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1ST SESSION

S. 2186

To require entities to provide consumers with the opportunity to prohibit the entity from collecting or using certain data concerning the consumer and to request deletion of such data.

IN THE SENATE OF THE UNITED STATES

JULY 18, 2019

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

A BILL

To require entities to provide consumers with the opportunity to prohibit the entity from collecting or using certain data concerning the consumer and to request deletion of such data.

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 “Protecting Personal
5 Information Act of 2019”.

1 **SEC. 2. REQUIREMENTS FOR ENTITIES WITH RESPECT TO**
2 **THE COLLECTION OR USE OF CERTAIN DATA**
3 **CONCERNING THE CONSUMER.**

4 (a) OPPORTUNITY TO PROHIBIT THE ENTITY FROM
5 COLLECTING OR USING CERTAIN DATA.—A covered enti-
6 ty shall, prior to collecting covered data concerning an in-
7 dividual, provide the individual with an opportunity to pro-
8 hibit the covered entity from collecting such data or selling
9 or otherwise transferring such data to a third party.

10 (b) DELETION UPON REQUEST.—Upon a request
11 from an individual for whom a covered entity has collected
12 covered data, the covered entity shall, without undue
13 delay, delete such covered data.

14 **SEC. 3. ENFORCEMENT BY THE FEDERAL TRADE COMMIS-**
15 **SION.**

16 (a) UNFAIR OR DECEPTIVE ACTS OR PRACTICES.—
17 A violation of section 2 shall be treated as a violation of
18 a rule defining an unfair or a deceptive act or practice
19 under section 18(a)(1)(B) of the Federal Trade Commis-
20 sion Act (15 U.S.C. 57a(a)(1)(B)).

21 (b) POWERS OF COMMISSION.—

22 (1) IN GENERAL.—The Commission shall en-
23 force this Act in the same manner, by the same
24 means, and with the same jurisdiction, powers, and
25 duties as though all applicable terms and provisions
26 of the Federal Trade Commission Act (15 U.S.C. 41

1 et seq.) were incorporated into and made a part of
2 this Act.

3 (2) PRIVILEGES AND IMMUNITIES.—Any cov-
4 ered entity that violates section 2 shall be subject to
5 the penalties and entitled to the privileges and im-
6 munities provided in the Federal Trade Commission
7 Act (15 U.S.C. 41 et seq.).

8 (3) AUTHORITY PRESERVED.—Nothing in this
9 Act shall be construed to limit the authority of the
10 Federal Trade Commission under any other provi-
11 sion of law.

12 **SEC. 4. ENFORCEMENT BY STATES.**

13 (a) IN GENERAL.—In any case in which the attorney
14 general of a State has reason to believe that an interest
15 of the residents of the State has been or is threatened
16 or adversely affected by the engagement of any covered
17 entity subject to section 2 in a practice that violates such
18 section, the attorney general of the State may, as *parens*
19 *patriae*, bring a civil action on behalf of the residents of
20 the State in an appropriate district court of the United
21 States—

22 (1) to enjoin further violation of such section by
23 such person;

24 (2) to compel compliance with such section; and

1 (3) to obtain damages, restitution, or other
2 compensation on behalf of such residents.

3 (b) RIGHTS OF FEDERAL TRADE COMMISSION.—

4 (1) NOTICE TO FEDERAL TRADE COMMISS-
5 SION.—

6 (A) IN GENERAL.—Except as provided in
7 subparagraph (C), the attorney general of a
8 State shall notify the Commission in writing
9 that the attorney general intends to bring a
10 civil action under subsection (a) not later than
11 10 days before initiating the civil action.

12 (B) CONTENTS.—The notification required
13 by subparagraph (A) with respect to a civil ac-
14 tion shall include a copy of the complaint to be
15 filed to initiate the civil action.

16 (C) EXCEPTION.—If it is not feasible for
17 the attorney general of a State to provide the
18 notification required by subparagraph (A) be-
19 fore initiating a civil action under subsection
20 (a), the attorney general shall notify the Com-
21 mission immediately upon instituting the civil
22 action.

