

115TH CONGRESS
2D SESSION

H. R. 5165

To prohibit entities from requiring individuals to submit to arbitration for disputes arising from a security breach, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

MARCH 5, 2018

Mr. TED LIEU of California introduced the following bill; which was referred to the Committee on Energy and Commerce

A BILL

To prohibit entities from requiring individuals to submit to arbitration for disputes arising from a security breach, 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 “Ending Forced Arbi-
5 tration for Victims of Data Breaches Act of 2018”.

6 **SEC. 2. PROTECTION OF DATA SECURITY BREACH VICTIMS.**

7 An entity may not require, as part of a customer or
8 other similar agreement, an individual to agree to submit
9 any dispute related to a security breach, including any dis-
10 pute related to identity theft, to arbitration.

1 **SEC. 3. APPLICABILITY.**

2 A provision of an agreement entered into prior to the
3 date of the enactment of this Act, that violates section
4 2, is void.

5 **SEC. 4. ENFORCEMENT BY THE FEDERAL TRADE COMMIS-**
6 **SION.**

7 (a) UNFAIR OR DECEPTIVE ACTS OR PRACTICES.—

8 A violation of section 2 shall be treated as an unfair and
9 deceptive act or practice in violation of a regulation under
10 section 18(a)(1)(B) of the Federal Trade Commission Act
11 (15 U.S.C. 57a(a)(1)(B)) regarding unfair or deceptive
12 acts or practices.

13 (b) POWERS OF COMMISSION.—The Commission
14 shall enforce this Act in the same manner, by the same
15 means, and with the same jurisdiction, powers, and duties
16 as though all applicable terms and provisions of the Fed-
17 eral Trade Commission Act (15 U.S.C. 41 et seq.) were
18 incorporated into and made a part of this Act. Any person
19 who violates section 2 shall be subject to the penalties and
20 entitled to the privileges and immunities provided in that
21 Act.

22 (c) RULES.—The Commission shall promulgate,
23 under section 553 of title 5, United States Code, such
24 rules as may be necessary to carry out the provisions of
25 this Act.

1 **SEC. 5. ENFORCEMENT BY STATES.**

2 (a) IN GENERAL.—If the attorney general of a State
3 has reason to believe that an interest of the residents of
4 the State has been or is being threatened or adversely af-
5 fected by a practice that violates section 2, the attorney
6 general of the State may, as *parens patriae*, bring a civil
7 action on behalf of the residents of the State in an appro-
8 priate district court of the United States to obtain appro-
9 priate relief.

10 (b) RIGHTS OF FEDERAL TRADE COMMISSION.—

11 (1) NOTICE TO FEDERAL TRADE COMMIS-
12 SION.—

13 (A) IN GENERAL.—Except as provided in
14 clause (iii), the attorney general of a State, be-
15 fore initiating a civil action under paragraph
16 (1), shall provide written notification to the
17 Federal Trade Commission that the attorney
18 general intends to bring such civil action.

19 (B) CONTENTS.—The notification required
20 under clause (i) shall include a copy of the com-
21 plaint to be filed to initiate the civil action.

22 (C) EXCEPTION.—If it is not feasible for
23 the attorney general of a State to provide the
24 notification required under clause (i) before ini-
25 tiating a civil action under paragraph (1), the

1 attorney general shall notify the Commission
2 immediately upon instituting the civil action.

3 (2) INTERVENTION BY FEDERAL TRADE COM-
4 MISSION.—The Commission may—

5 (A) intervene in any civil action brought by
6 the attorney general of a State under para-
7 graph (1); and

8 (B) upon intervening—

9 (i) be heard on all matters arising in
10 the civil action; and

11 (ii) file petitions for appeal of a deci-
12 sion in the civil action.

13 (c) INVESTIGATORY POWERS.—Nothing in this sub-
14 section may be construed to prevent the attorney general
15 of a State from exercising the powers conferred on the
16 attorney general by the laws of the State to conduct inves-
17 tigations, to administer oaths or affirmations, or to compel
18 the attendance of witnesses or the production of documen-
19 tary or other evidence.

20 (d) PREEMPTIVE ACTION BY FEDERAL TRADE COM-
21 MISSION.—If the Federal Trade Commission institutes a
22 civil action or an administrative action with respect to a
23 violation of section 2, the attorney general of a State may
24 not, during the pendency of such action, bring a civil ac-
25 tion under paragraph (1) against any defendant named

1 in the complaint of the Commission for the violation with
2 respect to which the Commission instituted such action.

