

[DISCUSSION DRAFT]

116TH CONGRESS
1ST SESSION

H. R. _____

To require the Securities and Exchange Commission to promulgate regulations relating to the disclosure of certain commercial data, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

Mr. FOSTER introduced the following bill; which was referred to the Committee on _____

A BILL

To require the Securities and Exchange Commission to promulgate regulations relating to the disclosure of certain commercial data, and for other purposes.

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 “Designing Accounting
5 Safeguards To Help Broaden Oversight and Regulations
6 on Data”.

7 **SEC. 2. DEFINITIONS.**

8 In this Act:

1 (1) COMMISSION.—The term “Commission”
2 means the Securities and Exchange Commission.

3 (2) ISSUER.—The term “issuer” has the mean-
4 ing given the term in section 3(a) of the Securities
5 and Exchange Act of 1934 (15 U.S.C. 78c(a)).

6 (3) OTHER DEFINITIONS.—The terms “com-
7 mercial data operator”, “user”, and “user data”
8 have the meaning given those terms, respectively,
9 under section 13(s)(1) of the Securities Exchange
10 Act of 1934.

11 **SEC. 3. COMMERCIAL DATA OPERATORS.**

12 (a) REQUIREMENTS.—

13 (1) IN GENERAL.—A commercial data operator
14 shall—

15 (A) on a routine basis, and not less fre-
16 quently than once every 90 days—

17 (i) provide each user of the commer-
18 cial data operator with an assessment of
19 the economic value that the commercial
20 data operator places on the data of that
21 user; and

22 (ii) in a clear and conspicuous man-
23 ner, in accordance with paragraph (3),
24 identify to each user of the commercial
25 data operator—

1 (I) the types of data collected
2 from users of the commercial data op-
3 erator, whether by the commercial
4 data operator or another person pur-
5 suant to an agreement with the com-
6 mercial data operator; and

7 (II) the ways that the data of a
8 user of the commercial data operator
9 is used if the use is not directly or ex-
10 clusively related to the online service
11 that the commercial data operator
12 provides to the user; and

13 (B) except as provided in paragraph (2),
14 provide a user of the commercial data operator
15 with the ability to delete all data, in the aggre-
16 gate and for an individual field, that the com-
17 mercial data operator possesses, or maintains
18 control or access to with respect to the user,
19 through—

20 (i) a single setting; or

21 (ii) another clear and conspicuous
22 mechanism by which the user may make
23 such a deletion.

24 (2) DELETION EXCEPTIONS.—

1 (A) IN GENERAL.—A commercial data op-
2 erator shall comply with a user directive to de-
3 lete, in whole or in part, the data of the user
4 except—

5 (i) in cases where there is a legal obli-
6 gation of the commercial data operator to
7 maintain the data;

8 (ii) for the establishment, exercise, or
9 defense of legal claims; or

10 (iii) if the data is necessary to detect
11 security incidents, protect against mali-
12 cious, deceptive, fraudulent, or illegal activ-
13 ity, or assist in the prosecution of those re-
14 sponsible for such activity.

15 (B) RETENTION.—A commercial data op-
16 erator may not retain any more user data than
17 is necessary to carry out an activity described
18 in clauses (i) through (iii) of subparagraph (A).

19 (3) AVAILABILITY.—A commercial data oper-
20 ator shall ensure that all disclosures required under
21 paragraph (1) are available to a user of the commer-
22 cial data operator—

23 (A) on and after the date on which the
24 commercial data operator makes the identifica-
25 tion; and

1 (B) through any normal mechanism by
2 which a user may interact with the online serv-
3 ice provided by the commercial data operator.

4 (4) UNFAIR AND DECEPTIVE ACTS OR PRAC-
5 TICES.—

6 (A) UNFAIR OR DECEPTIVE ACTS OR PRAC-
7 TICES.—A violation of this subsection shall be
8 treated as a violation of a rule defining an un-
9 fair or deceptive act or practice prescribed
10 under section 18(a)(1)(B) of the Federal Trade
11 Commission Act (15 U.S.C. 57a(a)(1)(B)).

12 (B) POWERS OF FEDERAL TRADE COMMIS-
13 SION.—

14 (i) IN GENERAL.—The Federal Trade
15 Commission shall enforce this subsection in
16 the same manner, by the same means, and
17 with the same jurisdiction, powers, and du-
18 ties as though all applicable terms and pro-
19 visions of the Federal Trade Commission
20 Act (15 U.S.C. 41 et seq.) were incor-
21 porated into and made a part of this sub-
22 section.

23 (ii) PRIVILEGES AND IMMUNITIES.—
24 Any person who violates this subsection
25 shall be subject to the penalties and enti-

1 tled to the privileges and immunities pro-
2 vided in the Federal Trade Commission
3 Act (15 U.S.C. 41 et seq.).

4 (b) REGULATIONS.—Not later than 1 year after the
5 date of enactment of this Act, the Federal Trade Commis-
6 sion shall promulgate regulations carrying out subsection
7 (a).

