

109TH CONGRESS  
1ST SESSION

# S. 116

To require the consent of an individual prior to the sale and marketing of such individual's personally identifiable information, and for other purposes.

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IN THE SENATE OF THE UNITED STATES

JANUARY 24, 2005

Mrs. FEINSTEIN introduced the following bill; which was read twice and referred to the Committee on the Judiciary

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## A BILL

To require the consent of an individual prior to the sale and marketing of such individual's personally identifiable 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; TABLE OF CONTENTS.**

4 (a) SHORT TITLE.—This Act may be cited as the  
5 “Privacy Act of 2005”.

6 (b) TABLE OF CONTENTS.—The table of contents of  
7 this Act is as follows:

Sec. 1. Short title; table of contents

TITLE I—COMMERCIAL SALE AND MARKETING OF PERSONALLY  
IDENTIFIABLE INFORMATION

Sec. 101. Collection and distribution of personally identifiable information

- Sec. 102. Enforcement
- Sec. 103. Safe harbor
- Sec. 104. Definitions
- Sec. 105. Preemption
- Sec. 106. Effective Date

#### TITLE II—SOCIAL SECURITY NUMBER MISUSE PREVENTION

- Sec. 201. Findings
- Sec. 202. Prohibition of the display, sale, or purchase of social security numbers
- Sec. 203. Application of prohibition of the display, sale, or purchase of social security numbers to public records
- Sec. 204. Rulemaking authority of the Attorney General
- Sec. 205. Treatment of social security numbers on government documents
- Sec. 206. Limits on personal disclosure of a social security number for consumer transactions
- Sec. 207. Extension of civil monetary penalties for misuse of a social security number
- Sec. 208. Criminal penalties for the misuse of a social security number
- Sec. 209. Civil actions and civil penalties
- Sec. 210. Federal injunctive authority

#### TITLE III—LIMITATIONS ON SALE AND SHARING OF NONPUBLIC PERSONAL FINANCIAL INFORMATION

- Sec. 301. Definition of sale
- Sec. 302. Rules applicable to sale of nonpublic personal information
- Sec. 303. Exceptions to disclosure prohibition
- Sec. 304. Conforming amendments
- Sec. 305. Regulatory authority
- Sec. 306. Effective date

#### TITLE IV—LIMITATIONS ON THE PROVISION OF PROTECTED HEALTH INFORMATION

- Sec. 401. Definitions
- Sec. 402. Prohibition against selling protected health information
- Sec. 403. Authorization for sale or marketing of protected health information by noncovered entities
- Sec. 404. Prohibition against retaliation
- Sec. 405. Rule of construction
- Sec. 406. Regulations
- Sec. 407. Enforcement

#### TITLE V—DRIVER'S LICENSE PRIVACY

- Sec. 501. Driver's license privacy

#### TITLE VI—MISCELLANEOUS

- Sec. 601. Enforcement by State Attorneys General
- Sec. 602. Federal injunctive authority

1 **TITLE I—COMMERCIAL SALE**  
2 **AND MARKETING OF PERSON-**  
3 **ALLY IDENTIFIABLE INFOR-**  
4 **MATION**

5 **SEC. 101. COLLECTION AND DISTRIBUTION OF PERSON-**  
6 **ALLY IDENTIFIABLE INFORMATION.**

7 (a) PROHIBITION.—

8 (1) IN GENERAL.—It is unlawful for a commer-  
9 cial entity to collect personally identifiable informa-  
10 tion and disclose such information to any non-  
11 affiliated third party for marketing purposes or sell  
12 such information to any nonaffiliated third party,  
13 unless the commercial entity provides—

14 (A) notice to the individual to whom the  
15 information relates in accordance with the re-  
16 quirements of subsection (b); and

17 (B) an opportunity for such individual to  
18 restrict the disclosure or sale of such informa-  
19 tion.

20 (2) EXCEPTION.—A commercial entity may col-  
21 lect personally identifiable information and use such  
22 information to market to potential customers such  
23 entity's product.

