

116TH CONGRESS
1ST SESSION

S. 1108

To direct the Federal Trade Commission to require entities that use, store, or share personal information to conduct automated decision system impact assessments and data protection impact assessments.

IN THE SENATE OF THE UNITED STATES

APRIL 10, 2019

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

A BILL

To direct the Federal Trade Commission to require entities that use, store, or share personal information to conduct automated decision system impact assessments and data protection impact assessments.

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 “Algorithmic Account-
5 ability Act of 2019”.

6 **SEC. 2. DEFINITIONS.**

7 In this Act:

1 (1) AUTOMATED DECISION SYSTEM.—The term
 2 “automated decision system” means a computational
 3 process, including one derived from machine learn-
 4 ing, statistics, or other data processing or artificial
 5 intelligence techniques, that makes a decision or fa-
 6 cilitates human decision making, that impacts con-
 7 sumers.

8 (2) AUTOMATED DECISION SYSTEM IMPACT AS-
 9 SESSMENT.—The term “automated decision system
 10 impact assessment” means a study evaluating an
 11 automated decision system and the automated deci-
 12 sion system’s development process, including the de-
 13 sign and training data of the automated decision
 14 system, for impacts on accuracy, fairness, bias, dis-
 15 crimination, privacy, and security that includes, at a
 16 minimum—

17 (A) a detailed description of the automated
 18 decision system, its design, its training, data,
 19 and its purpose;

20 (B) an assessment of the relative benefits
 21 and costs of the automated decision system in
 22 light of its purpose, taking into account rel-
 23 evant factors, including—

24 (i) data minimization practices;

1 (ii) the duration for which personal
2 information and the results of the auto-
3 mated decision system are stored;

4 (iii) what information about the auto-
5 mated decision system is available to con-
6 sumers;

7 (iv) the extent to which consumers
8 have access to the results of the automated
9 decision system and may correct or object
10 to its results; and

11 (v) the recipients of the results of the
12 automated decision system;

13 (C) an assessment of the risks posed by
14 the automated decision system to the privacy or
15 security of personal information of consumers
16 and the risks that the automated decision sys-
17 tem may result in or contribute to inaccurate,
18 unfair, biased, or discriminatory decisions im-
19 pacting consumers; and

20 (D) the measures the covered entity will
21 employ to minimize the risks described in sub-
22 paragraph (C), including technological and
23 physical safeguards.

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

1 (4) CONSUMER.—The term “consumer” means
2 an individual.

3 (5) COVERED ENTITY.—The term “covered en-
4 tity” means any person, partnership, or corporation
5 over which the Commission has jurisdiction under
6 section 5(a)(2) of the Federal Trade Commission
7 Act (15 U.S.C. 45(a)(2)) that—

8 (A) had greater than \$50,000,000 in aver-
9 age annual gross receipts for the 3-taxable-year
10 period preceding the most recent fiscal year, as
11 determined in accordance with paragraphs (2)
12 and (3) of section 448(c) of the Internal Rev-
13 enue Code of 1986;

14 (B) possesses or controls personal informa-
15 tion on more than—

16 (i) 1,000,000 consumers; or

17 (ii) 1,000,000 consumer devices;

18 (C) is substantially owned, operated, or
19 controlled by a person, partnership, or corpora-
20 tion that meets the requirements under sub-
21 paragraph (A) or (B); or

22 (D) is a data broker or other commercial
23 entity that, as a substantial part of its business,
24 collects, assembles, or maintains personal infor-
25 mation concerning an individual who is not a

1 customer or an employee of that entity in order
2 to sell or trade the information or provide third-
3 party access to the information.

4 (6) DATA PROTECTION IMPACT ASSESSMENT.—

5 The term “data protection impact assessment”
6 means a study evaluating the extent to which an in-
7 formation system protects the privacy and security
8 of personal information the system processes.

9 (7) HIGH-RISK AUTOMATED DECISION SYS-
10 TEM.—The term “high-risk automated decision sys-
11 tem” means an automated decision system that—

12 (A) taking into account the novelty of the
13 technology used and the nature, scope, context,
14 and purpose of the automated decision system,
15 poses a significant risk—

16 (i) to the privacy or security of per-
17 sonal information of consumers; or

18 (ii) of resulting in or contributing to
19 inaccurate, unfair, biased, or discrimina-
20 tory decisions impacting consumers;

21 (B) makes decisions, or facilitates human
22 decision making, based on systematic and ex-
23 tensive evaluations of consumers, including at-
24 tempts to analyze or predict sensitive aspects of
25 their lives, such as their work performance, eco-

