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(Original Signature of Member)

115TH CONGRESS  
2D SESSION

**H. R.** \_\_\_\_\_

To prohibit entities from requiring individuals to submit to arbitration for disputes arising from a security breach, and for other purposes.

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IN THE HOUSE OF REPRESENTATIVES

Mr. TED LIEU of California introduced the following bill; which was referred to the Committee on \_\_\_\_\_

\_\_\_\_\_  
**A BILL**

To prohibit entities from requiring individuals to submit to arbitration for disputes arising from a security breach, 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 “Ending Forced Arbi-  
5 tration for Victims of Data Breaches Act of 2018”.

6 **SEC. 2. PROTECTION OF DATA SECURITY BREACH VICTIMS.**

7 An entity may not require, as part of a customer or  
8 other similar agreement, an individual to agree to submit

1 any dispute related to a security breach, including any dis-  
2 pute related to identity theft, to arbitration.

3 **SEC. 3. APPLICABILITY.**

4 A provision of an agreement entered into prior to the  
5 date of the enactment of this Act, that violates section  
6 2, is void.

7 **SEC. 4. ENFORCEMENT BY THE FEDERAL TRADE COMMIS-  
8 SION.**

9 (a) UNFAIR OR DECEPTIVE ACTS OR PRACTICES.—

10 A violation of section 2 shall be treated as an unfair and  
11 deceptive act or practice in violation of a regulation under  
12 section 18(a)(1)(B) of the Federal Trade Commission Act  
13 (15 U.S.C. 57a(a)(1)(B)) regarding unfair or deceptive  
14 acts or practices.

15 (b) POWERS OF COMMISSION.—The Commission  
16 shall enforce this Act in the same manner, by the same  
17 means, and with the same jurisdiction, powers, and duties  
18 as though all applicable terms and provisions of the Fed-  
19 eral Trade Commission Act (15 U.S.C. 41 et seq.) were  
20 incorporated into and made a part of this Act. Any person  
21 who violates section 2 shall be subject to the penalties and  
22 entitled to the privileges and immunities provided in that  
23 Act.

24 (c) RULES.—The Commission shall promulgate,  
25 under section 553 of title 5, United States Code, such

1 rules as may be necessary to carry out the provisions of  
2 this Act.

3 **SEC. 5. ENFORCEMENT BY STATES.**

4 (a) IN GENERAL.—If the attorney general of a State  
5 has reason to believe that an interest of the residents of  
6 the State has been or is being threatened or adversely af-  
7 fected by a practice that violates section 2, the attorney  
8 general of the State may, as *parens patriae*, bring a civil  
9 action on behalf of the residents of the State in an appro-  
10 priate district court of the United States to obtain appro-  
11 priate relief.

12 (b) RIGHTS OF FEDERAL TRADE COMMISSION.—

13 (1) NOTICE TO FEDERAL TRADE COMMISS-  
14 SION.—

15 (A) IN GENERAL.—Except as provided in  
16 clause (iii), the attorney general of a State, be-  
17 fore initiating a civil action under paragraph  
18 (1), shall provide written notification to the  
19 Federal Trade Commission that the attorney  
20 general intends to bring such civil action.

21 (B) CONTENTS.—The notification required  
22 under clause (i) shall include a copy of the com-  
23 plaint to be filed to initiate the civil action.

24 (C) EXCEPTION.—If it is not feasible for  
25 the attorney general of a State to provide the

1 notification required under clause (i) before ini-  
2 tiating a civil action under paragraph (1), the  
3 attorney general shall notify the Commission  
4 immediately upon instituting the civil action.

5 (2) INTERVENTION BY FEDERAL TRADE COM-  
6 MISSION.—The Commission may—

7 (A) intervene in any civil action brought by  
8 the attorney general of a State under para-  
9 graph (1); and

10 (B) upon intervening—

11 (i) be heard on all matters arising in  
12 the civil action; and

13 (ii) file petitions for appeal of a deci-  
14 sion in the civil action.

15 (c) INVESTIGATORY POWERS.—Nothing in this sub-  
16 section may be construed to prevent the attorney general  
17 of a State from exercising the powers conferred on the  
18 attorney general by the laws of the State to conduct inves-  
19 tigations, to administer oaths or affirmations, or to compel  
20 the attendance of witnesses or the production of documen-  
21 tary or other evidence.

22 (d) PREEMPTIVE ACTION BY FEDERAL TRADE COM-  
23 MISSION.—If the Federal Trade Commission institutes a  
24 civil action or an administrative action with respect to a  
25 violation of section 2, the attorney general of a State may

1 not, during the pendency of such action, bring a civil ac-  
2 tion under paragraph (1) against any defendant named  
3 in the complaint of the Commission for the violation with  
4 respect to which the Commission instituted such action.