24 (b) NOTICE.—

1           (1) IN GENERAL.—A notice under subsection  
2 (a) shall contain statements describing the following:

3           (A) The identity of the commercial entity  
4 collecting the personally identifiable informa-  
5 tion.

6           (B) The types of personally identifiable in-  
7 formation that are being collected on the indi-  
8 vidual.

9           (C) How the commercial entity may use  
10 such information.

11           (D) A description of the categories of po-  
12 tential recipients of such personally identifiable  
13 information.

14           (E) Whether the individual is required to  
15 provide personally identifiable information in  
16 order to do business with the commercial entity.

17           (F) How an individual may decline to have  
18 such personally identifiable information used or  
19 sold as described in subsection (a).

20           (2) TIME OF NOTICE.—Notice shall be conveyed  
21 prior to the sale or use of the personally identifiable  
22 information as described in subsection (a) in such a  
23 manner as to allow the individual a reasonable pe-  
24 riod of time to consider the notice and limit such  
25 sale or use.

1           (3) MEDIUM OF NOTICE.—The medium for pro-  
2           viding notice must be—

3                   (A) the same medium in which the person-  
4                   ally identifiable information is or will be col-  
5                   lected, or a medium approved by the individual;  
6                   or

7                   (B) in the case of oral communication, no-  
8                   tice may be conveyed orally or in writing.

9           (4) FORM OF NOTICE.—The notice shall be  
10           clear and conspicuous.

11           (c) OPT-OUT.—

12                   (1) OPPORTUNITY TO OPT-OUT OF SALE OR  
13                   MARKETING.—The opportunity provided to limit the  
14                   sale of personally identifiable information to non-  
15                   affiliated third parties or the disclosure of such in-  
16                   formation for marketing purposes, shall be easy to  
17                   use, accessible and available in the medium the in-  
18                   formation is collected, or in a medium approved by  
19                   the individual.

20                   (2) DURATION OF LIMITATION.—An individ-  
21                   ual's limitation on the sale or marketing of person-  
22                   ally identifiable information shall be considered per-  
23                   manent, unless otherwise specified by the individual.

24                   (3) REVOCATION OF CONSENT.—After an indi-  
25                   vidual grants consent to the use of that individual's

1 personally identifiable information, the individual  
2 may revoke the consent at any time, except to the  
3 extent that the commercial entity has taken action  
4 in reliance thereon. The commercial entity shall pro-  
5 vide the individual an opportunity to revoke consent  
6 that is easy to use, accessible, and available in the  
7 medium the information was or is collected.

8 (4) NOT APPLICABLE.—This section shall not  
9 apply to disclosure of personally identifiable informa-  
10 tion—

11 (A) that is necessary to facilitate a trans-  
12 action specifically requested by the consumer;

13 (B) is used for the sole purpose of facili-  
14 tating this transaction; and

15 (C) in which the entity receiving or obtain-  
16 ing such information is limited, by contract, to  
17 use such formation for the purpose of com-  
18 pleting the transaction.

19 **SEC. 102. ENFORCEMENT.**

20 (a) IN GENERAL.—In accordance with the provisions  
21 of this section, the Federal Trade Commission shall have  
22 the authority to enforce any violation of section 101 of  
23 this Act.

24 (b) VIOLATIONS.—The Federal Trade Commission  
25 shall treat a violation of section 101 as a violation of a

1 rule under section 18a(a)(1)(B) of the Federal Trade  
2 Commission Act (15 U.S.C. 57a(a)(1)(B)).

3 (c) TRANSFER OF ENFORCEMENT AUTHORITY.—The  
4 Federal Trade Commission shall promulgate rules in ac-  
5 cordance with section 553 of title 5, United States Code,  
6 allowing for the transfer of enforcement authority from  
7 the Federal Trade Commission to a Federal agency re-  
8 garding section 101 of this Act. The Federal Trade Com-  
9 mission may permit a Federal agency to enforce any viola-  
10 tion of section 101 if such agency submits a written re-  
11 quest to the Commission to enforce such violations and  
12 includes in such request—

13 (1) a description of the entities regulated by  
14 such agency that will be subject to the provisions of  
15 section 101;

16 (2) an assurance that such agency has suffi-  
17 cient authority over the entities to enforce violations  
18 of section 101; and

19 (3) a list of proposed rules that such agency  
20 shall use in regulating such entities and enforcing  
21 section 101.

