

105TH CONGRESS  
2D SESSION

# H. R. 4667

To enhance consumer privacy, prevent unfair and deceptive practices, and protect children's privacy.

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IN THE HOUSE OF REPRESENTATIVES

OCTOBER 1, 1998

Mr. MARKEY introduced the following bill; which was referred to the Committee on Commerce

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## A BILL

To enhance consumer privacy, prevent unfair and deceptive practices, and protect children's privacy.

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 "Electronic Privacy Bill  
5 of Rights Act of 1998".

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1       **TITLE I—INTERNET PRIVACY**  
2       **PROTECTION FOR CHILDREN**

3       **SEC. 101. REGULATION OF UNFAIR AND DECEPTIVE ACTS**  
4                       **AND PRACTICES IN CONNECTION WITH THE**  
5                       **COLLECTION AND USE OF PERSONAL INFOR-**  
6                       **MATION FROM AND ABOUT CHILDREN ON**  
7                       **THE INTERNET.**

8       (a) REGULATIONS.—

9               (1) IN GENERAL.—It shall be unlawful for any  
10              operator of a website or online service that is di-  
11              rected to children, or any operator that has actual  
12              knowledge that it is collecting personal information  
13              from a child, to collect personal information from a  
14              child under the age of 13 in violation of the regula-  
15              tions prescribed under paragraph (2).

16             (2) CONTENTS.—Not later than one year after  
17             the date of enactment of this Act, the Commission  
18             shall prescribe regulations to prevent the improper  
19             collection of information from children under the age  
20             of 13. Such regulations shall—

21               (A) require that any website or online serv-  
22               ice that is directed to children that collects per-  
23               sonal information from children—

24                       (i) provide clear, prominent, under-  
25                       standable notice of the information collec-

1           tion, use, and disclosure practices of the  
2           operator through the website or online  
3           service;

4           (ii) obtain verifiable parental consent  
5           for the collection, use, or disclosure of per-  
6           sonal information from children who are  
7           under the age of 13; and

8           (iii) provide a parent—

9           (I) access to the personal infor-  
10          mation of the child of that parent col-  
11          lected by that website or online serv-  
12          ice; and

13          (II) the opportunity to refuse to  
14          permit any further use or future col-  
15          lection of personal information re-  
16          ferred to in subclause (I) and notice  
17          of that opportunity; and

18          (B) require that the operator of the  
19          website or online service concerned to establish  
20          and maintain reasonable procedures to ensure  
21          the confidentiality, security, accuracy, and in-  
22          tegrity of personal information collected from  
23          children through the website or online service.

24       (b) ENFORCEMENT.—

1           (1) TREATMENT OF REGULATIONS.—A regula-  
2           tion prescribed under subsection (a) shall be treated  
3           as a rule defining an unfair or deceptive act or prac-  
4           tice under section 18(a)(1)(B) of the Federal Trade  
5           Commission Act (15 U.S.C. 57a(a)(1)(B)).

6           (2) ENFORCEMENT.—Subject to section 103, a  
7           violation of a regulation prescribed under subsection  
8           (a) shall be treated as a violation of a rule defining  
9           an unfair or deceptive act or practice prescribed  
10          under section 18(a)(1)(B) of the Federal Trade  
11          Commission Act.

12 **SEC. 102. SAFE HARBORS.**

13          (a) IN GENERAL.—In prescribing regulations under  
14          section 101, the Federal Trade Commission shall provide  
15          incentives for efforts of self-regulation by commercial  
16          website operators to implement the protections described  
17          in subsection (a) of that section.

18          (b) SAFE HARBORS.—The incentives referred to in  
19          subsection (a) shall include provisions for ensuring that  
20          a person will be deemed to be in compliance with the re-  
21          quirements of the regulations under section 101 if that  
22          person applies guidelines that—

23                  (1) are issued by appropriate representatives of  
24          the computer industry; and

1           (2) are approved by the Federal Trade Commis-  
2           sion upon making a determination that the guide-  
3           lines meet the requirements of the regulations issued  
4           under section 101.

