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(Original Signature of Member)

119TH CONGRESS
1ST SESSION

H. R. _____

To prohibit unfair or deceptive acts or practices in the app marketplace,
and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

Mrs. CAMMACK introduced the following bill; which was referred to the
Committee on _____

A BILL

To prohibit unfair or deceptive acts or practices in the app
marketplace, 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 “App Store Freedom
5 Act”.

6 **SEC. 2. PROTECTING A COMPETITIVE APP MARKET.**

7 (a) REQUIREMENTS.—

8 (1) INTEROPERABILITY.—A covered company
9 that owns or controls the operating system on which

1 an app store owned or controlled by the covered
2 company operates shall allow and provide readily ac-
3 cessible means for a user of such operating system
4 to—

5 (A) choose a third-party app or app store
6 as a default;

7 (B) install a third-party app or app store
8 through means other than the app store owned
9 or controlled by the covered company; and

10 (C) hide or delete an app or app store pro-
11 vided or pre-installed by the covered company
12 (or any business partner of the covered com-
13 pany).

14 (2) OPEN APP DEVELOPMENT.—A covered com-
15 pany, in a timely manner, without cost, and on
16 terms that are equivalent to the terms of access by
17 the covered company or any business partner of the
18 covered company, shall provide to a developer of an
19 app accessible on an operating system, or distributed
20 through an app store, owned or controlled by the
21 covered company—

22 (A) access to any interface and hardware
23 and software feature of the operating system
24 that are generally available to the covered com-

1 pany and any business partner of the covered
2 company; and

3 (B) documentation and development infor-
4 mation sufficient to access any such interface
5 and feature.

6 (3) COMPLIANCE.—A covered company shall be
7 in compliance with the requirements described under
8 paragraph (2) if that company—

9 (A) licenses any intellectual property that
10 the developer of an app needs to access any
11 interface or hardware or software feature of
12 such operating system; or

13 (B) limits the interfaces and hardware and
14 software features of the operating system gen-
15 erally available to the covered company and any
16 businesses partner of the company to interfaces
17 and hardware and software features that do not
18 implicate such intellectual property rights.

19 (b) PROHIBITIONS.—

20 (1) EXCLUSIVITY AND TYING.—A covered com-
21 pany may not—

22 (A) require, as a condition for an app to
23 be accessible on an operating system or distrib-
24 uted through an app store that is owned or con-
25 trolled by the covered company, that—

1 (i) a developer of the app use or en-
2 able an in-app payment system owned or
3 controlled by the covered company or any
4 business partner of the covered company;
5 or

6 (ii) pricing or other terms of sale be
7 equal to or more favorable on such oper-
8 ating system or app store than on another
9 operating system or app store; or

10 (B) take punitive action or otherwise im-
11 pose less favorable terms and conditions against
12 a developer of an app distributed outside of an
13 app store that is owned or controlled by the
14 covered company—

15 (i) for using or offering different pric-
16 ing or other terms of sale on an app store
17 or through an in-app payment system that
18 is not owned or controlled by the covered
19 company; or

20 (ii) on the basis that such app pro-
21 vides access to a third-party app that is
22 not owned or controlled by the covered
23 company through remote electronic services
24 rather than through download from an op-
25 erating system or an app store that is

1 owned or controlled by the covered com-
2 pany.

3 (2) INTERFERENCE WITH LEGITIMATE BUSI-
4 NESS COMMUNICATIONS.—

5 (A) IN GENERAL.—A covered company
6 may not impose any restriction or fee on the
7 communication of a developer of an app acces-
8 sible on an operating system or distributed
9 through an app store that is owned or con-
10 trolled by the covered company with a user of
11 the app, whether through such app or direct
12 outreach to such user, concerning legitimate
13 business offers, including pricing or other terms
14 of sale and product or service offerings.

15 (B) RULE OF CONSTRUCTION.—Nothing in
16 this paragraph may be construed to prohibit a
17 covered company from requiring that consent of
18 a user be obtained prior to collecting and shar-
19 ing data of the user through an app accessible
20 on an operating system or distributed through
21 an app store that is owned or controlled by the
22 covered company if the apps and services of the
23 company are subject to the same consent.

24 (3) NONPUBLIC BUSINESS INFORMATION.—A
25 covered company may not use nonpublic business in-

1 formation derived from an app accessible on an op-
2 erating system or distributed through an app store
3 that is owned or controlled by the covered company
4 for the purpose of competing with such app.

