

116TH CONGRESS  
2D SESSION

# H. R. 8749

To provide for digital accountability and transparency.

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## IN THE HOUSE OF REPRESENTATIVES

NOVEMBER 12, 2020

Mr. VELA introduced the following bill; which was referred to the Committee on Energy and Commerce, and in addition to the Committee on Science, Space, and Technology, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

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## 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-

1       ered data, including by automated means, including  
2       purchasing, leasing, assembling, recording, gath-  
3       ering, acquiring, or procuring.

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

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

8           (A) means any information that is—

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

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

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

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

20          (B) does not include data that is—

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

1 (ii) lawfully made available to the  
2 public from Federal, State, or local govern-  
3 ment records.

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

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

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

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

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

21 (A) direct or indirect financial loss;

22 (B) stigmatization or reputational harm;

23 (C) anxiety, embarrassment, fear, and  
24 other severe emotional trauma;

25 (D) loss of economic opportunity; or

1 (E) physical harm.

2 (7) PROCESS.—The term “process” means any  
3 operation or set of operations that is performed on  
4 covered data or on sets of covered data, including by  
5 automated means, including organizing, combining,  
6 adapting, altering, using, or transforming.

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

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

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

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

22 (B) the use of covered data is within the  
23 context of the relationship between the covered  
24 entity and the individual linked to the covered  
25 data; and

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

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

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

8 (B) the precise geolocation information of  
9 a device associated with an individual.

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

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

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

1 **SEC. 3. REQUIRED PRIVACY NOTICE.**

2 (a) PRIVACY NOTICE.—Each covered entity shall post  
3 in an accessible location a notice that is concise, in con-  
4 text, in easily understandable language, accurate, clear,  
5 timely, updated, uses visualizations where appropriate,  
6 conspicuous, and free of charge regarding the covered en-  
7 tity’s privacy practices.

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

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

14 (2) the purposes for and means by which the  
15 entity collects, processes, and stores the covered  
16 data;

17 (3) the persons and entities to whom, and pur-  
18 poses for which, the covered entity discloses the cov-  
19 ered data; and

20 (4) a conspicuous, clear, and understandable  
21 means for individuals to access the methods nec-  
22 essary to exercise their rights under sections 4 and  
23 5.

24 **SEC. 4. REQUIRED DATA PRACTICES.**

25 (a) REGULATIONS.—Not later than 1 year after the  
26 date of the enactment of this Act, the Commission shall

1 promulgate regulations under section 553 of title 5,  
2 United States Code, that require covered entities to imple-  
3 ment, practice, and maintain certain data procedures and  
4 processes that meet the following requirements:

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

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

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

21 (ii) relevant and appropriate product  
22 and service development and enhancement;

23 (iii) preventing and detecting abuse,  
24 fraud, and other criminal activity;

1 (iv) reasonable communications and  
2 marketing practices that follow best prac-  
3 tices, rules, and ethical standards;

4 (v) engaging in scientific, medical, or  
5 statistical research that follows commonly  
6 accepted ethical standards; or

7 (vi) any other purpose for which the  
8 Commission considers to be reasonable.

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

14 (i) discriminatory targeted advertising  
15 practices;

16 (ii) price, service, or employment op-  
17 portunity discrimination; or

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

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



1 (i) the use of inconspicuous recording  
2 or tracking devices and methods;

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

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

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

15 (2) REQUIREMENTS FOR OPT-OUT CONSENT.—

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

22 (3) REQUIREMENTS FOR AFFIRMATIVE CON-  
23 SENT.—Except as provided in subsection (b), require  
24 covered entities to provide individuals with a notice  
25 that is concise, in easily understandable language,

1 accurate, clear, timely, and conspicuous to express  
2 affirmative, opt-in consent—

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

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

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

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

20 (iii) any other purpose that Commis-  
21 sion considers outside of context.

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

1 (A) take reasonable measures to limit the  
2 collection, processing, storage, and disclosure of  
3 covered data to the amount that is necessary to  
4 carry out the purposes for which the data is col-  
5 lected; and

6 (B) store covered data only as long as is  
7 reasonably necessary to carry out the purposes  
8 for which the data was collected.