1 nomic situation, health, personal preferences,
 2 interests, behavior, location, or movements,
 3 that—

4 (i) alter legal rights of consumers; or

5 (ii) otherwise significantly impact con-
 6 sumers;

7 (C) involves the personal information of a
 8 significant number of consumers regarding
 9 race, color, national origin, political opinions,
 10 religion, trade union membership, genetic data,
 11 biometric data, health, gender, gender identity,
 12 sexuality, sexual orientation, criminal convic-
 13 tions, or arrests;

14 (D) systematically monitors a large, pub-
 15 licly accessible physical place; or

16 (E) meets any other criteria established by
 17 the Commission in regulations issued under sec-
 18 tion 3(b)(1).

19 (8) HIGH-RISK INFORMATION SYSTEM.—The
 20 term “high-risk information system” means an in-
 21 formation system that—

22 (A) taking into account the novelty of the
 23 technology used and the nature, scope, context,
 24 and purpose of the information system, poses a

1 significant risk to the privacy or security of per-
2 sonal information of consumers;

3 (B) involves the personal information of a
4 significant number of consumers regarding
5 race, color, national origin, political opinions,
6 religion, trade union membership, genetic data,
7 biometric data, health, gender, gender identity,
8 sexuality, sexual orientation, criminal convic-
9 tions, or arrests;

10 (C) systematically monitors a large, pub-
11 licly accessible physical place; or

12 (D) meets any other criteria established by
13 the Commission in regulations issued under sec-
14 tion 3(b)(1).

15 (9) INFORMATION SYSTEM.—The term “infor-
16 mation system”—

17 (A) means a process, automated or not,
18 that involves personal information, such as the
19 collection, recording, organization, structuring,
20 storage, alteration, retrieval, consultation, use,
21 sharing, disclosure, dissemination, combination,
22 restriction, erasure, or destruction of personal
23 information; and

24 (B) does not include automated decision
25 systems.

1 (10) PERSONAL INFORMATION.—The term
 2 “personal information” means any information, re-
 3 gardless of how the information is collected, in-
 4 ferred, or obtained that is reasonably linkable to a
 5 specific consumer or consumer device.

6 (11) STORE.—The term “store”—

7 (A) means the actions of a person, part-
 8 nership, or corporation to retain information;
 9 and

10 (B) includes actions to store, collect, as-
 11 semble, possess, control, or maintain informa-
 12 tion.

13 (12) USE.—The term “use” means the actions
 14 of a person, partnership, or corporation in using in-
 15 formation, including actions to use, process, or ac-
 16 cess information.

17 **SEC. 3. DATA PROTECTION AUTHORITY.**

18 (a) ACTS PROHIBITED.—It is unlawful for any cov-
 19 ered entity to—

20 (1) violate a regulation promulgated under sub-
 21 section (b); or

22 (2) knowingly provide substantial assistance to
 23 any person, partnership, or corporation whose ac-
 24 tions violate subsection (b).

25 (b) REGULATIONS.—

1 (1) IN GENERAL.—Not later than 2 years after
2 the date of enactment of this section, the Commis-
3 sion shall promulgate regulations, in accordance with
4 section 553 of title 5, United States Code, that—

5 (A) require each covered entity to conduct
6 automated decision system impact assessments
7 of—

8 (i) existing high-risk automated deci-
9 sion systems, as frequently as the Commis-
10 sion determines is necessary; and

11 (ii) new high-risk automated decision
12 systems, prior to implementation,

13 provided that a covered entity may evaluate
14 similar high-risk automated decision systems
15 that present similar risks in a single assess-
16 ment;

17 (B) require each covered entity to conduct
18 data protection impact assessments of—

19 (i) existing high-risk information sys-
20 tems, as frequently as the Commission de-
21 termines is necessary; and

22 (ii) new high-risk information sys-
23 tems, prior to implementation,

1 provided that a covered entity may evaluate
2 similar high-risk information systems that
3 present similar risks in a single assessment;

4 (C) require each covered entity to conduct
5 the impact assessments under subparagraphs
6 (A) and (B), if reasonably possible, in consulta-
7 tion with external third parties, including inde-
8 pendent auditors and independent technology
9 experts; and

10 (D) require each covered entity to reason-
11 ably address in a timely manner the results of
12 the impact assessments under subparagraphs
13 (A) and (B).

14 (2) OPTIONAL PUBLICATION OF IMPACT AS-
15 SESSMENTS.—The impact assessments under sub-
16 paragraphs (A) and (B) may be made public by the
17 covered entity at its sole discretion.

