

116TH CONGRESS
1ST SESSION

S. 583

To provide for digital accountability and transparency.

IN THE SENATE OF THE UNITED STATES

FEBRUARY 27, 2019

Ms. CORTEZ MASTO introduced the following bill; which was read twice and referred to the Committee on Commerce, Science, and Transportation

A BILL

To provide for digital accountability and transparency.

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 “Digital Accountability
5 and Transparency to Advance Privacy Act” or the “DATA
6 Privacy Act”.

7 **SEC. 2. DEFINITIONS.**

8 (a) IN GENERAL.—In this Act:

9 (1) COLLECT.—The term “collect” means tak-
10 ing any operation or set of operations to obtain cov-
11 ered data, including by automated means, including

1 purchasing, leasing, assembling, recording, gath-
2 ering, acquiring, or procuring.

3 (2) COMMISSION.—The term “Commission”
4 means the Federal Trade Commission.

5 (3) COVERED DATA.—The term “covered
6 data”—

7 (A) means any information that is—

8 (i) collected, processed, stored, or dis-
9 closed by a covered entity;

10 (ii) collected over the internet or other
11 digital network; and

12 (iii)(I) linked to an individual or de-
13 vice associated with an individual; or

14 (II) practicably linkable to an indi-
15 vidual or device associated with an indi-
16 vidual, including by combination with sepa-
17 rate information, by the covered entity or
18 any potential recipient of the data; and

19 (B) does not include data that is—

20 (i) collected, processed, stored, or dis-
21 closed solely for the purpose of employ-
22 ment of an individual; and

23 (ii) lawfully made available to the
24 public from Federal, State, or local govern-
25 ment records.

1 (4) COVERED ENTITY.—The term “covered en-
2 tity”—

3 (A) means any entity that collects, proc-
4 esses, stores, or discloses covered data; and

5 (B) does not include any entity that col-
6 lects, processes, stores, or discloses covered data
7 relating to fewer than 3,000 individuals and de-
8 vices during any 12-month period.

9 (5) DISCLOSE.—The term “disclose” means
10 taking any action with respect to covered data, in-
11 cluding by automated means, to sell, share, provide,
12 or otherwise transfer covered data to another entity,
13 person, or the general public.

14 (6) PRIVACY RISK.—The term “privacy risk”
15 means potential harm to an individual resulting
16 from the collection, processing, storage, or disclosure
17 of covered data, including—

18 (A) direct or indirect financial loss;

19 (B) stigmatization or reputational harm;

20 (C) anxiety, embarrassment, fear, and
21 other severe emotional trauma;

22 (D) loss of economic opportunity; or

23 (E) physical harm.

24 (7) PROCESS.—The term “process” means any
25 operation or set of operations that is performed on

1 covered data or on sets of covered data, including by
2 automated means, including organizing, combining,
3 adapting, altering, using, or transforming.

4 (8) PROTECTED CHARACTERISTIC.—The term
5 “protected characteristic” means an individual’s
6 race, sex, gender, sexual orientation, nationality, re-
7 ligious belief, or political affiliation.

8 (9) PSEUDONYMOUS DATA.—The term “pseu-
9 donymous data” means covered data that may only
10 be linked to the identity of an individual or the iden-
11 tity of a device associated with an individual if com-
12 bined with separate information.

13 (10) REASONABLE INTEREST.—The term “rea-
14 sonable interest” means—

15 (A) a compelling business, operational, ad-
16 ministrative, legal, or educational justification
17 for the collection, processing, storage, or disclo-
18 sure of covered data exists;

19 (B) the use of covered data is within the
20 context of the relationship between the covered
21 entity and the individual linked to the covered
22 data; and

23 (C) the interest does not subject the indi-
24 vidual to an unreasonable privacy risk.

1 (11) SENSITIVE DATA.—The term “sensitive
2 data” means any covered data relating to—

3 (A) the health, biologic, physiologic, bio-
4 metric, sexual life, or genetic information of an
5 individual; or

6 (B) the precise geolocation information of
7 a device associated with an individual.

