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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

FEBRUARY 12, 2014

Mr. ROCKEFELLER (for himself and Mr. MARKEY) 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”.

6 **SEC. 2. DEFINITIONS.**

7 In this Act:

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

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

7 (3) NON-PUBLIC INFORMATION.—The term
8 “non-public information” means information about
9 an individual that is of a private nature, not avail-
10 able to the general public, and not obtained from a
11 public record.

12 (4) PUBLIC RECORD INFORMATION.—The term
13 “public record information” means information
14 about an individual that has been obtained originally
15 from records of a Federal, State, or local govern-
16 ment entity that are available for public inspection.

17 **SEC. 3. PROHIBITION ON OBTAINING OR SOLICITATION TO**
18 **OBTAIN PERSONAL INFORMATION BY FALSE**
19 **PRETENSES.**

20 (a) IN GENERAL.—It shall be unlawful for a data
21 broker to obtain or attempt to obtain, or cause to be dis-
22 closed or attempt to cause to be disclosed to any person,
23 personal information or any other information relating to
24 any person by making a false, fictitious, or fraudulent
25 statement or representation to any person, including by

1 providing any document to any person, that the data
2 broker knows or should know to be forged, counterfeit,
3 lost, stolen, or fraudulently obtained, or contains a false,
4 fictitious, or fraudulent statement or representation.

5 (b) SOLICITATION.—It shall be unlawful for a data
6 broker to request a person to obtain personal information,
7 or any other information, relating to any other person if
8 the data broker knows or should know that the person to
9 whom the request is made will obtain or attempt to obtain
10 that information in the manner described in subsection
11 (a).

12 **SEC. 4. PERSONAL INFORMATION.**

13 (a) ACCURACY.—A data broker shall establish rea-
14 sonable procedures to ensure the maximum possible accu-
15 racy of the personal information it collects, assembles, or
16 maintains, and any other information it collects, assem-
17 bles, or maintains that specifically identifies an individual,
18 unless the information only identifies an individual's name
19 or address.

20 (b) EXCEPTION; FRAUD DATABASES.—Notwith-
21 standing subsection (a), a data broker may collect or
22 maintain information that may be inaccurate with respect
23 to a particular individual if that information is being col-
24 lected or maintained solely for the purpose of—

1 (1) indicating whether there may be a discrep-
2 ancy or irregularity in the personal information that
3 is associated with an individual;

4 (2) helping to identify, or to authenticate the
5 identity of, an individual; or

6 (3) helping to protect against or investigate
7 fraud or other unlawful conduct.

8 (c) CONSUMER ACCESS.—A data broker shall provide
9 an individual a means to review any personal information
10 or other information that specifically identifies that indi-
11 vidual, that the data broker collects, assembles, or main-
12 tains on that individual, unless an exception applies under
13 section 5.

14 (d) REVIEW REQUIREMENTS.—The means for review
15 under subsection (c) shall be provided—

16 (1) at an individual's request;

17 (2) after verifying the identity of the individual;

18 (3) at least 1 time per year; and

19 (4) at no cost to the individual.

20 (e) NOTICE.—A data broker shall maintain an Inter-
21 net Web site and place a clear and conspicuous notice on
22 that Internet Web site instructing an individual—

23 (1) how to review the information described
24 under subsection (c); and

1 (2) how to express a preference with respect to
2 the use of personal information for marketing pur-
3 poses under subsection (g).

