

Union Calendar No. 553

106TH CONGRESS
2^D SESSION

H. R. 4049

[Report No. 106-919]

To establish the Commission for the Comprehensive Study of Privacy
Protection.

IN THE HOUSE OF REPRESENTATIVES

MARCH 21, 2000

Mr. HUTCHINSON (for himself, Mr. MORAN of Virginia, Ms. GRANGER, Mr. BRADY of Texas, Mr. DAVIS of Florida, Ms. PRYCE of Ohio, Mr. SUNUNU, Mr. BARRETT of Wisconsin, Mr. COBURN, Mr. DICKEY, Mr. KLECZKA, Mr. PITTS, Mr. GREENWOOD, Mr. RILEY, Mr. DUNCAN, Mr. LUCAS of Oklahoma, Mr. KOLBE, Mr. CAMPBELL, Mrs. KELLY, Mr. DAVIS of Virginia, and Mr. VITTER) introduced the following bill; which was referred to the Committee on Government Reform

SEPTEMBER 29, 2000

Additional sponsors: Mr. TURNER, Mr. WEINER, Mr. GREEN of Wisconsin, Mr. DOOLEY of California, Mr. BILBRAY, Ms. RIVERS, Mr. THUNE, Mr. ENGLISH, Mrs. BIGGERT, Mr. MURTHA, Mrs. ROUKEMA, Mr. ISAKSON, Mr. SHIMKUS, Mr. RYAN of Wisconsin, Mr. REYNOLDS, and Mr. CUNNINGHAM

SEPTEMBER 29, 2000

Reported with an amendment, committed to the Committee of the Whole
House on the State of the Union, and ordered to be printed

[Strike out all after the enacting clause and insert the part printed in italic]

[For text of introduced bill, see copy of bill as introduced on March 21, 2000]

A BILL

To establish the Commission for the Comprehensive Study
of Privacy Protection.

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 “Privacy Commission*
5 *Act”.*

6 **SEC. 2. FINDINGS.**

7 *The Congress finds the following:*

8 (1) *Americans are increasingly concerned about*
9 *their civil liberties and the security and use of their*
10 *personal information, including medical records, edu-*
11 *cational records, library records, magazine subscrip-*
12 *tion records, records of purchases of goods and other*
13 *payments, and driver’s license numbers.*

14 (2) *Commercial entities are increasingly aware*
15 *that consumers expect them to adopt privacy policies*
16 *and take all appropriate steps to protect the personal*
17 *information of consumers.*

18 (3) *There is a growing concern about the con-*
19 *fidentiality of medical records, because there are inad-*

1 *equate Federal guidelines and a patchwork of con-*
2 *fusing State and local rules regarding privacy protec-*
3 *tion for individually identifiable patient information.*

4 *(4) In light of recent changes in financial serv-*
5 *ices laws allowing for increased sharing of informa-*
6 *tion between traditional financial institutions and*
7 *insurance entities, a coordinated and comprehensive*
8 *review is necessary regarding the protections of per-*
9 *sonal data compiled by the health care, insurance,*
10 *and financial services industries.*

11 *(5) The use of Social Security numbers has ex-*
12 *panded beyond the uses originally intended.*

13 *(6) Use of the Internet has increased at astound-*
14 *ing rates, with approximately 5 million current*
15 *Internet sites and 64 million regular Internet users*
16 *each month in the United States alone.*

17 *(7) Financial transactions over the Internet have*
18 *increased at an astounding rate, with 17 million*
19 *American households spending \$20 billion shopping*
20 *on the Internet last year.*

21 *(8) Use of the Internet as a medium for commer-*
22 *cial activities will continue to grow, and it is esti-*
23 *mated that by the end of 2000, 56 percent of the com-*
24 *panies in the United States will sell their products on*
25 *the Internet.*

1 (9) *There have been reports of surreptitious col-*
2 *lection of consumer data by Internet marketers and*
3 *questionable distribution of personal information by*
4 *on-line companies.*

5 (10) *In 1999, the Federal Trade Commission*
6 *found that 87 percent of Internet sites provided some*
7 *form of privacy notice, which represented an increase*
8 *from 15 percent in 1998.*

