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1ST SESSION

S. 2290

To provide for requirements for data brokers with respect to the acquisition, use, and protection of brokered personal information and to require that data brokers annually register with the Federal Trade Commission.

IN THE SENATE OF THE UNITED STATES

JUNE 24, 2021

Mr. PETERS (for himself, Ms. LUMMIS, and Mrs. CAPITO) introduced the following bill; which was read twice and referred to the Committee on Commerce, Science, and Transportation

A BILL

To provide for requirements for data brokers with respect to the acquisition, use, and protection of brokered personal information and to require that data brokers annually register with the Federal Trade Commission.

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 List Act
5 of 2021”.

1 **SEC. 2. REQUIREMENTS FOR DATA BROKERS.**

2 (a) REQUIREMENTS WITH RESPECT TO THE ACQUI-
3 SITION AND USE OF BROKERED PERSONAL INFORMA-
4 TION.—A data broker shall not—

5 (1) acquire brokered personal information
6 through fraudulent means;

7 (2) acquire or use brokered personal informa-
8 tion for the purpose of—

9 (A) stalking or harassing another person;

10 (B) committing fraud, including identity
11 theft, financial fraud, or e-mail fraud; or

12 (C) engaging in unlawful discrimination,
13 including unlawful discrimination in decisions
14 regarding employment, housing, and credit eli-
15 gibility; or

16 (3) sell or transfer brokered personal informa-
17 tion to a third party if the data broker knows or rea-
18 sonably should know that the third party intends to
19 engage in any conduct prohibited by this Act.

20 (b) DUTY TO PROTECT BROKERED PERSONAL IN-
21 FORMATION.—

22 (1) IN GENERAL.—A data broker shall develop,
23 implement, and maintain a comprehensive informa-
24 tion security program in order to protect from secu-
25 rity breaches or other inadvertent or improper dis-

1 closure the brokered personal information acquired
2 by the data broker.

3 (2) NOTIFICATION OF CHANGE OF OWNER-
4 SHIP.—If a data broker is purchased or otherwise
5 acquired by another entity, such other entity shall
6 provide notification of such purchase or acquisition
7 to any consumer with respect to which—

8 (A) the data broker collected, processed,
9 analyzed, stored or used brokered personal in-
10 formation; and

11 (B) such other entity plans to continue to
12 collect, process, analyze, store or use such infor-
13 mation.

14 (3) PROGRAM REQUIREMENTS.—The com-
15 prehensive information security program required
16 under paragraph (1) shall—

17 (A) be written in one or more readily ac-
18 cessible parts; and

19 (B) contain administrative, technical, and
20 physical safeguards that are appropriate to—

21 (i) the size, scope, and type of busi-
22 ness of the data broker;

23 (ii) the amount of resources available
24 to the data broker;

1 (iii) the amount of stored data of the
2 data broker;

3 (iv) the nature and sensitivity of the
4 brokered personal information stored by
5 the data broker; and

6 (v) the need for security and confiden-
7 tiality of brokered personal information.

8 (c) ANNUAL REGISTRATION.—

9 (1) IN GENERAL.—Annually, on or before Janu-
10 ary 31, a data broker shall—

11 (A) register with the Commission; and

12 (B) provide the following information with
13 such registration:

14 (i) The name and primary physical, e-
15 mail, and internet addresses of the data
16 broker.

17 (ii) If the data broker permits a con-
18 sumer to opt out of the data broker's col-
19 lection of brokered personal information,
20 opt out of its databases, or opt out of cer-
21 tain sales of data—

22 (I) the method for requesting an
23 opt-out;

1 (II) if the opt-out applies to only
2 certain activities or sales, which ones;
3 and

4 (III) whether the data broker
5 permits a consumer to authorize a
6 third party to perform the opt-out on
7 the consumer's behalf.

8 (iii) A statement specifying the data
9 collection, databases, or sales activities
10 from which a consumer may not opt out,
11 and why an opportunity to opt out is not
12 available.

13 (iv) A statement specifying the types
14 of information being collected, as deter-
15 mined by the Commission, to the extent
16 practicable.

17 (v) A statement as to whether the
18 data broker implements a purchaser
19 credentialing process and, if so, a descrip-
20 tion of that process.

