

115TH CONGRESS
1ST SESSION

S. _____

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

Mr. MARKEY introduced the following bill; which was read twice and referred to the Committee on _____

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 2017”.

6 **SEC. 2. DEFINITIONS.**

7 In this Act:

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

10 (2) COVERED DATA BROKER.—

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

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

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

23 (4) NON-PUBLIC INFORMATION.—The term
24 “non-public information” means information about
25 an individual that is—

1 (A) of a private nature;

2 (B) not available to the general public; and

3 (C) not obtained from a public record.

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 it collects, as-
14 sembles, or maintains; and

15 (B) any other information it collects, as-
16 sembles, or maintains that specifically identifies
17 an individual, unless the information only iden-
18 tifies an individual's name or address.

19 (2) EXCEPTION.—A covered data broker may
20 collect or maintain information that may be inac-
21 curate with respect to a particular individual if that
22 information is being collected or maintained solely
23 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.—The means for
16 review under paragraph (1) shall be provided—

17 (A) at an individual's request;

18 (B) after verifying the identity of the indi-
19 vidual;

20 (C) at least 1 time per year;

21 (D) at no cost to the individual; and

22 (E) in a format that can be readily under-
23 stood by a consumer, as determined by the
24 Commission.

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

6 (4) EXCEPTIONS.—The Commission may, by
7 rule, establish such exceptions to paragraph (1) as
8 the Commission considers appropriate, such as for
9 child protection, law enforcement, fraud prevention,
10 or other government purposes.

11 (5) LIMITATION ON USE OF VERIFYING INFOR-
12 MATION.—If a covered data broker collects informa-
13 tion from an individual to verify the identity of the
14 individual under paragraph (2)(B) that the data
15 broker did not have before such collection, the data
16 broker may not use such information for any pur-
17 pose other than for purposes of verifying the identity
18 of the individual under such paragraph.

19 (c) DISPUTED INFORMATION.—

20 (1) IN GENERAL.—An individual whose per-
21 sonal information is maintained by a covered data
22 broker may dispute the accuracy of any information
23 described under subsection (b)(1) by requesting, in
24 writing, that the covered data broker correct the in-
25 formation.

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

7 (A) with regard to public record informa-
8 tion—

9 (i) inform the individual of the source
10 of the information and, if reasonably avail-
11 able, where to direct the individual's re-
12 quest for correction; or

13 (ii) if the individual provides proof
14 that the public record has been corrected
15 or that the covered data broker was report-
16 ing the information incorrectly, correct the
17 inaccuracy in the covered data broker's
18 records; and

19 (B) with regard to non-public informa-
20 tion—

21 (i) note the information that is dis-
22 puted, including the individual's written re-
23 quest;

24 (ii) if the information can be inde-
25 pendently verified, use the procedures es-

1 tablished under subsection (a) to independ-
2 ently verify the information; and

3 (iii) if the covered data broker was re-
4 porting the information incorrectly, correct
5 the inaccuracy in the covered data broker's
6 records.

7 (3) PERIOD OF CORRECTION.—In a case in
8 which a covered data broker is subject to a require-
9 ment under paragraph (2) due to a request made by
10 an individual under paragraph (1), such covered
11 data broker shall take such action as may be re-
12 quired to satisfy such requirement within such pe-
13 riod as the Commission shall determine, by rule, is
14 appropriate.

15 (d) NOTICE.—

16 (1) IN GENERAL.—A covered data broker shall
17 maintain an Internet website and place a clear and
18 conspicuous notice on that Internet website instruct-
19 ing an individual how—

20 (A) to review information under subsection
21 (b)(1); and
22 (B) to express a preference under sub-
23 section (e)(2).

24 (2) FORM.—A covered data broker shall ensure
25 that the notice the covered data broker places under

1 paragraph (1) conforms to such model form as the
2 Commission shall promulgate for purposes of this
3 subsection.

4 (e) CERTAIN MARKETING INFORMATION.—

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

9 (2) EXPRESSION OF PREFERENCES.—A covered
10 data broker that maintains any information de-
11 scribed under subsection (a) and that uses, shares,
12 or sells that information for marketing purposes
13 shall provide each individual whose information the
14 covered data broker maintains with a reasonable
15 means of expressing a preference not to have that
16 individual's information used for those purposes.

