117TH CONGRESS
2D SESSION

H. R. _____

To amend the Consumer Financial Protection Act of 2010 to require the Director of the Bureau of Consumer Financial Protection to ensure that financial data relating to the provision of abortion or other reproductive health services are not accessed, disclosed, or otherwise disseminated without the express written consent of the individual, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

M. ______ introduced the following bill; which was referred to the Committee on ______

A BILL

To amend the Consumer Financial Protection Act of 2010 to require the Director of the Bureau of Consumer Financial Protection to ensure that financial data relating to the provision of abortion or other reproductive health services are not accessed, disclosed, or otherwise disseminated without the express written consent of the individual, 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,
SECTION 1. SHORT TITLE.

This Act may be cited as the “Financial Data Privacy and Reproductive Justice Act”.

SEC. 2. FINANCIAL DATA AND SERVICES RELATED TO REPRODUCTIVE RIGHTS.

(a) Prohibition on Provision of Certain Information Relating to Abortion or Reproductive Health Services.—Subtitle B of the Consumer Financial Protection Act of 2010 (12 U.S.C. 5511 et seq.) is amended by inserting after section 1026 the following new section:

“SEC. 1026A. PROHIBITION ON PROVISION OF CERTAIN INFORMATION RELATING TO ABORTION OR REPRODUCTIVE HEALTH SERVICES.

“(a) Prohibition on Provision of Certain Information Relating to Abortion or Reproductive Health Services.—

“(1) In general.—Notwithstanding any other provision of Federal or State law, the Director of the Bureau shall ensure that any information on payments or other financial data relating to, or in connection with, the provision of abortion or other reproductive health services for individuals who access such health services are not accessed, disclosed, or otherwise disseminated to any person, including any State, State agency, city, county, municipality, or
other political subdivision of a State without the ex-
press written consent of the individual accessing
such health services at time of such access, disclo-
sure, or dissemination.

“(2) EXEMPTION.—A person may not be liable
for violating this subsection if—

“(A) the information described in para-
graph (1) is provided along with data relating
to other transactions; and

“(B) such person did not knowingly in-
clude such information in the data.

“(3) CONSENT NOT REQUIRED.—A covered per-
son that offers or provides consumer financial prod-
ucts or services may not require a consumer to pro-
vide the consent described in paragraph (1) as a
condition of providing such consumer financial prod-
ucts or services.

“(b) PREEMPTION.—

“(1) IN GENERAL.—Any law, regulation, provi-
sion, order, or other action of a State or political
subdivision thereof shall be preempted (and may not
be enforced) to the extent that the law, regulation,
provision, order, or other action is inconsistent with
this section or regulations issued thereunder or oth-
erwise restricts or eliminates the rights of individ-
uals to control access, disclosure, or other dissemination of the information described in subsection (a).

“(2) GREATER PROTECTION UNDER STATE LAW.—For purposes of this subsection, a law, regulation, provision, order, or other action of a State or political subdivision thereof is not inconsistent with this section or regulations issued thereunder if such law, regulation, provision, order, or other action provides greater privacy protection than the privacy protection provided by this section.

“(3) DETERMINATION.—A determination of whether a law, regulation, provision, or other action is inconsistent with this section or regulations issued thereunder, or otherwise restricts or eliminates the rights of individuals to control access, disclosure, or other dissemination of the information described in subsection (a) may be made by the Director of the Bureau of Consumer Financial Protection on the Director’s own motion or in response to a non-frivolous petition initiated by any interested person.

“(c) ENFORCEMENT BY INDIVIDUALS.—

“(1) IN GENERAL.—Any individual alleging a violation of this section or a regulation issued thereunder may bring a civil action in any court of competent jurisdiction.
“(2) RELIEF.—In a civil action brought under subparagraph (A) in which the plaintiff prevails, the court may award—

“(A) an amount not less than $100 and not greater than $1,000 per violation per day, or actual damages, whichever is greater;

“(B) punitive damages;

“(C) reasonable attorney’s fees and litigation costs; and

“(D) any other relief, including equitable or declaratory relief, that the court determines appropriate.

“(3) INJURY IN FACT.—A violation of this section or a regulation issued thereunder with respect to personal abortion or other reproductive health services information constitutes a concrete and particularized injury in fact to the individual to whom such information relates.

“(4) INVALIDITY OF PRE-DISPUTE ARBITRATION AGREEMENTS AND PRE-DISPUTE JOINT ACTION WAIVERS.—

“(A) IN GENERAL.—Notwithstanding any other provision of law, no pre-dispute arbitration agreement or pre-dispute joint-action waiv-
er shall be valid or enforceable with respect to a dispute arising under this section.

“(B) APPLICABILITY.—Any determination as to whether or how this subparagraph applies to any dispute shall be made by a court, rather than an arbitrator, without regard to whether such agreement purports to delegate such determination to an arbitrator.

“(C) DEFINITIONS.—For purposes of this subparagraph:

“(i) PRE-DISPUTE ARBITRATION AGREEMENT.—The term ‘pre-dispute arbitration agreement’ means any agreement to arbitrate a dispute that has not arisen at the time of the making of the agreement.

“(ii) PRE-DISPUTE JOINT-ACTION WAIVER.—The term ‘pre-dispute joint-action waiver’ means an agreement that would prohibit a party from participating in a joint, class, or collective action in a judicial, arbitral, administrative, or other forum, concerning a dispute that has not yet arisen at the time of the making of the agreement.
“(d) EXPRESS WRITTEN CONSENT DEFINED.—

“(1) IN GENERAL.—The term ‘express written consent’ means, with respect to the accessing, disclosure, or dissemination of financial data described under subsection (a), means informed, opt-in (with a right to opt-out at any time), voluntary, specific, and unambiguous written consent (which may include written consent provided by electronic means) to such accessing, disclosure, or dissemination.

“(2) EXCLUSION.—The term ‘express written consent’ does not include any of the following:

“(A) Consent secured without first providing to the individual a clear and conspicuous disclosure, apart from any privacy policy, terms of service, terms of use, general release, user agreement, or other similar document, of all information material to the provision of consent.

“(B) Hovering over, muting, pausing, or closing a given piece of content.

“(C) Agreement obtained through the use of a user interface designed or manipulated with the substantial effect of subverting or impairing user autonomy, decision making, or choice.”.
(b) CLERICAL AMENDMENT.—The table of contents of the Dodd-Frank Wall Street Reform and Consumer Protection Act (15 U.S.C. 5301 et seq.) is amended by inserting after the item relating to section 1026 the following new item:

"1026A. Prohibition on provision of certain information relating to abortion or reproductive health services."

c) EFFECTIVE DATE.—This Act and the amendments made by this Act shall take effect on the date that is 6 months after the date of the enactment of this Act.