

106TH CONGRESS
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H. R. 5430

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

IN THE HOUSE OF REPRESENTATIVES

OCTOBER 10, 2000

Mr. GREEN of Texas introduced the following bill; which was referred to the Committee on Commerce

A BILL

To require the Federal Trade Commission to prescribe regulations to protect the privacy of personal information collected from and about individuals on the Internet, to provide greater individual control over the collection and use of that information, 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 “Consumer Online Pri-
5 vacy and Disclosure Act”.

1 **SEC. 2. REGULATION OF UNFAIR AND DECEPTIVE ACTS**
2 **AND PRACTICES IN CONNECTION WITH THE**
3 **COLLECTION, USE, AND DISCLOSURE OF PER-**
4 **SONAL INFORMATION.**

5 (a) ACTS PROHIBITED.—

6 (1) IN GENERAL.—Except as provided in para-
7 graph (2), it is unlawful for an operator of a Web
8 site or online service to collect, use, or disclose per-
9 sonal information in a manner that violates the reg-
10 ulations prescribed under subsection (b).

11 (2) DISCLOSURE.—Notwithstanding paragraph
12 (1), neither an operator of a Web site or online serv-
13 ice nor the operator's agent shall be held liable
14 under this Act for any disclosure made in good faith
15 and following reasonable procedures in responding to
16 a request under subsection (b)(1)(B) by an indi-
17 vidual for disclosure of personal information per-
18 taining to such individual.

19 (3) CROSS TABULATION OF INTERNET DATA.—

20 Unless there is a pre-existing business relationship,
21 no Web site or ISP may correlate IPS address infor-
22 mation with personal information.

23 (b) REGULATIONS.—

24 (1) IN GENERAL.—Not later than 1 year after
25 the date of the enactment of this Act, the Commis-

1 sion shall promulgate under section 553 of title 5,
2 United States Code, regulations that—

3 (A) require the operator of any Web site or
4 online service—

5 (i) to provide notice on its Web site in
6 a format that the average person can un-
7 derstand which notice shall be clear and
8 conspicuous and shall provide the identity
9 of the operator, the physical and electronic
10 mail address of the operator, what per-
11 sonal information is collected by the oper-
12 ator, how the operator uses such informa-
13 tion, and what information may be shared
14 or sold with other companies;

15 (ii) to provide a meaningful and sim-
16 ple online process for individuals to opt-out
17 the disclosure of personal information for
18 purposes unrelated to those for which such
19 information was obtained or described in
20 the notice under clause (i); and

21 (iii) to provide a description of the
22 specific types of personal information col-
23 lected by that operator that is either sold,
24 shared, or transferred to an external com-
25 pany or third party.

1 (2) WHEN PURPOSE LIMITATION NOT RE-
2 QUIRED.—The regulations shall provide that the un-
3 related purpose limitation required under paragraph
4 (1)(A)(ii) is not required for—

5 (A) transactional information where per-
6 sonal information is not removed;

7 (B) personal information where it is used
8 to render or conduct a business activity related
9 to the business of the operator (for example,
10 the use of an e-mail address to respond to an
11 e-mail communication); or

12 (C) the collection, use, or dissemination of
13 such information by the operator of such a Web
14 site or online service necessary to the extent re-
15 quired under other provisions of law.

16 (c) ENFORCEMENT.—Subject to this section and sec-
17 tion 4, a violation of a regulation prescribed under sub-
18 section (a) shall be treated as a violation of a rule defining
19 an unfair or deceptive act or practice prescribed under sec-
20 tion 18(a)(1)(B) of the Federal Trade Commission Act
21 (15 U.S.C. 57a(a)(1)(B)).

22 (d) NO REQUIREMENT TO COLLECT OR MAINTAIN
23 DATA.—Nothing in this Act shall be interpreted to require
24 an operator to collect or maintain any data that would
25 not otherwise be collected or maintained.

1 **SEC. 3. ACTIONS BY STATES.**

2 (a) IN GENERAL.—

3 (1) CIVIL ACTIONS.—In any case in which the
4 attorney general of a State has reason to believe
5 that an interest of the residents of that State has
6 been or is threatened or adversely affected by the
7 engagement of any person in a practice that violates
8 any regulation of the Commission prescribed under
9 section 2, the State may bring a civil action on be-
10 half of the residents of the State in a district court
11 of the United States of appropriate jurisdiction to—

12 (A) enjoin that practice;

13 (B) enforce compliance with the regulation;

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

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

19 (2) NOTICE.—

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

24 (i) written notice of that action; and

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

1 (B) EXEMPTION.—

2 (i) IN GENERAL.—Subparagraph (A)
3 shall not apply with respect to the filing of
4 an action by an attorney general of a State
5 under this subsection, if the attorney gen-
6 eral determines that it is not feasible to
7 provide the notice described in that sub-
8 paragraph before the filing of the action.

9 (ii) NOTIFICATION.—In an action de-
10 scribed in clause (i), the attorney general
11 of a State shall provide notice and a copy
12 of the complaint to the Commission at the
13 same time as the attorney general files the
14 action.