9 (11) *The United States is the leading economic*
10 *and social force in the global information economy,*
11 *largely because of a favorable regulatory climate and*
12 *the free flow of information. It is important for the*
13 *United States to continue that leadership. As nations*
14 *and governing bodies around the world begin to estab-*
15 *lish privacy standards, these standards will directly*
16 *affect the United States.*

17 (12) *The shift from an industry-focused economy*
18 *to an information-focused economy calls for a reas-*
19 *essment of the most effective way to balance personal*
20 *privacy and information use, keeping in mind the po-*
21 *tential for unintended effects on technology develop-*
22 *ment, innovation, the marketplace, and privacy*
23 *needs.*

24 (13) *This Act shall not be construed to prohibit*
25 *the enactment of legislation on privacy issues by the*

1 *Congress during the existence of the Commission. It is*
2 *the responsibility of the Congress to act to protect the*
3 *privacy of individuals, including individuals' medical*
4 *and financial information. Various committees of the*
5 *Congress are currently reviewing legislation in the*
6 *area of medical and financial privacy. Further study*
7 *by the Commission established by this Act should not*
8 *be considered a prerequisite for further consideration*
9 *or enactment of financial or medical privacy legisla-*
10 *tion by the Congress.*

11 **SEC. 3. ESTABLISHMENT.**

12 *There is established a commission to be known as the*
13 *“Commission for the Comprehensive Study of Privacy Pro-*
14 *tection” (in this Act referred to as the “Commission”).*

15 **SEC. 4. DUTIES OF COMMISSION.**

16 *(a) STUDY.—The Commission shall conduct a study*
17 *of issues relating to protection of individual privacy and*
18 *the appropriate balance to be achieved between protecting*
19 *individual privacy and allowing appropriate uses of infor-*
20 *mation, including the following:*

21 *(1) The monitoring, collection, and distribution*
22 *of personal information by Federal, State, and local*
23 *governments, including personal information collected*
24 *for a decennial census, and such personal information*
25 *as a driver's license number.*

1 (2) *Current efforts to address the monitoring,*
2 *collection, and distribution of personal information*
3 *by Federal and State governments, individuals, or en-*
4 *tities, including—*

5 (A) *existing statutes and regulations relat-*
6 *ing to the protection of individual privacy, such*
7 *as section 552a of title 5, United States Code*
8 *(commonly referred to as the Privacy Act of*
9 *1974) and section 552 of title 5, United States*
10 *Code (commonly referred to as the Freedom of*
11 *Information Act);*

12 (B) *legislation pending before the Congress;*

13 (C) *privacy protection efforts undertaken by*
14 *the Federal Government, State governments, for-*
15 *foreign governments, and international governing*
16 *bodies;*

17 (D) *privacy protection efforts undertaken by*
18 *the private sector; and*

19 (E) *self-regulatory efforts initiated by the*
20 *private sector to respond to privacy issues.*

21 (3) *The monitoring, collection, and distribution*
22 *of personal information by individuals or entities, in-*
23 *cluding access to and use of medical records, financial*
24 *records (including credit cards, automated teller ma-*
25 *chine cards, bank accounts, and Internet trans-*

1 actions), personal information provided to on-line
2 sites accessible through the Internet, Social Security
3 numbers, insurance records, education records, and
4 driver's license numbers.

5 (4) Employer practices and policies with respect
6 to the financial and health information of employees,
7 including—

8 (A) whether employers use or disclose em-
9 ployee financial or health information for mar-
10 keting, employment, or insurance underwriting
11 purposes;

12 (B) what restrictions employers place on
13 disclosure or use of employee financial or health
14 information;

15 (C) employee rights to access, copy, and
16 amend their own health records and financial
17 information;

18 (D) what type of notice employers provide
19 to employees regarding employer practices with
20 respect to employee financial and health infor-
21 mation; and

22 (E) practices of employer medical depart-
23 ments with respect to disclosing employee health
24 information to administrative or other personnel
25 of the employer.

