

117TH CONGRESS
2D SESSION

S. 4408

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

IN THE SENATE OF THE UNITED STATES

JUNE 15, 2022

Ms. WARREN (for herself, Mr. WYDEN, Mrs. MURRAY, Mr. WHITEHOUSE, and Mr. SANDERS) 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 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-
10 erwise provide or make available any of the following

1 forms of data, whether declared or inferred, of an indi-
 2 vidual:

3 (1) Location data.

4 (2) Health data.

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

8 (b) EXCEPTIONS.—

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

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

21 (B) APPLICATION OF TERMS.—In para-
 22 graph (1), the terms “business associate”, “cov-
 23 ered entity”, and “health information” shall
 24 have the meaning given those terms in the Fed-
 25 eral regulations specified in such paragraph.

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

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

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

19 (1) the date the Commission issues the final
 20 rule under subsection (d); or

21 (2) 180 days after the date of enactment of this
 22 Act.

23 (d) RULEMAKING.—

24 (1) FINAL RULE.—Pursuant to section 553 of
 25 title 5, United States Code, the Commission shall

1 promulgate regulations to carry out the provisions of
2 this Act. The Commission shall issue a final rule by
3 not later than 180 days after the date of enactment
4 of this Act.

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

11 **SEC. 3. ENFORCEMENT.**

12 (a) ENFORCEMENT BY THE FEDERAL TRADE COM-
13 MISSION.—

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

20 (2) POWERS OF COMMISSION.—

21 (A) IN GENERAL.—Except as provided in
22 subparagraphs (D) and (E), the Commission
23 shall enforce section 2 in the same manner, by
24 the same means, and with the same jurisdic-
25 tion, powers, and duties as though all applicable

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

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

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

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

22 (E) INDEPENDENT LITIGATION AUTHOR-
23 ITY.—In any case in which the Commission has
24 reason to believe that a data broker is violating
25 or has violated section 2, the Commission may

bring a civil action in an appropriate district court of the United States to—

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

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

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

(iv) obtain civil penalties;

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

(vi) obtain any other appropriate equitable relief.

(b) ENFORCEMENT BY STATES.—

(1) IN GENERAL.—In any case in which the attorney general of a State has reason to believe that an interest of the residents of the State has been or is threatened or adversely affected by the engagement of any data broker subject to section 2 in a practice that violates such section, the attorney general 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 to—

4 (A) enjoin any further such violation by
5 such person;

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

9 (C) obtain a permanent, temporary, or pre-
10 liminary injunction;

11 (D) obtain civil penalties;

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

16 (F) obtain any other appropriate equitable
17 relief.

18 (2) NOTICE.—Before filing an action under
19 paragraph (1), the attorney general, official, or
20 agency of the State involved shall provide to the
21 Commission a written notice of such action and a
22 copy of the complaint for such action. If the attor-
23 ney general, official, or agency determines that it is
24 not feasible to provide the notice described in this
25 paragraph before the filing of the action, the attor-

1 ney general, official, or agency shall provide written
 2 notice of the action and a copy of the complaint to
 3 the Commission immediately upon the filing of the
 4 action.

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

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

20 (5) INVESTIGATORY POWERS.—Nothing in this
 21 subsection may be construed to prevent the attorney
 22 general of a State from exercising the powers con-
 23 ferred on the attorney general by the laws of the
 24 State to conduct investigations, to administer oaths
 25 or affirmations, or to compel the attendance of wit-

1 nesses or the production of documentary or other
2 evidence.

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

9 (1) enjoin any further such violation by such
10 person;

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

13 (3) obtain a permanent, temporary, or prelimi-
14 nary injunction;

15 (4) obtain damages (whether actual, punitive,
16 or otherwise), restitution, or other compensation;

17 (5) obtain reasonable attorney’s fees, including
18 litigation expenses, and costs; or

19 (6) obtain any other appropriate equitable re-
20 lief.

21 (d) CIVIL PENALTIES.—In addition to any pen-
22 alties as may be prescribed by law, a violation of this Act
23 shall carry a civil penalty not to exceed 15 percent of the
24 revenues earned by the person’s ultimate parent entity
25 during the preceding 12-month period.

1 (e) EXCLUSIVE JURISDICTION.—

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

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

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

12 (C) For private actions brought by per-
13 sons—

14 (i) the United States District Court
15 for the District of Columbia; or

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

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

24 (f) STATUTE OF LIMITATIONS.—A proceeding for a
25 violation of this Act may be commenced not later than

1 6 years after the date upon which the plaintiff obtains ac-
2 tual knowledge of the facts giving rise to such violation.

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

6 **SEC. 4. DEFINITIONS.**

7 In this Act:

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

10 (2) DATA.—

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

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

20 (i) specific individuals; or

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

24 (3) DATA BROKER.—The term “data broker”
25 means a person that collects, buys, licenses, or infers

1 data about individuals and then sells, licenses, or
2 trades that data.

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

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

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

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

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

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

23 (7) ULTIMATE PARENT ENTITY.—The term “ul-
24 timate parent entity” has the meaning given the

1 term in section 801.1 of title 16, Code of Federal
2 Regulations (or any successor regulation).

3 **SEC. 5. FUNDING.**

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

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