

114TH CONGRESS  
2D SESSION

# H. R. 4516

To require data brokers to establish procedures to ensure the accuracy of collected personal information, and for other purposes.

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## IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 10, 2016

Mr. JOHNSON of Georgia (for himself, Ms. JACKSON LEE, Mr. CICILLINE, and Mr. COHEN) introduced the following bill; which was referred to the Committee on Energy and Commerce

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## 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 2016”.

6 **SEC. 2. FINDINGS.**

7 Congress finds the following:

1           (1) The privacy of an individual is directly af-  
2           fected by the collection, maintenance, use, and dis-  
3           semination of personal information by data brokers.

4           (2) An individual rarely has any knowledge  
5           about the processing of the individual's personal in-  
6           formation by data brokers.

7           (3) The processing of personal information by  
8           data brokers and the commercial clients of data bro-  
9           kers affects economic marketplace opportunities  
10          available to individuals.

11          (4) The use of data broker information by Fed-  
12          eral, State, and local agencies can affect the ability  
13          of an individual to travel, work, obtain government  
14          benefits, and receive government services.

15          (5) An individual does not always have a right  
16          to access or seek correction of personal information  
17          maintained by data brokers.

18          (6) Data brokers operate in interstate com-  
19          merce, and it is necessary and proper for Congress  
20          to regulate the processing of information by data  
21          brokers.

22          (7) Existing law does not provide an individual  
23          with sufficient privacy or due process protections.

24          (8) Requiring data brokers to provide an indi-  
25          vidual with fair information practices will increase

1 fairness, improve privacy, promote economic growth,  
2 and limit identity theft and other criminal activity  
3 by increasing the accuracy and quality of informa-  
4 tion relied upon by governments and businesses.

5 **SEC. 3. DEFINITIONS.**

6 In this Act:

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

9 (2) COVERED DATA BROKER.—

10 (A) IN GENERAL.—The term “covered  
11 data broker” includes all data brokers except  
12 those data brokers excepted under subpara-  
13 graph (B).

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

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

7           (4) NON-PUBLIC INFORMATION.—The term  
8 “non-public information” means information about  
9 an individual that is—

- 10                   (A) of a private nature;  
11                   (B) not available to the general public; and  
12                   (C) not public record information.

13           (5) PERSONAL INFORMATION.—

14                   (A) DEFINITION.—The term “personal in-  
15 formation” means an individual’s first name or  
16 initial and last name, or address, or phone  
17 number, in combination with any one or more  
18 of the following data elements for that indi-  
19 vidual:

- 20                           (i) Social Security number.  
21                           (ii) Driver’s license number, passport  
22 number, military identification number, or  
23 other similar number issued on a govern-  
24 ment document used to verify identity.

1 (iii) Financial account number, or  
2 credit or debit card number, and any re-  
3 quired security code, access code, or pass-  
4 word that is necessary to permit access to  
5 an individual's financial account.

6 (B) MODIFIED DEFINITION BY RULE-  
7 MAKING.—The Commission may, by rule pro-  
8 mulgated under section 553 of title 5, United  
9 States Code, modify the definition of “personal  
10 information” under subparagraph (A) to the ex-  
11 tent that such modification is necessary to ac-  
12 commodate changes in technology or practices  
13 and will accomplish the purposes of this Act.

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

19 **SEC. 4. PROHIBITION ON OBTAINING OR SOLICITATION TO**  
20 **OBTAIN PERSONAL INFORMATION BY FALSE**  
21 **PRETENSES.**

22 (a) IN GENERAL.—A covered data broker may not  
23 obtain or attempt to obtain, or cause to be disclosed or  
24 attempt to cause to be disclosed to any person, personal  
25 information or any other information relating to any per-

1 son by making a false, fictitious, or fraudulent statement  
2 or representation to any person, including by providing  
3 any document to any person, that the covered data broker  
4 knows or should know—

5 (1) to be forged, counterfeit, lost, stolen, or  
6 fraudulently obtained; or

7 (2) contains a false, fictitious, or fraudulent  
8 statement or representation.

9 (b) SOLICITATION.—A covered data broker may not  
10 request a person to obtain personal information, or any  
11 other information, relating to any other person if the cov-  
12 ered data broker knows or should know that the person  
13 to whom the request is made will obtain or attempt to  
14 obtain that information in the manner described in sub-  
15 section (a).