21 (vi) The number of security breaches
22 that the data broker experienced during
23 the previous year, and if known, the total
24 number of consumers whose personal infor-

1 mation was accessed, downloaded, viewed,
2 or otherwise affected in a breach.

3 (vii) Where the data broker has actual
4 knowledge that it possesses the brokered
5 personal information of minors, a separate
6 statement detailing the data collection
7 practices, databases, sales activities, and
8 opt-out policies that are applicable to the
9 brokered personal information of minors.

10 (viii) Any additional information or
11 explanation concerning its data collection
12 practices.

13 (2) EXCEPTION.—The requirements under
14 paragraph (1) shall not apply to a data broker that
15 is already required to comply with such requirements
16 with respect to another Federal agency.

17 (3) PUBLIC AVAILABILITY.—The Commission
18 shall make the information described in paragraph
19 (1) available on the internet website of the Commis-
20 sion, except as necessary to protect the integrity of
21 ongoing investigations or to protect the privacy of
22 consumers, or if it is in the interest of public safety
23 or welfare.

1 **SEC. 3. ENFORCEMENT BY THE FEDERAL TRADE COMMIS-**
2 **SION.**

3 (a) UNFAIR OR DECEPTIVE ACTS OR PRACTICES.—

4 A violation of section 2 shall be treated as a violation of
5 a rule defining an unfair or a deceptive act or practice
6 under section 18(a)(1)(B) of the Federal Trade Commis-
7 sion Act (15 U.S.C. 57a(a)(1)(B)). The Commission shall
8 begin enforcement of such violations by not later than 1
9 year after the date of the enactment of this Act.

10 (b) POWERS OF COMMISSION.—

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

18 (2) PRIVILEGES AND IMMUNITIES.—Any data
19 broker who violates section 2 shall be subject to the
20 penalties and entitled to the privileges and immuni-
21 ties provided in the Federal Trade Commission Act
22 (15 U.S.C. 41 et seq.).

23 (3) CIVIL PENALTY.—A data broker that fails
24 to register as required under section 2(c) shall be
25 liable for a civil penalty in an amount determined by

1 the Commission through the rulemaking authority
2 under subsection (c).

3 (4) **AUTHORITY PRESERVED.**—Nothing in this
4 Act shall be construed to limit the authority of the
5 Federal Trade Commission under any other provi-
6 sion of law.

7 (c) **RULEMAKING AUTHORITY FOR THE COMMIS-**
8 **SION.**—The Commission shall have authority under sec-
9 tion 553 of title 5, United States Code, to promulgate reg-
10 ulations the Commission determines to be necessary to
11 carry out the provisions of this Act.

12 **SEC. 4. FTC ANNUAL REVIEW AND REPORT.**

13 (a) **ANNUAL REVIEW.**—The Commission shall con-
14 duct an annual review of the implementation of the provi-
15 sions of this Act. Such study shall include an analysis of—

16 (1) compliance by data brokers with the re-
17 quirements under section 2;

18 (2) enforcement actions taken by the Commis-
19 sion with respect to violations of such requirements;
20 and

21 (3) other areas determined appropriate by the
22 Commission.

23 (b) **ANNUAL REPORT.**—Not later than 1 year after
24 the date of the enactment of this Act, and annually there-
25 after the Commission shall submit to Congress a report

1 on the review conducted under subsection (a), together
2 with recommendations for such legislation and administra-
3 tive action as the Commission determines appropriate.

4 **SEC. 5. DEFINITIONS.**

5 In this section:

6 (1) **BROKERED PERSONAL INFORMATION.**—The
7 term “brokered personal information” means any
8 personal information that is categorized or organized
9 for sale, license, or trade, or is otherwise disclosed
10 for compensation, to a third party.

11 (2) **BUSINESS.**—

12 (A) **IN GENERAL.**—The term “business”
13 means a commercial entity, including a sole
14 proprietorship, partnership, corporation, asso-
15 ciation, limited liability company, or other
16 group, however organized and whether or not
17 organized to operate at a profit, including a fi-
18 nancial institution organized, chartered, or
19 holding a license or authorization certificate
20 under the laws of a State, the United States, or
21 any other country, or the parent, affiliate, or
22 subsidiary of a financial institution.

23 (B) **EXCLUSION.**—The term “business”
24 does not include a State, a State agency, any
25 political subdivision of a State, or a vendor act-

1 ing solely on behalf of, and at the direction of,
2 a State.