15 (b) INTERVENTION.—

16 (1) IN GENERAL.—On receiving notice under
17 subsection (a)(2), the Commission shall have the
18 right to intervene in the action that is the subject
19 of the notice.

20 (2) EFFECT OF INTERVENTION.—If the Com-
21 mission intervenes in an action under subsection (a),
22 it shall have the right—

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

25 (B) to file a petition for appeal.

1 (3) AMICUS CURIAE.—Upon application to the
2 court, a person whose self-regulatory guidelines have
3 been approved by the Commission and are relied
4 upon as a defense by any defendant to a proceeding
5 under this section may file amicus curiae in that
6 proceeding.

7 (c) CONSTRUCTION.—For purposes of bringing any
8 civil action under subsection (a), nothing in this Act shall
9 be construed to prevent an attorney general of a State
10 from exercising the powers conferred on the attorney gen-
11 eral by the laws of that State to—

12 (1) conduct investigations;

13 (2) administer oaths or affirmations; or

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

16 (d) VENUE; SERVICE OF PROCESS.—

17 (1) VENUE.—Any action brought under sub-
18 section (a) may be brought in the district court of
19 the United States that meets applicable require-
20 ments relating to venue under section 1391 of title
21 28, United States Code.

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

25 (A) is an inhabitant; or

1 (B) may be found.

2 **SEC. 4. ADMINISTRATION AND APPLICABILITY OF ACT.**

3 (a) IN GENERAL.—Except as otherwise provided, this
4 Act shall be enforced by the Commission under the Fed-
5 eral Trade Commission Act (15 U.S.C. 41 et seq.).

6 (b) PROVISIONS.—Compliance with the requirements
7 imposed under this Act shall be enforced under—

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

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

13 (B) member banks of the Federal Reserve
14 System (other than national banks), branches
15 and agencies of foreign banks (other than Fed-
16 eral branches, Federal agencies, and insured
17 State branches of foreign banks), commercial
18 lending companies owned or controlled by for-
19 eign banks, and organizations operating under
20 section 25 or 25(a) of the Federal Reserve Act
21 (12 U.S.C. 601 et seq. and 611 et seq.), by the
22 Board; and

23 (C) banks insured by the Federal Deposit
24 Insurance Corporation (other than members of
25 the Federal Reserve System) and insured State

1 branches of foreign banks, by the Board of Di-
2 rectors of the Federal Deposit Insurance Cor-
3 poration;

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

9 (3) the Federal Credit Union Act (12 U.S.C.
10 1751 et seq.) by the National Credit Union Adminis-
11 tration Board with respect to any Federal credit
12 union;

13 (4) part A of subtitle VII of title 49, United
14 States Code, by the Secretary of Transportation
15 with respect to any air carrier or foreign air carrier
16 subject to that part;

17 (5) the Packers and Stockyards Act, 1921 (7
18 U.S.C. 181 et seq.) (except as provided in section
19 406 of that Act (7 U.S.C. 226, 227)), by the Sec-
20 retary of Agriculture with respect to any activities
21 subject to that Act; and

22 (6) the Farm Credit Act of 1971 (12 U.S.C.
23 2001 et seq.) by the Farm Credit Administration
24 with respect to any Federal land bank, Federal land

1 bank association, Federal intermediate credit bank,
2 or production credit association.

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

14 (d) ACTIONS BY THE COMMISSION.—The Commis-
15 sion shall prevent any person from violating a rule of the
16 Commission under section 2 in the same manner, by the
17 same means, and with the same jurisdiction, powers, and
18 duties as though all applicable terms and provisions of the
19 Federal Trade Commission Act (15 U.S.C. 41 et seq.)
20 were incorporated into and made a part of this Act. Any
21 entity that violates such rule shall be subject to the pen-
22 alties and entitled to the privileges and immunities pro-
23 vided in the Federal Trade Commission Act in the same
24 manner, by the same means, and with the same jurisdic-
25 tion, power, and duties as though all applicable terms and

1 provisions of the Federal Trade Commission Act were in-
2 corporated into and made a part of this Act.

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

6 **SEC. 5. REVIEW.**

7 Not later than 2 years after the effective date of the
8 regulations initially issued under section 2, the Commis-
9 sion shall—

10 (1) review the implementation of this Act, in-
11 cluding the effect of the implementation of this Act
12 on practices relating to the collection and disclosure
13 of information; and

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

16 **SEC. 6. STUDY.**

17 The Comptroller General of the United States shall
18 conduct a study of the implementation of this Act during
19 the first 2 years after the date of its enactment and shall
20 report the results of such study to Congress.

21 **SEC. 7. EFFECTIVE DATE.**

22 Sections 2(a), 4, and 5 of this Act shall take effect
23 on the later of—

24 (1) the date that is 18 months after the date
25 of enactment of this Act; or

1 (2) the date on which the Commission rules on
2 the first application filed for safe harbor treatment
3 under section 2 if the Commission does not rule on
4 the first such application within one year after the
5 date of enactment of this Act, but in no case later
6 than the date that is 30 months after the date of
7 enactment of this Act.