8 (12) STORE.—The term “store” means any op-
9 eration or set of operations to continue possession of
10 covered data, including by automated means.

11 (13) THIRD PARTY SERVICE PROVIDER.—The
12 term “third party service provider” means any cov-
13 ered entity that collects, processes, stores, or dis-
14 closes covered data at the direction of, and for the
15 sole benefit of, another covered entity under a con-
16 tract.

17 (b) MODIFIED DEFINITION BY RULEMAKING.—If the
18 Commission determines that a term defined in paragraph
19 (9) or (11) is not sufficient to protect an individual’s data
20 privacy, the Commission may promulgated regulations
21 under section 553 of title 5, United States Code, to modify
22 the definition as the Commission considers appropriate.

23 **SEC. 3. REQUIRED PRIVACY NOTICE.**

24 (a) PRIVACY NOTICE.—Each covered entity shall post
25 in an accessible location a notice that is concise, in con-

1 text, in easily understandable language, accurate, clear,
2 timely, updated, uses visualizations where appropriate,
3 conspicuous, and free of charge regarding the covered en-
4 tity's privacy practices.

5 (b) CONTENTS OF NOTICE.—The notice required by
6 subsection (a) shall include—

7 (1) a description of the covered data that the
8 entity collects, processes, stores, and discloses, in-
9 cluding the sources that provided the covered data if
10 the covered entity did not collect the covered data;

11 (2) the purposes for and means by which the
12 entity collects, processes, and stores the covered
13 data;

14 (3) the persons and entities to whom, and pur-
15 poses for which, the covered entity discloses the cov-
16 ered data; and

17 (4) a conspicuous, clear, and understandable
18 means for individuals to access the methods nec-
19 essary to exercise their rights under sections 4 and
20 5.

21 **SEC. 4. REQUIRED DATA PRACTICES.**

22 (a) REGULATIONS.—Not later than 1 year after the
23 date of the enactment of this Act, the Commission shall
24 promulgate regulations under section 553 of title 5,
25 United States Code, that require covered entities to imple-

1 ment, practice, and maintain certain data procedures and
2 processes that meet the following requirements:

3 (1) MINIMUM DATA PROCESSING REQUIRE-
4 MENTS.—Except as provided in subsection (b), re-
5 quire covered entities to meet all of the following re-
6 quirements regarding the means by and purposes for
7 which covered data is collected, processed, stored,
8 and disclosed:

9 (A) REASONABLE.—Except as provided in
10 paragraph (3), covered data collection, proc-
11 essing, storage, and disclosure practices must
12 meet a reasonable interest of the covered entity,
13 including—

14 (i) business, educational, and adminis-
15 trative operations that are relevant and ap-
16 propriate to the context of the relationship
17 between the covered entity and the indi-
18 vidual linked to the covered data;

19 (ii) relevant and appropriate product
20 and service development and enhancement;

21 (iii) preventing and detecting abuse,
22 fraud, and other criminal activity;

23 (iv) reasonable communications and
24 marketing practices that follow best prac-
25 tices, rules, and ethical standards;

1 (v) engaging in scientific, medical, or
2 statistical research that follows commonly
3 accepted ethical standards; or

4 (vi) any other purpose for which the
5 Commission considers to be reasonable.

6 (B) **EQUITABLE.**—Covered data collection,
7 processing, storage, and disclosure practices
8 may not be for purposes that result in discrimi-
9 nation against a protected characteristic, in-
10 cluding—

11 (i) discriminatory targeted advertising
12 practices;

13 (ii) price, service, or employment op-
14 portunity discrimination; or

15 (iii) any other practice the Commis-
16 sion considers likely to result in unfair dis-
17 crimination against a protected char-
18 acteristic.

