personal
data.

(4) Direct Access to Data by Third Par-
ties.—For purposes of this Act, if the developer of
a mobile application allows a third party to access
personal data collected by the application, such per-
sonal data shall be considered to be shared with the
third party, whether or not such personal data are
first transmitted to the developer.

(b) Withdrawal of Consent.—The developer of a
mobile application shall—

(1) provide a user of the application with a
means of—

(A) notifying the developer that the user
intends to stop using the application; and

(B) requesting the developer—

(i) to refrain from any further collec-
tion of personal data through the applica-
tion; and

(ii) at the option of the user, either—
(I) to the extent practicable, to delete any personal data collected by the application that is stored by the developer; or

(II) to refrain from any further use or sharing of such data; and

(2) within a reasonable and appropriate time after receiving a request under paragraph (1)(B), comply with such request.

(c) Security of Personal Data and De-Identified Data.—The developer of a mobile application shall take reasonable and appropriate measures to prevent unauthorized access to personal data and de-identified data collected by the application.

(d) Exception.—Nothing in this Act prohibits the developer of a mobile application from disclosing or preserving personal data or de-identified data as required by—

(1) other Federal law (including a court order); or

(2) except as provided in section 6, the law of a State or a political subdivision of a State (including a court order).
SEC. 3. APPLICATION AND ENFORCEMENT.

(a) General Application.—The requirements of this Act and the regulations promulgated under this Act apply, according to their terms, to those persons, partnerships, and corporations over which the Commission has authority pursuant to section 5(a)(2) of the Federal Trade Commission Act (15 U.S.C. 45(a)(2)).

(b) Enforcement by Federal Trade Commission.—

(1) Unfair or Deceptive Acts or Practices.—A violation of this Act or a regulation promulgated under this Act shall be treated as a violation of a regulation under section 18(a)(1)(B) of the Federal Trade Commission Act (15 U.S.C. 57a(a)(1)(B)) regarding unfair or deceptive acts or practices.

(2) Powers of Commission.—The Commission shall enforce this Act and the regulations promulgated under this Act in the same manner, by the same means, and with the same jurisdiction, powers, and duties as though all applicable terms and provisions of the Federal Trade Commission Act (15 U.S.C. 41 et seq.) were incorporated into and made a part of this Act. Any person who violates this Act or a regulation promulgated under this Act shall be subject to the penalties and entitled to the privileges
and immunities provided in the Federal Trade Commission Act.

(c) ACTIONS BY STATES.—

(1) IN GENERAL.—In any case in which the attorney general of a State, or an official or agency of a State, has reason to believe that an interest of the residents of such State has been or is threatened or adversely affected by an act or practice in violation of this Act or a regulation promulgated under this Act, the State, as parens patriae, may bring a civil action on behalf of the residents of the State in an appropriate district court of the United States to—

(A) enjoin such act or practice;

(B) enforce compliance with this Act or such regulation;

(C) obtain damages, restitution, or other compensation on behalf of residents of the State; or

(D) obtain such other legal and equitable relief as the court may consider to be appropriate.

(2) NOTICE.—Before filing an action under this subsection, the attorney general, official, or agency of the State involved shall provide to the Commission a written notice of such action and a copy of
the complaint for such action. If the attorney general, official, or agency determines that it is not feasible to provide the notice described in this paragraph before the filing of the action, the attorney general, official, or agency shall provide written notice of the action and a copy of the complaint to the Commission immediately upon the filing of the action.

(3) AUTHORITY OF COMMISSION.—

(A) IN GENERAL.—On receiving notice under paragraph (2) of an action under this subsection, the Commission shall have the right—

(i) to intervene in the action;

(ii) upon so intervening, to be heard on all matters arising therein; and

(iii) to file petitions for appeal.

