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1ST SESSION

S. 2577

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

SEPTEMBER 26, 2019

Mr. MARKEY (for himself, Mr. BLUMENTHAL, and Ms. SMITH) 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 of 2019”.

6 **SEC. 2. DEFINITIONS.**

7 In this Act:

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

1 (2) COVERED DATA BROKER.—

2 (A) IN GENERAL.—The term “covered
3 data broker” includes all data brokers except
4 those data brokers excepted under subpara-
5 graph (B).

6 (B) EXCEPTIONS.—The Commission may
7 except a data broker if the Commission con-
8 siders, by rule, a data broker outside the scope
9 of this Act, such as a data broker who proc-
10 esses information collected by or on behalf of
11 and received from or on behalf of a non-
12 affiliated third party concerning an individual
13 who is a customer or an employee of that third
14 party to enable that third party, directly or
15 through parties acting on its behalf, to provide
16 benefits for its employees or directly transact
17 business with its customers.

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

24 (4) PERSONAL INFORMATION.—

1 (A) IN GENERAL.—The term “personal in-
2 formation” means information that directly or
3 indirectly identifies, relates to, describes, is ca-
4 pable of being associated with, or could reason-
5 ably be linked to, a particular individual.

6 (B) EXAMPLES.—The term “personal in-
7 formation” includes—

8 (i) an identifier such as a real name,
9 alias, signature, date of birth, gender iden-
10 tity, sexual orientation, marital status,
11 physical characteristic or description, post-
12 al address, telephone number, unique per-
13 sonal identifier, military identification
14 number, online identifier, Internet Protocol
15 address, email address, account name,
16 mother’s maiden name, social security
17 number, driver’s license number, passport
18 number, or other similar identifier;

19 (ii) information such as employment,
20 employment history, bank account number,
21 credit card number, debit card number, in-
22 surance policy number, or any other finan-
23 cial information, medical information, men-
24 tal health information, or health insurance
25 information;

1 (iii) commercial information, including
2 a record of personal property, income, as-
3 sets, leases, rentals, products or services
4 purchased, obtained, or considered, or
5 other purchasing or consuming history;

6 (iv) biometric information, including a
7 retina or iris scan, fingerprint, voiceprint,
8 or scan of hand or face geometry;

9 (v) internet or other electronic net-
10 work activity information, including brows-
11 ing history, search history, content, includ-
12 ing text, photographs, audio or video re-
13 cordings, or other user generated-content,
14 non-public communications, and informa-
15 tion regarding an individual's interaction
16 with an internet website, mobile applica-
17 tion, or advertisement;

18 (vi) historical or real-time geolocation
19 data;

20 (vii) audio, electronic, visual, thermal,
21 olfactory, or similar information;

22 (viii) education records, as defined in
23 section 99.3 of title 34, Code of Federal
24 Regulations, or any successor regulation;

1 (ix) political information or informa-
2 tion on criminal convictions or arrests;

3 (x) any required security code, access
4 code, password, or username necessary to
5 permit access to the account of an indi-
6 vidual;

7 (xi) characteristics of protected class-
8 es under Federal law, including race, color,
9 national origin, religion, sex, age, or dis-
10 ability; or

11 (xii) an inference drawn from any of
12 the information described in this subpara-
13 graph to create a profile about an indi-
14 vidual reflecting the individual's pref-
15 erences, characteristics, psychological
16 trends, preferences, predispositions, behav-
17 ior, attitudes, intelligence, abilities, or apti-
18 tudes.

19 (C) EXCLUSIONS.—

20 (i) IN GENERAL.—The term “personal
21 information” does not include publicly
22 available information.

23 (ii) PUBLICLY AVAILABLE INFORMA-
24 TION.—For purposes of clause (i), the
25 term “publicly available information”

1 means information that is lawfully made
 2 available from Federal, State, or local gov-
 3 ernment records.

