

Summary of Obligations under Three Corners Proposed Privacy Legislation

Wicker, Pallone, DelBene

June 6, 2022

	Covered Entity (In General)	Small Data Exception	Large Data Holder	Third-Party Collecting Entity	Service Provider [Processor]	Third Party [Controller]
TITLE I—DUTY OF LOYALTY						
<u>Sec. 101 data minimization.</u> <i>Reasonably necessary, proportionate, and limited to permitted purpose, service delivery, or anticipated communication.</i>	✔					
<u>Sec. 102. Loyalty Duties.</u> No collection, processing or transferring of: <ul style="list-style-type: none"> - SSNs - Known nonconsensual intimate images Unless consent, no collection, processing or transferring of: <ul style="list-style-type: none"> - Biometrics - Genetic info No transferring of: <ul style="list-style-type: none"> - Passwords Unless consent, no transferring of: <ul style="list-style-type: none"> - Geolocation - Physical activity information - Aggregated internet search or browsing history 	✔					
<u>Sec. 103. Privacy by design.</u> Reasonable policies, practices, procedures.	✔					
<u>Sec. 104. Loyalty to individuals with respect to pricing.</u> No conditional service or pricing.	✔					

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TITLE II—CONSUMER DATA RIGHTS						
Sec. 201. Consumer Awareness.						
Sec. 202. Transparency. Privacy policy requirements.	✓					
Sec. 203. Individual data ownership and control. Rights of access, correction, deletion, and portability.	✓	☐ <i>No portability; correction can be deleted instead.</i>			☒ (Exempt, but must assist covered entity in fulfilling request.)	
Sec. 204. Right to consent and object. - Sensitive data requires consent. - Withdrawal of consent as easy as provision. - Opt out of third-party transfers. - Opt out of targeted advertising.	✓				☒ (Exempt, but must assist covered entity in fulfilling request.)	☒ (Exempt)
Sec. 205. Data protections for children and minors. No targeted ads <18. Unless consent or parental consent, no transfer of ANY data to third party.	✓					
Sec. 206. Third-Party Collecting Entities. Notice, audit logging, registered on public list.	☒	☒	☒	✓	☒	☒
Sec. 207. Civil rights and algorithms. - No discrimination through data processing. - Algorithm design evaluation	✓					
- Algorithm impact assessments	☒	☒	✓	☒	☒	☒

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<u>Sec. 208. Data security and protection of covered data.</u> Reasonable data security practices, including: <ol style="list-style-type: none"> 1. Assess vulnerability 2. Preventative, corrective actions 3. Evaluation 4. Information retention, disposal 5. Training 6. Designation 	✔	☐ <i>Only required to comply with 4 (retention, disposal)</i>				
<u>Sec. 209. General exceptions.</u> Approved purposes: <ul style="list-style-type: none"> - Transactions - Maintenance, testing, debug - Security incident, warranty - Protect against fraud, illegal activity - Legal obligation - Prevent harm - Product recall - Research in public interest 	✔					
Sec. 210. Unified opt-out mechanisms.						
TITLE III—CORPORATE ACCOUNTABILITY						
<u>Sec. 301. Executive responsibility.</u> <ul style="list-style-type: none"> - Designate 1+ qualified employees as privacy officers - Designate 1+ OTHER employees as data security officers 	✔					
<ul style="list-style-type: none"> - Annual certification by CEO, privacy officer, and data security officer. - Privacy impact assessment every 2 years - One officer must report directly to CEO 	✘	✘	✔	✘	✘	✘

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<ul style="list-style-type: none"> - Review process - Training program - Maintain records - Point of contact with regulators 						
<p><u>Sec. 302. Service providers and third parties.</u></p> <p>Exercise reasonable due diligence in selecting service provider and deciding to transfer data to third party.</p>	✔					
<p>Service providers:</p> <ul style="list-style-type: none"> - limited to direction of covered entity - no onward transfers without consent - deletion 	✘	✘	✘	✘	✔	✘
<p>Third parties:</p> <ul style="list-style-type: none"> - No processing inconsistent with expectations of reasonable individual. 	✘	✘	✘	✘	✘	✔
<p><u>Sec. 303. Technical compliance programs.</u></p> <p>Can request Commission approval of a technical compliance program (establishes guidelines for compliance meeting or exceeding requirements, publicly available to covered individuals).</p> <p>Prior to commencing investigation, Commission will consider compliance with the approved technical compliance program.</p>	✔					
<p><u>Sec. 304. Commission approved compliance guidelines.</u></p> <p>Independent reviewers can be approved by Commission to create and enforce guidelines. When approved, compliance with guidelines = compliance with ADPPA. Non-compliance = enforceable.</p>	✔			✘		
<p><u>Sec. 305. Digital content forgeries.</u></p>						

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TITLE IV—ENFORCEMENT, APPLICABILITY, AND MISCELLANEOUS						
Sec. 401. Enforcement by the Federal Trade Commission.						
Sec. 402. Enforcement by State attorneys general.						
Sec. 403. <u>Enforcement by individuals.</u> Violations subject to individual civil action. No pre-dispute arbitration agreements or JAWs for <18. Injunctive relief can be dismissed if cured within 45 days notice.	☑					
Sec. 404. Relationship to Federal and State laws.						
Sec. 405. Severability.						
Sec. 406. COPPA.						
Sec. 407. Authorization of appropriations.						
Sec. 408. Effective date.						