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

5 (4) CONSUMER.—The term “consumer” means
6 an individual residing in the United States acting in
7 a personal, family, or household capacity.

8 (5) DATA BROKER.—

9 (A) IN GENERAL.—The term “data
10 broker” means a business that knowingly col-
11 lects or obtains the personal information of a
12 consumer with whom the business does not have
13 a direct relationship and then sells, licenses,
14 trades, provides for consideration, or is other-
15 wise compensated for disclosing that informa-
16 tion to a third party.

17 (B) DIRECT RELATIONSHIP.—For pur-
18 poses of subparagraph (A), a direct relationship
19 with a business exists if the consumer—

20 (i) is a current customer;

21 (ii) obtained a good or service from
22 the business within the prior 18 months; or

23 (iii) made an inquiry about the prod-
24 ucts or services of the business within the
25 prior 90 days.

1 (C) EXCLUSION.—The following activities
2 conducted by a business, and the collection and
3 sale or licensing of brokered personal informa-
4 tion incidental to conducting these activities, do
5 not qualify the business as a data broker:

6 (i) Providing 411 directory assistance
7 or directory information services, including
8 name, address, and telephone number, on
9 behalf of or as a function of a tele-
10 communications carrier.

11 (ii) Providing a consumer’s publicly
12 available information if the information is
13 being used by the recipient as it relates to
14 that consumer’s business or profession.

15 (iii) Providing publicly available infor-
16 mation via real-time or near-real-time alert
17 services for health or safety purposes.

18 (iv) Providing or using information in
19 a manner that is regulated under another
20 Federal or State law, including the Fair
21 Credit Reporting Act, the Gramm-Leach-
22 Bliley Act, or the Health Insurance Port-
23 ability and Accountability Act.

1 (v) Providing data to a third party at
2 the direction of the consumer and with the
3 consumer's affirmative express consent.

4 (vi) Providing or using information
5 for assessing, verifying, or authenticating a
6 person's identity, or for investigating or
7 preventing actual or potential fraud.

8 (D) EXCLUSION FROM SALE.—For pur-
9 poses of this paragraph, the term “sells” does
10 not include a one-time or occasional sale of as-
11 sets of a business as part of a transfer of con-
12 trol of those assets that is not part of the ordi-
13 nary conduct of the business.

14 (6) DATA BROKER SECURITY BREACH.—

15 (A) IN GENERAL.—The term “data broker
16 security breach” means an unauthorized acqui-
17 sition or a reasonable belief of an unauthorized
18 acquisition of more than one element of bro-
19 kered personal information maintained by a
20 data broker when the brokered personal infor-
21 mation is not encrypted, redacted, or protected
22 by another method that renders the information
23 unreadable or unusable by an unauthorized per-
24 son or entity.

1 (B) EXCLUSION.—The term “data broker
2 security breach” does not include good faith but
3 unauthorized acquisition of brokered personal
4 information by an employee or agent of the
5 data broker for a legitimate purpose of the data
6 broker, provided that the brokered personal in-
7 formation is not used for a purpose unrelated
8 to the data broker’s business or subject to fur-
9 ther unauthorized disclosure.

10 (C) APPLICATION.—In determining wheth-
11 er brokered personal information has been ac-
12 quired or is reasonably believed to have been ac-
13 quired without valid authorization, a data
14 broker may consider the following factors,
15 among others:

16 (i) Indications that the brokered per-
17 sonal information is in the physical posses-
18 sion and control of a person or entity with-
19 out valid authorization, such as a lost or
20 stolen computer or other device containing
21 brokered personal information.

22 (ii) Indications that the brokered per-
23 sonal information has been downloaded or
24 copied.

1 (iii) Indications that the brokered per-
2 sonal information was used by an unau-
3 thorized person or entity, such as fraudu-
4 lent accounts opened or instances of iden-
5 tity theft reported.

6 (iv) That the brokered personal infor-
7 mation has been made public.

8 (7) PERSONAL INFORMATION.—The term “per-
9 sonal information” means information which is re-
10 lated to any identified or identifiable person.

11 (8) STATE.—The term “State” means any
12 State of the United States, the District of Columbia,
13 the Commonwealth of Puerto Rico, Guam, American
14 Samoa, the Commonwealth of Northern Mariana Is-
15 lands, and the United States Virgin Islands.

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