5 (e) VENUE; SERVICE OF PROCESS.—

6 (1) VENUE.—Any action brought under para-  
7 graph (1) may be brought in—

8 (A) the district court of the United States  
9 that meets applicable requirements relating to  
10 venue under section 1391 of title 28, United  
11 States Code; or

12 (B) another court of competent jurisdic-  
13 tion.

14 (2) SERVICE OF PROCESS.—In an action  
15 brought under paragraph (1), process may be served  
16 in any district in which—

17 (A) the defendant is an inhabitant, may be  
18 found, or transacts business; or

19 (B) venue is proper under section 1391 of  
20 title 28, United States Code.

21 **SEC. 6. PRIVATE RIGHT OF ACTION.**

22 (a) IN GENERAL.—An individual who is injured by  
23 a violation of section 2 may bring a private right of action  
24 in any court of appropriate jurisdiction for rescission and  
25 restitution, as well as for all damages and maybe awarded

1 injunctive relief against a violation of such section. The  
2 individual shall also be entitled to recover its costs of liti-  
3 gation and reasonable attorney's fees and expert witness  
4 fees, against any entity or person found to be liable for  
5 such violation.

6 (b) LIABILITY.—Every person who directly or indi-  
7 rectly controls a person liable under subsection (a), every  
8 partner in a firm so liable, every principal executive officer  
9 or director of a corporation so liable, every person occu-  
10 pying a similar status or performing similar functions and  
11 every employee of a person so liable who materially aids  
12 in the act or transaction constituting the violation is also  
13 liable jointly and severally with and to the same extent  
14 as such person, unless the person who would otherwise be  
15 liable hereunder had no knowledge of or reasonable  
16 grounds to know of the existence of the facts by reason  
17 of which the liability is alleged to exist.

18 (c) STATUTE OF LIMITATIONS.—No action may be  
19 commenced pursuant to this section more than the later  
20 of—

21 (1) 2 years after the date on which the violation  
22 occurs; or

23 (2) 2 years after the date on which the violation  
24 is discovered or should have been discovered through  
25 exercise of reasonable diligence.

1 (d) VENUE.—An action under this section may be  
2 brought in—

3 (1) the district court of the United States that  
4 meets applicable requirements relating to venue  
5 under section 1391 of title 28, United States Code;  
6 or

7 (2) another court of competent jurisdiction.

8 (e) CUMULATIVE RIGHT.—The private rights pro-  
9 vided for in this section are in addition to and not in lieu  
10 of other rights or remedies created by Federal or State  
11 law.

12 **SEC. 7. DEFINITIONS.**

13 In this Act—

14 (1) the term “security breach”—

15 (A) means a compromise of the security,  
16 confidentiality, or integrity of, or the loss of,  
17 computerized data that results in, or there is a  
18 reasonable basis to conclude has resulted in—

19 (i) the unauthorized acquisition of  
20 sensitive personally identifiable informa-  
21 tion; or

22 (ii) access to sensitive personally iden-  
23 tifiable information that is for an unau-  
24 thorized purpose, or in excess of authoriza-  
25 tion;

1 (B) does not include any lawfully author-  
2 ized investigative, protective, or intelligence ac-  
3 tivity of a law enforcement agency of the  
4 United States, a State, or a political subdivision  
5 of a State, or of an element of the intelligence  
6 community; and

7 (2) the term “sensitive personally identifiable  
8 information” means any information or compilation  
9 of information, in electronic or digital form that in-  
10 cludes one or more of the following:

11 (A) An individual’s first and last name or  
12 first initial and last name in combination with  
13 any two of the following data elements:

14 (i) Home address or telephone num-  
15 ber.

16 (ii) Mother’s maiden name.

17 (iii) Month, day, and year of birth.

18 (B) A Social Security number (but not in-  
19 cluding only the last four digits of a Social Se-  
20 curity number), driver’s license number, pass-  
21 port number, or alien registration number or  
22 other Government-issued unique identification  
23 number.



1 (C) Unique biometric data such as a finger  
2 print, voice print, a retina or iris image, or any  
3 other unique physical representation.

4 (D) A unique account identifier, including  
5 a financial account number or credit or debit  
6 card number, electronic identification number,  
7 user name, or routing code.

8 (E) A user name or electronic mail ad-  
9 dress, in combination with a password or secu-  
10 rity question and answer that would permit ac-  
11 cess to an online account.

12 (F) Any combination of the following data  
13 elements:

14 (i) An individual's first and last name  
15 or first initial and last name.

16 (ii) A unique account identifier, in-  
17 cluding a financial account number or  
18 credit or debit card number, electronic  
19 identification number, user name, or rout-  
20 ing code.

21 (iii) Any security code, access code, or  
22 password, or source code that could be  
23 used to generate such codes or passwords.