23 (2) INTERVENTION BY FEDERAL TRADE COM-
24 MISSION.—The Commission may—

1 (A) intervene in any civil action brought by
2 the attorney general of a State under sub-
3 section (a); and

4 (B) upon intervening—

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

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

9 (c) INVESTIGATORY POWERS.—Nothing in this sec-
10 tion may be construed to prevent the attorney general of
11 a State from exercising the powers conferred on the attor-
12 ney general by the laws of the State to conduct investiga-
13 tions, to administer oaths or affirmations, or to compel
14 the attendance of witnesses or the production of documen-
15 tary or other evidence.

16 (d) PREEMPTIVE ACTION BY FEDERAL TRADE COM-
17 MISSION.—If the Commission institutes a civil action or
18 an administrative action with respect to a violation of sec-
19 tion (2), the attorney general of a State may not, during
20 the pendency of such action, bring a civil action under sub-
21 section (a) against any defendant named in the complaint
22 of the Commission for the violation with respect to which
23 the Commission instituted such action.

24 (e) VENUE; SERVICE OF PROCESS.—

1 (1) VENUE.—Any action brought under sub-
2 section (a) may be brought in—

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

7 (B) another court of competent jurisdic-
8 tion.

9 (2) SERVICE OF PROCESS.—In an action
10 brought under subsection (a), process may be served
11 in any district in which the defendant—

12 (A) is an inhabitant; or

13 (B) may be found.

14 (f) ACTIONS BY OTHER STATE OFFICIALS.—

15 (1) IN GENERAL.—In addition to civil actions
16 brought by attorneys general under subsection (a),
17 any other consumer protection officer of a State who
18 is authorized by the State to do so may bring a civil
19 action under subsection (a), subject to the same re-
20 quirements and limitations that apply under this
21 section to civil actions brought by attorneys general.

22 (2) SAVINGS PROVISION.—Nothing in this sec-
23 tion may be construed to prohibit an authorized offi-
24 cial of a State from initiating or continuing any pro-

1 ceeding in a court of the State for a violation of any
2 civil or criminal law of the State.

3 **SEC. 5. DEFINITIONS.**

4 In this Act:

5 (1) COMMISSION.—The term “Commission”
6 means the Federal Trade Commission.

7 (2) COVERED DATA.—

8 (A) IN GENERAL.—Except as provided in
9 subparagraph (B), the term “covered data”
10 means only the following:

11 (i) Personally identifiable information.

12 (ii) Unique identifier information.

13 (iii) Any information that is collected,
14 used, or stored in connection with person-
15 ally identifiable information or unique
16 identifier information in a manner that
17 may reasonably be used by the party col-
18 lecting the information to identify a spe-
19 cific individual.

20 (B) EXCEPTION.—The term “covered
21 data” does not include the following:

22 (i) Personally identifiable information
23 obtained from public records that is not
24 merged with covered information gathered
25 elsewhere.

1 (ii) Personally identifiable information
2 that is obtained from a forum—

3 (I) where the individual volun-
4 tarily shared the information or au-
5 thorized the information to be shared;
6 and

7 (II) that—

8 (aa) is widely and publicly
9 available and was not made pub-
10 licly available in bad faith; and

11 (bb) contains no restrictions
12 on who can access and view such
13 information.

14 (iii) Personally identifiable informa-
15 tion reported in public media.

16 (iv) Personally identifiable informa-
17 tion dedicated to contacting an individual
18 at the individual's place of work.