16 **SEC. 5. REQUIREMENTS CONCERNING ACCURACY OF AND**  
17 **ACCESS TO PERSONAL INFORMATION.**

18 (a) ACCURACY.—

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

23 (A) the personal information it collects, as-  
24 sembles, or maintains; and

1           (B) any other information it collects, as-  
2           sembles, or maintains that specifically identifies  
3           an individual, unless the information only iden-  
4           tifies an individual's name or address.

5           (2) EXCEPTION.—A covered data broker may  
6           collect or maintain information that may be inac-  
7           curate with respect to a particular individual if that  
8           information is being collected or maintained solely  
9           for the purpose of—

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

13           (B) helping to identify, or to authenticate  
14           the identity of, an individual; or

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

17           (b) CONSUMER ACCESS.—

18           (1) IN GENERAL.—Subject to paragraph (4), a  
19           covered data broker shall provide an individual a  
20           means to review any personal information, or other  
21           information that specifically identifies that indi-  
22           vidual, that the covered data broker collects, assem-  
23           bles, or maintains on that individual.

24           (2) REVIEW REQUIREMENTS.—The means for  
25           review under paragraph (1) shall be provided—

- 1 (A) at an individual's request;
- 2 (B) after verifying the identity of the indi-  
3 vidual;
- 4 (C) at least 1 time per year;
- 5 (D) at no cost to the individual; and
- 6 (E) in a format that can be readily under-  
7 stood by a consumer, as determined by the  
8 Commission.

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

14 (4) EXCEPTIONS.—The Commission may, by  
15 rule, establish such exceptions to paragraph (1) as  
16 the Commission considers appropriate, such as for  
17 child protection, law enforcement, fraud prevention,  
18 or other government purposes.

19 (5) LIMITATION ON USE OF VERIFYING INFOR-  
20 MATION.—If a covered data broker collects informa-  
21 tion from an individual to verify the identity of the  
22 individual under paragraph (2)(B) that the data  
23 broker did not have before such collection, the data  
24 broker may not use such information for any pur-

1 pose other than for purposes of verifying the identity  
2 of the individual under such paragraph.

3 (c) DISPUTED INFORMATION.—

4 (1) IN GENERAL.—An individual whose per-  
5 sonal information is maintained by a covered data  
6 broker may dispute the accuracy of any information  
7 described under subsection (b)(1) by requesting, in  
8 writing, that the covered data broker correct the in-  
9 formation.

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

16 (A) with regard to public record informa-  
17 tion—

18 (i) inform the individual of the source  
19 of the information and, if reasonably avail-  
20 able, where to direct the individual's re-  
21 quest for correction; or

22 (ii) if the individual provides proof  
23 that the public record has been corrected  
24 or that the covered data broker was report-  
25 ing the information incorrectly, correct the

1           inaccuracy in the covered data broker's  
2           records; and

3           (B) with regard to non-public informa-  
4           tion—

5                   (i) note the information that is dis-  
6                   puted, including the individual's written re-  
7                   quest;

8                   (ii) if the information can be inde-  
9                   pendently verified, use the procedures es-  
10                  tablished under subsection (a) to independ-  
11                  ently verify the information; and

12                  (iii) if the covered data broker was re-  
13                  porting the information incorrectly, correct  
14                  the inaccuracy in the covered data broker's  
15                  records.

16           (3) PERIOD OF CORRECTION.—In a case in  
17           which a covered data broker is subject to a require-  
18           ment under paragraph (2) due to a request made by  
19           an individual under paragraph (1), such covered  
20           data broker shall take such action as may be re-  
21           quired to satisfy such requirement within such pe-  
22           riod as the Commission shall determine, by rule, is  
23           appropriate.

24           (d) NOTICE.—

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

5                   (A) to review information under subsection  
6                   (b)(1); and

7                   (B) to express a preference under sub-  
8                   section (e)(2).

9           (2) FORM.—A covered data broker shall ensure  
10 that the notice the covered data broker places under  
11 paragraph (1) conforms to such model form as the  
12 Commission shall promulgate for purposes of this  
13 subsection.

14           (e) CERTAIN MARKETING INFORMATION.—

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

19                   (2) EXPRESSION OF PREFERENCES.—A covered  
20 data broker that maintains any information de-  
21 scribed under subsection (a) and that uses, shares,  
22 or sells that information for marketing purposes  
23 shall provide each individual whose information the  
24 covered data broker maintains with a reasonable

1 means of expressing a preference not to have that  
2 individual's information used for those purposes.