1 (5) *The extent to which individuals in the*
2 *United States can obtain redress for privacy viola-*
3 *tions.*

4 (6) *The extent to which older individuals and*
5 *disabled individuals are subject to exploitation involv-*
6 *ing the disclosure or use of their financial informa-*
7 *tion.*

8 (b) *FIELD HEARINGS.—*

9 (1) *IN GENERAL.—The Commission shall conduct*
10 *at least 2 field hearings in each of the 5 geographical*
11 *regions of the United States.*

12 (2) *BOUNDARIES.—For purposes of this sub-*
13 *section, the Commission may determine the bound-*
14 *aries of the five geographical regions of the United*
15 *States.*

16 (c) *REPORT.—*

17 (1) *IN GENERAL.—Not later than 18 months*
18 *after appointment of all members of the*
19 *Commission—*

20 (A) *a majority of the members of the Com-*
21 *mission shall approve a report; and*

22 (B) *the Commission shall submit the ap-*
23 *proved report to the Congress and the President.*

1 (2) *CONTENTS.*—*The report shall include a de-*
2 *tailed statement of findings, conclusions, and rec-*
3 *ommendations, including the following:*

4 (A) *Findings on potential threats posed to*
5 *individual privacy.*

6 (B) *Analysis of purposes for which sharing*
7 *of information is appropriate and beneficial to*
8 *consumers.*

9 (C) *Analysis of the effectiveness of existing*
10 *statutes, regulations, private sector self-regu-*
11 *latory efforts, technology advances, and market*
12 *forces in protecting individual privacy.*

13 (D) *Recommendations on whether addi-*
14 *tional legislation is necessary, and if so, specific*
15 *suggestions on proposals to reform or augment*
16 *current laws and regulations relating to indi-*
17 *vidual privacy.*

18 (E) *Analysis of purposes for which addi-*
19 *tional regulations may impose undue costs or*
20 *burdens, or cause unintended consequences in*
21 *other policy areas, such as security, law enforce-*
22 *ment, medical research, or critical infrastructure*
23 *protection.*

24 (F) *Cost analysis of legislative or regulatory*
25 *changes proposed in the report.*

1 (G) *Recommendations on non-legislative so-*
2 *lutions to individual privacy concerns, including*
3 *education, market-based measures, industry best*
4 *practices, and new technology.*

5 (H) *Review of the effectiveness and utility*
6 *of third-party verification of privacy statements,*
7 *including specifically with respect to existing*
8 *private sector self-regulatory efforts.*

9 (d) *ADDITIONAL REPORT.—Together with the report*
10 *under subsection (c), the Commission shall submit to the*
11 *Congress and the President any additional report of dis-*
12 *senting opinions or minority views by a member of the*
13 *Commission.*

14 (e) *INTERIM REPORT.—The Commission may submit*
15 *to the Congress and the President an interim report ap-*
16 *proved by a majority of the members of the Commission.*

17 **SEC. 5. MEMBERSHIP.**

18 (a) *NUMBER AND APPOINTMENT.—The Commission*
19 *shall be composed of 17 members appointed as follows:*

20 (1) *4 members appointed by the President.*

21 (2) *4 members appointed by the majority leader*
22 *of the Senate.*

23 (3) *2 members appointed by the minority leader*
24 *of the Senate.*

1 (4) 4 members appointed by the Speaker of the
2 *House of Representatives.*

3 (5) 2 members appointed by the minority leader
4 *of the House of Representatives.*

5 (6) 1 member, who shall serve as Chairperson of
6 *the Commission, appointed jointly by the President,*
7 *the majority leader of the Senate, and the Speaker of*
8 *the House of Representatives.*

9 (b) *DIVERSITY OF VIEWS.*—*The appointing authorities*
10 *under subsection (a) shall seek to ensure that the member-*
11 *ship of the Commission has a diversity of views and experi-*
12 *ences on the issues to be studied by the Commission, such*
13 *as views and experiences of Federal, State, and local gov-*
14 *ernments, the media, the academic community, consumer*
15 *groups, public policy groups and other advocacy organiza-*
16 *tions, business and industry (including small business), the*
17 *medical community, civil liberties experts, and the finan-*
18 *cial services industry.*

19 (c) *DATE OF APPOINTMENT.*—*The appointment of the*
20 *members of the Commission shall be made not later than*
21 *30 days after the date of the enactment of this Act.*

22 (d) *TERMS.*—*Each member of the Commission shall be*
23 *appointed for the life of the Commission.*

1 (e) *VACANCIES.*—*A vacancy in the Commission shall*
2 *be filled in the same manner in which the original appoint-*
3 *ment was made.*

4 (f) *COMPENSATION; TRAVEL EXPENSES.*—*Members of*
5 *the Commission shall serve without pay, but shall receive*
6 *travel expenses, including per diem in lieu of subsistence,*
7 *in accordance with sections 5702 and 5703 of title 5, United*
8 *States Code.*