19 (C) **FORTHRIGHT.**—Covered data collec-
20 tion, processing, storage, and disclosure prac-
21 tices may not be accomplished with means or
22 for purposes that are deceptive, including—

23 (i) the use of inconspicuous recording
24 or tracking devices and methods;

1 (ii) the disclosure of covered data that
 2 a reasonable individual believes to be the
 3 content of a private communication with
 4 another party or parties;

5 (iii) notices, interfaces, or other rep-
 6 resentations likely to mislead consumers;
 7 or

8 (iv) any other practice that the Com-
 9 mission considers likely to mislead individ-
 10 uals regarding the purposes for and means
 11 by which covered data is collected, proc-
 12 essed, stored, or disclosed.

13 (2) REQUIREMENTS FOR OPT-OUT CONSENT.—
 14 Except as provided in subsection (b), require covered
 15 entities to provide individuals with conspicuous ac-
 16 cess to a method that is in easily understandable
 17 language, concise, accurate, clear, to opt out of any
 18 collection, processing, storage, or disclosure of cov-
 19 ered data linked to the individual.

20 (3) REQUIREMENTS FOR AFFIRMATIVE CON-
 21 SENT.—Except as provided in subsection (b), require
 22 covered entities to provide individuals with a notice
 23 that is concise, in easily understandable language,
 24 accurate, clear, timely, and conspicuous to express
 25 affirmative, opt-in consent—

1 (A) before the covered entity collects or
2 discloses sensitive data linked to the individual;
3 or

4 (B) before the covered entity collects, proc-
5 esses, stores, or discloses data for purposes
6 which are outside the context of the relationship
7 of the covered entity with the individual linked
8 to the data, including—

9 (i) the use of covered data beyond
10 what is necessary to provide, improve, or
11 market a good or service that the indi-
12 vidual requests;

13 (ii) the processing or disclosure of
14 covered data differs in material ways from
15 the purposes described in the privacy pol-
16 icy that was in effect when the data was
17 collected; and

18 (iii) any other purpose that Commis-
19 sion considers outside of context.

20 (4) DATA MINIMIZATION REQUIREMENTS.—Ex-
21 cept as provided in subsection (b), require covered
22 entities to—

23 (A) take reasonable measures to limit the
24 collection, processing, storage, and disclosure of
25 covered data to the amount that is necessary to

1 carry out the purposes for which the data is col-
2 lected; and

3 (B) store covered data only as long as is
4 reasonably necessary to carry out the purposes
5 for which the data was collected.

6 (b) EXEMPTIONS.—Subsection (a) shall not apply if
7 the limitations on the collection, processing, storage, or
8 disclosure of covered data would—

9 (1) inhibit detection or prevention of a security
10 risk or incident;

11 (2) risk the health, safety, or property of the
12 covered entity or individual; or

13 (3) prevent compliance with an applicable law
14 (including regulations) or legal process.

15 **SEC. 5. INDIVIDUAL CONTROL OVER DATA USE.**

16 (a) REGULATIONS.—Not later than 1 year after the
17 date of the enactment of this Act, the Commission shall
18 promulgate regulations under section 553 of title 5,
19 United States Code, to require covered entities to provide
20 conspicuous, understandable, clear, and free of charge
21 method to—

22 (1) upon the request of an individual, provide
23 the individual with access to, or an accurate rep-
24 resentation of, covered data linked to with the indi-

1 vidual or the individual’s device stored by the cov-
2 ered entity;

3 (2) upon the request of an individual, provide
4 the individual with a means to dispute and resolve
5 the accuracy or completeness of the covered data
6 linked to the individual or the individual’s device
7 stored by the entity;

8 (3) upon the request of an individual, delete
9 any covered data that the covered entity stores
10 linked to the individual or the individual’s device;
11 and

12 (4) when technically feasible, upon the request
13 of an individual, allow the individual to transmit or
14 transfer covered data linked to the individual or the
15 individual’s device that is maintained by the entity
16 to the individual in a format that is standardized
17 and interoperable.