3 (f) AUDITING.—

4 (1) IN GENERAL.—Subject to paragraph (2),  
5 each covered data broker shall establish measures  
6 that facilitate the auditing or retracing of any inter-  
7 nal or external access to, or transmission of, any  
8 data containing personal information collected, as-  
9 sembled, or maintained by the covered data broker.

10 (2) EXCEPTIONS.—The Commission may estab-  
11 lish, by rule, such exceptions to paragraph (1) as the  
12 Commission considers appropriate to further or pro-  
13 tect law enforcement or national security activities.

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

21 **SEC. 6. REGULATIONS.**

22 (a) IN GENERAL.—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, to carry out this Act.

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

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

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

7 (3) Such exceptions as the Commission con-  
8 siders appropriate to promulgate under section  
9 5(b)(4).

10 (4) The period of correction required under sec-  
11 tion 5(c)(3).

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

13 (6) Requirements for auditing under paragraph  
14 (1) of section 5(f) and such exceptions under para-  
15 graph (2) of such section as the Commission con-  
16 siders appropriate.

17 (7) Establishment of a centralized Internet  
18 website for the benefit of consumers that—

19 (A) lists the covered data brokers that are  
20 subject to a requirement of section 5; and

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

23 (8) Such other regulations as the Commission  
24 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 4 or 5 or a regulation  
6 promulgated under this Act shall be treated as a vio-  
7 lation of a rule defining an unfair or a deceptive act  
8 or practice under section 18(a)(1)(B) of the Federal  
9 Trade Commission Act (15 U.S.C. 57a(a)(1)(B)).

10 (2) POWERS OF COMMISSION.—

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

18 (B) PRIVILEGES AND IMMUNITIES.—Any  
19 person who violates section 4 or 5 or a regula-  
20 tion prescribed under this Act shall be subject  
21 to the penalties and entitled to the privileges  
22 and immunities provided in the Federal Trade  
23 Commission Act (15 U.S.C. 41 et seq.).

24 (b) ENFORCEMENT BY STATES.—

25 (1) CIVIL ACTION.—Except as provided under  
26 paragraph (5), in any case in which the attorney

1 general of a State has reason to believe that an in-  
2 terest of the residents of that State has been or is  
3 threatened or adversely affected by any person sub-  
4 ject to a provision of section 4 or 5 or a regulation  
5 promulgated under this Act in a practice that vio-  
6 lates such provision or regulation, the attorney gen-  
7 eral of the State may, as *parens patriae*, bring a  
8 civil action on behalf of the residents of the State in  
9 an appropriate district court of the United States—

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

12 (B) to compel compliance with such provi-  
13 sion or regulation;

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

16 (D) to obtain such other relief as the court  
17 considers appropriate; or

18 (E) to obtain civil penalties in the amount  
19 determined under paragraph (2).

20 (2) CIVIL PENALTIES.—

21 (A) CALCULATION.—For purposes of im-  
22 posing a civil penalty under paragraph (1)(E),  
23 the amount determined under this paragraph is  
24 the amount calculated by multiplying the num-

1           ber of separate violations of a rule by an  
2           amount not greater than \$16,000.

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

13          (3) RIGHTS OF FEDERAL TRADE COMMIS-  
14          SION.—

15                 (A) NOTICE TO FEDERAL TRADE COMMIS-  
16                 SION.—

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

23                         (ii) CONTENTS.—The notification re-  
24                         quired by clause (i) with respect to a civil

1 action shall include a copy of the complaint  
2 to be filed to initiate the civil action.

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

10 (B) INTERVENTION BY FEDERAL TRADE  
11 COMMISSION.—The Commission may—

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

15 (ii) upon intervening—

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

18 (II) file petitions for appeal of a  
19 decision in the civil action.

20 (4) INVESTIGATORY POWERS.—Nothing in this  
21 subsection may be construed to prevent the attorney  
22 general of a State from exercising the powers con-  
23 ferred on the attorney general by the laws of the  
24 State to conduct investigations, to administer oaths  
25 or affirmations, or to compel the attendance of wit-

1 nesses or the production of documentary or other  
2 evidence.

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

13 (6) ACTIONS BY OTHER STATE OFFICIALS.—

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

22 (B) SAVINGS PROVISION.—Nothing in this  
23 subsection may be construed to prohibit an au-  
24 thorized official of a State from initiating or  
25 continuing any proceeding in a court of the

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

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

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

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

○