

115TH CONGRESS
1ST SESSION

S. 1815

To require data brokers to establish procedures to ensure the accuracy of collected personal information, and for other purposes.

IN THE SENATE OF THE UNITED STATES

SEPTEMBER 14, 2017

Mr. MARKEY (for himself, Mr. BLUMENTHAL, Mr. WHITEHOUSE, Mr. FRANKEN, and Mr. SANDERS) introduced the following bill; which was read twice and referred to the Committee on Commerce, Science, and Transportation

A BILL

To require data brokers to establish procedures to ensure the accuracy of collected personal 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 “Data Broker Account-
5 ability and Transparency Act of 2017”.

6 **SEC. 2. DEFINITIONS.**

7 In this Act:

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

1 (2) COVERED DATA BROKER.—

2 (A) IN GENERAL.—The term “covered
3 data broker” includes all data brokers except
4 those data brokers excepted under subpara-
5 graph (B).

6 (B) EXCEPTIONS.—The Commission may
7 except a data broker if the Commission con-
8 siders, by rule, a data broker outside the scope
9 of this Act, such as a data broker who proc-
10 esses information collected by or on behalf of
11 and received from or on behalf of a non-
12 affiliated third party concerning an individual
13 who is a customer or an employee of that third
14 party to enable that third party, directly or
15 through parties acting on its behalf, to provide
16 benefits for its employees or directly transact
17 business with its customers.

18 (3) DATA BROKER.—The term “data broker”
19 means a commercial entity that collects, assembles,
20 or maintains personal information concerning an in-
21 dividual who is not a customer or an employee of
22 that entity in order to sell the information or provide
23 third-party access to the information.

1 (4) NON-PUBLIC INFORMATION.—The term
2 “non-public information” means information about
3 an individual that is—

4 (A) of a private nature;

5 (B) not available to the general public; and

6 (C) not obtained from a public record.

7 (5) PUBLIC RECORD INFORMATION.—The term
8 “public record information” means information
9 about an individual that has been obtained originally
10 from records of a Federal, State, or local govern-
11 ment entity that are available for public inspection.

12 **SEC. 3. PROHIBITION ON OBTAINING OR SOLICITATION TO**
13 **OBTAIN PERSONAL INFORMATION BY FALSE**
14 **PRETENSES.**

15 (a) IN GENERAL.—A covered data broker may not
16 obtain or attempt to obtain, or cause to be disclosed or
17 attempt to cause to be disclosed to any person, personal
18 information or any other information relating to any per-
19 son by making a false, fictitious, or fraudulent statement
20 or representation to any person, including by providing
21 any document to any person, that the covered data broker
22 knows or should know—

23 (1) to be forged, counterfeit, lost, stolen, or
24 fraudulently obtained; or

1 (2) contains a false, fictitious, or fraudulent
2 statement or representation.

3 (b) SOLICITATION.—A covered data broker may not
4 request a person to obtain personal information, or any
5 other information, relating to any other person if the cov-
6 ered data broker knows or should know that the person
7 to whom the request is made will obtain or attempt to
8 obtain that information in the manner described in sub-
9 section (a).

10 **SEC. 4. REQUIREMENTS CONCERNING ACCURACY OF AND**
11 **ACCESS TO PERSONAL INFORMATION.**

12 (a) ACCURACY.—

13 (1) IN GENERAL.—Except as provided in para-
14 graph (2), a covered data broker shall establish pro-
15 cedures to ensure, to the maximum extent prac-
16 ticable, the accuracy of—

17 (A) the personal information it collects, as-
18 sembles, or maintains; and

19 (B) any other information it collects, as-
20 sembles, or maintains that specifically identifies
21 an individual, unless the information only iden-
22 tifies an individual's name or address.

23 (2) EXCEPTION.—A covered data broker may
24 collect or maintain information that may be inac-
25 curate with respect to a particular individual if that

1 information is being collected or maintained solely
2 for the purpose of—

3 (A) indicating whether there may be a dis-
4 crepancy or irregularity in the personal infor-
5 mation that is associated with an individual;

6 (B) helping to identify, or to authenticate
7 the identity of, an individual; or

8 (C) helping to protect against or inves-
9 tigate fraud or other unlawful conduct.

10 (b) CONSUMER ACCESS.—

11 (1) IN GENERAL.—Subject to paragraph (4), a
12 covered data broker shall provide an individual a
13 means to review any personal information or other
14 information that specifically identifies that indi-
15 vidual, that the covered data broker collects, assem-
16 bles, or maintains on that individual.

