To require the Federal Trade Commission to prescribe regulations to protect the privacy of personal information collected from and about children on the Internet, to provide greater parental control over the collection and use of that information, and for other purposes.

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IN THE SENATE OF THE UNITED STATES

JULY 17, 1998

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

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A BILL

To require the Federal Trade Commission to prescribe regulations to protect the privacy of personal information collected from and about children on the Internet, to provide greater parental control over the collection and use of that information, and for other purposes.

1 Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

2 SECTION 1. SHORT TITLE.

3 This Act may be cited as the “Children’s Online Privacy Protection Act of 1998”.

4 SEC. 2. DEFINITIONS.

5 In this Act:
(1) CHILD.—The term “child” means an individual under the age of 16.

(2) CHILDREN.—The term “children” means more than 1 child.

(3) COMMERCIAL WEBSITE OPERATOR.—The term “commercial website operator” means any person operating a website on the World Wide Web for commercial purposes, including any person offering products or services for sale though that website, involving commerce—

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

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

(i) and another such territory; or

(ii) and any State or foreign nation;

or

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

(4) COMMISSION.—The term “Commission” means the Federal Trade Commission.

(5) DISCLOSURE.—The term “disclosure” means, with respect to personal information—
(A) the release of information in identifiable form by a person to any other person for any purpose; or

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

(i) a home page of a website;

(ii) a pen pal service;

(iii) an electronic mail service;

(iv) a message board; or

(v) a chat room.

(6) FEDERAL AGENCY.—The term “Federal agency” means an agency, as that term is defined in section 551(1) of title 5, United States Code.

(7) INTERNET.—The term “Internet” means the international computer network of both Federal and non-Federal interoperable packet switched data networks.

(8) PARENT.—The term “parent” means a legal guardian, including a biological or adoptive parent.

(9) PERSONAL INFORMATION.—The term “personal information” means individually, identifiable information about an individual, including—
(A) a first and last name;
(B) a home or other physical address;
(C) an e-mail address;
(D) a telephone number;
(E) a Social Security number; or
(F) any other information that would facilitate or enable the physical or online locating and contacting of a specific individual, including information that is associated with an identifier described in this paragraph in such manner as to become identifiable to a specific individual.

(10) VERIFIABLE PARENTAL CONSENT.—The term “verifiable parental consent” means any reasonable effort (taking into consideration available technology) to ensure that a parent of a child authorizes the disclosure of personal information and subsequent use of that information before that information is collected from that child.

(11) WEBSITE DIRECTED TO CHILDREN.—The term “website directed to children”—
(A) means a commercial website that is—
(i) targeted to children;
(ii) directed to children by reason of the subject matter, visual content, age of
models, language, characters, tone, message, or any other similar characteristic of the website; or

(iii) used by a commercial website operator to knowingly collect information from children; and

(B) includes any commercial website any portion of which is directed to children, as specified in subparagraph (A).

(12) Person.—The term “person” means any individual, partnership, corporation, trust, estate, cooperative, association, or other entity.

SEC. 3. REGULATION OF UNFAIR AND DECEPTIVE ACTS AND PRACTICES IN CONNECTION WITH THE COLLECTION AND USE OF PERSONAL INFORMATION FROM AND ABOUT CHILDREN ON THE INTERNET.

(a) Regulations.—

(1) In general.—Not later than 1 year after the date of enactment of this Act, the Commission shall, in a manner consistent with section 553 of title 5, United States Code, prescribe regulations requiring commercial website operators to follow fair information practices in connection with the collection and use of personal information from children.
(2) CONTENTS.—The regulations issued under this subsection shall—

(A) require that any website directed to children that collects personal information from children—

(i) provide clear, prominent, understandable notice of the information collection and use practices of the website operator through the website;

(ii) obtain verifiable parental consent for the collection, use, or disclosure of personal information from children who are under the age of 13;

(iii) use reasonable efforts to provide the parents with notice and an opportunity to prevent or curtail the collection or use of personal information collected from children over the age of 12 and under the age of 17;

(iv) provide a parent—

(I) access to the personal information of the child of that parent collected by that website; and

(II) the opportunity to refuse to permit any further use or future col-
lection of personal information referred to in subclause (I) and notice of that opportunity; and

(B) require that the commercial website operator concerned establish and maintain reasonable procedures to ensure the confidentiality, security, accuracy, and integrity of personal information collected from children through the website.

(b) Enforcement.—

(1) Treatment of regulations.—A regulation prescribed under subsection (a) shall be treated as a rule defining an unfair or deceptive act or practice under section 18(a)(1)(B) of the Federal Trade Commission Act (15 U.S.C. 57a(a)(1)(B)).

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

SEC. 4. SAFE HARBORS.

(a) In general.—In prescribing regulations under section 3, the Commission shall provide incentives for efforts of self-regulation by commercial website operators to
implement the protections described in subsection (a) of that section.

(b) SAFE HARBORS.—The incentives referred to in subsection (a) shall include provisions for ensuring that a person will be deemed to be in compliance with the requirements of the regulations under section 3 if that person applies guidelines that—

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

(2) are approved by the Commission upon making a determination that the guidelines meet the requirements of the regulations issued under section 3.

SEC. 5. ACTIONS BY STATES.