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

12 (1) inhibit detection or prevention of a security  
13 risk or incident;

14 (2) risk the health, safety, or property of the  
15 covered entity or individual; or

16 (3) prevent compliance with an applicable law  
17 (including regulations) or legal process.

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

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

1           (1) upon the request of an individual, provide  
2           the individual with access to, or an accurate rep-  
3           resentation of, covered data linked to the individual  
4           or the individual's device stored by the covered enti-  
5           ty;

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

11          (3) upon the request of an individual, delete  
12          any covered data that the covered entity stores  
13          linked to the individual or the individual's device;  
14          and

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

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

1       (c) **TIMELINESS OF REQUESTS.**—In fulfilling any re-  
 2       quests made by the individual under subsection (a) the  
 3       covered entity shall act in as timely a manner as is reason-  
 4       ably possible.

5       (d) **ACCESS TO SAME SERVICE.**—A covered entity  
 6       shall not discriminate against an individual because of any  
 7       action the individual took under their rights described in  
 8       subsection (a), including—

- 9               (1) denying goods or services to the individual;
- 10              (2) charging, or advertising, different prices or  
 11       rates for goods or services; or
- 12              (3) providing different quality of goods or serv-  
 13       ices.

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

19       **SEC. 6. INFORMATION SECURITY STANDARDS.**

20       (a) **REQUIRED DATA SECURITY PRACTICES.**—

- 21              (1) **REGULATIONS.**—Not later than 1 year after  
 22       the date of enactment of this Act, the Commission  
 23       shall promulgate regulations under section 553 of  
 24       title 5, United States Code, to require covered enti-  
 25       ties to establish and implement policies and proce-

1       dures regarding information security practices for  
2       the treatment and protection of covered data taking  
3       into consideration—

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

6               (B) the sensitivity of the covered data col-  
7               lected, processed, and stored and the associated  
8               privacy risk;

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

13              (D) the cost associated with implementing,  
14              maintaining, and regularly reviewing the safe-  
15              guards; and

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

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

1 types of covered data are covered by such law, in-  
2 cluding the following:

3 (A) Title V of the Gramm-Leach-Bliley Act  
4 (15 U.S.C. 6801 et seq.).

5 (B) The Health Information Technology  
6 for Economic and Clinical Health Act (42  
7 U.S.C. 17931).

8 (C) The Health Insurance Portability and  
9 Accountability Act of 1996 Security Rule (45  
10 CFR 160.103 and part 164).

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

16 **SEC. 7. PRIVACY PROTECTION OFFICERS.**

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

22 (1) educate employees about compliance re-  
23 quirements;

24 (2) train employees involved in data processing;

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

(b) PROTECTIONS.—The privacy protection officer shall not be dismissed or otherwise penalized by the covered entity for performing any of the tasks assigned to the person under this section.

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

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

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1 “(D) privacy and confidentiality, includ-  
2 ing—

3 “(i) cryptography;

4 “(ii) anonymization;

5 “(iii) pseudonymization;

6 “(iv) filtering tools;

7 “(v) anti-spying and anti-tracking  
8 tools; and

9 “(vi) any other technology that the  
10 Director determines will enhance individual  
11 privacy;”.

## 12 **SEC. 9. ENFORCEMENT.**

13 (a) **ENFORCEMENT BY THE COMMISSION.**—

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

19 (2) **UNFAIR OR DECEPTIVE ACTS OR PRAC-**  
20 **TICES.**—A violation of this Act or a regulation pre-  
21 scribed under this Act shall be treated as a violation  
22 of a rule defining an unfair or deceptive act or prac-  
23 tice prescribed under section 18(a)(1)(B) of the Fed-  
24 eral Trade Commission Act (15 U.S.C.  
25 57a(a)(1)(B)).

