

[STAFF WORKING DRAFT]

FEBRUARY 12, 2014

113TH CONGRESS
2D 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

_____ 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”.

6 **SEC. 2. DEFINITIONS.**

7 In this Act:

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

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

9 (3) NON-PUBLIC INFORMATION.—The term
10 “non-public information” means information about
11 an individual that is of a private nature, not avail-
12 able to the general public, and not obtained from a
13 public record.

14 (4) 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. 3. PROHIBITION ON OBTAINING OR SOLICITATION TO**
20 **OBTAIN PERSONAL INFORMATION BY FALSE**
21 **PRETENSES.**

22 (a) IN GENERAL.—It shall be unlawful for a data
23 broker to obtain or attempt to obtain, or cause to be dis-
24 closed or attempt to cause to be disclosed to any person,
25 personal information or any other information relating to

1 any person by making a false, fictitious, or fraudulent
2 statement or representation to any person, including by
3 providing any document to any person, that the data
4 broker knows or should know to be forged, counterfeit,
5 lost, stolen, or fraudulently obtained, or contains a false,
6 fictitious, or fraudulent statement or representation.

7 (b) SOLICITATION.—It shall be unlawful for a data
8 broker to request a person to obtain personal information,
9 or any other information, relating to any other person if
10 the data broker knows or should know that the person to
11 whom the request is made will obtain or attempt to obtain
12 that information in the manner described in subsection
13 (a).

14 **SEC. 4. PERSONAL INFORMATION.**

15 (a) ACCURACY.—A data broker shall establish rea-
16 sonable procedures to ensure the maximum possible accu-
17 racy of the personal information it collects, assembles, or
18 maintains, and any other information it collects, assem-
19 bles, or maintains that specifically identifies an individual,
20 unless the information only identifies an individual's name
21 or address.

22 (b) EXCEPTION; FRAUD DATABASES.—Notwith-
23 standing subsection (a), a data broker may collect or
24 maintain information that may be inaccurate with respect

1 to a particular individual if that information is being col-
2 lected or maintained solely for the purpose of—

3 (1) indicating whether there may be a discrep-
4 ancy or irregularity in the personal information that
5 is associated with an individual;

6 (2) helping to identify, or to authenticate the
7 identity of, an individual; or

8 (3) helping to protect against or investigate
9 fraud or other unlawful conduct.

10 (c) CONSUMER ACCESS.—A data broker shall provide
11 an individual a means to review any personal information
12 or other information that specifically identifies that indi-
13 vidual, that the data broker collects, assembles, or main-
14 tains on that individual, unless an exception applies under
15 section 5.

16 (d) REVIEW REQUIREMENTS.—The means for review
17 under subsection (c) shall be provided—

18 (1) at an individual's request;

19 (2) after verifying the identity of the individual;

20 (3) at least 1 time per year; and

21 (4) at no cost to the individual.

22 (e) NOTICE.—A data broker shall maintain an Inter-
23 net Web site and place a clear and conspicuous notice on
24 that Internet Web site instructing an individual—

1 (1) how to review the information described
2 under subsection (c); and

3 (2) how to express a preference with respect to
4 the use of personal information for marketing pur-
5 poses under subsection (g).

6 (f) **DISPUTED INFORMATION.**—An individual whose
7 personal information is maintained by a data broker may
8 dispute the accuracy of any information described under
9 subsection (c) by requesting, in writing, that the data
10 broker correct the information. A data broker, after
11 verifying the identity of the individual making the request,
12 and unless there are reasonable grounds to believe the re-
13 quest is frivolous or irrelevant, shall—

14 (1) with regard to public record information—

15 (A) inform the individual of the source of
16 the information and, if reasonably available,
17 where to direct the individual’s request for cor-
18 rection; or

19 (B) if the individual provides proof that
20 the public record has been corrected or that the
21 data broker was reporting the information in-
22 correctly, correct the inaccuracy in the data
23 broker’s records; and

24 (2) with regard to non-public information—

1 (A) note the information that is disputed,
2 including the individual's written request;

3 (B) if the information can be independ-
4 ently verified, use the reasonable procedures es-
5 tablished under subsection (a) to independently
6 verify the information; and

7 (C) if the data broker was reporting the
8 information incorrectly, correct the inaccuracy
9 in the data broker's records.

10 (g) CERTAIN MARKETING INFORMATION.—A data
11 broker that maintains any information described under
12 subsection (a) and that uses, shares, or sells that informa-
13 tion for marketing purposes shall provide each individual
14 whose information it maintains with a reasonable means
15 of expressing a preference not to have that individual's
16 information used for those purposes. If an individual ex-
17 presses such a preference, the data broker may not use,
18 share, or sell that individual's information for marketing
19 purposes.

20 (h) PERSONS REGULATED BY THE FAIR CREDIT RE-
21 PORTING ACT.—A data broker shall be deemed in compli-
22 ance with this section with respect to information that is
23 subject to the Fair Credit Reporting Act (15 U.S.C. 1681
24 et seq.) if the data broker is in compliance with sections

1 609, 610, and 611 of that Act (15 U.S.C. 1681g, 1681h,
2 1681i).