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

9 **SEC. 3. PROHIBITION ON OBTAINING OR SOLICITATION TO**
 10 **OBTAIN PERSONAL INFORMATION BY FALSE**
 11 **PRETENSES.**

12 (a) IN GENERAL.—A covered data broker may not
 13 obtain or attempt to obtain, or cause to be disclosed or
 14 attempt to cause to be disclosed to any person, personal
 15 information or any other information relating to any per-
 16 son by making a false, fictitious, or fraudulent statement
 17 or representation to any person, including by providing
 18 any document to any person, that the covered data broker
 19 knows or should know—

20 (1) to be forged, counterfeit, lost, stolen, or
 21 fraudulently obtained; or

22 (2) contains a false, fictitious, or fraudulent
 23 statement or representation.

24 (b) SOLICITATION.—A covered data broker may not
 25 request a person to obtain personal information, or any

1 other information, relating to any other person if the cov-
2 ered data broker knows or should know that the person
3 to whom the request is made will obtain or attempt to
4 obtain that information in the manner described in sub-
5 section (a).

6 **SEC. 4. REQUIREMENTS CONCERNING ACCURACY OF AND**
7 **ACCESS TO PERSONAL INFORMATION.**

8 (a) ACCURACY.—

9 (1) IN GENERAL.—Except as provided in para-
10 graph (2), a covered data broker shall establish pro-
11 cedures to ensure, to the maximum extent prac-
12 ticable, the accuracy of—

13 (A) the personal information the broker
14 collects, assembles, or maintains; and

15 (B) any other information the broker col-
16 lects, assembles, or maintains that specifically
17 identifies an individual, unless the information
18 only identifies the name or address of an indi-
19 vidual.

20 (2) EXCEPTION.—A covered data broker may
21 collect or maintain information that may be inac-
22 curate with respect to a particular individual if that
23 information is being collected or maintained solely
24 for the purpose of—

1 (A) indicating whether there may be a dis-
2 crepancy or irregularity in the personal infor-
3 mation that is associated with an individual;

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

6 (C) helping to protect against or inves-
7 tigate fraud or other unlawful conduct.

8 (b) CONSUMER ACCESS.—

9 (1) IN GENERAL.—Subject to paragraph (4), a
10 covered data broker shall provide an individual a
11 means to review any personal information or other
12 information that specifically identifies that indi-
13 vidual, that the covered data broker collects, assem-
14 bles, or maintains on that individual.

15 (2) REVIEW REQUIREMENTS.—

16 (A) ELEMENTS.—As part of the review de-
17 scribed in paragraph (1), a covered data broker
18 shall provide a description of—

19 (i) the personal information being re-
20 tained;

21 (ii) each date on which the covered
22 entity collected the personal information;

23 (iii) the third parties to which the cov-
24 ered entity has disclosed or will disclose
25 the personal information; and

1 (iv) if possible, how long the personal
2 information will be retained or stored, or if
3 not possible, the criteria used for deter-
4 mining how long the personal information
5 will be retained or stored.

6 (B) ADDITIONAL REQUIREMENTS.—A cov-
7 ered data broker shall provide the means for re-
8 view under paragraph (1)—

9 (i) at the request of an individual;

10 (ii) after verifying the identity of the
11 individual;

12 (iii) not less than 1 time per year;

13 (iv) at no cost to the individual; and

14 (v) in a format that can be readily un-
15 derstood by a consumer, as determined by
16 the Commission.

17 (3) PERIOD OF REVIEW.—A covered data
18 broker shall provide an individual the means re-
19 quired under paragraph (1) within such period after
20 receiving a request from the individual as the Com-
21 mission shall determine, by rule, is appropriate.

22 (4) EXCEPTIONS.—The Commission may, by
23 rule, establish any exceptions to paragraph (1) that
24 the Commission considers appropriate, such as for

1 child protection, law enforcement, fraud prevention,
2 or other government purposes.

3 (5) LIMITATION ON USE OF VERIFYING INFOR-
4 MATION.—If a covered data broker collects informa-
5 tion from an individual to verify the identity of the
6 individual under paragraph (2)(B) that the data
7 broker did not have before that collection, the data
8 broker may not use the information for any purpose
9 other than for purposes of verifying the identity of
10 the individual under that paragraph.

11 (c) DISPUTED INFORMATION.—

12 (1) IN GENERAL.—An individual whose per-
13 sonal information is maintained by a covered data
14 broker may dispute the accuracy of any information
15 described under subsection (b)(1) by requesting, in
16 writing, that the covered data broker correct the in-
17 formation.