5 **SEC. 3. ENFORCEMENT.**

6 (a) ENFORCEMENT BY FEDERAL TRADE COMMIS-
7 SION.—

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

14 (2) POWERS OF COMMISSION.—Except as pro-
15 vided in paragraph (3)—

16 (A) the Commission shall enforce this Act
17 in the same manner, by the same means, and
18 with the same jurisdiction, powers, and duties
19 as though all applicable terms and provisions of
20 the Federal Trade Commission Act (15 U.S.C.
21 41 et seq.) were incorporated into and made a
22 part of this Act; and

23 (B) any covered company who violates this
24 Act shall be subject to the penalties and enti-

1 tled to the privileges and immunities provided
2 in the Federal Trade Commission Act.

3 (3) PENALTIES.—

4 (A) ADDITIONAL CIVIL PENALTY.—In ad-
5 dition to any penalty applicable under the Fed-
6 eral Trade Commission Act, any covered com-
7 pany who violates this Act shall be liable for a
8 civil penalty of not more than \$1,000,000 for
9 each violation.

10 (B) METHOD.—Any civil penalty described
11 in subparagraph (A) shall be obtained in the
12 same manner as a civil penalty for a violation
13 of a regulation under section 18(a)(1)(B) of the
14 Federal Trade Commission Act (15 U.S.C.
15 57a(a)(1)(B)).

16 (4) AUTHORITY PRESERVED.—Nothing in this
17 section may be construed to limit the authority of
18 the Commission under any other provision of law.

19 (b) ENFORCEMENT BY STATES.—

20 (1) IN GENERAL.—If the attorney general of a
21 State, or an official or agency of a State, has reason
22 to believe that an interest of the residents of the
23 State has been or is threatened or adversely affected
24 by an act or practice that violates this Act, the State
25 may bring a civil action on behalf of the residents

1 of the State in an appropriate district court of the
2 United States to obtain appropriate relief.

3 (2) RIGHTS OF COMMISSION.—

4 (A) NOTICE TO COMMISSION.—

5 (i) IN GENERAL.—Except as provided
6 in clause (iii), an attorney general, official,
7 or agency of a State, before filing a civil
8 action under paragraph (1), shall provide
9 written notification to the Commission that
10 the attorney general, official, or agency in-
11 tends to bring such civil action.

12 (ii) CONTENTS.—The notification re-
13 quired under clause (i) shall include a copy
14 of the complaint for the civil action.

15 (iii) EXCEPTION.—If it is not feasible
16 for an attorney general, official, or agency
17 of a State to provide the notification re-
18 quired under clause (i) before filing a civil
19 action under paragraph (1), the attorney
20 general, official, or agency shall provide
21 the notification to the Commission imme-
22 diately upon the filing of the civil action.

23 (B) INTERVENTION BY COMMISSION.—The
24 Commission may—

1 (i) intervene in any civil action filed
2 by an attorney general, official, or agency
3 of a State under paragraph (1); and

4 (ii) upon so intervening—

5 (I) be heard on all matters arising
6 in the civil action; and

7 (II) appeal a decision in the civil
8 action.

9 (C) LIMITATION ON STATE ACTION WHILE
10 FEDERAL ACTION IS PENDING.—If the Commis-
11 sion or the Attorney General of the United
12 States has instituted a civil action for violation
13 of this Act (referred to in this subparagraph as
14 the “Federal action”), no State attorney gen-
15 eral, official, or agency may bring an action
16 under paragraph (1) during the pendency of the
17 Federal action against any defendant named in
18 the complaint in the Federal action for any vio-
19 lation of such Act alleged in such complaint.

20 (3) RULE OF CONSTRUCTION.—For purposes of
21 bringing a civil action under paragraph (1), nothing
22 in this Act may be construed to prevent an attorney
23 general, official, or agency of a State from exercising
24 the powers conferred on the attorney general, offi-
25 cial, or agency by the laws of the State to conduct

1 investigations, administer oaths or affirmations, or
2 compel the attendance of witnesses or the production
3 of documentary or other evidence.

4 **SEC. 4. EFFECT ON STATE LAW.**

5 (a) IN GENERAL.—A State, or political subdivision
6 of a State, may not maintain, enforce, prescribe, or con-
7 tinue in effect any law, rule, regulation, requirement,
8 standard, or other provision having the force and effect
9 of law of the State, or political subdivision of the State,
10 that—

11 (1) prohibits a covered company from engaging
12 in any conduct prohibited by section 2; or

13 (2) requires a covered company to take any ac-
14 tion required by section 2.

15 (b) RULE OF CONSTRUCTION.—This section may not
16 be construed to—

17 (1) preempt any law of a State or political sub-
18 division of a State relating to contracts, torts, or un-
19 fair competition; or

20 (2) preempt any law of a State or political sub-
21 division of a State to the extent that such law re-
22 lates to an act of fraud, unauthorized access to per-
23 sonal information, or notification of unauthorized ac-
24 cess to personal information.