18 (c) PREEMPTION OF PRIVATE CONTRACTS.—It shall
19 be unlawful for any covered entity to commit the acts pro-
20 hibited in subsection (a), regardless of specific agreements
21 between entities or consumers.

22 (d) ENFORCEMENT BY THE COMMISSION.—

23 (1) UNFAIR OR DECEPTIVE ACTS OR PRAC-
24 TICES.—A violation of subsection (a) shall be treated
25 as a violation of a rule defining an unfair or decep-

1 tive act or practice under section 18(a)(1)(B) of the
2 Federal Trade Commission Act (15 U.S.C.
3 57a(a)(1)(B)).

4 (2) POWERS OF THE COMMISSION.—

5 (A) IN GENERAL.—The Commission shall
6 enforce this section in the same manner, by the
7 same means, and with the same jurisdiction,
8 powers, and duties as though all applicable
9 terms and provisions of the Federal Trade
10 Commission Act (15 U.S.C. 41 et seq.) were in-
11 corporated into and made a part of this section.

12 (B) PRIVILEGES AND IMMUNITIES.—Any
13 person who violates subsection (a) shall be sub-
14 ject to the penalties and entitled to the privi-
15 leges and immunities provided in the Federal
16 Trade Commission Act (15 U.S.C. 41 et seq.).

17 (C) AUTHORITY PRESERVED.—Nothing in
18 this section shall be construed to limit the au-
19 thority of the Commission under any other pro-
20 vision of law.

21 (e) ENFORCEMENT BY STATES.—

22 (1) IN GENERAL.—If the attorney general of a
23 State has reason to believe that an interest of the
24 residents of the State has been or is being threat-
25 ened or adversely affected by a practice that violates

1 subsection (a), the attorney general of the State
2 may, as *parens patriae*, bring a civil action on behalf
3 of the residents of the State in an appropriate dis-
4 trict court of the United States to obtain appro-
5 priate relief.

6 (2) RIGHTS OF COMMISSION.—

7 (A) NOTICE TO COMMISSION.—

8 (i) IN GENERAL.—Except as provided
9 in clause (iii), the attorney general of a
10 State, before initiating a civil action under
11 paragraph (1), shall provide written notifi-
12 cation to the Commission that the attorney
13 general intends to bring such civil action.

14 (ii) CONTENTS.—The notification re-
15 quired under clause (i) shall include a copy
16 of the complaint to be filed to initiate the
17 civil action.

18 (iii) EXCEPTION.—If it is not feasible
19 for the attorney general of a State to pro-
20 vide the notification required under clause
21 (i) before initiating a civil action under
22 paragraph (1), the attorney general shall
23 notify the Commission immediately upon
24 instituting the civil action.

1 (B) INTERVENTION BY COMMISSION.—The
2 Commission may—

3 (i) intervene in any civil action
4 brought by the attorney general of a State
5 under paragraph (1); and

6 (ii) upon intervening—

7 (I) be heard on all matters arising
8 in the civil action; and

9 (II) file petitions for appeal of a
10 decision in the civil action.

11 (3) INVESTIGATORY POWERS.—Nothing in this
12 subsection may be construed to prevent the attorney
13 general of a State from exercising the powers conferred
14 on the attorney general by the laws of the
15 State to conduct investigations, to administer oaths
16 or affirmations, or to compel the attendance of witnesses
17 or the production of documentary or other
18 evidence.

19 (4) VENUE; SERVICE OF PROCESS.—

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

22 (i) the district court of the United
23 States that meets applicable requirements
24 relating to venue under section 1391 of
25 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—

6 (i) the defendant is an inhabitant,
7 may be found, or transacts business; or

8 (ii) venue is proper under section
9 1391 of title 28, United States Code.

10 (5) ACTIONS BY OTHER STATE OFFICIALS.—

11 (A) IN GENERAL.—In addition to a civil
12 action brought by an attorney general under
13 paragraph (1), any other officer of a State who
14 is authorized by the State to do so may bring
15 a civil action under paragraph (1), subject to
16 the same requirements and limitations that
17 apply under this subsection to civil actions
18 brought by attorneys general.

19 (B) SAVINGS PROVISION.—Nothing in this
20 subsection may be construed to prohibit an au-
21 thorized official of a State from initiating or
22 continuing any proceeding in a court of the
23 State for a violation of any civil or criminal law
24 of the State.

1 **SEC. 4. NO PREEMPTION.**

2 Nothing in this Act may be construed to preempt any

3 State law.