4 (f) DISPUTED INFORMATION.—An individual whose
5 personal information is maintained by a data broker may
6 dispute the accuracy of any information described under
7 subsection (c) by requesting, in writing, that the data
8 broker correct the information. A data broker, after
9 verifying the identity of the individual making the request,
10 and unless there are reasonable grounds to believe the re-
11 quest is frivolous or irrelevant, shall—

12 (1) with regard to public record information—

13 (A) inform the individual of the source of
14 the information and, if reasonably available,
15 where to direct the individual’s request for cor-
16 rection; or

17 (B) if the individual provides proof that
18 the public record has been corrected or that the
19 data broker was reporting the information in-
20 correctly, correct the inaccuracy in the data
21 broker’s records; and

22 (2) with regard to non-public information—

23 (A) note the information that is disputed,
24 including the individual’s written request;

1 (B) if the information can be independ-
2 ently verified, use the reasonable procedures es-
3 tablished under subsection (a) to independently
4 verify the information; and

5 (C) if the data broker was reporting the
6 information incorrectly, correct the inaccuracy
7 in the data broker's records.

8 (g) CERTAIN MARKETING INFORMATION.—A data
9 broker that maintains any information described under
10 subsection (a) and that uses, shares, or sells that informa-
11 tion for marketing purposes shall provide each individual
12 whose information it maintains with a reasonable means
13 of expressing a preference not to have that individual's
14 information used for those purposes. If an individual ex-
15 presses such a preference, the data broker may not use,
16 share, or sell that individual's information for marketing
17 purposes.

18 (h) PERSONS REGULATED BY THE FAIR CREDIT RE-
19 PORTING ACT.—A data broker shall be deemed in compli-
20 ance with this section with respect to information that is
21 subject to the Fair Credit Reporting Act (15 U.S.C. 1681
22 et seq.) if the data broker is in compliance with sections
23 609, 610, and 611 of that Act (15 U.S.C. 1681g, 1681h,
24 1681i).

1 **SEC. 5. REGULATIONS.**

2 Not later than 1 year after the date of enactment
3 of this Act, the Commission shall promulgate regulations
4 under section 553 of title 5, United States Code, to imple-
5 ment and enforce the requirements of this Act, includ-
6 ing—

7 (1) a requirement that a data broker establish
8 measures that facilitate the auditing or retracing of
9 any internal or external access to, or transmission
10 of, any data containing personal information col-
11 lected, assembled, or maintained by the data broker;

12 (2) the establishment of a centralized Internet
13 Web site for the benefit of consumers that lists the
14 data brokers subject to section 4 and provides addi-
15 tional information to consumers about their rights
16 under this Act;

17 (3) if the Commission considers a data broker
18 outside the scope of the purposes of this Act, the ex-
19 clusion of that data broker from the applicability of
20 this Act, such as, if the Commission considers it ap-
21 propriate for exclusion, a data broker who processes
22 information collected by or on behalf of and received
23 from or on behalf of a nonaffiliated third party con-
24 cerning an individual who is a customer or an em-
25 ployee of that third party to enable that third party,
26 directly or through parties acting on its behalf, to

1 provide benefits for its employees or directly trans-
2 act business with its customers;

3 (4) any exceptions, that the Commission con-
4 siders necessary, to the auditing and retracing re-
5 quirements under paragraph (1) to further or pro-
6 tect law enforcement or national security activities;
7 and

8 (5) any exceptions, that the Commission con-
9 siders necessary, to an individual's right to review
10 the information described under section 4(c), such
11 as for child protection, law enforcement, fraud pre-
12 vention, or other legitimate government purposes.

13 **SEC. 6. ENFORCEMENT.**

14 (a) **IN GENERAL.**—A violation of a regulation pre-
15 scribed under this Act shall be treated as a violation of
16 a rule defining an unfair or a deceptive act or practice
17 under section 18(a)(1)(B) of the Federal Trade Commis-
18 sion Act (15 U.S.C. 57a(a)(1)(B)).

19 (b) **POWERS OF COMMISSION.**—The Commission
20 shall enforce this Act in the same manner, by the same
21 means, and with the same jurisdiction, powers, and duties
22 as though all applicable terms and provisions of the Fed-
23 eral Trade Commission Act (15 U.S.C. 41 et seq.) were
24 incorporated into and made a part of this Act. Any data
25 broker who violates a regulation prescribed under this Act

1 shall be subject to the penalties and entitled to the privi-
2 leges and immunities provided in the Federal Trade Com-
3 mission Act (15 U.S.C. 41 et seq.).

