

116TH CONGRESS
1ST SESSION

S. 2342

To provide for requirements for data brokers with respect to the acquisition, use, and protection of brokered personal information and to require that data brokers annually register with the Federal Trade Commission.

IN THE SENATE OF THE UNITED STATES

JULY 30, 2019

Mr. PETERS (for himself and Ms. MCSALLY) introduced the following bill; which was read twice and referred to the Committee on Commerce, Science, and Transportation

A BILL

To provide for requirements for data brokers with respect to the acquisition, use, and protection of brokered personal information and to require that data brokers annually register with the Federal Trade Commission.

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 List Act
5 of 2019”.

1 **SEC. 2. REQUIREMENTS FOR DATA BROKERS.**

2 (a) REQUIREMENTS WITH RESPECT TO THE ACQUI-
3 SITION AND USE OF BROKERED PERSONAL INFORMA-
4 TION.—A data broker shall not—

5 (1) acquire brokered personal information
6 through fraudulent means;

7 (2) acquire or use brokered personal informa-
8 tion for the purpose of—

9 (A) stalking or harassing another person;

10 (B) committing fraud, including identity
11 theft, financial fraud, or e-mail fraud; or

12 (C) engaging in unlawful discrimination,
13 including unlawful discrimination in decisions
14 regarding employment, housing, and credit eli-
15 gibility; or

16 (3) sell or transfer brokered personal informa-
17 tion to a third party if the data broker knows or rea-
18 sonably should know that the third party intends to
19 engage in any conduct prohibited by this Act.

20 (b) DUTY TO PROTECT BROKERED PERSONAL IN-
21 FORMATION.—

22 (1) IN GENERAL.—A data broker shall develop,
23 implement, and maintain a comprehensive informa-
24 tion security program in order to protect from secu-
25 rity breaches or other inadvertent or improper dis-

1 closure the brokered personal information acquired
2 by the data broker.

3 (2) PROGRAM REQUIREMENTS.—The com-
4 prehensive information security program required
5 under paragraph (1) shall—

6 (A) be written in one or more readily ac-
7 cessible parts; and

8 (B) contain administrative, technical, and
9 physical safeguards that are appropriate to—

10 (i) the size, scope, and type of busi-
11 ness of the data broker;

12 (ii) the amount of resources available
13 to the data broker;

14 (iii) the amount of stored data of the
15 data broker; and

16 (iv) the need for security and con-
17 fidentiality of brokered personal informa-
18 tion.

19 (c) ANNUAL REGISTRATION.—

20 (1) IN GENERAL.—Annually, on or before Janu-
21 ary 31, a data broker shall—

22 (A) register with the Commission; and

23 (B) provide the following information with
24 such registration:

1 (i) The name and primary physical, e-
2 mail, and internet addresses of the data
3 broker.

4 (ii) If the data broker permits a con-
5 sumer to opt out of the data broker's col-
6 lection of brokered personal information,
7 opt out of its databases, or opt out of cer-
8 tain sales of data—

9 (I) the method for requesting an
10 opt-out;

11 (II) if the opt-out applies to only
12 certain activities or sales, which ones;
13 and

14 (III) whether the data broker
15 permits a consumer to authorize a
16 third party to perform the opt-out on
17 the consumer's behalf.

18 (iii) A statement specifying the data
19 collection, databases, or sales activities
20 from which a consumer may not opt out.

21 (iv) A statement as to whether the
22 data broker implements a purchaser
23 credentialing process.

24 (v) The number of security breaches
25 that the data broker experienced during

1 the previous year, and if known, the total
2 number of consumers whose personal infor-
3 mation was accessed, downloaded, viewed,
4 or otherwise affected in a breach.

5 (vi) Where the data broker has actual
6 knowledge that it possesses the brokered
7 personal information of minors, a separate
8 statement detailing the data collection
9 practices, databases, sales activities, and
10 opt-out policies that are applicable to the
11 brokered personal information of minors.

12 (vii) Any additional information or ex-
13 planation the data broker chooses to pro-
14 vide concerning its data collection prac-
15 tices.

