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1ST SESSION

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To require the Securities and Exchange Commission to promulgate regulations relating to the disclosure of certain commercial data, and for other purposes.

IN THE SENATE OF THE UNITED STATES

JUNE 25, 2019

Mr. WARNER (for himself and Mr. HAWLEY) introduced the following bill; which was read twice and referred to the Committee on Banking, Housing, and Urban Affairs

A BILL

To require the Securities and Exchange Commission to promulgate regulations relating to the disclosure of certain commercial data, 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 “Designing Accounting
5 Safeguards To Help Broaden Oversight and Regulations
6 on Data”.

7 **SEC. 2. DEFINITIONS.**

8 In this Act:

1 (1) COMMERCIAL DATA OPERATOR.—The term
2 “commercial data operator” means an entity acting
3 in its capacity as a consumer online services provider
4 or data broker that—

5 (A) generates a material amount of rev-
6 enue from the use, collection, processing, sale,
7 or sharing of the user data; and

8 (B) has more than 100,000,000 unique
9 monthly visitors or users in the United States
10 for a majority of months during the previous 1-
11 year period.

12 (2) COMMISSION.—The term “Commission”
13 means the Securities and Exchange Commission.

14 (3) ISSUER.—The term “issuer” has the mean-
15 ing given the term in section 3(a) of the Securities
16 and Exchange Act of 1934 (15 U.S.C. 78c(a)).

17 (4) USER.—The term “user” means an indi-
18 vidual consumer who uses an online service designed
19 for consumer use by a commercial data operator.

20 (5) USER DATA.—The term “user data” means
21 any information that identifies, relates to, describes,
22 is capable of being associated with, or could reason-
23 ably be linked with an individual user, whether di-
24 rectly submitted to the commercial data operator by

1 the user or derived from the observed activity of the
2 user by the commercial data operator.

3 **SEC. 3. COMMERCIAL DATA OPERATORS.**

4 (a) REQUIREMENTS.—

5 (1) IN GENERAL.—A commercial data operator
6 shall—

7 (A) on a routine basis, and not less fre-
8 quently than once every 90 days—

9 (i) provide each user of the commer-
10 cial data operator with an assessment of
11 the economic value that the commercial
12 data operator places on the data of that
13 user; and

14 (ii) in a clear and conspicuous man-
15 ner, in accordance with paragraph (3),
16 identify to each user of the commercial
17 data operator—

18 (I) the types of data collected
19 from users of the commercial data op-
20 erator, whether by the commercial
21 data operator or another person pur-
22 suant to an agreement with the com-
23 mercial data operator; and

24 (II) the ways that the data of a
25 user of the commercial data operator

1 is used if the use is not directly or ex-
2 clusively related to the online service
3 that the commercial data operator
4 provides to the user; and

5 (B) except as provided in paragraph (2),
6 provide a user of the commercial data operator
7 with the ability to delete all data, in the aggre-
8 gate and for an individual field, that the com-
9 mercial data operator possesses, or maintains
10 control or access to with respect to the user,
11 through—

12 (i) a single setting; or

13 (ii) another clear and conspicuous
14 mechanism by which the user may make
15 such a deletion.

16 (2) DELETION EXCEPTIONS.—

17 (A) IN GENERAL.—A commercial data op-
18 erator shall comply with a user directive to de-
19 lete, in whole or in part, the data of the user
20 except—

21 (i) in cases where there is a legal obli-
22 gation of the commercial data operator to
23 maintain the data;

24 (ii) for the establishment, exercise, or
25 defense of legal claims; or

1 (iii) if the data is necessary to detect
2 security incidents, protect against mali-
3 cious, deceptive, fraudulent, or illegal activ-
4 ity, or assist in the prosecution of those re-
5 sponsible for such activity.

6 (B) RETENTION.—A commercial data op-
7 erator may not retain any more user data than
8 is necessary to carry out an activity described
9 in clauses (i) through (iii) of subparagraph (A).

10 (3) AVAILABILITY.—A commercial data oper-
11 ator shall ensure that all disclosures required under
12 subsection (a) are available to a user of the commer-
13 cial data operator—

14 (A) on and after the date on which the
15 commercial data operator makes the identifica-
16 tion; and

17 (B) through any normal mechanism by
18 which a user may interact with the online serv-
19 ice provided by the commercial data operator.

20 (4) UNFAIR AND DECEPTIVE ACTS OR PRAC-
21 TICES.—

22 (A) UNFAIR OR DECEPTIVE ACTS OR PRAC-
23 TICES.—A violation of this subsection shall be
24 treated as a violation of a rule defining an un-
25 fair or deceptive act or practice prescribed

1 under section 18(a)(1)(B) of the Federal Trade
2 Commission Act (15 U.S.C. 57a(a)(1)(B)).

3 (B) POWERS OF FEDERAL TRADE COMMIS-
4 SION.—

5 (i) IN GENERAL.—The Federal Trade
6 Commission shall enforce this subsection in
7 the same manner, by the same means, and
8 with the same jurisdiction, powers, and du-
9 ties as though all applicable terms and pro-
10 visions of the Federal Trade Commission
11 Act (15 U.S.C. 41 et seq.) were incor-
12 porated into and made a part of this sub-
13 section.

14 (ii) PRIVILEGES AND IMMUNITIES.—
15 Any person who violates this subsection
16 shall be subject to the penalties and enti-
17 tled to the privileges and immunities pro-
18 vided in the Federal Trade Commission
19 Act (15 U.S.C. 41 et seq.).

