S. 142

To impose privacy requirements on providers of internet services similar to the requirements imposed on Federal agencies under the Privacy Act of 1974.

IN THE SENATE OF THE UNITED STATES

JANUARY 16, 2019

Mr. RUBIO introduced the following bill; which was read twice and referred to the Committee on Commerce, Science, and Transportation

A BILL

To impose privacy requirements on providers of internet services similar to the requirements imposed on Federal agencies under the Privacy Act of 1974.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the “American Data Dissemination Act of 2019” or the “ADD Act”.

SEC. 2. DEFINITIONS.

(a) IN GENERAL.—In this Act—
(1) the term “agency” has the meaning given in section 552a of title 5, United States Code;

(2) the term “appropriate committees of Congress” means—

(A) the Committee on Commerce, Science, and Transportation of the Senate; and

(B) the Committee on Energy and Commerce of the House of Representatives;

(3) the term “collect” means to buy, rent, gather, obtain, receive, or access information about an individual by any means, including by—

(A) receiving information from the individual, either actively or passively; or

(B) observing the behavior of the individual;

(4) the term “Commission” means the Federal Trade Commission;

(5) the term “covered provider” means a person that—

(A) provides a service that uses the internet; and

(B) in providing the service under subparagraph (A), collects records;
(6) the term “disclose” means to release, disseminate, make available, transfer, or otherwise communicate orally, in writing, or by electronic or other means;

(7) the term “maintain” includes maintain, collect, use, disclose, or process;

(8) the term “Privacy Act of 1974” means section 552a of title 5, United States Code;

(9) the term “process” means to perform an operation or set of operations on information or on sets of information, whether or not by automated means;

(10) subject to subsection (b), the term “record” means any item, collection, or grouping of information about an individual that—

(A) is maintained by a covered provider, including the education, financial transactions, medical history, and criminal or employment history of the individual; and

(B) contains any name or number that may be used, alone or in conjunction with any other information, to identify a specific individual, including any—

(i) name, social security number, date of birth, official driver’s license or identi-
ication number issued by a State, alien registration number, government passport number, or employer or taxpayer identi-

(iii) unique electronic identification number, address, or routing code;

(iv) telecommunication identifying in-
formation or access device (as those terms are defined in section 1029(e) of title 18, United States Code); or

(v) user-generated content; and

(11) the term “sell” means to disclose informa-
tion about an individual to another person for monetary or other valuable consideration.

(b) MODIFICATION OF DEFINITION.—If the Commis-
sion promulgates regulations under section 4(a), the Com-
mission may modify, at any time, the definition of the term “record” under subsection (a) of this section as nec-

ecessary to conform to new Federal laws or regulations.
SEC. 3. RECOMMENDED PRIVACY REQUIREMENTS FOR PROVIDERS OF INTERNET SERVICES.

(a) In General.—Not later than 180 days after the date of enactment of this Act, the Commission shall submit to the appropriate committees of Congress detailed recommendations for privacy requirements that Congress could impose on covered providers that would be substantially similar, to the extent practicable, to the requirements applicable to agencies under the Privacy Act of 1974.

(b) Subjects for Recommendations.—The recommendations under subsection (a) shall address the issues described in section 4.

SEC. 4. REGULATIONS IMPOSING PRIVACY REQUIREMENTS ON PROVIDERS OF INTERNET SERVICES.

(a) Regulations.—

(1) Proposed regulations.—Not earlier than 1 year after the date on which the Commission submits detailed recommendations for privacy requirements under section 3(a), and not later than 15 months after that date, the Commission shall publish and submit to the appropriate committees of Congress proposed regulations to impose privacy requirements on covered providers that are substantially similar, to the extent practicable, to the re-
requirements applicable to agencies under the Privacy Act of 1974.

(2) Final regulations.—If a law imposing privacy requirements on covered providers that are substantially similar, to the extent practicable, to the requirements applicable to agencies under the Privacy Act of 1974 is not enacted by the date that is 2 years after the date of enactment of this Act, the Commission shall, not later than 27 months after that date of enactment, promulgate final regulations that impose such privacy requirements.

(b) Contents.—In promulgating regulations under subsection (a), the Commission—

(1) shall—

(A) establish criteria for exempting certain small, newly formed covered providers from the requirements under the regulations, taking into account factors including—

(i) the period of time during which the covered provider has been operating as a covered provider;

(ii) the annual revenue of the covered provider; and

(iii) the number of individuals about whom the covered provider collects records;
(B) restrict disclosure of records maintained by covered providers;

(C) provide that—

(i) an individual may request access to a record (or a portion thereof) maintained by a covered provider that relates to the individual; and

(ii) upon a request under clause (i), the covered provider shall—

(I) provide the individual with access to the record (or the relevant portion thereof); or

(II) if the covered provider so elects, delete the record (or the relevant portion thereof), subject to the requirements to keep and provide an accounting under subparagraph (G);

(D) provide that if an individual demonstrates that a record relating to the individual is not accurate, relevant, timely, or complete (as those terms are defined by the Commission)—