17 (f) AUDITING.—

18 (1) IN GENERAL.—Subject to paragraph (2),
19 each covered data broker shall establish measures
20 that facilitate the auditing or retracing of any inter-
21 nal or external access to, or transmission of, any
22 data containing personal information collected, as-
23 sembled, or maintained by the covered data broker.

24 (2) EXCEPTIONS.—The Commission may estab-
25 lish, by rule, such exceptions to paragraph (1) as the

1 Commission considers appropriate to further or pro-
2 tect law enforcement or national security activities.

3 (g) SECURITY.—

4 (1) IN GENERAL.—Each covered data broker
5 shall develop and implement a comprehensive con-
6 sumer privacy and data security program to protect
7 against harm that may be caused by—

8 (A) loss of personal information collected,
9 assembled, or maintained by the covered data
10 broker; or

11 (B) unauthorized access, destruction, use,
12 modification, or disclosure of such personal in-
13 formation.

14 (2) NOTICE.—Whenever a covered data broker
15 determines that personal information of an indi-
16 vidual that is collected, assembled, or maintained by
17 the covered data broker has been lost or the subject
18 of an unauthorized access, destruction, use, modi-
19 fication, or disclosure, the covered data broker shall
20 notify such individual of such loss, access, destruc-
21 tion, use, modification, or disclosure.

22 (h) PERSONS REGULATED BY THE FAIR CREDIT RE-
23 PORTING ACT.—A covered data broker shall be considered
24 to be in compliance with subsections (a) through (f) of
25 this section with respect to information that is subject to

1 the Fair Credit Reporting Act (15 U.S.C. 1681 et seq.)
2 if the covered data broker is in compliance with sections
3 609, 610, and 611 of that Act (15 U.S.C. 1681g, 1681h,
4 1681i).

5 **SEC. 5. REGULATIONS.**

6 (a) IN GENERAL.—Not later than 1 year after the
7 date of the enactment of this Act, the Commission shall
8 promulgate regulations under section 553 of title 5,
9 United States Code, to carry out this Act.

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

12 (1) Such exceptions the Commission considers
13 appropriate to promulgate under section 2(2)(B).

14 (2) The period of review required under section
15 4(b)(3).

16 (3) Such exceptions as the Commission con-
17 siders appropriate to promulgate under section
18 4(b)(4).

19 (4) The period of correction required under sec-
20 tion 4(c)(3).

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

22 (6) Requirements for auditing under paragraph
23 (1) of section 4(f) and such exceptions under para-
24 graph (2) of such section as the Commission con-
25 siders appropriate.

1 (7) Establishment of a centralized Internet
2 website for the benefit of consumers that—

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

5 (B) provides information to consumers
6 about their rights under this Act.

7 (8) Such other regulations as the Commission
8 considers appropriate to carry out this Act.

9 **SEC. 6. ENFORCEMENT.**

10 (a) ENFORCEMENT BY FEDERAL TRADE COMMIS-
11 SION.—

12 (1) UNFAIR OR DECEPTIVE ACTS OR PRAC-
13 TICES.—A violation of section 3 or 4 or a regulation
14 promulgated under this Act shall be treated as a vio-
15 lation of a rule defining an unfair or a deceptive act
16 or practice under section 18(a)(1)(B) of the Federal
17 Trade Commission Act (15 U.S.C. 57a(a)(1)(B)).

18 (2) POWERS OF COMMISSION.—

19 (A) IN GENERAL.—The Commission shall
20 enforce this Act in the same manner, by the
21 same means, and with the same jurisdiction,
22 powers, and duties as though all applicable
23 terms and provisions of the Federal Trade
24 Commission Act (15 U.S.C. 41 et seq.) were in-
25 corporated into and made a part of this Act.

1 (B) PRIVILEGES AND IMMUNITIES.—Any
2 person who violates a regulation prescribed
3 under this Act shall be subject to the penalties
4 and entitled to the privileges and immunities
5 provided in the Federal Trade Commission Act
6 (15 U.S.C. 41 et seq.).