19 (3) COVERED ENTITY.—The term “covered en-
20 tity” means an entity—

21 (A) that collects covered data concerning
22 individuals;

23 (B) that—

24 (i) has gross annual revenue in excess
25 of \$25,000,000;

1 (ii) annually buys, receives, sells, or
2 shares covered data of 50,000 or more in-
3 dividuals; or

4 (iii) derives 50 percent or more of its
5 annual revenue from selling individuals'
6 covered data; and

7 (C) that is—

8 (i) a person over which the Commis-
9 sion has authority pursuant to section
10 5(a)(2) of the Federal Trade Commission
11 Act (15 U.S.C. 45(a)(2));

12 (ii) a common carrier subject to the
13 Communications Act of 1934 (47 U.S.C.
14 151 et seq.), notwithstanding the definition
15 of the term “Acts to regulate commerce”
16 in section 4 of the Federal Trade Commis-
17 sion Act (15 U.S.C. 44) and the exception
18 provided by section 5(a)(2) of the Federal
19 Trade Commission Act (15 U.S.C.
20 45(a)(2)) for such carriers; or

21 (iii) a nonprofit organization, includ-
22 ing any organization described in section
23 501(c) of the Internal Revenue Code of
24 1986 that is exempt from taxation under
25 section 501(a) of such Code, notwith-

1 standing the definition of the term “Acts
2 to regulate commerce” in section 4 of the
3 Federal Trade Commission Act (15 U.S.C.
4 44) and the exception provided by section
5 5(a)(2) of the Federal Trade Commission
6 Act (15 U.S.C. 45(a)(2)) for such organi-
7 zations.

8 (4) DELETE.—The term “delete” means to re-
9 move personally identifiable information such that
10 the information is not maintained in retrievable form
11 and cannot be retrieved in the normal course of
12 business.

13 (5) PERSONALLY IDENTIFIABLE INFORMA-
14 TION.—The term “personally identifiable informa-
15 tion” means only the following:

16 (A) Any of the following information about
17 an individual:

18 (i) The first name (or initial) and last
19 name of an individual, whether given at
20 birth or time of adoption, or resulting from
21 a lawful change of name.

22 (ii) The postal address of a physical
23 place of residence of such individual.

24 (iii) An e-mail address.

1 (iv) A telephone number or mobile de-
2 vice number.

3 (v) A social security number or other
4 government issued identification number
5 issued to such individual.

6 (vi) The account number of a credit
7 card issued to such individual.

8 (vii) Unique identifier information
9 that alone can be used to identify a spe-
10 cific individual.

11 (viii) Biometric data about such indi-
12 vidual, including fingerprints and retina
13 scans.

14 (B) If used, transferred, or stored in con-
15 nection with one or more of the items of infor-
16 mation described in subparagraph (A), any of
17 the following:

18 (i) A date of birth.

19 (ii) The number of a certificate of
20 birth or adoption.

21 (iii) A place of birth.

22 (iv) Unique identifier information that
23 alone cannot be used to identify a specific
24 individual.

1 (v) Precise geographic location, at the
2 same degree of specificity as a global posi-
3 tioning system or equivalent system, and
4 not including any general geographic infor-
5 mation that may be derived from an Inter-
6 net Protocol address.

7 (vi) Information about an individual's
8 destination, location, and amount of uses
9 of voice services, regardless of technology
10 used.

11 (vii) Any other information concerning
12 an individual that may reasonably be used
13 by the party using, collecting, or storing
14 that information to identify that individual.

15 (6) THIRD PARTY.—The term “third party”
16 means, with respect to a covered entity, a person
17 that—

18 (A) is—

19 (i) not related to the covered entity by
20 common ownership or corporate control; or

21 (ii) related to the covered entity by
22 common ownership or corporate control
23 and an ordinary consumer would not un-
24 derstand that the covered entity and the

1 person were related by common ownership
2 or corporate control;

3 (B) is not a service provider used by the
4 covered entity to receive covered data in per-
5 forming services or functions on behalf of and
6 under the instruction of the covered entity; and

7 (C) with respect to the collection of cov-
8 ered data of an individual, does not have an es-
9 tablished business relationship with the indi-
10 vidual and does not identify itself to the indi-
11 vidual at the time of such collection in a clear
12 and conspicuous manner that is visible to the
13 individual.

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