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(Original Signature of Member)

117TH CONGRESS
2D SESSION

H. R. _____

To prohibit data brokers from selling and transferring certain sensitive data.

IN THE HOUSE OF REPRESENTATIVES

Ms. SCANLON introduced the following bill; which was referred to the
Committee on _____

A BILL

To prohibit data brokers from selling and transferring
certain sensitive data.

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 “Health and Location
5 Data Protection Act of 2022”.

6 **SEC. 2. UNFAIR AND DECEPTIVE ACTS AND PRACTICES RE-**
7 **LATING TO HEALTH AND LOCATION DATA.**

8 (a) IN GENERAL.—It shall be unlawful for a data
9 broker to sell, resell, license, trade, transfer, share, or oth-

1 erwise provide or make available any of the following
2 forms of data, whether declared or inferred, of an indi-
3 vidual:

4 (1) Location data.

5 (2) Health data.

6 (3) Other categories of data identified by the
7 Commission that address or reveal a category of
8 data described in paragraphs (1) and (2).

9 (b) EXCEPTIONS.—

10 (1) ACTIONS THAT ARE HIPAA-COMPLIANT.—

11 (A) IN GENERAL.—Nothing in this Act
12 shall be construed to prohibit any action taken
13 with respect to the health information of an in-
14 dividual by a data broker that is a business as-
15 sociate or covered entity that is permissible
16 under the Federal regulations concerning stand-
17 ards for privacy of individually identifiable
18 health information promulgated under section
19 264(c) of the Health Insurance Portability and
20 Accountability Act of 1996 (42 U.S.C. 1320d-
21 2 note).

22 (B) APPLICATION OF TERMS.—In para-
23 graph (1), the terms “business associate”, “cov-
24 ered entity”, and “health information” shall

1 have the meaning given those terms in the Fed-
2 eral regulations specified in such paragraph.

3 (2) PUBLICATION OF NEWSWORTHY INFORMA-
4 TION OF LEGITIMATE PUBLIC CONCERN.—Nothing
5 in this Act shall be construed to prohibit the publi-
6 cation of newsworthy information of legitimate pub-
7 lic concern.

8 (3) DISCLOSURE PURSUANT TO VALID AUTHOR-
9 IZATION.—Nothing in this Act shall be construed to
10 prohibit a disclosure of the data of an individual for
11 which the individual provides valid authorization.
12 For purposes of this paragraph, the term “valid au-
13 thorization” has the meaning given such term in sec-
14 tion 164.508 of title 45, Code of Federal Regula-
15 tions (or a successor regulation), subject to such ad-
16 aptations as the Commission shall deem necessary to
17 apply such term to the disclosure of both location
18 data and health data.

19 (c) EFFECTIVE DATE.—The prohibition under sub-
20 section (a) shall take effect on the earlier of—

21 (1) the date the Commission issues the final
22 rule under subsection (d); or

23 (2) 180 days after the date of enactment of this
24 Act.

25 (d) RULEMAKING.—

1 (1) FINAL RULE.—Pursuant to section 553 of
2 title 5, United States Code, the Commission shall
3 promulgate regulations to carry out the provisions of
4 this Act. The Commission shall issue a final rule by
5 not later than 180 days after the date of enactment
6 of this Act.

7 (2) ADDITIONAL GUIDANCE.—Pursuant to sec-
8 tion 553 of title 5, United States Code, the Commis-
9 sion may promulgate further regulations to carry out
10 the provisions of this Act, including further guidance
11 regarding the types of data described in subsection
12 (a).

13 **SEC. 3. ENFORCEMENT.**

14 (a) ENFORCEMENT BY THE FEDERAL TRADE COM-
15 MISSION.—

16 (1) UNFAIR OR DECEPTIVE ACTS OR PRAC-
17 TICES.—A violation of section 2 shall be treated as
18 a violation of a rule defining an unfair or a deceptive
19 act or practice under section 18(a)(1)(B) of the Fed-
20 eral Trade Commission Act (15 U.S.C.
21 57a(a)(1)(B)).

22 (2) POWERS OF COMMISSION.—

23 (A) IN GENERAL.—Except as provided in
24 subparagraphs (D) and (E), the Commission
25 shall enforce section 2 in the same manner, by

1 the same means, and with the same jurisdic-
2 tion, powers, and duties as though all applicable
3 terms and provisions of the Federal Trade
4 Commission Act (15 U.S.C. 41 et seq.) were in-
5 corporated into and made a part of this Act.