20 (b) REGULATIONS.—Not later than 1 year after the
21 date of enactment of this Act, the Federal Trade Commis-
22 sion shall promulgate regulations carrying out subsection
23 (a).

1 **SEC. 4. SEC DISCLOSURES.**

2 (a) IN GENERAL.—Section 13 of the Securities Ex-
3 change Act of 1934 (15 U.S.C. 78m) is amended by add-
4 ing at the end the following:

5 “(s) DISCLOSURE RELATING TO AGGREGATE VALUE
6 OF USER DATA HELD BY COMMERCIAL DATA OPERA-
7 TORS.—

8 “(1) DEFINITIONS.—In this subsection:

9 “(A) COMMERCIAL DATA OPERATOR.—The
10 term ‘commercial data operator’ means an enti-
11 ty acting in its capacity as a consumer online
12 services provider or data broker that—

13 “(i) generates a material amount of
14 revenue directly from the use, collection,
15 processing, sale, or sharing of the user
16 data; and

17 “(ii) has more than 100,000,000
18 unique monthly visitors or users in the
19 United States for a majority of months
20 during the previous 1-year period;

21 “(B) USER.—The term ‘user’ means an in-
22 dividual consumer who uses an online service
23 designed for consumer use by a commercial
24 data operator.

25 “(C) USER DATA.—The term ‘user data’
26 means any information that identifies, relates

1 to, describes, is capable of being associated
2 with, or could reasonably be linked with an in-
3 dividual user, whether directly submitted to the
4 commercial data operator by the user or derived
5 from the observed activity of the user by the
6 commercial data operator.

7 “(2) DISCLOSURE.—Each issuer that is, or is a
8 consolidated subsidiary of, a commercial data oper-
9 ator and is required to file an annual or quarterly
10 report under subsection (a) shall disclose in that re-
11 port the aggregate value, if material, of—

12 “(A) user data that the commercial data
13 operator holds;

14 “(B) contracts with third parties for the
15 collection of user data through the online serv-
16 ice provided by the commercial data operator;
17 and

18 “(C) any other item that the Commission
19 determines, by rule, is necessary or useful for
20 the protection of investors and in the public in-
21 terest.

22 “(3) VALUATION METHODOLOGY.—

23 “(A) IN GENERAL.—The Commission, in
24 consultation with appropriate standards set-
25 tings organizations, shall develop a method or

1 methods for calculating the value of user data
2 required to be disclosed under paragraph (2).

3 “(B) CONSIDERATIONS.—In developing the
4 method under subparagraph (A), the Commis-
5 sion shall promote comparability in calculating
6 the value of data across commercial data opera-
7 tors that utilize user data in a similar manner
8 while taking into account the potential need to
9 develop distinct methods for calculating the
10 value of data for different uses, sectors, and
11 business models.”.

12 (b) QUALITATIVE DISCLOSURE.—Not later than 1
13 year after the date of enactment of this subsection, the
14 Commission shall amend section 229.306 of title 17, Code
15 of Federal Regulations, to require a commercial data oper-
16 ator that is an issuer subject to section 13 or 15(d) of
17 the Securities Exchange Act of 1934 (15 U.S.C. 78m,
18 78o(d)) to provide quantitative and qualitative disclosures
19 about the value of user data held, including—

20 (1) technical and legal measures in place to
21 protect user data held by the commercial data oper-
22 ator;

23 (2) an assessment of financial and legal risks
24 associated with storing the type and quantity of user
25 data held by the commercial data operator;

1 (3) each source of user data held by the com-
2 mercial data operator, whether by sale, a direct con-
3 sumer relationship, an indirect consumer relation-
4 ship, or other means;

5 (4) each discrete revenue generating operation
6 of the commercial data operator and any subsidiary
7 or affiliate that relies on user data;

8 (5) the entry into any contract valued at more
9 than \$10,000,000 with a third party for the collec-
10 tion, licensing, or sharing by the third party pursu-
11 ant to an agreement with the commercial data oper-
12 ator;

13 (6) the amount of revenue derived from obtain-
14 ing, collecting, processing, selling, using or sharing
15 user data during the reporting period;

16 (7) how changes in the measurement of aggre-
17 gate fair value of user data affect the reported per-
18 formance and cash flows of the issuer; and

19 (8) any acquisition of user data in the pre-
20 ceding reporting period valued at more than
21 \$100,000,000.

22 (c) REPORT.—

23 (1) IN GENERAL.—Not later than 3 years after
24 the date of enactment of this Act, the Commission
25 shall submit to the Committee on Banking, Housing,

1 and Urban Affairs of the Senate and the Committee
2 on Financial Services of the House of Representa-
3 tives a report on—

4 (A) the nature, timing, and extent of the
5 disclosure practices of commercial data opera-
6 tors;

7 (B) an assessment of the valuation meth-
8 odologies and practices employed by commercial
9 data operators in developing and submitting
10 disclosures to the public;

11 (C) an evaluation of the methods of deliv-
12 ery and presentation of the disclosures required
13 by this Act, and the amendments made by this
14 Act; and

15 (D) recommendations for the improvement
16 of the methods described in paragraph (3), in-
17 cluding developing standards to enhance com-
18 parability and utility for investors.

19 (2) RULEMAKING.—Not later than 180 days
20 after the date on which the report required under
21 paragraph (1) is submitted, the Commission shall
22 promulgate a proposed regulation implementing the
23 recommendations described in paragraph (1)(D).

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