18 (b) PSEUDONYMOUS DATA.—If the covered data that
19 an individual has requested processed under subsection (a)
20 is pseudonymous data, a covered entity may decline the
21 request if processing the request is not technically feasible.

22 (c) TIMELINESS OF REQUESTS.—In fulfilling any re-
23 quests made by the individual under subsection (a) the
24 covered entity shall act in as timely a manner as is reason-
25 ably possible.

1 (d) ACCESS TO SAME SERVICE.—A covered entity
2 shall not discriminate against an individual because of any
3 action the individual took under their rights described in
4 subsection (a), including—

5 (1) denying goods or services to the individual;

6 (2) charging, or advertising, different prices or
7 rates for goods or services; or

8 (3) providing different quality of goods or serv-
9 ices.

10 (e) CONSIDERATION.—The Commission shall allow a
11 covered entity, by contract, to provide relevant obligations
12 to the individual under subsection (a) on behalf of a third
13 party service provider that collects, processes, stores, or
14 discloses covered data only on behalf of the covered entity.

15 **SEC. 6. INFORMATION SECURITY STANDARDS.**

16 (a) REQUIRED DATA SECURITY PRACTICES.—

17 (1) REGULATIONS.—Not later than 1 year after
18 the date of enactment of this Act, the Commission
19 shall promulgate regulations under section 553 of
20 title 5, United States Code, to require covered enti-
21 ties to establish and implement policies and proce-
22 dures regarding information security practices for
23 the treatment and protection of covered data taking
24 into consideration—

1 (A) the level of identifiability of the cov-
2 ered data and the associated privacy risk;

3 (B) the sensitivity of the covered data col-
4 lected, processed, and stored and the associated
5 privacy risk;

6 (C) the currently available and widely ac-
7 cepted technological, administrative, and phys-
8 ical means to protect personal data under the
9 control of the covered entity;

10 (D) the cost associated with implementing,
11 maintaining, and regularly reviewing the safe-
12 guards; and

13 (E) the impact of these requirements on
14 small and medium-sized businesses.

15 (2) LIMITATIONS.—In promulgating the regula-
16 tions required under this section, the Commission
17 shall consider a covered entity who is in compliance
18 with existing information security laws that the
19 Commission determines are sufficiently rigorous to
20 be in compliance with this section with respect to
21 particular types of covered data to the extent those
22 types of covered data are covered by such law, in-
23 cluding the following:

24 (A) Title V of the Gramm-Leach-Bliley Act
25 (15 U.S.C. 6801 et seq.).

1 (B) The Health Information Technology
2 for Economic and Clinical Health Act (42
3 U.S.C. 17931).

4 (C) The Health Insurance Portability and
5 Accountability Act of 1996 Security Rule (45
6 CFR 160.103 and part 164).

7 (D) Any other existing law requiring a cov-
8 ered entity to implement and maintain informa-
9 tion security practices and procedures that the
10 Commission determines to be sufficiently rig-
11 orous.

12 **SEC. 7. PRIVACY PROTECTION OFFICERS.**

13 (a) APPOINTMENT OF A PRIVACY PROTECTION OFFI-
14 CER.—Each covered entity with annual revenue in excess
15 of \$25,000,000 the prior year shall designate at least 1
16 appropriately qualified employee as a privacy protection
17 officer who shall—

18 (1) educate employees about compliance re-
19 quirements;

20 (2) train employees involved in data processing;

21 (3) conduct regular, comprehensive audits to
22 ensure compliance and make records of the audits
23 available to enforcement authorities upon request;

1 (4) maintain updated, clear, and understand-
2 able records of all data security practices undertaken
3 by the covered entity;

4 (5) serve as the point of contact between the
5 covered entity and enforcement authorities; and

6 (6) advocate for policies and practices within
7 the covered entity that promote individual privacy.

8 (b) PROTECTIONS.—The privacy protection officer
9 shall not be dismissed or otherwise penalized by the cov-
10 ered entity for performing any of the tasks assigned to
11 the person under this section.