5 **SEC. 103. ADMINISTRATION AND APPLICABILITY OF ACT.**

6           (a) IN GENERAL.—Except as otherwise provided, this  
7 title shall be enforced by the Federal Trade Commission  
8 under the Federal Trade Commission Act (15 U.S.C. 41  
9 et seq.).

10          (b) PROVISIONS.—Compliance with the requirements  
11 imposed under this title shall be enforced under—

12           (1) section 8 of the Federal Deposit Insurance  
13 Act (12 U.S.C. 1818), in the case of—

14           (A) national banks, and Federal branches  
15           and Federal agencies of foreign banks, by the  
16           Office of the Comptroller of the Currency;

17           (B) member banks of the Federal Reserve  
18           System (other than national banks), branches  
19           and agencies of foreign banks (other than Fed-  
20           eral branches, Federal agencies, and insured  
21           State branches of foreign banks), commercial  
22           lending companies owned or controlled by for-  
23           eign banks, and organizations operating under  
24           section 25 or 25(a) of the Federal Reserve Act

1 (12 U.S.C. 601 et seq. and 611 et seq.), by the  
2 Board; and

3 (C) banks insured by the Federal Deposit  
4 Insurance Corporation (other than members of  
5 the Federal Reserve System) and insured State  
6 branches of foreign banks, by the Board of Di-  
7 rectors of the Federal Deposit Insurance Cor-  
8 poration;

9 (2) section 8 of the Federal Deposit Insurance  
10 Act (12 U.S.C. 1818), by the Director of the Office  
11 of Thrift Supervision, in the case of a savings asso-  
12 ciation the deposits of which are insured by the Fed-  
13 eral Deposit Insurance Corporation;

14 (3) the Federal Credit Union Act (12 U.S.C.  
15 1751 et seq.), by the National Credit Union Admin-  
16 istration Board with respect to any Federal credit  
17 union;

18 (4) part A of subtitle VII of title 49, by the  
19 Secretary of Transportation with respect to any air  
20 carrier or foreign air carrier subject to that part;

21 (5) the Packers and Stockyards Act, 1921 (7  
22 U.S.C. 181 et seq.) (except as provided in section  
23 406 of that Act (7 U.S.C. 226, 227)), by the Sec-  
24 retary of Agriculture with respect to any activities  
25 subject to that Act; and

1           (6) the Farm Credit Act of 1971 (12 U.S.C.  
2           2001 et seq.) by the Farm Credit Administration  
3           with respect to any Federal land bank, Federal land  
4           bank association, Federal intermediate credit bank,  
5           or production credit association.

6           (c) EXERCISE OF CERTAIN POWERS.—For the pur-  
7           pose of the exercise by any agency referred to in sub-  
8           section (b) of its powers under any Act referred to in that  
9           subsection, a violation of any requirement imposed under  
10          this title shall be deemed to be a violation of a requirement  
11          imposed under that Act. In addition to its powers under  
12          any provision of law specifically referred to in subsection  
13          (a), each of the agencies referred to in that subsection may  
14          exercise, for the purpose of enforcing compliance with any  
15          requirement imposed under this title, any other authority  
16          conferred on it by law.

17          (d) ACTIONS BY THE COMMISSION.—The Federal  
18          Trade Commission shall prevent any person from violating  
19          a rule of the Federal Trade Commission under section 101  
20          in the same manner, by the same means, and with the  
21          same jurisdiction, powers, and duties as though all appli-  
22          cable terms and provisions of the Federal Trade Commis-  
23          sion Act (15 U.S.C. 41 et seq.) were incorporated into and  
24          made a part of this title. Any entity that violates such  
25          rule shall be subject to the penalties and entitled to the

1 privileges and immunities provided in the Federal Trade  
2 Commission Act in the same manner, by the same means,  
3 and with the same jurisdiction, power, and duties as  
4 though all applicable terms and provisions of the Federal  
5 Trade Commission Act were incorporated into and made  
6 a part of this title.