9 (g) *QUORUM.*—*A majority of the members of the Com-*
10 *mission shall constitute a quorum, but a lesser number may*
11 *hold hearings.*

12 (h) *MEETINGS.*—

13 (1) *IN GENERAL.*—*The Commission shall meet at*
14 *the call of the Chairperson or a majority of its mem-*
15 *bers.*

16 (2) *INITIAL MEETING.*—*Not later than 45 days*
17 *after the date of the enactment of this Act, the Com-*
18 *mission shall hold its initial meeting.*

19 **SEC. 6. DIRECTOR; STAFF; EXPERTS AND CONSULTANTS.**

20 (a) *DIRECTOR.*—

21 (1) *IN GENERAL.*—*On or after October 1, 2000,*
22 *the Commission shall appoint a Director without re-*
23 *gard to the provisions of title 5, United States Code,*
24 *governing appointments to the competitive service.*

1 (2) *PAY.*—*The Director shall be paid at the rate*
2 *payable for level III of the Executive Schedule estab-*
3 *lished under section 5314 of such title.*

4 (b) *STAFF.*—*The Director may appoint staff as the Di-*
5 *rector determines appropriate.*

6 (c) *APPLICABILITY OF CERTAIN CIVIL SERVICE*
7 *LAWS.*—

8 (1) *IN GENERAL.*—*The staff of the Commission*
9 *shall be appointed without regard to the provisions of*
10 *title 5, United States Code, governing appointments*
11 *in the competitive service.*

12 (2) *PAY.*—*The staff of the Commission shall be*
13 *paid in accordance with the provisions of chapter 51*
14 *and subchapter III of chapter 53 of that title relating*
15 *to classification and General Schedule pay rates, but*
16 *at rates not in excess of the maximum rate for grade*
17 *GS–15 of the General Schedule under section 5332 of*
18 *that title.*

19 (d) *EXPERTS AND CONSULTANTS.*—*The Director may*
20 *procure temporary and intermittent services under section*
21 *3109(b) of title 5, United States Code.*

22 (e) *STAFF OF FEDERAL AGENCIES.*—

23 (1) *IN GENERAL.*—*Upon request of the Director,*
24 *the head of any Federal department or agency may*
25 *detail, on a reimbursable basis, any of the personnel*

1 of that department or agency to the Commission to
2 assist it in carrying out this Act.

3 (2) *NOTIFICATION.*—Before making a request
4 under this subsection, the Director shall give notice of
5 the request to each member of the Commission.

6 **SEC. 7. POWERS OF COMMISSION.**

7 (a) *HEARINGS AND SESSIONS.*—The Commission may,
8 for the purpose of carrying out this Act, hold hearings, sit
9 and act at times and places, take testimony, and receive
10 evidence as the Commission considers appropriate. The
11 Commission may administer oaths or affirmations to wit-
12 nesses appearing before it.

13 (b) *POWERS OF MEMBERS AND AGENTS.*—Any mem-
14 ber or agent of the Commission may, if authorized by the
15 Commission, take any action which the Commission is au-
16 thorized to take by this section.

17 (c) *OBTAINING OFFICIAL INFORMATION.*—

18 (1) *IN GENERAL.*—Except as provided in para-
19 graph (2), if the Chairperson of the Commission sub-
20 mits a request to a Federal department or agency for
21 information necessary to enable the Commission to
22 carry out this Act, the head of that department or
23 agency shall furnish that information to the Commis-
24 sion.

1 (2) *EXCEPTION FOR NATIONAL SECURITY.*—If the
2 head of that department or agency determines that it
3 is necessary to guard that information from disclo-
4 sure to protect the national security interests of the
5 United States, the head shall not furnish that infor-
6 mation to the Commission.

7 (d) *MAILS.*—The Commission may use the United
8 States mails in the same manner and under the same condi-
9 tions as other departments and agencies of the United
10 States.

11 (e) *ADMINISTRATIVE SUPPORT SERVICES.*—Upon the
12 request of the Director, the Administrator of General Serv-
13 ices shall provide to the Commission, on a reimbursable
14 basis, the administrative support services necessary for the
15 Commission to carry out this Act.

