

116TH CONGRESS
2D SESSION

S. 4953

To prohibit data brokers from selling, trading, licensing, or otherwise providing for consideration lists of vulnerable populations to any individual or commercial entity.

IN THE SENATE OF THE UNITED STATES

DECEMBER 2, 2020

Mr. CASSIDY 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, trading, licensing, or otherwise providing for consideration lists of vulnerable populations to any individual or commercial entity.

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 Vulnerable
5 Population’s Data Act of 2020”.

6 **SEC. 2. UNFAIR AND DECEPTIVE ACTS AND PRACTICES RE-**
7 **LATING TO VULNERABLE POPULATION LISTS.**

8 (a) IN GENERAL.—It shall be unlawful for a data
9 broker to sell, license, trade, or otherwise provide or make

1 available for consideration a vulnerable population list to
2 any commercial entity or individual.

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

5 (1) the date the Commission issues the final
6 rule under section 3(a)(3); or

7 (2) 1 year after the date of enactment of this
8 Act.

9 **SEC. 3. ENFORCEMENT.**

10 (a) ENFORCEMENT BY THE FEDERAL TRADE COM-
11 MISSION.—

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

18 (2) POWERS OF COMMISSION.—

19 (A) IN GENERAL.—Except as provided in
20 subparagraph (D), the Commission shall en-
21 force section 2 in the same manner, by the
22 same means, and with the same jurisdiction,
23 powers, and duties as though all applicable
24 terms and provisions of the Federal Trade

1 Commission Act (15 U.S.C. 41 et seq.) were in-
2 corporated into and made a part of this Act.

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

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

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

21 (3) RULEMAKING.—Pursuant to section 553 of
22 title 5, United States Code, the Commission shall
23 promulgate regulations to carry out the provisions of
24 this Act. The Commission shall issue a final rule by

1 not later than 1 year after the date of enactment of
2 this Act.

3 (b) ENFORCEMENT BY STATES.—

4 (1) IN GENERAL.—In any case in which the at-
5 torney general of a State has reason to believe that
6 an interest of the residents of the State has been or
7 is threatened or adversely affected by the engage-
8 ment of any data broker subject to section 2 in a
9 practice that violates such section, the attorney gen-
10 eral of the State may, as *parens patriae*, bring a
11 civil action on behalf of the residents of the State in
12 an appropriate district court of the United States—

13 (A) to enjoin further violation of such sec-
14 tion by such person;

15 (B) to compel compliance with such sec-
16 tion; and

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

19 (2) RIGHTS OF FEDERAL TRADE COMMIS-
20 SION.—

21 (A) NOTICE TO FEDERAL TRADE COMMIS-
22 SION.—

23 (i) IN GENERAL.—Except as provided
24 in clause (iii), the attorney general of a
25 State shall notify the Commission in writ-

1 ing that the attorney general intends to
2 bring a civil action under paragraph (1)
3 not later than 10 days before initiating the
4 civil action.

5 (ii) CONTENTS.—The notification re-
6 quired by clause (i) with respect to a civil
7 action shall include a copy of the complaint
8 to be filed to initiate the civil action.

9 (iii) EXCEPTION.—If it is not feasible
10 for the attorney general of a State to pro-
11 vide the notification required by clause (i)
12 before initiating a civil action under para-
13 graph (1), the attorney general shall notify
14 the Commission immediately upon insti-
15 tuting the civil action.

16 (B) INTERVENTION BY FEDERAL TRADE
17 COMMISSION.—The Commission may—

18 (i) intervene in any civil action
19 brought by the attorney general of a State
20 under paragraph (1); and

21 (ii) upon intervening—

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

24 (II) file petitions for appeal of a
25 decision in the civil action.

1 (3) INVESTIGATORY POWERS.—Nothing in this
2 subsection may be construed to prevent the attorney
3 general of a State from exercising the powers con-
4 ferred on the attorney general by the laws of the
5 State to conduct investigations, to administer oaths
6 or affirmations, or to compel the attendance of wit-
7 nesses or the production of documentary or other
8 evidence.

9 (4) PREEMPTIVE ACTION BY FEDERAL TRADE
10 COMMISSION.—If the Commission institutes a civil
11 action or an administrative action with respect to a
12 violation of section 2, the attorney general of a State
13 may not, during the pendency of such action, bring
14 a civil action under paragraph (1) against any de-
15 fendant named in the complaint of the Commission
16 for the violation with respect to which the Commis-
17 sion instituted such action.

18 (5) VENUE; SERVICE OF PROCESS.—

19 (A) VENUE.—Any action brought under
20 paragraph (1) may be brought in—

21 (i) the district court of the United
22 States that meets applicable requirements
23 relating to venue under section 1391 of
24 title 28, United States Code; or

1 (ii) another court of competent juris-
2 diction.

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

6 (i) is an inhabitant; or

7 (ii) may be found.

8 **SEC. 4. DEFINITIONS.**

9 In this Act:

10 (1) COMMERCIAL ENTITY.—The term “commer-
11 cial entity” means an entity, whether organized for
12 profit or not for profit, that is organized under the
13 laws of any State, including a sole proprietorship, a
14 partnership, a limited liability partnership, a cor-
15 poration, an association, and a limited liability com-
16 pany.

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

19 (3) CONSUMER.—The term “consumer” means
20 an individual residing in a State.

21 (4) DATA BROKER.—The term “data broker”
22 means a business that knowingly collects and sells to
23 third parties the personal information of a consumer
24 with whom the business does not have a direct rela-
25 tionship.

1 (5) PERSONAL INFORMATION.—The term “per-
2 sonal information” means information that is linked
3 or reasonably linkable to any identified or identifi-
4 able person or device.

5 (6) PUBLIC RECORD INFORMATION.—The term
6 “public record information” means information that
7 is lawfully made available from Federal, State, or
8 local government records provided that the data
9 broker processes and transfers such information in
10 accordance with any restrictions or terms of use
11 placed on the information by the relevant govern-
12 ment entity.

13 (7) STATE.—The term “State” means any
14 State of the United States, the District of Columbia,
15 the Commonwealth of Puerto Rico, Guam, American
16 Samoa, the Commonwealth of the Northern Mariana
17 Islands, and the United States Virgin Islands.

18 (8) VULNERABLE POPULATION LIST.—The
19 term “vulnerable population list” means a list that
20 includes personal information (other than public
21 record information) about one or more individuals or
22 households which is created for the express or im-
23 plied purpose of compiling information about one or
24 more individuals or households in one or more of the
25 following categories (or similar categories):

- 1 (A) Survivors of domestic abuse.
- 2 (B) Survivors of child abuse.
- 3 (C) Survivors of elder abuse.
- 4 (D) Survivors of any sex crime, including,
5 but not limited to rape, sexual assault, or sex-
6 ual battery.
- 7 (E) Victims of stalking.
- 8 (F) Victims of human trafficking.
- 9 (G) Victims of violent crimes.
- 10 (H) Individuals diagnosed with a disease,
11 such as HIV/AIDS, a genetic disease, or de-
12 mentia.
- 13 (I) Individuals identified as having addict-
14 ive behavior or having received clinical treat-
15 ment for addiction, including, but not limited
16 to, addictions to alcohol, drugs, or sex.
- 17 (J) Individuals identified by prescriptions
18 taken.
- 19 (K) Local, State, or Federal law enforce-
20 ment officers.
- 21 (L) Judges and justices of the State or
22 Federal judiciary.

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