17 (2) REVIEW REQUIREMENTS.—The means for
18 review under paragraph (1) shall be provided—

19 (A) at an individual's request;

20 (B) after verifying the identity of the indi-
21 vidual;

22 (C) at least 1 time per year;

23 (D) at no cost to the individual; and

1 (E) in a format that can be readily under-
2 stood by a consumer, as determined by the
3 Commission.

4 (3) PERIOD OF REVIEW.—A covered data
5 broker shall provide an individual the means re-
6 quired under paragraph (1) within such period after
7 receiving a request from such individual as the Com-
8 mission shall determine, by rule, is appropriate.

9 (4) EXCEPTIONS.—The Commission may, by
10 rule, establish such exceptions to paragraph (1) as
11 the Commission considers appropriate, such as for
12 child protection, law enforcement, fraud prevention,
13 or other government purposes.

14 (5) LIMITATION ON USE OF VERIFYING INFOR-
15 MATION.—If a covered data broker collects informa-
16 tion from an individual to verify the identity of the
17 individual under paragraph (2)(B) that the data
18 broker did not have before such collection, the data
19 broker may not use such information for any pur-
20 pose other than for purposes of verifying the identity
21 of the individual under such paragraph.

22 (c) DISPUTED INFORMATION.—

23 (1) IN GENERAL.—An individual whose per-
24 sonal information is maintained by a covered data
25 broker may dispute the accuracy of any information

1 described under subsection (b)(1) by requesting, in
2 writing, that the covered data broker correct the in-
3 formation.

4 (2) CORRECTION REQUIREMENTS.—A covered
5 data broker, after verifying the identity of an indi-
6 vidual making a request under paragraph (1) to cor-
7 rect information, and unless there are reasonable
8 grounds to believe the request is frivolous or irrele-
9 vant, shall—

10 (A) with regard to public record informa-
11 tion—

12 (i) inform the individual of the source
13 of the information and, if reasonably avail-
14 able, where to direct the individual's re-
15 quest for correction; or

16 (ii) if the individual provides proof
17 that the public record has been corrected
18 or that the covered data broker was report-
19 ing the information incorrectly, correct the
20 inaccuracy in the covered data broker's
21 records; and

22 (B) with regard to non-public informa-
23 tion—

1 (i) note the information that is dis-
2 puted, including the individual's written re-
3 quest;

4 (ii) if the information can be inde-
5 pendently verified, use the procedures es-
6 tablished under subsection (a) to independ-
7 ently verify the information; and

8 (iii) if the covered data broker was re-
9 porting the information incorrectly, correct
10 the inaccuracy in the covered data broker's
11 records.

12 (3) PERIOD OF CORRECTION.—In a case in
13 which a covered data broker is subject to a require-
14 ment under paragraph (2) due to a request made by
15 an individual under paragraph (1), such covered
16 data broker shall take such action as may be re-
17 quired to satisfy such requirement within such pe-
18 riod as the Commission shall determine, by rule, is
19 appropriate.

20 (d) NOTICE.—

21 (1) IN GENERAL.—A covered data broker shall
22 maintain an Internet website and place a clear and
23 conspicuous notice on that Internet website instruct-
24 ing an individual how—

1 (A) to review information under subsection
2 (b)(1); and

3 (B) to express a preference under sub-
4 section (e)(2).

5 (2) FORM.—A covered data broker shall ensure
6 that the notice the covered data broker places under
7 paragraph (1) conforms to such model form as the
8 Commission shall promulgate for purposes of this
9 subsection.

10 (e) CERTAIN MARKETING INFORMATION.—

11 (1) IN GENERAL.—A covered data broker may
12 not use, share, or sell any information for marketing
13 purposes that is subject to an expressed preference
14 under paragraph (2).

15 (2) EXPRESSION OF PREFERENCES.—A covered
16 data broker that maintains any information de-
17 scribed under subsection (a) and that uses, shares,
18 or sells that information for marketing purposes
19 shall provide each individual whose information the
20 covered data broker maintains with a reasonable
21 means of expressing a preference not to have that
22 individual's information used for those purposes.

23 (f) AUDITING.—

24 (1) IN GENERAL.—Subject to paragraph (2),
25 each covered data broker shall establish measures

1 that facilitate the auditing or retracing of any inter-
2 nal or external access to, or transmission of, any
3 data containing personal information collected, as-
4 sembled, or maintained by the covered data broker.