22 (d) ACTIONS BY THE COMMISSION.—Absent transfer  
23 of enforcement authority to a Federal agency under sub-  
24 section (c), the Federal Trade Commission shall prevent  
25 any person from violating section 101 in the same manner,

1 by the same means, and with the same jurisdiction, pow-  
2 ers, and duties as provided to such Commission under the  
3 Federal Trade Commission Act (15 U.S.C. 41 et seq.).  
4 Any entity that violates section 101 is subject to the pen-  
5 alties and entitled to the privileges and immunities pro-  
6 vided in such Act in the same manner, by the same means,  
7 and with the same jurisdiction, power, and duties under  
8 such Act.

9 (e) RELATIONSHIP TO OTHER LAWS.—

10 (1) COMMISSION AUTHORITY.—Nothing con-  
11 tained in this title shall be construed to limit author-  
12 ity provided to the Commission under any other law.

13 (2) COMMUNICATIONS ACT.—Nothing in section  
14 101 requires an operator of a website to take any  
15 action that is inconsistent with the requirements of  
16 section 222 or 631 of the Communications Act of  
17 1934 (47 U.S.C. 222 and 5551).

18 (3) OTHER ACTS.—Nothing in this title is in-  
19 tended to affect the applicability or the enforce-  
20 ability of any provision of, or any amendment made  
21 by—

22 (A) the Children’s Online Privacy Protec-  
23 tion Act of 1998 (15 U.S.C. 6501 et seq.);

24 (B) title V of the Gramm-Leach-Bliley Act;



1 (C) the Health Insurance Portability and  
2 Accountability Act of 1996; or

3 (D) the Fair Credit Reporting Act.

4 (f) PUBLIC RECORDS.—Nothing in this title shall be  
5 construed to restrict commercial entities from obtaining  
6 or disclosing personally identifying information from pub-  
7 lic records.

8 (g) CIVIL PENALTIES.—In addition to any other pen-  
9 alty applicable to a violation of section 101(a), a penalty  
10 of up to \$25,000 may be issued for each violation.

11 (h) ENFORCEMENT REGARDING PROGRAMS.—

12 (1) IN GENERAL.—A Federal agency or depart-  
13 ment providing financial assistance to any entity re-  
14 quired to comply with section 101 of this Act shall  
15 issue regulations requiring that such entity comply  
16 with such section or forfeit some or all of such as-  
17 sistance. Such regulations shall prescribe sanctions  
18 for noncompliance, require that such department or  
19 agency provide notice of failure to comply with such  
20 section prior to any action being taken against such  
21 recipient, and require that a determination be made  
22 prior to any action being taken against such recipi-  
23 ent that compliance cannot be secured by voluntary  
24 means.

1           (2) FEDERAL FINANCIAL ASSISTANCE.—The  
2 term “Federal financial assistance” means assist-  
3 ance through a grant, cooperative agreement, loan,  
4 or contract other than a contract of insurance or  
5 guaranty.

6 **SEC. 103. SAFE HARBOR.**

7           A commercial entity may not be held to have violated  
8 any provision of this title if such entity complies with self-  
9 regulatory guidelines that—

10           (1) are issued by seal programs or representa-  
11 tives of the marketing or online industries or by any  
12 other person; and

13           (2) are approved by the Federal Trade Commis-  
14 sion, after public comment has been received on such  
15 guidelines by the Commission, as meeting the re-  
16 quirements of this title.

17 **SEC. 104. DEFINITIONS.**

18           In this title:

19           (1) COMMERCIAL ENTITY.—The term “commer-  
20 cial entity”—

21           (A) means any person offering products or  
22 services involving commerce—

23           (i) among the several States or with 1  
24 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 and

10 (B) does not include—

11 (i) any nonprofit entity that would  
12 otherwise be exempt from coverage under  
13 section 5 of the Federal Trade Commission  
14 Act (15 U.S.C. 45);

15 (ii) any financial institution that is  
16 subject to title V of the Gramm-Leach-Bliley  
17 Act (15 U.S.C. 6801 et seq.); or

18 (iii) any group health plan, health in-  
19 surance issuer, or other entity that is sub-  
20 ject to the Health Insurance Portability  
21 and Accountability Act of 1996 (42 U.S.C.  
22 201 note).

