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

IN THE SENATE OF THE UNITED STATES

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 ____________________

A BILL

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

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the “Health and Location Data Protection Act of 2022”.

SEC. 2. UNFAIR AND DECEPTIVE ACTS AND PRACTICES RELATING TO HEALTH AND LOCATION DATA.

(a) IN GENERAL.—It shall be unlawful for a data broker to sell, resell, license, trade, transfer, share, or otherwise provide or make available any of the following
forms of data, whether declared or inferred, of an individual:

(1) Location data.

(2) Health data.

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

(b) Exceptions.—

(1) Actions that are HIPAA-compliant.—

(A) In general.—Nothing in this Act shall be construed to prohibit any action taken with respect to the health information of an individual by a data broker that is a business associate or covered entity that is permissible under the Federal regulations concerning standards for privacy of individually identifiable health information promulgated under section 264(c) of the Health Insurance Portability and Accountability Act of 1996 (42 U.S.C. 1320d–2 note)).

(B) Application of terms.—In paragraph (1), the terms “business associate”, “covered entity”, and “health information” shall have the meaning given those terms in the Federal regulations specified in such paragraph.
(2) Publication of newsworthy information of legitimate public concern.—Nothing in this Act shall be construed to prohibit the publication of newsworthy information of legitimate public concern.

(3) Disclosure pursuant to valid authorization.—Nothing in this Act shall be construed to prohibit a disclosure of the data of an individual for which the individual provides valid authorization. For purposes of this paragraph, the term “valid authorization” has the meaning given such term in section 164.508 of title 45, Code of Federal Regulations (or a successor regulation), subject to such adaptations as the Commission shall deem necessary to apply such term to the disclosure of both location data and health data.

(c) Effective date.—The prohibition under subsection (a) shall take effect on the earlier of—

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

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

(d) Rulemaking.—

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

(2) ADDITIONAL GUIDANCE.—Pursuant to section 553 of title 5, United States Code, the Commission may promulgate further regulations to carry out the provisions of this Act, including further guidance regarding the types of data described in subsection (a).

SEC. 3. ENFORCEMENT.

(a) ENFORCEMENT BY THE FEDERAL TRADE COMMISSION.—

(1) UNFAIR OR DECEPTIVE ACTS OR PRACTICES.—A violation of section 2 shall be treated as a violation of a rule defining an unfair or a deceptive act or practice under section 18(a)(1)(B) of the Federal Trade Commission Act (15 U.S.C. 57a(a)(1)(B)).

(2) POWERS OF COMMISSION.—

(A) IN GENERAL.—Except as provided in subparagraphs (D) and (E), the Commission shall enforce section 2 in the same manner, by the same means, and with the same jurisdiction, powers, and duties as though all applicable
terms and provisions of the Federal Trade Commission Act (15 U.S.C. 41 et seq.) were incorporated into and made a part of this Act.

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

(C) AUTHORITY PRESERVED.—Nothing in this Act shall be construed to limit the authority of the Federal Trade Commission under any other provision of law.

(D) NONPROFIT ORGANIZATIONS.—Notwithstanding section 4 of the Federal Trade Commission Act (15 U.S.C. 44) or any jurisdictional limitation of the Commission, the Commission shall also enforce this Act, in the same manner provided in subparagraphs (A) and (B), with respect to organizations not organized to carry on business for their own profit or that of their members.

(E) INDEPENDENT LITIGATION AUTHORITY.—In any case in which the Commission has reason to believe that a data broker is violating 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 equi-
table relief.

(b) Enforcement by States.—

(1) In general.—In any case in which the at-
torney 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 engage-
ment of any data broker subject to section 2 in a
practice that violates such section, the attorney gen-
eral of the State may, as parens patriae, bring a
civil action on behalf of the residents of the State in
an appropriate district court of the United States
to—

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

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

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

(D) obtain civil penalties;

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

(F) obtain any other appropriate equitable
relief.

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

(3) LIMITATION ON STATE ACTION WHILE FEDERAL ACTION IS PENDING.—If the Commission has instituted a civil action for a violation of section 2, no State attorney general, or official or agency of a State, may bring an action under this paragraph during the pendency of that action against any defendant named in the complaint of the Commission for any violation of section 2 alleged in the complaint.

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

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

(c) Private Enforcement.—Any person whose interest 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 may bring a civil action in an appropriate district court of the United States to—

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

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

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

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

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

(6) obtain any other appropriate equitable relief.

(d) Civil Penalties.—In addition to any other penalties as may be prescribed by law, a violation of this Act shall carry a civil penalty not to exceed 15 percent of the revenues earned by the person’s ultimate parent entity during the preceding 12-month period.
(c) **EXCLUSIVE JURISDICTION.**—

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

(A) For actions brought by the Commission, the United States District Court for the District of Columbia.

(B) For actions brought by a State attorney general, the district court of the United States for the judicial district in which the capital of the State is located.

(C) For private actions brought by persons—

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

(ii) the district court of the United States for the judicial district in which the violation took place or in which any defendant resides or does business.

(2) **COURT OF APPEALS.**—The United States Court of Appeals for the District of Columbia Circuit shall have exclusive jurisdiction of appeals from all decisions under paragraph (1).

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

(g) Preemption.—The provisions of this Act preempt only the provisions of State or local law that require disclosure prohibited by this Act.

SEC. 4. DEFINITIONS.

In this Act:


(2) Data.—

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

(B) Requirement.—The term “data” shall include information that is linked, or reasonably linkable, to—

(i) specific individuals; or

(ii) specific groups of individuals who share the same place of residence or internet protocol address.

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

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

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

(B) any past, present, or future disability, physical health condition, mental health condition, or health condition of an individual, including, but not limited to, pregnancy and miscarriage; or

(C) any treatment or diagnosis of a disability or condition described in subparagraph (B).

(5) LOCATION DATA.—The term “location data” means data capable of determining the past or present physical location of an individual or an individual’s device.

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

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

SEC. 5. FUNDING.

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