4 (c) ENFORCEMENT BY STATE ATTORNEYS GEN-
5 ERAL.—

6 (1) CIVIL ACTION.—Except as provided under
7 paragraph (3)(B), in any case in which the attorney
8 general of a State, or an official or agency of a
9 State, has reason to believe that an interest of the
10 residents of that State has been or is threatened or
11 adversely affected by a data broker who violates a
12 regulation prescribed under this Act, the attorney
13 general, official, or agency of the State, as *parens*
14 *patriae*, may bring a civil action on behalf of the
15 residents of the State in a district court of the
16 United States of appropriate jurisdiction—

17 (A) to enjoin further violation of this Act
18 by the defendant;

19 (B) to compel compliance with this Act;

20 (C) to obtain damages, restitution, or other
21 compensation on behalf of such residents, or to
22 obtain such further and other relief as the court
23 may deem appropriate; or

24 (D) to obtain civil penalties in the amount
25 determined under paragraph (2).

1 (2) CIVIL PENALTIES.—

2 (A) CALCULATION.—For purposes of im-
3 posing a civil penalty under paragraph (1)(D),
4 the amount determined under this paragraph is
5 the amount calculated by multiplying the num-
6 ber of separate violations of a rule by an
7 amount not greater than \$16,000.

8 (B) ADJUSTMENT FOR INFLATION.—Be-
9 ginning on the date that the Consumer Price
10 Index is first published by the Bureau of Labor
11 Statistics that is after 1 year after the date of
12 enactment of this Act, and each year thereafter,
13 the amount specified in subparagraph (A) shall
14 be increased by the percentage increase in the
15 Consumer Price Index published on that date
16 from the Consumer Price Index published the
17 previous year.

18 (3) INTERVENTION BY THE COMMISSION.—

19 (A) NOTICE.—A State shall provide prior
20 written notice of any civil action under para-
21 graph (1) to the Commission and provide the
22 Commission with a copy of its complaint, except
23 in any case in which such prior notice is not
24 feasible, in which case the State shall serve

1 such notice immediately upon instituting such
2 action.

3 (B) INTERVENTION BY THE COMMISS-
4 SION.—The Commission shall have the right—

5 (i) to intervene in the civil action
6 under paragraph (1);

7 (ii) upon so intervening, to be heard
8 on all matters arising in that civil action;
9 and

10 (iii) to file petitions for appeal of a
11 decision in that civil action.

12 (C) LIMITATION ON STATE ACTION WHILE
13 FEDERAL ACTION IS PENDING.—If the Commis-
14 sion has instituted a civil action for violation of
15 this Act, no State attorney general, or official
16 or agency of a State, may bring an action under
17 this subsection during the pendency of that ac-
18 tion against any defendant named in the com-
19 plaint of the Commission for any violation of
20 this Act alleged in the complaint.

21 (4) CONSTRUCTION.—For purposes of bringing
22 any civil action under paragraph (1), nothing in this
23 Act shall be construed to prevent an attorney gen-
24 eral of a State from exercising the powers conferred
25 on the attorney general by the laws of that State—

- 1 (A) to conduct investigations;
- 2 (B) to administer oaths or affirmations; or
- 3 (C) to compel the attendance of witnesses
- 4 or the production of documentary and other evi-
- 5 dence.

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

7 (a) PRESERVATION OF COMMISSION AUTHORITY.—

8 Nothing in this Act may be construed in any way to limit

9 or affect the Commission’s authority under any other pro-

10 vision of law.

11 (b) PRESERVATION OF OTHER FEDERAL LAW.—

12 Nothing in this Act may be construed in any way to super-

13 sede, restrict, or limit the application of the Fair Credit

14 Reporting Act (15 U.S.C. 1681 et seq.) or any other Fed-

15 eral law.

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