

107TH CONGRESS
1ST SESSION

H. R. 347

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

JANUARY 31, 2001

Mr. GREEN of Texas introduced the following bill; which was referred to the Committee on Energy and 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) VIOLATIONS OF REGULATIONS PROHIB-
7 ITED.—

8 (A) IN GENERAL.—Except as provided in
9 subparagraph (B), it is unlawful for an oper-
10 ator of a Web site or online service to collect,
11 use, or disclose personal information in a man-
12 ner that violates the regulations prescribed
13 under subsection (b).

14 (B) DISCLOSURE IN RESPONSE TO CON-
15 SUMER REQUEST.—Notwithstanding subpara-
16 graph (A), neither an operator of a Web site or
17 online service nor the operator's agent shall be
18 held liable under this Act for any disclosure
19 made in good faith and following reasonable
20 procedures in responding to a request under
21 subsection (b)(1)(B) by an individual for disclo-
22 sure of personal information pertaining to such
23 individual.

24 (2) INTERNET PROFILING PROHIBITED.—No
25 operator of a Web site or online service may allow
26 any third party to attach a persistent cookie as a

1 means of developing a personal profile of an indi-
2 vidual unless the operator—

3 (A) clearly discloses such practices to the
4 individual in the notice required under sub-
5 section (b)(1)(A)(i); and

6 (B) provides the individual the opportunity
7 to opt-in to allowing the third party to attach
8 the persistent cookie.

9 (3) PROHIBITION ON THE SALE OF CONSUMER
10 INFORMATION.—If an operator of a Web site or on-
11 line service becomes insolvent, no transactional infor-
12 mation collected by the operator from any individual
13 may be sold in whole or part as a means to satisfy
14 creditors, without the affirmative permission of such
15 individual.

16 (b) REGULATIONS.—

17 (1) IN GENERAL.—Not later than 1 year after
18 the date of the enactment of this Act, the Commis-
19 sion shall promulgate under section 553 of title 5,
20 United States Code, regulations that—

21 (A) require the operator of any Web site or
22 online service—

23 (i) to provide notice on its Web site in
24 a format that the average person can un-
25 derstand which notice shall be clear and

1 conspicuous and shall provide the identity
2 of the operator, the physical and electronic
3 mail address of the operator, what per-
4 sonal information is collected by the oper-
5 ator, how the operator uses such informa-
6 tion, and what information may be shared
7 or sold with other companies;

8 (ii) to provide a meaningful and sim-
9 ple online process for individuals to opt-out
10 of the disclosure of personal information
11 for purposes unrelated to those for which
12 such information was obtained or described
13 in the notice under clause (i); and

14 (iii) to provide a description of the
15 specific types of personal information col-
16 lected by that operator that is either sold,
17 shared, or transferred to an external com-
18 pany or third party.

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

23 (A) transactional information where per-
24 sonal information is removed;

1 (B) personal information where it is used
2 to render or conduct a business activity related
3 to the business of the operator (for example,
4 the use of an e-mail address to respond to an
5 e-mail communication); or

6 (C) the collection, use, or dissemination of
7 such information by the operator of such a Web
8 site or online service necessary to the extent re-
9 quired under other provisions of law.

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

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

20 **SEC. 3. ACTIONS BY STATES.**

21 (a) IN GENERAL.—

22 (1) CIVIL ACTIONS.—In any case in which the
23 attorney general of a State has reason to believe
24 that an interest of the residents of that State has
25 been or is threatened or adversely affected by the

1 engagement of any person in a practice that violates
2 any regulation of the Commission prescribed under
3 section 2, the State may bring a civil action on be-
4 half of the residents of the State in a district court
5 of the United States of appropriate jurisdiction to—

6 (A) enjoin that practice;

7 (B) enforce compliance with the regulation;

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

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

13 (2) NOTICE.—

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

18 (i) written notice of that action; and

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

21 (B) EXEMPTION.—

22 (i) IN GENERAL.—Subparagraph (A)
23 shall not apply with respect to the filing of
24 an action by an attorney general of a State
25 under this subsection, if the attorney gen-

1 eral determines that it is not feasible to
2 provide the notice described in that sub-
3 paragraph before the filing of the action.

4 (ii) NOTIFICATION.—In an action de-
5 scribed in clause (i), the attorney general
6 of a State shall provide notice and a copy
7 of the complaint to the Commission at the
8 same time as the attorney general files the
9 action.

10 (b) INTERVENTION.—

11 (1) IN GENERAL.—On receiving notice under
12 subsection (a)(2), the Commission shall have the
13 right to intervene in the action that is the subject
14 of the notice.

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

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

20 (B) to file a petition for appeal.

21 (3) AMICUS CURIAE.—Upon application to the
22 court, a person whose self-regulatory guidelines have
23 been approved by the Commission and are relied
24 upon as a defense by any defendant to a proceeding

1 under this section may file amicus curiae in that
2 proceeding.

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

8 (1) conduct investigations;

9 (2) administer oaths or affirmations; or

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

12 (d) VENUE; SERVICE OF PROCESS.—

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

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

21 (A) is an inhabitant; or

22 (B) may be found.