18 (2) CORRECTION REQUIREMENTS.—A covered
19 data broker, after verifying the identity of an indi-
20 vidual making a request under paragraph (1) to cor-
21 rect information, and unless there are reasonable
22 grounds to believe the request is frivolous or irrele-
23 vant, shall—

24 (A) with regard to publicly available infor-
25 mation—

1 (i) inform the individual of the source
2 of the information and, if reasonably avail-
3 able, where to direct the request for correc-
4 tion; or

5 (ii) if the individual provides proof
6 that the public record has been corrected
7 or that the covered data broker was report-
8 ing the information incorrectly, correct the
9 inaccuracy in the records of the covered
10 data broker; and

11 (B) with regard to personal information—

12 (i) note the information that is dis-
13 puted, including the written request of the
14 individual;

15 (ii) if the information can be inde-
16 pendently verified, use the procedures es-
17 tablished under subsection (a) to independ-
18 ently verify the information; and

19 (iii) if the covered data broker was re-
20 porting the information incorrectly, correct
21 the inaccuracy in the records of the cov-
22 ered data broker.

23 (3) PERIOD OF CORRECTION.—If a covered
24 data broker is subject to a requirement under para-
25 graph (2) due to a request made by an individual

1 under paragraph (1), the covered data broker shall
2 take any action that may be required to satisfy the
3 requirement within a period determined appropriate
4 by the Commission, by rule.

5 (d) NOTICE.—

6 (1) IN GENERAL.—A covered data broker shall
7 maintain an internet website and place a clear and
8 conspicuous notice on that internet website instruct-
9 ing an individual how—

10 (A) to review information under subsection

11 (b)(1); and

12 (B) to express a preference under sub-
13 section (e)(2).

14 (2) FORM.—A covered data broker shall ensure
15 that the notice the covered data broker places under
16 paragraph (1) conforms to a model form that the
17 Commission shall promulgate for purposes of this
18 subsection.

19 (e) CERTAIN MARKETING INFORMATION.—

20 (1) IN GENERAL.—A covered data broker may
21 not use, share, or sell any information for marketing
22 purposes that is subject to an expressed preference
23 under paragraph (2).

24 (2) EXPRESSION OF PREFERENCES.—A covered
25 data broker that maintains any information de-

1 scribed under subsection (a) and that uses, shares,
2 or sells that information for marketing purposes
3 shall provide each individual whose information the
4 covered data broker maintains with a reasonable
5 means of expressing a preference not to have that
6 individual's information used for those purposes.

7 (f) AUDITING.—

8 (1) IN GENERAL.—Subject to paragraph (2), a
9 covered data broker shall establish measures that fa-
10 cilitate the auditing or retracing of any internal or
11 external access to, or transmission of, any data con-
12 taining personal information collected, assembled, or
13 maintained by the covered data broker.

14 (2) EXCEPTIONS.—The Commission may estab-
15 lish, by rule, any exceptions to paragraph (1) that
16 the Commission considers appropriate to further or
17 protect law enforcement or national security activi-
18 ties.

19 (g) SECURITY.—

20 (1) IN GENERAL.—A covered data broker shall
21 develop and implement a comprehensive consumer
22 privacy and data security program to protect against
23 harm that may be caused by—

1 (A) loss of personal information collected,
2 assembled, or maintained by the covered data
3 broker; or

4 (B) unauthorized access, destruction, use,
5 modification, or disclosure of personal informa-
6 tion described in subparagraph (A).

7 (2) NOTICE.—If a covered data broker deter-
8 mines that personal information of an individual
9 that is collected, assembled, or maintained by the
10 covered data broker has been lost or the subject of
11 unauthorized access, destruction, use, modification,
12 or disclosure, the covered data broker shall notify
13 the individual of the loss, access, destruction, use,
14 modification, or disclosure.