3 (e) VENUE; SERVICE OF PROCESS.—

4 (1) VENUE.—Any action brought under para-
5 graph (1) may be brought in—

6 (A) the district court of the United States
7 that meets applicable requirements relating to
8 venue under section 1391 of title 28, United
9 States Code; or

10 (B) another court of competent jurisdic-
11 tion.

12 (2) SERVICE OF PROCESS.—In an action
13 brought under paragraph (1), process may be served
14 in any district in which—

15 (A) the defendant is an inhabitant, may be
16 found, or transacts business; or

17 (B) venue is proper under section 1391 of
18 title 28, United States Code.

19 **SEC. 6. PRIVATE RIGHT OF ACTION.**

20 (a) IN GENERAL.—An individual who is injured by
21 a violation of section 2 may bring a private right of action
22 in any court of appropriate jurisdiction for rescission and
23 restitution, as well as for all damages and may be awarded
24 injunctive relief against a violation of such section. The
25 individual shall also be entitled to recover its costs of liti-

1 gation and reasonable attorney's fees and expert witness
2 fees, against any entity or person found to be liable for
3 such violation.

4 (b) LIABILITY.—Every person who directly or indi-
5 rectly controls a person liable under subsection (a), every
6 partner in a firm so liable, every principal executive officer
7 or director of a corporation so liable, every person occu-
8 pying a similar status or performing similar functions and
9 every employee of a person so liable who materially aids
10 in the act or transaction constituting the violation is also
11 liable jointly and severally with and to the same extent
12 as such person, unless the person who would otherwise be
13 liable hereunder had no knowledge of or reasonable
14 grounds to know of the existence of the facts by reason
15 of which the liability is alleged to exist.

16 (c) STATUTE OF LIMITATIONS.—No action may be
17 commenced pursuant to this section more than the later
18 of—

19 (1) 2 years after the date on which the violation
20 occurs; or

21 (2) 2 years after the date on which the violation
22 is discovered or should have been discovered through
23 exercise of reasonable diligence.

24 (d) VENUE.—An action under this section may be
25 brought in—

1 (1) the district court of the United States that
2 meets applicable requirements relating to venue
3 under section 1391 of title 28, United States Code;
4 or

5 (2) another court of competent jurisdiction.

6 (e) CUMULATIVE RIGHT.—The private rights pro-
7 vided for in this section are in addition to and not in lieu
8 of other rights or remedies created by Federal or State
9 law.

10 **SEC. 7. DEFINITIONS.**

11 In this Act—

12 (1) the term “security breach”—

13 (A) means a compromise of the security,
14 confidentiality, or integrity of, or the loss of,
15 computerized data that results in, or there is a
16 reasonable basis to conclude has resulted in—

17 (i) the unauthorized acquisition of
18 sensitive personally identifiable informa-
19 tion; or

20 (ii) access to sensitive personally iden-
21 tifiable information that is for an unau-
22 thorized purpose, or in excess of authoriza-
23 tion;

24 (B) does not include any lawfully author-
25 ized investigative, protective, or intelligence ac-

1 tivity of a law enforcement agency of the
2 United States, a State, or a political subdivision
3 of a State, or of an element of the intelligence
4 community; and

5 (2) the term “sensitive personally identifiable
6 information” means any information or compilation
7 of information, in electronic or digital form that in-
8 cludes one or more of the following:

9 (A) An individual’s first and last name or
10 first initial and last name in combination with
11 any two of the following data elements:

12 (i) Home address or telephone num-
13 ber.

14 (ii) Mother’s maiden name.

15 (iii) Month, day, and year of birth.

16 (B) A Social Security number (but not in-
17 cluding only the last four digits of a Social Se-
18 curity number), driver’s license number, pass-
19 port number, or alien registration number or
20 other Government-issued unique identification
21 number.

22 (C) Unique biometric data such as a finger
23 print, voice print, a retina or iris image, or any
24 other unique physical representation.

1 (D) A unique account identifier, including
2 a financial account number or credit or debit
3 card number, electronic identification number,
4 user name, or routing code.

5 (E) A user name or electronic mail ad-
6 dress, in combination with a password or secu-
7 rity question and answer that would permit ac-
8 cess to an online account.

9 (F) Any combination of the following data
10 elements:

11 (i) An individual's first and last name
12 or first initial and last name.

13 (ii) A unique account identifier, in-
14 cluding a financial account number or
15 credit or debit card number, electronic
16 identification number, user name, or rout-
17 ing code.

18 (iii) Any security code, access code, or
19 password, or source code that could be
20 used to generate such codes or passwords.

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