8 **SEC. 4. SEC DISCLOSURES.**

9 (a) IN GENERAL.—Section 13 of the Securities Ex-
10 change Act of 1934 (15 U.S.C. 78m) is amended by add-
11 ing at the end the following:

12 “(s) DISCLOSURE RELATING TO AGGREGATE VALUE
13 OF USER DATA HELD BY COMMERCIAL DATA OPERA-
14 TORS.—

15 “(1) DEFINITIONS.—In this subsection:

16 “(A) COMMERCIAL DATA OPERATOR.—The
17 term ‘commercial data operator’ means an enti-
18 ty acting in its capacity as a consumer online
19 services provider or data broker that—

20 “(i) generates a material amount of
21 revenue directly from the use, collection,
22 processing, sale, or sharing of the user
23 data; and

24 “(ii) has more than 100,000,000
25 unique monthly visitors or users in the

1 United States for a majority of months
2 during the previous 1-year period;

3 “(B) USER.—The term ‘user’ means an in-
4 dividual consumer who uses an online service
5 designed for consumer use by a commercial
6 data operator.

7 “(C) USER DATA.—The term ‘user data’
8 means any information that identifies, relates
9 to, describes, is capable of being associated
10 with, or could reasonably be linked with an in-
11 dividual user, whether directly submitted to the
12 commercial data operator by the user or derived
13 from the observed activity of the user by the
14 commercial data operator.

15 “(2) DISCLOSURE.—Each issuer that is, or is a
16 consolidated subsidiary of, a commercial data oper-
17 ator and is required to file an annual or quarterly
18 report under subsection (a) shall disclose in that re-
19 port the aggregate value, if material, of—

20 “(A) user data that the commercial data
21 operator holds;

22 “(B) contracts with third parties for the
23 collection of user data through the online serv-
24 ice provided by the commercial data operator;
25 and

1 “(C) any other item that the Commission
2 determines, by rule, is necessary or useful for
3 the protection of investors and in the public in-
4 terest.

5 “(3) VALUATION METHODOLOGY.—

6 “(A) IN GENERAL.—The Commission, in
7 consultation with appropriate standards set-
8 tings organizations, shall develop a method or
9 methods for calculating the value of user data
10 required to be disclosed under paragraph (2).

11 “(B) CONSIDERATIONS.—In developing the
12 method under subparagraph (A), the Commis-
13 sion shall promote comparability in calculating
14 the value of data across commercial data opera-
15 tors that utilize user data in a similar manner
16 while taking into account the potential need to
17 develop distinct methods for calculating the
18 value of data for different uses, sectors, and
19 business models.”.

20 (b) QUALITATIVE DISCLOSURE.—Not later than 1
21 year after the date of enactment of this subsection, the
22 Commission shall amend section 229.306 of title 17, Code
23 of Federal Regulations, to require a commercial data oper-
24 ator that is an issuer subject to section 13 or 15(d) of
25 the Securities Exchange Act of 1934 (15 U.S.C. 78m,

1 78o(d)) to provide quantitative and qualitative disclosures
2 about the value of user data held, including—

3 (1) technical and legal measures in place to
4 protect user data held by the commercial data oper-
5 ator;

6 (2) an assessment of financial and legal risks
7 associated with storing the type and quantity of user
8 data held by the commercial data operator;

9 (3) each source of user data held by the com-
10 mercial data operator, whether by sale, a direct con-
11 sumer relationship, an indirect consumer relation-
12 ship, or other means;

13 (4) each discrete revenue generating operation
14 of the commercial data operator and any subsidiary
15 or affiliate that relies on user data;

16 (5) the entry into any contract valued at more
17 than \$10,000,000 with a third party for the collec-
18 tion, licensing, or sharing by the third party pursu-
19 ant to an agreement with the commercial data oper-
20 ator;

21 (6) the amount of revenue derived from obtain-
22 ing, collecting, processing, selling, using or sharing
23 user data during the reporting period;

1 (7) how changes in the measurement of aggregate fair value of user data affect the reported performance and cash flows of the issuer; and

2 (8) any acquisition of user data in the preceding reporting period valued at more than
3 \$100,000,000.

4 (c) REPORT.—

5 (1) IN GENERAL.—Not later than 3 years after
6 the date of enactment of this Act, the Commission
7 shall submit to the Committee on Banking, Housing,
8 and Urban Affairs of the Senate and the Committee
9 on Financial Services of the House of Representatives a report on—

10 (A) the nature, timing, and extent of the
11 disclosure practices of commercial data operators;
12

13 (B) an assessment of the valuation methodologies and practices employed by commercial data operators in developing and submitting disclosures to the public;

14 (C) an evaluation of the methods of delivery and presentation of the disclosures required by this Act, and the amendments made by this Act; and

1 (D) recommendations for the improvement
2 of the methods described in subparagraph (C),
3 including developing standards to enhance com-
4 parability and utility for investors.

5 (2) RULEMAKING.—Not later than 180 days
6 after the date on which the report required under
7 paragraph (1) is submitted, the Commission shall
8 promulgate a proposed regulation implementing the
9 recommendations described in paragraph (1)(D).