12 **SEC. 8. RESEARCH INTO PRIVACY ENHANCING TECH-**
13 **NOLOGY.**

14 Section 4(a) of the Cyber Security Research and De-
15 velopment Act (15 U.S.C. 7403(a)) is amended—

16 (1) by striking the subsection heading and in-
17 serting the following:

18 “(a) NETWORK SECURITY AND INFORMATION PRI-
19 VACY RESEARCH GRANTS.—”; and

20 (2) in paragraph (1), by striking subparagraph
21 (D) and inserting the following:

22 “(D) privacy and confidentiality, includ-
23 ing—

24 “(i) cryptography;

25 “(ii) anonymization;

1 “(iii) pseudonymization;
2 “(iv) filtering tools;
3 “(v) anti-spying and anti-tracking
4 tools; and
5 “(vi) any other technology that the
6 Director determines will enhance individual
7 privacy;”.

8 **SEC. 9. ENFORCEMENT.**

9 (a) ENFORCEMENT BY THE COMMISSION.—

10 (1) IN GENERAL.—Except as otherwise pro-
11 vided, this Act and the regulations prescribed under
12 this Act shall be enforced by the Commission under
13 the Federal Trade Commission Act (15 U.S.C. 41 et
14 seq.).

15 (2) UNFAIR OR DECEPTIVE ACTS OR PRAC-
16 TICES.—A violation of this Act or a regulation pre-
17 scribed under this Act shall be treated as a violation
18 of a rule defining an unfair or deceptive act or prac-
19 tice prescribed under section 18(a)(1)(B) of the Fed-
20 eral Trade Commission Act (15 U.S.C.
21 57a(a)(1)(B)).

22 (3) ACTIONS BY THE COMMISSION.—Subject to
23 paragraph (4), the Commission shall prevent any
24 person from violating this Act or a regulation pre-
25 scribed under this Act in the same manner, by the

1 same means, and with the same jurisdiction, powers,
2 and duties as though all applicable terms and provi-
3 sions of the Federal Trade Commission Act (15
4 U.S.C. 41 et seq.) were incorporated into and made
5 a part of this Act, and any person who violates this
6 Act or such regulation shall be subject to the pen-
7 alties and entitled to the privileges and immunities
8 provided in the Federal Trade Commission Act (15
9 U.S.C. 41 et seq.).

10 (4) COMMON CARRIERS.—Notwithstanding sec-
11 tion 4, 5(a)(2), or 6 of the Federal Trade Commis-
12 sion Act (15 U.S.C. 44, 45(a)(2), and 46) or any ju-
13 risdictional limitation of the Commission, the Com-
14 mission shall also enforce this Act, in the same man-
15 ner provided in paragraphs (1), (2), and (3) with re-
16 spect to common carriers subject to the Communica-
17 tions Act of 1934 (47 U.S.C. 151 et seq.) and Acts
18 amendatory thereof and supplementary thereto.

19 (b) ENFORCEMENT BY STATE ATTORNEYS GEN-
20 ERAL.—

21 (1) IN GENERAL.—

22 (A) CIVIL ACTIONS.—In any case in which
23 the attorney general of a State has reason to
24 believe that an interest of the residents of that
25 State has been or is threatened or adversely af-

1 fected by the engagement of any person in a
2 practice that violates this Act or a regulation
3 prescribed under this Act, the State, as *parens*
4 *patriae*, may bring a civil action on behalf of
5 the residents of the State in a district court of
6 the United States of appropriate jurisdiction
7 to—

8 (i) enjoin that practice;

9 (ii) enforce compliance with this Act
10 or such regulation;

11 (iii) obtain damages, restitution, or
12 other compensation on behalf of residents
13 of the State;

14 (iv) impose a civil penalty in an
15 amount that is not greater than the prod-
16 uct of the number of individuals whose in-
17 formation was affected by a violation and
18 \$40,000; or

19 (v) obtain such other relief as the
20 court may consider to be appropriate.