1           (3) ACTIONS BY THE COMMISSION.—Subject to  
2       paragraph (4), the Commission shall prevent any  
3       person from violating this Act or a regulation pre-  
4       scribed under this Act in the same manner, by the  
5       same means, and with the same jurisdiction, powers,  
6       and duties as though all applicable terms and provi-  
7       sions of the Federal Trade Commission Act (15  
8       U.S.C. 41 et seq.) were incorporated into and made  
9       a part of this Act, and any person who violates this  
10      Act or such regulation shall be subject to the pen-  
11      alties and entitled to the privileges and immunities  
12      provided in the Federal Trade Commission Act (15  
13      U.S.C. 41 et seq.).

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

23           (b) ENFORCEMENT BY STATE ATTORNEYS GEN-  
24      ERAL.—

25           (1) IN GENERAL.—

1           (A) CIVIL ACTIONS.—In any case in which  
2           the attorney general of a State has reason to  
3           believe that an interest of the residents of that  
4           State has been or is threatened or adversely af-  
5           fected by the engagement of any person in a  
6           practice that violates this Act or a regulation  
7           prescribed under this Act, the State, as *parens*  
8           *patriae*, may bring a civil action on behalf of  
9           the residents of the State in a district court of  
10          the United States of appropriate jurisdiction  
11          to—

12                   (i) enjoin that practice;

13                   (ii) enforce compliance with this Act  
14                   or such regulation;

15                   (iii) obtain damages, restitution, or  
16                   other compensation on behalf of residents  
17                   of the State;

18                   (iv) impose a civil penalty in an  
19                   amount that is not greater than the prod-  
20                   uct of the number of individuals whose in-  
21                   formation was affected by a violation and  
22                   \$40,000; or

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

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

11 (C) NOTICE.—

12 (i) IN GENERAL.—Before filing an ac-  
13 tion under subparagraph (A), the attorney  
14 general of the State involved shall provide  
15 to the Commission—

16 (I) written notice of that action;

17 and

18 (II) a copy of the complaint for  
19 that action.

20 (ii) EXEMPTION.—

21 (I) IN GENERAL.—Clause (i)  
22 shall not apply with respect to the fil-  
23 ing of an action by an attorney gen-  
24 eral of a State under this paragraph  
25 if the attorney general determines

1                   that it is not feasible to provide the  
2                   notice described in that clause before  
3                   the filing of the action.

4                   (II) NOTIFICATION.—In an ac-  
5                   tion described in subclause (I), the at-  
6                   torney general of a State shall provide  
7                   notice and a copy of the complaint to  
8                   the Commission at the same time as  
9                   the attorney general files the action.

10           (c) RIGHTS OF THE COMMISSION.—

11                   (1) INTERVENTION BY THE COMMISSION.—The  
12                   Commission may intervene in any civil action  
13                   brought by the attorney general of a State under  
14                   subsection (b) and upon intervening—

15                           (A) be heard on all matters arising in the  
16                           civil action; and

17                           (B) file petitions for appeal of a decision in  
18                           the civil action.

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

1           (3) ACTION BY THE COMMISSION.—If the Com-  
2           mission institutes a civil action for violation of this  
3           title or a regulation promulgated under this title, no  
4           attorney general of a State may bring a civil action  
5           under subsection (b) against any defendant named  
6           in the complaint of the Commission for violation of  
7           this Act or a regulation promulgated under this Act  
8           that is alleged in the complaint.

9           (d) VENUE AND SERVICE OF PROCESS.—

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

12                   (A) the district court of the United States  
13                   that meets applicable requirements relating to  
14                   venue under section 1391 of title 28, United  
15                   States Code; or

16                   (B) another court of competent jurisdic-  
17                   tion.

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

21                   (A) is an inhabitant; or

22                   (B) may be found.

23           (e) ACTION OF OTHER STATE OFFICIALS.—

24           (1) IN GENERAL.—In addition to civil actions  
25           brought by attorneys general under subsection (b),

1 any other officer of a State who is authorized by the  
2 State to do so may bring a civil action under sub-  
3 section (b), subject to the same requirements and  
4 limitations that apply under this subsection to civil  
5 actions brought by attorneys general.

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

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

14 **SEC. 10. ADDITIONAL ENFORCEMENT RESOURCES.**

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

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

○