(i) the individual may request that the covered provider amend the record; and
(ii) upon a request under clause (i),
the covered provider shall amend the
record;

(E) establish a process modeled on the
process established under section 611(a) of the
Fair Credit Reporting Act (15 U.S.C.
1681i(a))—

(i) through which an individual and a
covered provider may resolve a dispute
under subparagraph (D) of this paragraph
regarding the assertion that a record relat-
ing to the individual is not accurate, rel-
evant, timely, or complete; and

(ii) that does not require the indi-
vidual to incur any expense;

(F) in accordance with accepted standards
and in consultation with the Secretary of Com-
merce, establish a code of “fair information
practices”, for the secure collection, mainte-
nance, and dissemination of records, with which
a covered provider must comply;

(G) require a covered provider, in a man-
ner substantially similar, to the extent prac-
ticable, to the requirements applicable to agen-
cies under section 552a(c) of title 5, United States Code, to—

(i) keep an accounting of certain disclosures of records for a reasonable period of time, as determined by the Commission; and

(ii) make available to an individual, upon request, the accounting made under clause (i) of disclosures of records relating to the individual, unless the period of time described in that clause has expired; and

(H) to the extent practicable, incorporate the exceptions under paragraphs (1) through (12) of section 552a(b) of title 5, United States Code; and

(2) may promulgate regulations not described in paragraph (1) that are modeled on section 552a of title 5, United States Code, and the regulations promulgated under that section.

(e) Application With Other Federal Laws.—

(1) Exemption for Persons Subject to Other Federal Privacy Laws.—To the extent that a person is subject to a Federal privacy law described in paragraph (2) of this subsection, the regulations promulgated under subsection (a) shall not
apply to the person with respect to any information
or records governed by that Federal privacy law.

(2) Other Federal privacy laws described.—The Federal privacy laws described in
this paragraph are as follows:

(A) The regulations promulgated under
section 264(e) of the Health Insurance Port-
ability and Accountability Act of 1996 (42
U.S.C. 1320d–2 note), as those regulations re-
late to—

(i) a person described in section
1172(a) of the Social Security Act (42
U.S.C. 1320d–1(a)); or

(ii) transactions referred to in section
1173(a)(1) of the Social Security Act (42
U.S.C. 1320d–2(a)(1)).

(B) Section 444 of the General Education
Provisions Act (20 U.S.C. 1232g) (commonly
referred to as the “Family Educational Rights
and Privacy Act of 1974”).

(C) Section 552a of title 5, United States
Code.

(3) Conflicts.—

(A) Children’s online privacy protec-
tion act.—In the case of a conflict between
the regulations promulgated under subsection (a) of this section and the Children’s Online Privacy Protection Act of 1998 (15 U.S.C. 6501 et seq.) (and any regulations promulgated under that Act), the Commission shall determine which provision of law shall apply.

(B) Gramm-Leach-Bliley Act.—In the case of a conflict between the regulations promulgated under subsection (a) of this section and title V of the Gramm-Leach-Bliley Act of 1999 (15 U.S.C. 6801 et seq.) (and any regulations promulgated under that Act), the Commission shall determine which provision of law shall apply.

SEC. 5. ENFORCEMENT.

(a) Unfair or Deceptive Acts or Practices.—A violation of a regulation promulgated under section 4(a) shall be treated as a violation of a rule defining an unfair or deceptive act or practice prescribed under section 18(a)(1)(B) of the Federal Trade Commission Act (15 U.S.C. 57a(a)(1)(B)).

(b) Powers of Commission.—

(1) In general.—Except as provided in paragraph (3), if the Commission promulgates regulations under section 4(a), the Commission shall en-
force this Act in the same manner, by the same
means, and with the same jurisdiction, powers, and
duties as though all applicable terms and provisions
et seq.) were incorporated into and made a part of
this Act.

(2) Privileges and Immunities.—Except as
provided in paragraph (3), any person who violates
a regulation promulgated under section 4(a) shall be
subject to the penalties and entitled to the privileges
and immunities provided in the Federal Trade Com-
mission Act (15 U.S.C. 41 et seq.).

(3) Common Carriers.—Notwithstanding sec-
tion 4, 5(a)(2), or 6 of the Federal Trade Commiss-
ion Act (15 U.S.C. 44, 45(a)(2), 46) or any juris-
dictional limitation of the Commission, if the Com-
mission promulgates regulations under section 4(a),
the Commission shall also enforce this Act, in the
same manner provided in paragraphs (1) and (2) of
this subsection, with respect to common carriers
subject to the Communications Act of 1934 (47
U.S.C. 151 et seq.) and Acts amendatory thereof
and supplementary thereto.
(4) Authority preserved.—Nothing in this Act shall be construed to limit the authority of the Commission under any other provision of law.

SEC. 6. EFFECT ON STATE LAWS.

This Act, including any regulations promulgated under section 4(a), shall supersede any provision of the law of a State relating to a covered provider that is subject to such a regulation, to the extent that the provision relates to the maintenance of—

(1) records covered by this Act; or

(2) any other personally identifiable information or personal identification information.