7 (e) EFFECT ON OTHER LAWS.—Nothing contained in  
8 the Act shall be construed to limit the authority of the  
9 Federal Trade Commission under any other provisions of  
10 law.

11 **SEC. 104. REVIEW.**

12 (a) IN GENERAL.—Not later than 5 years after the  
13 effective date of the regulations initially issued under sec-  
14 tion 101, the Federal Trade Commission shall—

15 (1) review the implementation of this title, in-  
16 cluding the effect of the implementation of this title  
17 on practices relating to the disclosure of information  
18 relating to children; and

19 (2) prepare and submit to Congress a report  
20 the results of the review under paragraph (1).

21 **SEC. 105. DEFINITIONS.**

22 In this title:

23 (1) CHILD.—The terms “child” and “children”  
24 means an individual or individuals, respectively,  
25 under the age of 16.

1           (2) OPERATOR.—The term “operator” means  
2 any person operating a website on the World Wide  
3 Webs for commercial purposes, or operating any on-  
4 line service, and includes any person offering prod-  
5 ucts or services for sale through that website or on-  
6 line service, involving commerce—

7           (A) among the several States or with 1 or  
8 more foreign nations;

9           (B) in any territory of the United States  
10 or in the District of Columbia, or between any  
11 such territory—

12           (i) and another such territory; or

13           (ii) and any State or foreign nation;

14           or

15           (C) between the District of Columbia and  
16 any State, territory, or foreign nation.

17 Such term does not include any non-profit entity  
18 that would otherwise be exempt from coverage under  
19 section 5 of the Federal Trade Commission Act (15  
20 U.S.C. 45).

21           (3) DISCLOSURE.—The term “disclosure”  
22 means, with respect to personal information—

23           (A) the release of information in identifi-  
24 able form by a person to any other person for  
25 any purpose; or

1 (B) making publicly available information  
2 in identifiable form by any means including by  
3 a public posting, through the use of a computer  
4 on or through—

5 (i) a home page of a website;

6 (ii) a pen pal service;

7 (iii) an electronic mail service;

8 (iv) a message board; or

9 (v) a chat room.

10 (4) PARENT.—The term “parent” means a  
11 legal guardian, including a biological or adoptive  
12 parent.

13 (5) PERSONAL INFORMATION.—The term “per-  
14 sonal information” means individually, identifiable  
15 information about an individual, including—

16 (A) a first and last name;

17 (B) a home or other physical address;

18 (C) an e-mail address;

19 (D) a telephone number;

20 (E) a Social Security number; or

21 (F) any other information that would fa-  
22 cilitate or enable the physical or online locating  
23 and contacting of a specific individual, includ-  
24 ing information that is associated with an iden-  
25 tifier described in this paragraph in such man-

1           ner as to become identifiable to a specific indi-  
2           vidual.

3           (6) VERIFIABLE PARENTAL CONSENT.—The  
4           term “verifiable parental consent” means any rea-  
5           sonable effort (taking into consideration available  
6           technology) to ensure that a parent of a child au-  
7           thorizes the disclosure of personal information and  
8           subsequent use of that information before that infor-  
9           mation is collected from that child.

10          (7) WEBSITE DIRECTED TO CHILDREN.—The  
11          term “website directed to children”—

12                 (A) means a commercial website that is—

13                         (i) targeted to children;

14                         (ii) directed to children by reason of  
15                         the subject matter, visual content, age of  
16                         models, language, characters, tone, mes-  
17                         sage, or any other similar characteristic of  
18                         the website; or

19                         (iii) used by a commercial website op-  
20                         erator to knowingly collect information  
21                         from children; and

22                 (B) includes any commercial website any  
23                 portion of which is directed to children, as spec-  
24                 ified in subparagraph (A).