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

1           (3) INDIVIDUAL.—The term “individual” means  
2 a person whose personally identifying information  
3 has been, is, or will be collected by a commercial en-  
4 tity.

5           (4) MARKETING.—The term “marketing”  
6 means to make a communication about a product or  
7 service a purpose of which is to encourage recipients  
8 of the communication to purchase or use the product  
9 or service.

10          (5) MEDIUM.—The term “medium” means any  
11 channel or system of communication including oral,  
12 written, and online communication.

13          (6) NONAFFILIATED THIRD PARTY.—The term  
14 “nonaffiliated third party” means any entity that is  
15 not related by common ownership or affiliated by  
16 corporate control with, the commercial entity, but  
17 does not include a joint employee of such institution.

18          (7) PERSONALLY IDENTIFIABLE INFORMA-  
19 TION.—The term “personally identifiable informa-  
20 tion” means individually identifiable information  
21 about the individual that is collected including—

22               (A) a first, middle, or last name, whether  
23 given at birth or adoption, assumed, or legally  
24 changed;

1 (B) a home or other physical address, in-  
2 cluding the street name, zip code, and name of  
3 a city or town;

4 (C) an e-mail address;

5 (D) a telephone number;

6 (E) a photograph or other form of visual  
7 identification;

8 (F) a birth date, birth certificate number,  
9 or place of birth for that person; or

10 (G) information concerning the individual  
11 that is combined with any other identifier in  
12 this paragraph.

13 (8) SALE; SELL; SOLD.—The terms “sale”,  
14 “sell”, and “sold”, with respect to personally identi-  
15 fiable information, mean the exchanging of such in-  
16 formation for any thing of value, directly or indi-  
17 rectly, including the licensing, bartering, or renting  
18 of such information.

19 (9) WRITING.—The term “writing” means writ-  
20 ing in either a paper-based or computer-based form,  
21 including electronic and digital signatures.

22 **SEC. 105. PREEMPTION.**

23 The provisions of this title shall supersede any statu-  
24 tory and common law of States and their political subdivi-

1 sions insofar as that law may now or hereafter relate to  
2 the—

3 (1) collection and disclosure of personally iden-  
4 tifiable information for marketing purposes; and

5 (2) collection and sale of personally identifiable  
6 information.

7 **SEC. 106. EFFECTIVE DATE.**

8 This title and the amendments made by this title  
9 shall take effect 1 year after the date of enactment of this  
10 Act.

11 **TITLE II—SOCIAL SECURITY**  
12 **NUMBER MISUSE PREVENTION**

13 **SEC. 201. FINDINGS.**

14 Congress makes the following findings:

15 (1) The inappropriate display, sale, or purchase  
16 of social security numbers has contributed to a  
17 growing range of illegal activities, including fraud,  
18 identity theft, and, in some cases, stalking and other  
19 violent crimes.

20 (2) While financial institutions, health care pro-  
21 viders, and other entities have often used social se-  
22 curity numbers to confirm the identity of an indi-  
23 vidual, the general display to the public, sale, or pur-  
24 chase of these numbers has been used to commit

1 crimes, and also can result in serious invasions of in-  
2 dividual privacy.

3 (3) The Federal Government requires virtually  
4 every individual in the United States to obtain and  
5 maintain a social security number in order to pay  
6 taxes, to qualify for social security benefits, or to  
7 seek employment. An unintended consequence of  
8 these requirements is that social security numbers  
9 have become one of the tools that can be used to fa-  
10 cilitate crime, fraud, and invasions of the privacy of  
11 the individuals to whom the numbers are assigned.  
12 Because the Federal Government created and main-  
13 tains this system, and because the Federal Govern-  
14 ment does not permit individuals to exempt them-  
15 selves from those requirements, it is appropriate for  
16 the Federal Government to take steps to stem the  
17 abuse of social security numbers.