5 (2) EXCEPTIONS.—The Commission may estab-
6 lish, by rule, such exceptions to paragraph (1) as the
7 Commission considers appropriate to further or pro-
8 tect law enforcement or national security activities.

9 (g) SECURITY.—

10 (1) IN GENERAL.—Each covered data broker
11 shall develop and implement a comprehensive con-
12 sumer privacy and data security program to protect
13 against harm that may be caused by—

14 (A) loss of personal information collected,
15 assembled, or maintained by the covered data
16 broker; or

17 (B) unauthorized access, destruction, use,
18 modification, or disclosure of such personal in-
19 formation.

20 (2) NOTICE.—Whenever a covered data broker
21 determines that personal information of an indi-
22 vidual that is collected, assembled, or maintained by
23 the covered data broker has been lost or the subject
24 of an unauthorized access, destruction, use, modi-
25 fication, or disclosure, the covered data broker shall

1 notify such individual of such loss, access, destruc-
2 tion, use, modification, or disclosure.

3 (h) PERSONS REGULATED BY THE FAIR CREDIT RE-
4 PORTING ACT.—A covered data broker shall be considered
5 to be in compliance with subsections (a) through (f) of
6 this section with respect to information that is subject to
7 the Fair Credit Reporting Act (15 U.S.C. 1681 et seq.)
8 if the covered data broker is in compliance with sections
9 609, 610, and 611 of that Act (15 U.S.C. 1681g, 1681h,
10 1681i).

11 **SEC. 5. REGULATIONS.**

12 (a) IN GENERAL.—Not later than 1 year after the
13 date of the enactment of this Act, the Commission shall
14 promulgate regulations under section 553 of title 5,
15 United States Code, to carry out this Act.

16 (b) ELEMENTS.—The regulations promulgated under
17 subsection (a) shall include the following:

18 (1) Such exceptions the Commission considers
19 appropriate to promulgate under section 2(2)(B).

20 (2) The period of review required under section
21 4(b)(3).

22 (3) Such exceptions as the Commission con-
23 sidered appropriate to promulgate under section
24 4(b)(4).

1 (4) The period of correction required under sec-
2 tion 4(c)(3).

3 (5) The model form required by section 4(d)(2).

4 (6) Requirements for auditing under paragraph
5 (1) of section 4(f) and such exceptions under para-
6 graph (2) of such section as the Commission con-
7 siders appropriate.

8 (7) Establishment of a centralized Internet
9 website for the benefit of consumers that—

10 (A) lists the covered data brokers that are
11 subject to a requirement of section 4; and

12 (B) provides information to consumers
13 about their rights under this Act.

14 (8) Such other regulations as the Commission
15 considers appropriate to carry out this Act.

16 **SEC. 6. ENFORCEMENT.**

17 (a) ENFORCEMENT BY FEDERAL TRADE COMMIS-
18 SION.—

19 (1) UNFAIR OR DECEPTIVE ACTS OR PRAC-
20 TICES.—A violation of section 3 or 4 or a regulation
21 promulgated under this Act shall be treated as a vio-
22 lation of a rule defining an unfair or a deceptive act
23 or practice under section 18(a)(1)(B) of the Federal
24 Trade Commission Act (15 U.S.C. 57a(a)(1)(B)).

25 (2) POWERS OF COMMISSION.—

1 (A) IN GENERAL.—The Commission shall
2 enforce this Act in the same manner, by the
3 same means, and with the same jurisdiction,
4 powers, and duties as though all applicable
5 terms and provisions of the Federal Trade
6 Commission Act (15 U.S.C. 41 et seq.) were in-
7 corporated into and made a part of this Act.

8 (B) PRIVILEGES AND IMMUNITIES.—Any
9 person who violates a regulation prescribed
10 under this Act shall be subject to the penalties
11 and entitled to the privileges and immunities
12 provided in the Federal Trade Commission Act
13 (15 U.S.C. 41 et seq.).