8 **SEC. 8. DEFINITIONS.**

9 In this Act:

10 (1) **INDIVIDUAL.**—The term “individual” means
11 a natural person of age 13 and above.

12 (2) **COMMISSION.**—The term “Commission”
13 means the Federal Trade Commission.

14 (3) **DISCLOSURE.**—The term “disclosure”
15 means, with respect to personal information the re-
16 lease of personal information collected in identifiable
17 form by an operator for any purpose, except where
18 such information is provided to a person other than
19 the operator who provides support for the internal
20 operations of the Web site and does not disclose or
21 use that information for any other purpose.

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

1 (5) INTERNET.—The term “Internet” means
2 collectively the myriad of computer and tele-
3 communications facilities, including equipment and
4 operating software, which comprise the inter-
5 connected world-wide network of networks that em-
6 ploy the Transmission Control Protocol/Internet
7 Protocol, or any predecessor or successor protocols
8 to such protocol, to communicate information of all
9 kinds by wire or radio.

10 (6) OPERATOR.—The term “operator”—

11 (A) means any person who operates a Web
12 site located on the Internet or an online service
13 and who collects or maintains personal informa-
14 tion from or about the users of or visitors to
15 such Web site or online service, or on whose be-
16 half such information is collected or main-
17 tained, where such Web site or online service is
18 operated for commercial purposes, including
19 any person offering products or services for sale
20 through that Web site or online service, involv-
21 ing commerce—

22 (i) among the several States or with 1
23 or more foreign nations;

1 (ii) in any territory of the United
2 States or in the District of Columbia, or
3 between any such territory and—

4 (I) another such territory; or

5 (II) any State or foreign nation;

6 or

7 (iii) between the District of Columbia
8 and any State, territory, or foreign nation;

9 but

10 (B) does not include any nonprofit entity
11 that would otherwise be exempt from coverage
12 under section 5 of the Federal Trade Commis-
13 sion Act (15 U.S.C. 45).

14 (7) PERSONAL INFORMATION.—The term “per-
15 sonal information” means information collected on-
16 line from an individual that identifies that indi-
17 vidual, including—

18 (A) first and last name;

19 (B) home and other physical address;

20 (C) e-mail address;

21 (D) social security number;

22 (E) telephone number;

23 (F) any other identifier that the Commis-
24 sion determines identifies an individual; or

1 (G) information that is maintained with, or
2 can be searched or retrieved by means of, data
3 described in subparagraphs (A) through (F).

4 (8) PRE-EXISTING BUSINESS RELATIONSHIP.—

5 The term “pre-existing relationship” means, when
6 used with respect to an individual and operator of
7 a Web site, that either of the following communica-
8 tions exist:

9 (A) Within a 5-year period there has been
10 a business transaction between the individual
11 and the operator (including a transaction in-
12 volving the provision, free of charge, of informa-
13 tion requested by the recipient of goods or serv-
14 ices).

15 (B) The individual was at the time of a
16 business transaction or thereafter, provided a
17 clear and conspicuous notice of an operators
18 data collection practices and has not exercised
19 their opportunity to terminate the pending
20 transaction.

21 (9) TRANSACTIONAL INFORMATION.—The term
22 “transactional information” means information gen-
23 erated in connection with the process of requesting,
24 accessing, or otherwise using the Internet.

1 **SEC. 9. PRIVATE RIGHT OF ACTION.**

2 (a) ACTIONS AUTHORIZED.—Any person or entity
3 may, if otherwise permitted by the laws or rules of court
4 of a State, bring in an appropriate court of that State,
5 or may bring in an appropriate Federal court if such laws
6 or rules do not so permit, either or both of the following
7 actions:

8 (1) An action based on a violation of any rule
9 promulgated under section 2 to enjoin such viola-
10 tion.

11 (2) An action to recover for actual monetary
12 loss from such a violation in an amount equal to the
13 greatest of—

14 (A) the amount of such actual monetary
15 loss; or

16 (B) \$1,000 for each such violation, not to
17 exceed a total of \$50,000.

18 (b) ADDITIONAL REMEDIES.—If the court finds that
19 the defendant willfully, knowingly, or repeatedly violated
20 a rule promulgated under section 2, the court may, in its
21 discretion, increase the amount of the award to an amount
22 equal to not more than three times the amount available
23 under subsection (a)(2).

24 (c) ATTORNEY FEES.—In any such action, the court
25 may, in its discretion, require an undertaking for the pay-
26 ment of the costs of such action, and assess reasonable

1 costs, including reasonable attorneys' fees, against any
2 party.

3 (d) PROTECTION OF TRADE SECRETS.—At the re-
4 quest of any party to an action brought pursuant to this
5 section or any other participant in such an action, the
6 court may, in its discretion, issue protective orders and
7 conduct legal proceedings in such a way as to protect the
8 secrecy and security of the computer, computer network,
9 computer data, computer program, and computer software
10 involved in order to prevent possible recurrence of the
11 same or a similar act by another person and to protect
12 any trade secrets of any such party or participant.

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