1 **SEC. 5. RULES OF CONSTRUCTION.**

2 Nothing in this Act may be construed—

3 (1) to limit—

4 (A) any authority of the Federal Trade
5 Commission under the Federal Trade Commis-
6 sion Act (15 U.S.C. 41 et seq.), or any other
7 provision of law; or

8 (B) the application of any Federal law;

9 (2) to require a covered company—

10 (A) to provide service under a hardware or
11 software warranty for damage caused by a
12 third-party app or app store installed through
13 means other than an app store owned or con-
14 trolled by the covered company; or

15 (B) to provide customer service for the in-
16 stallation or operation of such a third-party app
17 or app store;

18 (3) to prevent an action taken by a covered
19 company that is reasonably tailored to protect the
20 rights of a person under section 106, 1101, 1201, or
21 1401 of title 17, United States Code, or rights ac-
22 tionable under sections 32 or 43 of the Act entitled
23 “An Act to provide for the registration and protec-
24 tion of trademarks used in commerce, to carry out
25 the provisions of certain international conventions,
26 and for other purposes”, approved July 5, 1946

1 (commonly known as the “Lanham Act” or the
2 “Trademark Act of 1946”) (15 U.S.C. 1114, 1125),
3 or corollary State law;

4 (4) to require a covered company to license any
5 intellectual property, including any trade secrets,
6 owned by or licensed to the covered company;

7 (5) to prevent a covered company from assert-
8 ing rights of the covered company under intellectual
9 property law to prevent the unlawful use of any in-
10 tellectual property owned by or duly licensed to the
11 covered company;

12 (6) to require a covered company to work with
13 or share data with any person who—

14 (A) is on any list maintained by the Fed-
15 eral Government by which entities are identified
16 as limited or prohibited from engaging in eco-
17 nomic transactions as part of United States
18 sanctions or export control regimes;

19 (B) is a foreign entity that has been identi-
20 fied by the Federal Government as a national
21 security, intelligence, or law enforcement risk,
22 including the Government of the People’s Re-
23 public of China or the government of a foreign
24 adversary (as defined in section 8(c)(2) of the

1 Secure and Trusted Communications Networks
2 Act of 2019 (473 U.S.C. 1607(c)(2))); or
3 (C) is a foreign adversary controlled appli-
4 cation (as defined in section 2(g)(3) of the Pro-
5 tecting Americans from Foreign Adversary Con-
6 trolled Applications Act (Public Law 118–50;
7 15 U.S.C. 9901 note)); or
8 (7) to limit any Federal or State law relating
9 to antitrust.

10 **SEC. 6. DEFINITIONS.**

11 In this Act:

12 (1) APP.—The term “app” means a software
13 application or electronic service that may be run or
14 directed by a user on a computer, a mobile device,
15 or any other general purpose consumer computing
16 device.

17 (2) APP STORE.—The term “app store” means
18 a publicly available website, software application, or
19 other electronic service that may distribute apps
20 from third-party developers to users of a computer,
21 a mobile device, or any other general purpose con-
22 sumer computing device.

23 (3) COMMISSION.—The term “Commission”
24 means the Federal Trade Commission.

1 (4) COVERED COMPANY.—The term “covered
2 company” means any person who owns or controls—

3 (A) an app store for which the number of
4 users in the United States exceeds
5 100,000,000; and

6 (B) the operating system on which such
7 app store operates.

8 (5) DEVELOPER.—The term “developer” means
9 a person who owns or controls an app or an app
10 store.

11 (6) IN-APP PAYMENT SYSTEM.—The term “in-
12 app payment system” means an application, service,
13 or user interface to manage billing or process a pay-
14 ment from a user of an app.

15 (7) NONPUBLIC BUSINESS INFORMATION.—The
16 term “nonpublic business information” means non-
17 public data that is—

18 (A) derived from a developer or an app or
19 app store owned or controlled by a developer,
20 including an interaction between a user and the
21 app or app store of the developer; and

22 (B) collected by a covered company in the
23 course of operating an app store or providing
24 an operating system.

1 (8) OPERATING SYSTEM.—The term “operating
2 system” includes an operating system configuration.

3 **SEC. 7. GUIDANCE; EFFECTIVE DATE.**

4 (a) FTC GUIDANCE.—Not later than 180 days after
5 the date of the enactment of this Act, the Commission
6 shall issue guidance to assist covered companies in com-
7 plying with this Act.

8 (b) EFFECTIVE DATE.—This Act shall take effect on
9 the date on which the Commission issues guidance under
10 subsection (a).