7 (b) ENFORCEMENT BY STATES.—

8 (1) CIVIL ACTION.—Except as provided under
9 paragraph (5), in any case in which the attorney
10 general of a State has reason to believe that an in-
11 terest of the residents of that State has been or is
12 threatened or adversely affected by any person sub-
13 ject to a provision of section 3 or 4 or a regulation
14 promulgated under this Act in a practice that vio-
15 lates such provision or regulation, the attorney gen-
16 eral of the State may, as *parens patriae*, bring a
17 civil action on behalf of the residents of the State in
18 an appropriate district court of the United States—

19 (A) to enjoin further violation of such pro-
20 vision or regulation by such person;

21 (B) to compel compliance with such provi-
22 sion or regulation;

23 (C) to obtain damages, restitution, or other
24 compensation on behalf of such residents;

1 (D) to obtain such other relief as the court
2 considers appropriate; or

3 (E) to obtain civil penalties in the amount
4 determined under paragraph (2).

5 (2) CIVIL PENALTIES.—

6 (A) CALCULATION.—For purposes of im-
7 posing a civil penalty under paragraph (1)(E),
8 the amount determined under this paragraph is
9 the amount calculated by multiplying the num-
10 ber of separate violations of a rule by an
11 amount not greater than \$16,000.

12 (B) ADJUSTMENT FOR INFLATION.—Be-
13 ginning on the date that the Consumer Price
14 Index is first published by the Bureau of Labor
15 Statistics that is after 1 year after the date of
16 enactment of this Act, and each year thereafter,
17 the amount specified in subparagraph (A) shall
18 be increased by the percentage increase in the
19 Consumer Price Index published on that date
20 from the Consumer Price Index published the
21 previous year.

22 (3) RIGHTS OF FEDERAL TRADE COMMIS-
23 SION.—

24 (A) NOTICE TO FEDERAL TRADE COMMIS-
25 SION.—

1 (i) IN GENERAL.—Except as provided
2 in clause (iii), the attorney general of a
3 State shall notify the Commission in writ-
4 ing that the attorney general intends to
5 bring a civil action under paragraph (1)
6 before initiating the civil action.

7 (ii) CONTENTS.—The notification re-
8 quired by clause (i) with respect to a civil
9 action shall include a copy of the complaint
10 to be filed to initiate the civil action.

11 (iii) EXCEPTION.—If it is not feasible
12 for the attorney general of a State to pro-
13 vide the notification required by clause (i)
14 before initiating a civil action under para-
15 graph (1), the attorney general shall notify
16 the Commission immediately upon insti-
17 tuting the civil action.

18 (B) INTERVENTION BY FEDERAL TRADE
19 COMMISSION.—The Commission may—

20 (i) intervene in any civil action
21 brought by the attorney general of a State
22 under paragraph (1); and

23 (ii) upon intervening—

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

1 (II) file petitions for appeal of a
2 decision in the civil action.

3 (4) INVESTIGATORY POWERS.—Nothing in this
4 subsection may be construed to prevent the attorney
5 general of a State from exercising the powers con-
6 ferred on the attorney general by the laws of the
7 State to conduct investigations, to administer oaths
8 or affirmations, or to compel the attendance of wit-
9 nesses or the production of documentary or other
10 evidence.

11 (5) PREEMPTIVE ACTION BY FEDERAL TRADE
12 COMMISSION.—If the Commission institutes a civil
13 action or an administrative action with respect to a
14 violation of a provision of section 3 or 4 or a regula-
15 tion promulgated under this Act, the attorney gen-
16 eral of a State may not, during the pendency of such
17 action, bring a civil action under paragraph (1)
18 against any defendant named in the complaint of the
19 Commission for the violation with respect to which
20 the Commission instituted such action.

21 (6) ACTIONS BY OTHER STATE OFFICIALS.—

22 (A) IN GENERAL.—In addition to civil ac-
23 tions brought by attorneys general under para-
24 graph (1), any other officer of a State who is
25 authorized by the State to do so may bring a

1 civil action under paragraph (1), subject to the
2 same requirements and limitations that apply
3 under this subsection to civil actions brought by
4 attorneys general.

5 (B) SAVINGS PROVISION.—Nothing in this
6 subsection may be construed to prohibit an au-
7 thorized official of a State from initiating or
8 continuing any proceeding in a court of the
9 State for a violation of any civil or criminal law
10 of the State.

11 **SEC. 7. EFFECT ON OTHER LAWS.**

12 (a) PRESERVATION OF COMMISSION AUTHORITY.—
13 Nothing in this Act may be construed in any way to limit
14 or affect the Commission’s authority under any other pro-
15 vision of law.

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