14 (b) ENFORCEMENT BY STATES.—

15 (1) CIVIL ACTION.—Except as provided under
16 paragraph (5), in any case in which the attorney
17 general of a State has reason to believe that an in-
18 terest of the residents of that State has been or is
19 threatened or adversely affected by any person sub-
20 ject to a provision of section 3 or 4 or a regulation
21 promulgated under this Act in a practice that vio-
22 lates such provision or regulation, the attorney gen-
23 eral of the State may, as *parens patriae*, bring a
24 civil action on behalf of the residents of the State in
25 an appropriate district court of the United States—

1 (A) to enjoin further violation of such pro-
2 vision or regulation by such person;

3 (B) to compel compliance with such provi-
4 sion or regulation;

5 (C) to obtain damages, restitution, or other
6 compensation on behalf of such residents;

7 (D) to obtain such other relief as the court
8 considers appropriate; or

9 (E) to obtain civil penalties in the amount
10 determined under paragraph (2).

11 (2) CIVIL PENALTIES.—

12 (A) CALCULATION.—For purposes of im-
13 posing a civil penalty under paragraph (1)(E),
14 the amount determined under this paragraph is
15 the amount calculated by multiplying the num-
16 ber of separate violations of a rule by an
17 amount not greater than \$16,000.

18 (B) ADJUSTMENT FOR INFLATION.—Be-
19 ginning on the date that the Consumer Price
20 Index is first published by the Bureau of Labor
21 Statistics that is after 1 year after the date of
22 enactment of this Act, and each year thereafter,
23 the amount specified in subparagraph (A) shall
24 be increased by the percentage increase in the
25 Consumer Price Index published on that date

1 from the Consumer Price Index published the
2 previous year.

3 (3) RIGHTS OF FEDERAL TRADE COMMIS-
4 SION.—

5 (A) NOTICE TO FEDERAL TRADE COMMIS-
6 SION.—

7 (i) IN GENERAL.—Except as provided
8 in clause (iii), the attorney general of a
9 State shall notify the Commission in writ-
10 ing that the attorney general intends to
11 bring a civil action under paragraph (1)
12 before initiating the civil action.

13 (ii) CONTENTS.—The notification re-
14 quired by clause (i) with respect to a civil
15 action shall include a copy of the complaint
16 to be filed to initiate the civil action.

17 (iii) EXCEPTION.—If it is not feasible
18 for the attorney general of a State to pro-
19 vide the notification required by clause (i)
20 before initiating a civil action under para-
21 graph (1), the attorney general shall notify
22 the Commission immediately upon insti-
23 tuting the civil action.

24 (B) INTERVENTION BY FEDERAL TRADE
25 COMMISSION.—The Commission may—

1 (i) intervene in any civil action
2 brought by the attorney general of a State
3 under paragraph (1); and

4 (ii) upon intervening—

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

6 (II) file petitions for appeal of a
7 decision in the civil action.
8

9 (4) INVESTIGATORY POWERS.—Nothing in this
10 subsection may be construed to prevent the attorney
11 general of a State from exercising the powers conferred on the attorney general by the laws of the
12 State to conduct investigations, to administer oaths
13 or affirmations, or to compel the attendance of witnesses or the production of documentary or other
14 evidence.
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17 (5) PREEMPTIVE ACTION BY FEDERAL TRADE
18 COMMISSION.—If the Commission institutes a civil
19 action or an administrative action with respect to a
20 violation of a provision of section 3 or 4 or a regulation promulgated under this Act, the attorney general of a State may not, during the pendency of such
21 action, bring a civil action under paragraph (1)
22 against any defendant named in the complaint of the
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1 Commission for the violation with respect to which
2 the Commission instituted such action.

3 (6) ACTIONS BY OTHER STATE OFFICIALS.—

4 (A) IN GENERAL.—In addition to civil ac-
5 tions brought by attorneys general under para-
6 graph (1), any other officer of a State who is
7 authorized by the State to do so may bring a
8 civil action under paragraph (1), subject to the
9 same requirements and limitations that apply
10 under this subsection to civil actions brought by
11 attorneys general.

12 (B) SAVINGS PROVISION.—Nothing in this
13 subsection may be construed to prohibit an au-
14 thorized official of a State from initiating or
15 continuing any proceeding in a court of the
16 State for a violation of any civil or criminal law
17 of the State.

18 **SEC. 7. EFFECT ON OTHER LAWS.**

19 (a) PRESERVATION OF COMMISSION AUTHORITY.—
20 Nothing in this Act may be construed in any way to limit
21 or affect the Commission’s authority under any other pro-
22 vision of law.

23 (b) PRESERVATION OF OTHER FEDERAL LAW.—
24 Nothing in this Act may be construed in any way to super-
25 sede, restrict, or limit the application of the Fair Credit

1 Reporting Act (15 U.S.C. 1681 et seq.) or any other Fed-
2 eral law.

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