

117TH CONGRESS
2D SESSION

S. 4281

To prohibit data brokers from selling, reselling, trading, licensing, or otherwise providing for consideration lists of military servicemembers to a covered nation.

IN THE SENATE OF THE UNITED STATES

MAY 19 (legislative day, MAY 17), 2022

Mr. CASSIDY (for himself, Ms. WARREN, and Mr. RUBIO) introduced the following bill; which was read twice and referred to the Committee on Commerce, Science, and Transportation

A BILL

To prohibit data brokers from selling, reselling, trading, licensing, or otherwise providing for consideration lists of military servicemembers to a covered nation.

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 “Protecting Military
5 Servicemembers’ Data Act of 2022”.

1 **SEC. 2. UNFAIR AND DECEPTIVE ACTS AND PRACTICES RE-**
2 **LATING TO MILITARY SERVICEMEMBER**
3 **LISTS.**

4 (a) **IN GENERAL.**—It shall be unlawful for a data
5 broker to sell, resell, license, trade, or otherwise provide
6 or make available for consideration a military servicemem-
7 ber list to any covered nation.

8 (b) **EFFECTIVE DATE.**—The prohibition under sub-
9 section (a) shall take effect on the earlier of—

10 (1) the date the Commission issues the final
11 rule under section 3(a)(3); or

12 (2) 1 year after the date of enactment of this
13 Act.

14 **SEC. 3. ENFORCEMENT.**

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

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

23 (2) **POWERS OF COMMISSION.**—

24 (A) **IN GENERAL.**—Except as provided in
25 subparagraphs (D) and (E), the Commission
26 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—

5 (i) to enjoin further violation of such
6 section by such person;

7 (ii) to compel compliance with such
8 section; and

9 (iii) to obtain damages, restitution, or
10 other compensation on behalf of aggrieved
11 consumers.

12 (3) RULEMAKING.—Pursuant to section 553 of
13 title 5, United States Code, the Commission shall
14 promulgate regulations to carry out the provisions of
15 this Act. The Commission shall issue a final rule by
16 not later than 1 year after the date of enactment of
17 this Act.

18 (b) ENFORCEMENT BY STATES.—

19 (1) IN GENERAL.—In any case in which the at-
20 torney general of a State has reason to believe that
21 an interest of the residents of the State has been or
22 is threatened or adversely affected by the engage-
23 ment of any data broker subject to section 2 in a
24 practice that violates such section, the attorney gen-
25 eral of the State may, as *parens patriae*, bring a

1 civil action on behalf of the residents of the State in
2 an appropriate district court of the United States—

3 (A) to enjoin further violation of such sec-
4 tion by such person;

5 (B) to compel compliance with such sec-
6 tion; and

7 (C) to obtain damages, restitution, or other
8 compensation on behalf of such residents.

9 (2) RIGHTS OF FEDERAL TRADE COMMIS-
10 SION.—

11 (A) NOTICE TO FEDERAL TRADE COMMIS-
12 SION.—

13 (i) IN GENERAL.—Except as provided
14 in clause (iii), the attorney general of a
15 State shall notify the Commission in writ-
16 ing that the attorney general intends to
17 bring a civil action under paragraph (1)
18 not later than 10 days before initiating the
19 civil action.

20 (ii) CONTENTS.—The notification re-
21 quired by clause (i) with respect to a civil
22 action shall include a copy of the complaint
23 to be filed to initiate the civil action.

24 (iii) EXCEPTION.—If it is not feasible
25 for the attorney general of a State to pro-

1 vide the notification required by clause (i)
2 before initiating a civil action under para-
3 graph (1), the attorney general shall notify
4 the Commission immediately upon insti-
5 tuting the civil action.

6 (B) INTERVENTION BY FEDERAL TRADE
7 COMMISSION.—The Commission may—

8 (i) intervene in any civil action
9 brought by the attorney general of a State
10 under paragraph (1); and

11 (ii) upon intervening—

12 (I) be heard on all matters aris-
13 ing in the civil action; and

14 (II) file petitions for appeal of a
15 decision in the civil action.

16 (3) INVESTIGATORY POWERS.—Nothing in this
17 subsection may be construed to prevent the attorney
18 general of a State from exercising the powers con-
19 ferred on the attorney general by the laws of the
20 State to conduct investigations, to administer oaths
21 or affirmations, or to compel the attendance of wit-
22 nesses or the production of documentary or other
23 evidence.

24 (4) PREEMPTIVE ACTION BY FEDERAL TRADE
25 COMMISSION.—If the Commission institutes a civil

1 action or an administrative action with respect to a
2 violation of section 2, the attorney general of a State
3 may not, during the pendency of such action, bring
4 a civil action under paragraph (1) against any de-
5 fendant named in the complaint of the Commission
6 for the violation with respect to which the Commis-
7 sion instituted such action.

8 (5) VENUE; SERVICE OF PROCESS.—

9 (A) VENUE.—Any action brought under
10 paragraph (1) may be brought in—

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

15 (ii) another court of competent juris-
16 diction.

17 (B) SERVICE OF PROCESS.—In an action
18 brought under paragraph (1), process may be
19 served in any district in which the defendant—

20 (i) is an inhabitant; or

21 (ii) may be found.

22 **SEC. 4. DEFINITIONS.**

23 In this Act:

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

1 (2) CONSUMER.—The term “consumer” means
2 an individual residing in a State.

3 (3) COVERED NATION.—The term “covered na-
4 tion” has the meaning given that term in section
5 4872(d)(2) of title 10, United States Code.

6 (4) DATA BROKER.—The term “data broker”
7 means a business that knowingly collects and sells to
8 third parties the personal information of a consumer
9 with whom the business does not have a direct rela-
10 tionship.

11 (5) MILITARY SERVICEMEMBER LIST.—The
12 term “military servicemember list” means a list that
13 includes personal information (other than public
14 record information) about one or more individuals or
15 households which is created for the express or im-
16 plied purpose of compiling information about individ-
17 uals who are current or former servicemembers (as
18 that term is defined in section 3911(1) of title 50,
19 United States Code).

20 (6) PERSONAL INFORMATION.—The term “per-
21 sonal information” means information that is linked
22 or reasonably linkable to any identified or identifi-
23 able person or device.

24 (7) PUBLIC RECORD INFORMATION.—The term
25 “public record information” means information that

1 is lawfully made available from Federal, State, or
2 local government records provided that the data
3 broker processes and transfers such information in
4 accordance with any restrictions or terms of use
5 placed on the information by the relevant govern-
6 ment entity.

7 (8) STATE.—The term “State” means any
8 State of the United States, the District of Columbia,
9 the Commonwealth of Puerto Rico, Guam, American
10 Samoa, the Commonwealth of the Northern Mariana
11 Islands, and the United States Virgin Islands.

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