21 (B) ADJUSTMENT FOR INFLATION.—Be-
22 ginning on the date that the Consumer Price
23 Index is first published by the Bureau of Labor
24 Statistics that is after 1 year after the date of
25 enactment of this Act, and each year thereafter,

1 the amounts specified in subparagraph (A)(iv)
2 shall be increased by the percentage increase in
3 the Consumer Price Index published on that
4 date from the Consumer Price Index published
5 the previous year.

6 (C) NOTICE.—

7 (i) IN GENERAL.—Before filing an ac-
8 tion under subparagraph (A), the attorney
9 general of the State involved shall provide
10 to the Commission—

11 (I) written notice of that action;

12 and

13 (II) a copy of the complaint for
14 that action.

15 (ii) EXEMPTION.—

16 (I) IN GENERAL.—Clause (i)
17 shall not apply with respect to the fil-
18 ing of an action by an attorney gen-
19 eral of a State under this paragraph
20 if the attorney general determines
21 that it is not feasible to provide the
22 notice described in that clause before
23 the filing of the action.

24 (II) NOTIFICATION.—In an ac-
25 tion described in subclause (I), the at-

1 torney general of a State shall provide
2 notice and a copy of the complaint to
3 the Commission at the same time as
4 the attorney general files the action.

5 (c) RIGHTS OF THE COMMISSION.—

6 (1) INTERVENTION BY THE COMMISSION.—The
7 Commission may intervene in any civil action
8 brought by the attorney general of a State under
9 subsection (b) and upon intervening—

10 (A) be heard on all matters arising in the
11 civil action; and

12 (B) file petitions for appeal of a decision in
13 the civil action.

14 (2) POWERS.—Nothing in this subsection may
15 be construed to prevent the attorney general of a
16 State from exercising the powers conferred on the
17 attorney general by the laws of the State to conduct
18 investigations, to administer oaths or affirmations,
19 or to compel the attendance of witnesses or the pro-
20 duction of documentary or other evidence.

21 (3) ACTION BY THE COMMISSION.—If the Com-
22 mission institutes a civil action for violation of this
23 title or a regulation promulgated under this title, no
24 attorney general of a State may bring a civil action
25 under subsection (b) against any defendant named

1 in the complaint of the Commission for violation of
2 this Act or a regulation promulgated under this Act
3 that is alleged in the complaint.

4 (d) VENUE AND SERVICE OF PROCESS.—

5 (1) VENUE.—Any action brought under sub-
6 section (b) may be brought in—

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

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

13 (2) SERVICE OF PROCESS.—In an action
14 brought under subsection (b), process may be served
15 in any district in which the defendant—

16 (A) is an inhabitant; or

17 (B) may be found.

18 (e) ACTION OF OTHER STATE OFFICIALS.—

19 (1) IN GENERAL.—In addition to civil actions
20 brought by attorneys general under subsection (b),
21 any other officer of a State who is authorized by the
22 State to do so may bring a civil action under sub-
23 section (b), subject to the same requirements and
24 limitations that apply under this subsection to civil
25 actions brought by attorneys general.

1 (2) SAVINGS PROVISION.—Nothing in this sub-
2 section may be construed to prohibit an authorized
3 official of a State from initiating or continuing any
4 proceeding in a court of the State for a violation of
5 any civil or criminal law of the State.

6 (f) PRESERVATION OF AUTHORITY.—Nothing in this
7 Act shall be construed to limit the authority of the Federal
8 Trade Commission under any other provision of law.

9 **SEC. 10. ADDITIONAL ENFORCEMENT RESOURCES.**

10 (a) IN GENERAL.—Notwithstanding any other provi-
11 sion of law the Commission may, without regard to the
12 civil service laws (including regulations), appoint not more
13 than 300 additional personnel for the purposes of enforce-
14 ing privacy and data security laws and regulations.

15 (b) AUTHORIZATION OF APPROPRIATIONS.—There is
16 authorized to be appropriated to the Commission such
17 sums as may be necessary to carry out this section.

○