(a) IN GENERAL.—

(1) CIVIL ACTIONS.—In any case in which the attorney general of a State has reason to believe that an interest of the residents of that State has been or is threatened or adversely affected by the engagement of any person in a practice that violates any regulation of the Commission prescribed under section 3, the State, as parens patriae, may bring a civil action on behalf of the residents of the State in a district court of the United States of appropriate jurisdiction to—

(A) enjoin that practice;
(B) enforce compliance with the regulation;

(C) obtain damage, restitution, or other compensation on behalf of residents of the State; or

(D) obtain such other relief as the court may consider to be appropriate.

(2) NOTICE.—

(A) IN GENERAL.—Before filing an action under paragraph (1), the attorney general of the State involved shall provide to the Commission—

(i) written notice of that action; and

(ii) a copy of the complaint for that action.

(B) EXEMPTION.—

(i) IN GENERAL.—Subparagraph (A) shall not apply with respect to the filing of an action by an attorney general of a State under this subsection, if the attorney general determines that it is not feasible to provide the notice described in that subparagraph before the filing of the action.

(ii) NOTIFICATION.—In an action described in clause (i), the attorney general of a State shall provide notice and a copy
of the complaint to the Commission at the same time as the attorney general files the action.

(b) Intervention.—

(1) In general.—On receiving notice under paragraph (2), the Commission shall have the right to intervene in the action that is the subject of the notice.

(2) Effect of intervention.—If the Commission intervenes in an action under subparagraph (A), the Commission shall have the right—

(A) to be heard with respect to any matter that arises in that action; and

(B) to file a petition for appeal.

(c) Construction.—For purposes of bringing any civil action under subsection (a), nothing in this Act shall be construed to prevent an attorney general of a State from exercising the powers conferred on the attorney general by the laws of that State to—

(1) conduct investigations;

(2) administer oaths or affirmations; or

(3) compel the attendance of witnesses or the production of documentary and other evidence.

(d) Actions by the Commission.—In any case in which an action is instituted by or on behalf of the Com-
mission for violation of any regulation prescribed under section 3, no State may, during the pendency of that action, institute an action under subsection (a) against any defendant named in the complaint in that action for violation of that regulation.

(e) VENUE; SERVICE OF PROCESS.—

(1) VENUE.—Any action brought under subsection (a) may be brought in the district court of the United States—

(A) in which the defendant—

(i) is found;

(ii) is an inhabitant; or

(iii) transacts business; or

(B) that otherwise meets applicable requirements relating to venue under section 1391 of title 28, United States Code.

(2) SERVICE OF PROCESS.—In an action brought under subsection (a), process may be served in any district in which the defendant—

(A) is an inhabitant; or

(B) may be found.

(f) ACTIONS BY OTHER STATE OFFICIALS.—

(1) IN GENERAL.—Nothing in this section may be construed to prohibit a State official from proceeding a court of the State in accordance with the
laws of that State on the basis of an alleged violation of any civil or criminal law of that State.

(2) Certain actions in state courts.—In addition to any actions brought by an attorney general of a State under subsection (a), an action described in paragraph (1) may be brought by any other officer of that State who is authorized by the State to bring such an action in that State on behalf of the residents of the State.

SEC. 6. ADMINISTRATION AND APPLICABILITY OF ACT.

(a) In General.—Except as otherwise provided, this Act shall be enforced by the Commission under the Federal Trade Commission Act (15 U.S.C. 41 et seq.).

(b) Provisions.—Compliance with the requirements imposed under this subchapter shall be enforced under—

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

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

(B) member banks of the Federal Reserve System (other than national banks), branches and agencies of foreign banks (other than Federal branches, Federal agencies, and insured State branches of foreign banks), commercial
lending companies owned or controlled by for-
egn banks, and organizations operating under
section 25 or 25(a) of the Federal Reserve Act
(12 U.S.C. 601 et seq. and 611 et seq.), by the
Board; and

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

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

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

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

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

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

(e) Exercise of Certain Powers.—For the purpose of the exercise by any agency referred to in subsection (a) of its powers under any Act referred to in that subsection, a violation of any requirement imposed under this Act shall be deemed to be a violation of a requirement imposed under that Act. In addition to its powers under any provision of law specifically referred to in subsection (a), each of the agencies referred to in that subsection may exercise, for the purpose of enforcing compliance with any requirement imposed under this Act, any other authority conferred on it by law.

(d) Actions by the Commission.—The Commission shall prevent any person from violating a rule of the Commission under section 3 in the same manner, by the same means, and with the same jurisdiction, powers, and duties as though all applicable terms and provisions of the Federal Trade Commission Act (15 U.S.C. 41 et seq.)
were incorporated into and made a part of this Act. Any entity that violates such rule shall be subject to the penalties and entitled to the privileges and immunities provided in the Federal Trade Commission Act in the same manner, by the same means, and with the same jurisdiction, power, and duties as though all applicable terms and provisions of the Federal Trade Commission Act were incorporated into and made a part of this Act.

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

SEC. 7. REVIEW.

(a) IN GENERAL.—Not later than 5 years after the effective date of the regulations initially issued under section 3, the Commission shall—

(1) review the implementation of this Act, including the effect of the implementation of this Act on practices relating to the disclosure of information relating to children; and

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