6 (B) PRIVILEGES AND IMMUNITIES.—Any
7 person who violates section 2 shall be subject to
8 the penalties and entitled to the privileges and
9 immunities provided in the Federal Trade Com-
10 mission Act (15 U.S.C. 41 et seq.).

11 (C) AUTHORITY PRESERVED.—Nothing in
12 this Act shall be construed to limit the author-
13 ity of the Federal Trade Commission under any
14 other provision of law.

15 (D) NONPROFIT ORGANIZATIONS.—Not-
16 withstanding section 4 of the Federal Trade
17 Commission Act (15 U.S.C. 44) or any jurisdic-
18 tional limitation of the Commission, the Com-
19 mission shall also enforce this Act, in the same
20 manner provided in subparagraphs (A) and (B),
21 with respect to organizations not organized to
22 carry on business for their own profit or that
23 of their members.

24 (E) INDEPENDENT LITIGATION AUTHOR-
25 ITY.—In any case in which the Commission has

1 reason to believe that a data broker is violating
2 or has violated section 2, the Commission may
3 bring a civil action in an appropriate district
4 court of the United States to—

5 (i) enjoin any further such violation
6 by such person;

7 (ii) enforce compliance with this Act,
8 including through deletion of the relevant
9 information;

10 (iii) obtain a permanent, temporary,
11 or preliminary injunction;

12 (iv) obtain civil penalties;

13 (v) obtain damages (whether actual,
14 punitive, or otherwise), restitution,
15 disgorgement of unjust enrichment, or
16 other compensation on behalf of aggrieved
17 persons; or

18 (vi) obtain any other appropriate equi-
19 table relief.

20 (b) ENFORCEMENT BY STATES.—

21 (1) IN GENERAL.—In any case in which the at-
22 torney general of a State has reason to believe that
23 an interest of the residents of the State has been or
24 is threatened or adversely affected by the engage-
25 ment of any data broker subject to section 2 in a

1 practice that violates such section, the attorney gen-
2 eral of the State may, as *parens patriae*, bring a
3 civil action on behalf of the residents of the State in
4 an appropriate district court of the United States
5 to—

6 (A) enjoin any further such violation by
7 such person;

8 (B) enforce compliance with this Act, in-
9 cluding through deletion of the relevant infor-
10 mation;

11 (C) obtain a permanent, temporary, or pre-
12 liminary injunction;

13 (D) obtain civil penalties;

14 (E) obtain damages (whether actual, puni-
15 tive, or otherwise), restitution, disgorgement of
16 unjust enrichment, or other compensation on
17 behalf of aggrieved persons; or

18 (F) obtain any other appropriate equitable
19 relief.

20 (2) NOTICE.—Before filing an action under
21 paragraph (1), the attorney general, official, or
22 agency of the State involved shall provide to the
23 Commission a written notice of such action and a
24 copy of the complaint for such action. If the attor-
25 ney general, official, or agency determines that it is

1 not feasible to provide the notice described in this
2 paragraph before the filing of the action, the attor-
3 ney general, official, or agency shall provide written
4 notice of the action and a copy of the complaint to
5 the Commission immediately upon the filing of the
6 action.

7 (3) LIMITATION ON STATE ACTION WHILE FED-
8 ERAL ACTION IS PENDING.—If the Commission has
9 instituted a civil action for a violation of section 2,
10 no State attorney general, or official or agency of a
11 State, may bring an action under this paragraph
12 during the pendency of that action against any de-
13 fendant named in the complaint of the Commission
14 for any violation of section 2 alleged in the com-
15 plaint.

16 (4) RELATIONSHIP WITH STATE-LAW CLAIMS.—
17 If the attorney general of a State has authority to
18 bring an action under State law directed at acts or
19 practices that also violate section 2, the attorney
20 general may assert the State-law claim and a claim
21 under section 2 in the same civil action.

22 (5) INVESTIGATORY POWERS.—Nothing in this
23 subsection may be construed to prevent the attorney
24 general of a State from exercising the powers con-
25 ferred on the attorney general by the laws of the

1 State to conduct investigations, to administer oaths
2 or affirmations, or to compel the attendance of wit-
3 nesses or the production of documentary or other
4 evidence.