1 **TITLE II—EXAMINATIONS OF**  
2 **INTERNET PRIVACY PROTEC-**  
3 **TIONS FOR ADULTS**

4 **SEC. 201. FEDERAL TRADE COMMISSION EXAMINATION.**

5 (a) PROCEEDING REQUIRED.—Within 6 months after  
6 the date of enactment of this Act, the Federal Trade Com-  
7 mission shall commence a proceeding—

8 (1) to determine whether consumers are able,  
9 and, if not, the methods by which consumers may be  
10 enabled—

11 (A) to have knowledge that consumer in-  
12 formation is being collected about them through  
13 their utilization of various telecommunications  
14 services and systems;

15 (B) to receive conspicuous notice that such  
16 information could be used, or is intended to be  
17 used, without authorization by the entity col-  
18 lecting the data for reasons unrelated to the  
19 original communications, or that such informa-  
20 tion could be sold (or is intended to be sold) to  
21 other companies or entities;

22 (C) to give notice to indicate the particular  
23 privacy preferences of the consumer with re-  
24 spect to the practices described in subpara-  
25 graphs (A) and (B);

1 (D) to exercise control over the collection  
2 of personal information and to stop the unau-  
3 thorized use, reuse, disclosure, or sale of that  
4 information;

5 (2) to solicit and review comment from the pub-  
6 lic and the National Telecommunication and Infor-  
7 mation Administration on the changes proposed pur-  
8 suant to paragraph (3); and

9 (3) to prepare recommendations to the Con-  
10 gress for any legislative changes required to correct  
11 such defects.

12 (b) SCHEDULE FOR FEDERAL TRADE COMMISSION  
13 RESPONSES.—The Federal Trade Commission shall, with-  
14 in 1 year after the date of enactment of this Act—

15 (1) complete any rulemaking required to revise  
16 Commission regulations to correct any defects in  
17 such regulations identified pursuant to subsection  
18 (a); and

19 (2) submit to Congress a report containing the  
20 recommendations required by subsection (a)(5).

21 **SEC. 202. FEDERAL COMMUNICATIONS COMMISSION EXAM-**  
22 **INATION.**

23 (a) PROCEEDING REQUIRED.—Within 6 months after  
24 the date of enactment of this Act, the Federal Commu-  
25 nications Commission shall commence a proceeding—

1           (1) to examine the impact of interconnected  
2           communications networks of telephone, cable, sat-  
3           ellite, wireless devices, and other technologies on the  
4           privacy rights and remedies of the consumers of  
5           those technologies, as described in paragraphs (1)  
6           and (2) of section 101(a);

7           (2) to determine whether consumers are able,  
8           and, if not, the methods by which consumers may be  
9           enabled to exercise such rights and remedies;

10          (3) to determine whether common carriers have  
11          taken adequate steps to secure the communications  
12          infrastructure and its components against unauthor-  
13          ized interception of communications and other per-  
14          sonal information;

15          (4) to propose changes in the Commission's reg-  
16          ulations to ensure that the effect on consumer pri-  
17          vacy rights is considered in the introduction of new  
18          telecommunications services and that the protection  
19          of such privacy rights and network security is incor-  
20          porated as necessary in the design of such services  
21          or the rules regulating such services;

22          (5) to propose changes in the Commission's reg-  
23          ulations as necessary to correct any defects identi-  
24          fied pursuant to this section in such rights, rem-  
25          edies, and security;

1           (6) to solicit and review comment from the pub-  
2       lic and the National Telecommunication and Infor-  
3       mation Administration on the changes proposed pur-  
4       suant to paragraph (5); and

5           (7) to prepare recommendations to the Con-  
6       gress for any legislative changes required to correct  
7       such defects.

8       (b) SCHEDULE FOR FEDERAL COMMUNICATIONS  
9       COMMISSION RESPONSES.—The Federal Communications  
10      Commission shall, within 1 year after the date of enact-  
11      ment of this Act—

12           (1) complete any rulemaking required to revise  
13      Commission regulations to correct defects in such  
14      regulations identified pursuant to subsection (a);  
15      and

16           (2) submit to the Congress a report containing  
17      the recommendations required by subsection (a)(6).

○