16 (2) EXCEPTION.—The requirements under
17 paragraph (1) shall not apply to a data broker that
18 is already required to comply with such requirements
19 with respect to another Federal agency.

20 (3) PUBLIC AVAILABILITY.—The Commission
21 shall make the information described in paragraph
22 (1) available for public inspection, except as nec-
23 essary to protect the integrity of ongoing investiga-
24 tions or to protect the privacy of consumers, or if it
25 is in the interest of public safety or welfare.

1 **SEC. 3. ENFORCEMENT BY THE FEDERAL TRADE COMMIS-**
2 **SION.**

3 (a) UNFAIR OR DECEPTIVE ACTS OR PRACTICES.—
4 A violation of section 2 shall be treated as a violation of
5 a rule defining an unfair or a deceptive act or practice
6 under section 18(a)(1)(B) of the Federal Trade Commis-
7 sion Act (15 U.S.C. 57a(a)(1)(B)). The Commission shall
8 begin enforcement of such violations by not later than 1
9 year after the date of the enactment of this Act.

10 (b) POWERS OF COMMISSION.—

11 (1) IN GENERAL.—The Commission shall en-
12 force this section in the same manner, by the same
13 means, and with the same jurisdiction, powers, and
14 duties as though all applicable terms and provisions
15 of the Federal Trade Commission Act (15 U.S.C. 41
16 et seq.) were incorporated into and made a part of
17 this section.

18 (2) PRIVILEGES AND IMMUNITIES.—Any data
19 broker who violates section 2 shall be subject to the
20 penalties and entitled to the privileges and immuni-
21 ties provided in the Federal Trade Commission Act
22 (15 U.S.C. 41 et seq.).

23 (3) AUTHORITY PRESERVED.—Nothing in this
24 section shall be construed to limit the authority of
25 the Federal Trade Commission under any other pro-
26 vision of law.

1 (c) RULEMAKING AUTHORITY FOR THE FEDERAL
2 TRADE COMMISSION.—The Commission shall have au-
3 thority under section 553 of title 5, United States Code,
4 to promulgate regulations the Commission determines to
5 be necessary to carry out the provisions of this Act.

6 **SEC. 4. FTC ANNUAL REVIEW AND REPORT.**

7 (a) ANNUAL REVIEW.—The Commission shall con-
8 duct an annual review of the implementation of the provi-
9 sions of this Act. Such study shall include an analysis of—

10 (1) compliance by data brokers with the re-
11 quirements under section 2;

12 (2) enforcement actions taken by the Commis-
13 sion with respect to violations of such requirements;
14 and

15 (3) other areas determined appropriate by the
16 Commission.

17 (b) ANNUAL REPORT.—Not later than 1 year after
18 the date of the enactment of this Act, and annually there-
19 after the Commission shall submit to Congress a report
20 on the review conducted under subsection (a), together
21 with recommendations for such legislation and administra-
22 tive action as the Commission determines appropriate.

23 **SEC. 5. DEFINITIONS.**

24 In this section:

1 (1) BROKERED PERSONAL INFORMATION.—The
2 term “brokered personal information” means any
3 personal information that is categorized or organized
4 for sale to a third party.

5 (2) BUSINESS.—

6 (A) IN GENERAL.—The term “business”
7 means a commercial entity, including a sole
8 proprietorship, partnership, corporation, asso-
9 ciation, limited liability company, or other
10 group, however organized and whether or not
11 organized to operate at a profit, including a fi-
12 nancial institution organized, chartered, or
13 holding a license or authorization certificate
14 under the laws of a State, the United States, or
15 any other country, or the parent, affiliate, or
16 subsidiary of a financial institution.

17 (B) EXCLUSION.—The term “business”
18 does not include a State, a State agency, any
19 political subdivision of a State, or a vendor act-
20 ing solely on behalf of, and at the direction of,
21 a State.

22 (3) COMMISSION.—The term “Commission”
23 means the Federal Trade Commission.