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

1 **SEC. 5. USE LIMITATIONS.**

2 (a) IN GENERAL.—A covered data broker shall not
3 use personal information for unreasonable purposes, in-
4 cluding—

5 (1) selling, leasing, trading, or otherwise prof-
6 iting from an individual’s biometric information;

7 (2) sharing, resharing, or otherwise dissemi-
8 nating an individual’s biometric information without
9 first obtaining specific consent from the individual,
10 unless—

11 (A) the dissemination is required by State
12 or Federal law or municipal ordinance; or

13 (B) the dissemination is required pursuant
14 to a valid warrant or subpoena issued by a
15 court of competent jurisdiction;

16 (3) processing personal information for the pur-
17 pose of advertising, marketing, soliciting, offering,
18 selling, leasing, licensing, renting, or otherwise com-
19 mercially contracting for employment, finance,
20 healthcare, credit, insurance, housing, or education
21 opportunities, in a manner that discriminates
22 against or otherwise makes the opportunity unavail-
23 able on the basis of a person’s or class of persons’
24 actual or perceived race, color, ethnicity, religion,
25 national origin, sex, gender, gender identity, sexual

1 orientation, familial status, biometric information,
2 lawful source of income, or disability; or

3 (4) processing personal information in a man-
4 ner that segregates, discriminates in, or otherwise
5 makes unavailable the goods, services, facilities,
6 privileges, advantages, or accommodations of any
7 place of public accommodation on the basis of a per-
8 son's or class of persons' actual or perceived race,
9 color, ethnicity, religion, national origin, sex, gender,
10 gender identity, sexual orientation, or disability.

11 (b) DEFINITION OF PLACE OF PUBLIC ACCOMMODA-
12 TION.—For purposes of subsection (a), the term “place
13 of public accommodation” means—

14 (1) any entity considered a place of public ac-
15 commodation under section 201(b) of the Civil
16 Rights Act of 1964 (42 U.S.C. 2000a(b)) or section
17 301 of the Americans with Disabilities Act of 1990
18 (42 U.S.C. 12181); and

19 (2) any entity that offers goods or services
20 through the internet to the general public.

21 **SEC. 6. REGULATIONS.**

22 (a) IN GENERAL.—Not later than 1 year after the
23 date of enactment of this Act, the Commission shall pro-
24 mulgate regulations under section 553 of title 5, United
25 States Code, to carry out this Act.

1 (b) ELEMENTS.—The regulations promulgated under
2 subsection (a) shall include the following:

3 (1) Any exceptions the Commission considers
4 appropriate to promulgate under section 2(2)(B).

5 (2) The period of review required under section
6 4(b)(3).

7 (3) Any exceptions the Commission considers
8 appropriate to promulgate under section 4(b)(4).

9 (4) The period of correction required under sec-
10 tion 4(c)(3).

11 (5) The model form required by section 4(d)(2).

12 (6) Requirements for auditing under paragraph
13 (1) of section 4(f) and any exceptions under para-
14 graph (2) of that section that the Commission con-
15 siders appropriate.

16 (7) Establishment of a centralized internet
17 website for the benefit of consumers that—

18 (A) lists the covered data brokers that are
19 subject to a requirement of section 4; and

20 (B) provides information to consumers
21 about their rights under this Act.

22 (8) Any other regulations that the Commission
23 considers appropriate to carry out this Act.

1 **SEC. 7. ENFORCEMENT.**

2 (a) ENFORCEMENT BY FEDERAL TRADE COMMIS-
3 SION.—

4 (1) UNFAIR OR DECEPTIVE ACTS OR PRAC-
5 TICES.—A violation of section 3, 4, or 5 or a regula-
6 tion promulgated under this Act shall be treated as
7 a violation of a rule defining an unfair or a deceptive
8 act or practice under section 18(a)(1)(B) of the Fed-
9 eral Trade Commission Act (15 U.S.C.
10 57a(a)(1)(B)).

11 (2) POWERS OF COMMISSION.—

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

19 (B) PRIVILEGES AND IMMUNITIES.—Any
20 person who violates a regulation prescribed
21 under this Act shall be subject to the penalties
22 and entitled to the privileges and immunities
23 provided in the Federal Trade Commission Act
24 (15 U.S.C. 41 et seq.).