5 (c) PRIVATE ENFORCEMENT.—Any person whose in-
6 terest has been or is threatened or adversely affected by
7 the engagement of any data broker subject to section 2
8 in a practice that violates such section may bring a civil
9 action in an appropriate district court of the United States
10 to—

11 (1) enjoin any further such violation by such
12 person;

13 (2) enforce compliance with this Act, including
14 through deletion of the relevant information;

15 (3) obtain a permanent, temporary, or prelimi-
16 nary injunction;

17 (4) obtain damages (whether actual, punitive,
18 or otherwise), restitution, or other compensation;

19 (5) obtain reasonable attorney's fees, including
20 litigation expenses, and costs; or

21 (6) obtain any other appropriate equitable re-
22 lief.

23 (d) CIVIL PENALTIES.—In addition to any other pen-
24 alties as may be prescribed by law, a violation of this Act
25 shall carry a civil penalty not to exceed 15 percent of the

1 revenues earned by the person's ultimate parent entity
2 during the preceding 12-month period.

3 (e) EXCLUSIVE JURISDICTION.—

4 (1) DISTRICT COURTS.—For any action brought
5 under this Act, the following district courts shall
6 have exclusive jurisdiction:

7 (A) For actions brought by the Commis-
8 sion, the United States District Court for the
9 District of Columbia.

10 (B) For actions brought by a State attor-
11 ney general, the district court of the United
12 States for the judicial district in which the cap-
13 ital of the State is located.

14 (C) For private actions brought by per-
15 sons—

16 (i) the United States District Court
17 for the District of Columbia; or

18 (ii) the district court of the United
19 States for the judicial district in which the
20 violation took place or in which any de-
21 fendant resides or does business.

22 (2) COURT OF APPEALS.—The United States
23 Court of Appeals for the District of Columbia Cir-
24 cuit shall have exclusive jurisdiction of appeals from
25 all decisions under paragraph (1).

1 (f) STATUTE OF LIMITATIONS.—A proceeding for a
2 violation of this Act may be commenced not later than
3 6 years after the date upon which the plaintiff obtains ac-
4 tual knowledge of the facts giving rise to such violation.

5 (g) PREEMPTION.—The provisions of this Act pre-
6 empt only the provisions of State or local law that require
7 disclosure prohibited by this Act.

8 **SEC. 4. DEFINITIONS.**

9 In this Act:

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

12 (2) DATA.—

13 (A) IN GENERAL.—Not later than 180
14 days after the date of enactment of this Act,
15 the Commission shall adopt rules in accordance
16 with section 553 of title 5, United States Code,
17 to define the term “data” for the purpose of
18 implementing and enforcing this Act.

19 (B) REQUIREMENT.—The term “data”
20 shall include information that is linked, or rea-
21 sonably linkable, to—

22 (i) specific individuals; or

23 (ii) specific groups of individuals who
24 share the same place of residence or inter-
25 net protocol address.

1 (3) DATA BROKER.—The term “data broker”
2 means a person that collects, buys, licenses, or infers
3 data about individuals and then sells, licenses, or
4 trades that data.

5 (4) HEALTH DATA.—The term “health data”
6 means data that reveal or describe—

7 (A) the search for, attempt to obtain, or
8 receipt of any health services;

9 (B) any past, present, or future disability,
10 physical health condition, mental health condi-
11 tion, or health condition of an individual, in-
12 cluding, but not limited to, pregnancy and mis-
13 carriage; or

14 (C) any treatment or diagnosis of a dis-
15 ability or condition described in subparagraph
16 (B).

17 (5) LOCATION DATA.—The term “location
18 data” means data capable of determining the past or
19 present physical location of an individual or an indi-
20 vidual’s device.

21 (6) STATE.—The term “State” means each of
22 the several States, the District of Columbia, each
23 commonwealth, territory, or possession of the United
24 States, and each federally recognized Indian Tribe.

1 (7) ULTIMATE PARENT ENTITY.—The term “ul-
2 timate parent entity” has the meaning given the
3 term in section 801.1 of title 16, Code of Federal
4 Regulations (or any successor regulation).

5 **SEC. 5. FUNDING.**

6 In addition to amounts otherwise available, there is
7 appropriated to the Commission for fiscal year 2023, out
8 of any money in the Treasury not otherwise appropriated,
9 \$1,000,000,000, to remain available until September 30,
10 2032, for carrying out the work of the Commission.