16 (f) *GIFTS AND DONATIONS.*—The Commission may ac-
17 cept, use, and dispose of gifts or donations of services or
18 property to carry out this Act, but only to the extent or
19 in the amounts provided in advance in appropriation Acts.

20 (g) *CONTRACTS.*—The Commission may contract with
21 and compensate persons and government agencies for sup-
22 plies and services, without regard to section 3709 of the Re-
23 vised Statutes (41 U.S.C. 5).

24 (h) *SUBPOENA POWER.*—

1 (1) *IN GENERAL.*—*The Commission may issue*
2 *subpoenas requiring the attendance and testimony of*
3 *witnesses and the production of any evidence relating*
4 *to any matter that the Commission is empowered to*
5 *investigate by section 4. The attendance of witnesses*
6 *and the production of evidence may be required by*
7 *such subpoena from any place within the United*
8 *States and at any specified place of hearing within*
9 *the United States.*

10 (2) *FAILURE TO OBEY A SUBPOENA.*—*If a person*
11 *refuses to obey a subpoena issued under paragraph*
12 *(1), the Commission may apply to a United States*
13 *district court for an order requiring that person to*
14 *appear before the Commission to give testimony,*
15 *produce evidence, or both, relating to the matter*
16 *under investigation. The application may be made*
17 *within the judicial district where the hearing is con-*
18 *ducted or where that person is found, resides, or*
19 *transacts business. Any failure to obey the order of*
20 *the court may be punished by the court as civil con-*
21 *tempt.*

22 (3) *SERVICE OF SUBPOENAS.*—*The subpoenas of*
23 *the Commission shall be served in the manner pro-*
24 *vided for subpoenas issued by a United States district*

1 *court under the Federal Rules of Civil Procedure for*
2 *the United States district courts.*

3 (4) *SERVICE OF PROCESS.*—*All process of any*
4 *court to which application is made under paragraph*
5 (2) *may be served in the judicial district in which the*
6 *person required to be served resides or may be found.*

7 **SEC. 8. TERMINATION.**

8 *The Commission shall terminate 30 days after submit-*
9 *ting a report under section 4(c).*

10 **SEC. 9. AUTHORIZATION OF APPROPRIATIONS.**

11 (a) *IN GENERAL.*—*There are authorized to be appro-*
12 *priated to the Commission \$5,000,000 to carry out this Act.*

13 (b) *AVAILABILITY.*—*Any sums appropriated pursuant*
14 *to the authorization in subsection (a) shall remain available*
15 *until expended.*

16 **SEC. 10. BUDGET ACT COMPLIANCE.**

17 *Any new contract authority authorized by this Act*
18 *shall be effective only to the extent or in the amounts pro-*
19 *vided in advance in appropriation Acts.*

20 **SEC. 11. PRIVACY PROTECTIONS.**

21 (a) *DESTRUCTION OR RETURN OF INFORMATION RE-*
22 *QUIRED.*—*Upon the conclusion of the matter or need for*
23 *which individually identifiable information was disclosed*
24 *to the Commission, the Commission shall either destroy the*
25 *individually identifiable information or return it to the*

1 *person or entity from which it was obtained, unless the in-*
2 *dividual that is the subject of the individually identifiable*
3 *information has authorized its disclosure.*

4 (b) *DISCLOSURE OF INFORMATION PROHIBITED.—The*
5 *Commission—*

6 (1) *shall protect individually identifiable infor-*
7 *mation from improper use; and*

8 (2) *may not disclose such information to any*
9 *person, including the Congress or the President, un-*
10 *less the individual that is the subject of the informa-*
11 *tion has authorized such a disclosure.*

12 (c) *PROPRIETARY BUSINESS INFORMATION AND FI-*
13 *NANCIAL INFORMATION.—The Commission shall protect*
14 *from improper use, and may not disclose to any person,*
15 *proprietary business information and proprietary financial*
16 *information that may be viewed or obtained by the Com-*
17 *mission in the course of carrying out its duties under this*
18 *Act.*

19 (d) *INDIVIDUALLY IDENTIFIABLE INFORMATION DE-*
20 *FINED.—For the purposes of this Act, the term “individ-*
21 *ually identifiable information” means any information,*
22 *whether oral or recorded in any form or medium, that iden-*
23 *tifies an individual, or with respect to which there is a rea-*
24 *sonable basis to believe that the information can be used*
25 *to identify an individual.*

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