(B) LIMITATION ON STATE ACTION WHILE FEDERAL ACTION IS PENDING.—If the Commission or the Attorney General of the United States has instituted a civil action for violation of this Act or a regulation promulgated under this Act (referred to in this subparagraph as the “Federal action”), no State attorney general, official, or agency may bring an action
under this subsection during the pendency of
the Federal action against any defendant
named in the complaint in the Federal action
for any violation of this Act or such regulation
alleged in such complaint.

(4) RULE OF CONSTRUCTION.—For purposes of
bringing a civil action under this subsection, nothing
in this Act shall be construed to prevent an attorney
general, official, or agency of a State from exercising
the powers conferred on the attorney general, offi-
cial, or agency by the laws of such State to conduct
investigations, administer oaths and affirmations, or
compel the attendance of witnesses or the production
of documentary and other evidence.

SEC. 4. REGULATIONS.

Not later than 1 year after the date of the enactment
of this Act, the Commission shall promulgate regulations
in accordance with section 553 of title 5, United States
Code, to implement and enforce this Act.

SEC. 5. SAFE HARBOR.

(a) IN GENERAL.—The developer of a mobile applica-
tion may satisfy the requirements of this Act and the regu-
lations promulgated under this Act by adopting and fol-
lowing a code of conduct for consumer data privacy (inso-
far as such code relates to data collected by a mobile application) that—

(1) was developed in a multistakeholder process convened by the National Telecommunications and Information Administration, as described in the document issued by the President on February 23, 2012, entitled “Consumer Data Privacy in a Networked World: A Framework for Protecting Privacy and Promoting Innovation in the Global Digital Economy”; and

(2) the Commission has approved as meeting the requirements of the regulations promulgated under section 4.

(b) REGULATIONS.—The Commission shall promulgate regulations in accordance with section 553 of title 5, United States Code, to govern the consideration and approval of codes of conduct under subsection (a)(2).

SEC. 6. RELATIONSHIP TO STATE LAW.

This Act and the regulations promulgated under this Act superecede a provision of law of a State or a political subdivision of a State only to the extent that such provision—

(1) conflicts with this Act or such regulations, as determined without regard to section 2(d)(2);
(2) specifically relates to the treatment of personal data or de-identified data; and

(3) provides a level of transparency, user control, or security in the treatment of personal data or de-identified data that is less than the level provided by this Act and such regulations.

SEC. 7. PRESERVATION OF FTC AUTHORITY.

Nothing in this Act may be construed in any way to limit or affect the authority of the Commission under any other provision of law.

SEC. 8. DEFINITIONS.

In this Act:

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

(2) DE-IDENTIFIED DATA.—The term “de-identified data” means data that cannot reasonably be used to identify or infer information about, or otherwise be linked to, a particular individual or mobile device, as determined with a reasonable level of justified confidence based on the available methods and technologies, the nature of the data at issue, and the purposes for which the data will be used.

(3) DEVELOPER.—The term “developer” shall have the meaning given such term by the Commission by regulation.
(4) **MOBILE APPLICATION.**—The term “mobile application” means a software program that—

(A) runs on the operating system of a mobile device; and

(B) collects data from a user.

(5) **MOBILE DEVICE.**—The term “mobile device” means a smartphone, tablet computer, or similar portable computing device that transmits data over a wireless connection.

(6) **PERSONAL DATA.**—The term “personal data” shall have the meaning given such term by the Commission by regulation, except that such term shall not include de-identified data.

(7) **STATE.**—The term “State” means each of the several States, the District of Columbia, each commonwealth, territory, or possession of the United States, and each federally recognized Indian tribe.

(8) **THIRD PARTY.**—The term “third party” means, with respect to the developer of an application, an entity that holds itself out to the public as separate from the developer such that a user of the application acting reasonably under the circumstances would not expect the entity to be related to the developer or to have access to personal data the user provides to the developer. Such term in-
cludes an affiliate of the developer unless the affiliation is reasonably clear to users of the application.

SEC. 9. EFFECTIVE DATE.

This Act shall apply with respect to any collection, use, storage, or sharing of personal data or de-identified data that occurs after the date that is 30 days after the promulgation of final regulations under section 4.