3 **SEC. 5. REGULATIONS.**

4 Not later than 1 year after the date of enactment
5 of this Act, the Commission shall promulgate regulations
6 under section 553 of title 5, United States Code, to imple-
7 ment and enforce the requirements of this Act, includ-
8 ing—

9 (1) a requirement that a data broker establish
10 measures that facilitate the auditing or retracing of
11 any internal or external access to, or transmission
12 of, any data containing personal information col-
13 lected, assembled, or maintained by the data broker;

14 (2) the establishment of a centralized Internet
15 Web site for the benefit of consumers that lists the
16 data brokers subject to section 4 and provides addi-
17 tional information to consumers about their rights
18 under this Act;

19 (3) if the Commission considers a data broker
20 outside the scope of the purposes of this Act, the ex-
21 clusion of that data broker from the applicability of
22 this Act, such as, if the Commission considers it ap-
23 propriate for exclusion, a data broker who processes
24 information collected by or on behalf of and received
25 from or on behalf of a nonaffiliated third party con-

1 cerning an individual who is a customer or an em-
2 ployee of that third party to enable that third party,
3 directly or through parties acting on its behalf, to
4 provide benefits for its employees or directly trans-
5 act business with its customers;

6 (4) any exceptions, that the Commission con-
7 siders necessary, to the auditing and retracing re-
8 quirements under paragraph (1) to further or pro-
9 tect law enforcement or national security activities;
10 and

11 (5) any exceptions, that the Commission con-
12 siders necessary, to an individual's right to review
13 the information described under section 4(c), such
14 as for child protection, law enforcement, fraud pre-
15 vention, or other legitimate government purposes.

16 **SEC. 6. ENFORCEMENT.**

17 (a) **IN GENERAL.**—A violation of a regulation pre-
18 scribed under this Act shall be treated as a violation of
19 a rule defining an unfair or a deceptive act or practice
20 under section 18(a)(1)(B) of the Federal Trade Commis-
21 sion Act (15 U.S.C. 57a(a)(1)(B)).

22 (b) **POWERS OF COMMISSION.**—The Commission
23 shall enforce this Act in the same manner, by the same
24 means, and with the same jurisdiction, powers, and duties
25 as though all applicable terms and provisions of the Fed-

1 eral Trade Commission Act (15 U.S.C. 41 et seq.) were
2 incorporated into and made a part of this Act. Any data
3 broker who violates a regulation prescribed under this Act
4 shall be subject to the penalties and entitled to the privi-
5 leges and immunities provided in the Federal Trade Com-
6 mission Act (15 U.S.C. 41 et seq.).

7 (c) ENFORCEMENT BY STATE ATTORNEYS GEN-
8 ERAL.—

9 (1) CIVIL ACTION.—Except as provided under
10 paragraph (3)(B), in any case in which the attorney
11 general of a State, or an official or agency of a
12 State, has reason to believe that an interest of the
13 residents of that State has been or is threatened or
14 adversely affected by a data broker who violates a
15 regulation prescribed under this Act, the attorney
16 general, official, or agency of the State, as *parens*
17 *patriae*, may bring a civil action on behalf of the
18 residents of the State in a district court of the
19 United States of appropriate jurisdiction—

20 (A) to enjoin further violation of this Act
21 by the defendant;

22 (B) to compel compliance with this Act;

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

1 obtain such further and other relief as the court
2 may deem appropriate; or

3 (D) 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)(D),
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) INTERVENTION BY THE COMMISSION.—

23 (A) NOTICE.—A State shall provide prior
24 written notice of any civil action under para-
25 graph (1) to the Commission and provide the

1 Commission with a copy of its complaint, except
2 in any case in which such prior notice is not
3 feasible, in which case the State shall serve
4 such notice immediately upon instituting such
5 action.

6 (B) INTERVENTION BY THE COMMISS-
7 SION.—The Commission shall have the right—

8 (i) to intervene in the civil action
9 under paragraph (1);

10 (ii) upon so intervening, to be heard
11 on all matters arising in that civil action;
12 and

13 (iii) to file petitions for appeal of a
14 decision in that civil action.

15 (C) LIMITATION ON STATE ACTION WHILE
16 FEDERAL ACTION IS PENDING.—If the Commis-
17 sion has instituted a civil action for violation of
18 this Act, no State attorney general, or official
19 or agency of a State, may bring an action under
20 this subsection during the pendency of that ac-
21 tion against any defendant named in the com-
22 plaint of the Commission for any violation of
23 this Act alleged in the complaint.

24 (4) CONSTRUCTION.—For purposes of bringing
25 any civil action under paragraph (1), nothing in this

1 Act shall be construed to prevent an attorney gen-
2 eral of a State from exercising the powers conferred
3 on the attorney general by the laws of that State—

4 (A) to conduct investigations;

5 (B) to administer oaths or affirmations; or

6 (C) to compel the attendance of witnesses

7 or the production of documentary and other evi-

8 dence.

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

10 (a) PRESERVATION OF COMMISSION AUTHORITY.—

11 Nothing in this Act may be construed in any way to limit

12 or affect the Commission's authority under any other pro-

13 vision of law.

14 (b) PRESERVATION OF OTHER FEDERAL LAW.—

15 Nothing in this Act may be construed in any way to super-

16 sede, restrict, or limit the application of the Fair Credit

17 Reporting Act (15 U.S.C. 1681 et seq.) or any other Fed-

18 eral law.