1 (4) CONSUMER.—The term “consumer” means
2 an individual residing in the United States acting in
3 a personal, family, or household capacity.

4 (5) DATA BROKER.—

5 (A) IN GENERAL.—The term “data
6 broker” means a business that collects or ob-
7 tains a consumer’s personal information and
8 sells, licenses, trades, or provides for consider-
9 ation that information to another business with
10 whom a consumer does not have a direct rela-
11 tionship.

12 (B) DIRECT RELATIONSHIP.—For pur-
13 poses of subparagraph (A), a direct relationship
14 with a business exists if the consumer—

15 (i) is a current customer;

16 (ii) obtained a good or service from
17 the business within the prior 18 months; or

18 (iii) made an inquiry about the prod-
19 ucts or services of the business within the
20 prior 90 days.

21 (C) EXCLUSION.—The following activities
22 conducted by a business, and the collection and
23 sale or licensing of brokered personal informa-
24 tion incidental to conducting these activities, do
25 not qualify the business as a data broker:

1 (i) Providing 411 directory assistance
2 or directory information services, including
3 name, address, and telephone number, on
4 behalf of or as a function of a tele-
5 communications carrier.

6 (ii) Providing a consumer's publicly
7 available information if the information is
8 being used by the recipient as it relates to
9 that consumer's business or profession.

10 (iii) Providing publicly available infor-
11 mation via real-time or near-real-time alert
12 services for health or safety purposes.

13 (iv) Providing or using information in
14 a manner that is regulated under another
15 Federal law, including the Fair Credit Re-
16 porting Act, the Gramm-Leach-Bliley Act,
17 or the Health Insurance Portability and
18 Accountability Act.

19 (v) Providing data to a third party at
20 the direction of the customer and with the
21 customer's consent.

22 (D) EXCLUSION FROM SALE.—For pur-
23 poses of this paragraph, the term “sells” does
24 not include a one-time or occasional sale of as-
25 sets of a business as part of a transfer of con-

1 trol of those assets that is not part of the ordi-
2 nary conduct of the business.

3 (6) DATA BROKER SECURITY BREACH.—

4 (A) IN GENERAL.—The term “data broker
5 security breach” means an unauthorized acqui-
6 sition or a reasonable belief of an unauthorized
7 acquisition of more than one element of bro-
8 kered personal information maintained by a
9 data broker when the brokered personal infor-
10 mation is not encrypted, redacted, or protected
11 by another method that renders the information
12 unreadable or unusable by an unauthorized
13 data broker.

14 (B) EXCLUSION.—The term “data broker
15 security breach” does not include good faith but
16 unauthorized acquisition of brokered personal
17 information by an employee or agent of the
18 data broker for a legitimate purpose of the data
19 broker, provided that the brokered personal in-
20 formation is not used for a purpose unrelated
21 to the data broker’s business or subject to fur-
22 ther unauthorized disclosure.

23 (C) APPLICATION.—In determining wheth-
24 er brokered personal information has been ac-
25 quired or is reasonably believed to have been ac-

1 required by a data broker without valid authoriza-
2 tion, a data broker may consider the following
3 factors, among others:

4 (i) Indications that the brokered per-
5 sonal information is in the physical posses-
6 sion and control of a person without valid
7 authorization, such as a lost or stolen com-
8 puter or other device containing brokered
9 personal information.

10 (ii) Indications that the brokered per-
11 sonal information has been downloaded or
12 copied.

13 (iii) Indications that the brokered per-
14 sonal information was used by an unau-
15 thorized data broker, such as fraudulent
16 accounts opened or instances of identity
17 theft reported.

18 (iv) That the brokered personal infor-
19 mation has been made public.

20 (7) PERSONAL INFORMATION.—The term “per-
21 sonal information” means information which is re-
22 lated to any identified or identifiable person.

23 (8) STATE.—The term “State” means any
24 State of the United States, the District of Columbia,
25 the Commonwealth of Puerto Rico, Guam, American

- 1 Samoa, the Commonwealth of Northern Mariana Is-
- 2 lands, and the United States Virgin Islands.