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

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

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

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

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

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

22 (C) banks insured by the Federal Deposit
23 Insurance Corporation (other than members of
24 the Federal Reserve System) and insured State
25 branches of foreign banks, by the Board of Di-

1 rectors of the Federal Deposit Insurance Cor-
2 poration;

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

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

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

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

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

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

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

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

4 **SEC. 5. PRIVATE RIGHT OF ACTION.**

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

11 (1) An action based on a violation of any rule
12 promulgated under section 2 to enjoin such viola-
13 tion.

14 (2) An action to recover for actual monetary
15 loss from such a violation in an amount equal to the
16 greatest of—

17 (A) the amount of such actual monetary
18 loss; or

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

21 (b) ADDITIONAL REMEDIES.—If the court finds that
22 the defendant willfully, knowingly, or repeatedly violated
23 a rule promulgated under section 2, the court may, in its
24 discretion, increase the amount of the award to an amount

1 equal to not more than three times the amount available
2 under subsection (a)(2).

3 (c) ATTORNEY FEES.—In any such action, the court
4 may, in its discretion, require an undertaking for the pay-
5 ment of the costs of such action, and assess reasonable
6 costs, including reasonable attorneys' fees, against any
7 party.

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

18 **SEC. 6. REVIEW.**

19 Not later than 2 years after the effective date of the
20 regulations initially issued under section 2, the Commis-
21 sion shall—

22 (1) review the implementation of this Act, in-
23 cluding the effect of the implementation of this Act
24 on practices relating to the collection and disclosure
25 of information; and

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

3 **SEC. 7. STUDY.**

4 The Comptroller General of the United States shall
5 conduct a study of the implementation of this Act during
6 the first 2 years after the date of its enactment and shall
7 report the results of such study to Congress.

8 **SEC. 8. EFFECTIVE DATE.**

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

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

13 (2) the date on which the Commission rules on
14 the first application filed for safe harbor treatment
15 under section 2 if the Commission does not rule on
16 the first such application within one year after the
17 date of enactment of this Act, but in no case later
18 than the date that is 30 months after the date of
19 enactment of this Act.

20 **SEC. 9. DEFINITIONS.**

21 In this Act:

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

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

1 (3) DISCLOSURE.—The term “disclosure”
2 means, with respect to personal information the re-
3 lease of personal information collected in identifiable
4 form by an operator for any purpose, except where
5 such information is provided to a person other than
6 the operator who provides support for the internal
7 operations of the Web site and does not disclose or
8 use that information for any other purpose.

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

12 (5) INTERNET.—The term “Internet” means
13 collectively the myriad of computer and tele-
14 communications facilities, including equipment and
15 operating software, which comprise the inter-
16 connected world-wide network of networks that em-
17 ploy the Transmission Control Protocol/Internet
18 Protocol, or any predecessor or successor protocols
19 to such protocol, to communicate information of all
20 kinds by wire or radio.

21 (6) OPERATOR.—The term “operator”—

22 (A) means any person who operates a Web
23 site located on the Internet or an online service
24 and who collects or maintains personal informa-
25 tion from or about the users of or visitors to

1 such Web site or online service, or on whose
2 behalf such information is collected or main-
3 tained, where such Web site or online service
4 is operated for commercial purposes, including
5 any person offering products or services for sale
6 through that Web site or online service, involv-
7 ing commerce—

8 (i) among the several States or with 1
9 or more foreign nations;

10 (ii) in any territory of the United
11 States or in the District of Columbia, or
12 between any such territory and—

13 (I) another such territory; or

14 (II) any State or foreign nation;

15 or

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

18 but

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

23 (7) PERSONAL INFORMATION.—The term “per-
24 sonal information” means information collected on-

1 line from an individual that identifies that indi-
2 vidual, including—

3 (A) first and last name;

4 (B) home and other physical address;

5 (C) e-mail address;

6 (D) social security number;

7 (E) telephone number;

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

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

13 (8) PRE-EXISTING RELATIONSHIP.—The term
14 “pre-existing relationship” means, when used with
15 respect to an individual and operator of a Web site,
16 that either of the following communications exist:

17 (A) Within a 5-year period there has been
18 a business transaction between the individual
19 and the operator (including a transaction in-
20 volving the provision, free of charge, of informa-
21 tion requested by the recipient of goods or serv-
22 ices).

23 (B) The individual was at the time of a
24 business transaction or thereafter, provided a
25 clear and conspicuous notice of an operators

1 data collection practices and has not exercised
2 their opportunity to terminate the pending
3 transaction.

4 (9) TRANSACTIONAL INFORMATION.—The term
5 “transactional information” means information gen-
6 erated in connection with the process of requesting,
7 accessing, or otherwise using the Internet.

8 (10) PERSISTENT COOKIES.—The term “per-
9 sistent cookies” means small files copied for varying
10 lengths of time to an individual’s computer and serv-
11 ing as a means to track and report on an individ-
12 ual’s Internet activity.

13 (11) THIRD PARTY.—The term “third party”
14 means, with respect to the disclosure by an operator
15 of a Web site or online service of personal informa-
16 tion relating to such individual, a person or other
17 entity other than—

18 (A) such operator;

19 (B) an employee of such operator; or

20 (C) the individual.

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