25 (b) ENFORCEMENT BY STATES.—

1 (1) CIVIL ACTION.—Except as provided under
2 paragraph (5), in any case in which the attorney
3 general of a State has reason to believe that an in-
4 terest of the residents of that State has been or is
5 threatened or adversely affected by the engagement
6 of any person subject to a provision of section 3, 4,
7 or 5 or a regulation promulgated under this Act in
8 a practice that violates that provision or regulation,
9 the attorney general of the State may, as *parens*
10 *patriae*, bring a civil action on behalf of the resi-
11 dents of the State in an appropriate district court of
12 the United States—

13 (A) to enjoin further violation of that pro-
14 vision or regulation by the person;

15 (B) to compel compliance with that provi-
16 sion or regulation;

17 (C) to obtain damages, restitution, or other
18 compensation on behalf of the residents;

19 (D) to obtain any other relief that the
20 court considers appropriate; or

21 (E) to obtain civil penalties in the amount
22 determined under paragraph (2).

23 (2) CIVIL PENALTIES.—

24 (A) CALCULATION.—For purposes of im-
25 posing a civil penalty under paragraph (1)(E),

1 the amount determined under this paragraph is
2 the amount calculated by multiplying the num-
3 ber of separate violations of a rule by an
4 amount not greater than \$16,000.

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

15 (3) RIGHTS OF FEDERAL TRADE COMMIS-
16 SION.—

17 (A) NOTICE TO FEDERAL TRADE COMMIS-
18 SION.—

19 (i) IN GENERAL.—Except as provided
20 in clause (iii), the attorney general of a
21 State shall notify the Commission in writ-
22 ing that the attorney general intends to
23 bring a civil action under paragraph (1)
24 before initiating the civil action.

1 (ii) CONTENTS.—The notification re-
2 quired by clause (i) with respect to a civil
3 action shall include a copy of the complaint
4 to be filed to initiate the civil action.

5 (iii) EXCEPTION.—If it is not feasible
6 for the attorney general of a State to pro-
7 vide the notification required by clause (i)
8 before initiating a civil action under para-
9 graph (1), the attorney general shall notify
10 the Commission immediately upon insti-
11 tuting the civil action.

12 (B) INTERVENTION BY FEDERAL TRADE
13 COMMISSION.—The Commission may—

14 (i) intervene in any civil action
15 brought by the attorney general of a State
16 under paragraph (1); and

17 (ii) upon intervening—

18 (I) be heard on all matters aris-
19 ing in the civil action; and

20 (II) file petitions for appeal of a
21 decision in the civil action.

22 (4) INVESTIGATORY POWERS.—Nothing in this
23 subsection may be construed to prevent the attorney
24 general of a State from exercising the powers con-
25 ferred on the attorney general by the laws of the

1 State to conduct investigations, to administer oaths
2 or affirmations, or to compel the attendance of wit-
3 nesses or the production of documentary or other
4 evidence.

5 (5) PREEMPTIVE ACTION BY FEDERAL TRADE
6 COMMISSION.—If the Commission institutes a civil
7 action or an administrative action with respect to a
8 violation of a provision of section 3, 4, or 5 or a reg-
9 ulation promulgated under this Act, the attorney
10 general of a State may not, during the pendency of
11 the action, bring a civil action under paragraph (1)
12 against any defendant named in the complaint of the
13 Commission for the violation with respect to which
14 the Commission instituted the action.

15 (6) ACTIONS BY OTHER STATE OFFICIALS.—

16 (A) IN GENERAL.—In addition to civil ac-
17 tions brought by attorneys general under para-
18 graph (1), any other officer of a State who is
19 authorized by the State to do so may bring a
20 civil action under paragraph (1), subject to the
21 same requirements and limitations that apply
22 under this subsection to civil actions brought by
23 attorneys general.

24 (B) SAVINGS PROVISION.—Nothing in this
25 subsection may be construed to prohibit an au-

1 thorized official of a State from initiating or
2 continuing any proceeding in a court of the
3 State for a violation of any civil or criminal law
4 of the State.

5 **SEC. 8. EFFECT ON OTHER LAWS.**

6 (a) PRESERVATION OF COMMISSION AUTHORITY.—
7 Nothing in this Act may be construed in any way to limit
8 or affect the authority of the Commission under any other
9 provision of law.

10 (b) PRESERVATION OF OTHER FEDERAL LAW.—
11 Nothing in this Act may be construed in any way to super-
12 sede, restrict, or limit the application of the Fair Credit
13 Reporting Act (15 U.S.C. 1681 et seq.) or any other Fed-
14 eral law.

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