18 (4) The display, sale, or purchase of social secu-  
19 rity numbers in no way facilitates uninhibited, ro-  
20 bust, and wide-open public debate, and restrictions  
21 on such display, sale, or purchase would not affect  
22 public debate.

23 (5) No one should seek to profit from the dis-  
24 play, sale, or purchase of social security numbers in  
25 circumstances that create a substantial risk of phys-

1 ical, emotional, or financial harm to the individuals  
2 to whom those numbers are assigned.

3 (6) Consequently, this title provides each indi-  
4 vidual that has been assigned a social security num-  
5 ber some degree of protection from the display, sale,  
6 and purchase of that number in any circumstance  
7 that might facilitate unlawful conduct.

8 **SEC. 202. PROHIBITION OF THE DISPLAY, SALE, OR PUR-**  
9 **CHASE OF SOCIAL SECURITY NUMBERS.**

10 (a) PROHIBITION.—

11 (1) IN GENERAL.—Chapter 47 of title 18,  
12 United States Code, is amended by inserting after  
13 section 1028 the following:

14 **“§ 1028A. Prohibition of the display, sale, or purchase**  
15 **of social security numbers**

16 “(a) DEFINITIONS.—In this section:

17 “(1) DISPLAY.—The term ‘display’ means to in-  
18 tentiously communicate or otherwise make available  
19 (on the Internet or in any other manner) to the gen-  
20 eral public an individual’s social security number.

21 “(2) PERSON.—The term ‘person’ means any  
22 individual, partnership, corporation, trust, estate, co-  
23 operative, association, or any other entity.



1           “(3) PURCHASE.—The term ‘purchase’ means  
2           providing directly or indirectly, anything of value in  
3           exchange for a social security number.

4           “(4) SALE.—The term ‘sale’ means obtaining,  
5           directly or indirectly, anything of value in exchange  
6           for a social security number.

7           “(5) STATE.—The term ‘State’ means any  
8           State of the United States, the District of Columbia,  
9           Puerto Rico, the Northern Mariana Islands, the  
10          United States Virgin Islands, Guam, American  
11          Samoa, and any territory or possession of the  
12          United States.

13          “(b) LIMITATION ON DISPLAY.—Except as provided  
14          in section 1028B, no person may display any individual’s  
15          social security number to the general public without the  
16          affirmatively expressed consent of the individual.

17          “(c) LIMITATION ON SALE OR PURCHASE.—Except  
18          as otherwise provided in this section, no person may sell  
19          or purchase any individual’s social security number with-  
20          out the affirmatively expressed consent of the individual.

21          “(d) PREREQUISITES FOR CONSENT.—In order for  
22          consent to exist under subsection (b) or (c), the person  
23          displaying or seeking to display, selling or attempting to  
24          sell, or purchasing or attempting to purchase, an individ-  
25          ual’s social security number shall—

1           “(1) inform the individual of the general pur-  
2           pose for which the number will be used, the types of  
3           persons to whom the number may be available, and  
4           the scope of transactions permitted by the consent;  
5           and

6           “(2) obtain the affirmatively expressed consent  
7           (electronically or in writing) of the individual.

8           “(e) EXCEPTIONS.—Nothing in this section shall be  
9           construed to prohibit or limit the display, sale, or purchase  
10          of a social security number—

11           “(1) required, authorized, or excepted under  
12           any Federal law;

13           “(2) for a public health purpose, including the  
14           protection of the health or safety of an individual in  
15           an emergency situation;

16           “(3) for a national security purpose;

17           “(4) for a law enforcement purpose, including  
18           the investigation of fraud and the enforcement of a  
19           child support obligation;

20           “(5) if the display, sale, or purchase of the  
21           number is for a use occurring as a result of an inter-  
22           action between businesses, governments, or business  
23           and government (regardless of which entity initiates  
24           the interaction), including, but not limited to—

1           “(A) the prevention of fraud (including  
2 fraud in protecting an employee’s right to em-  
3 ployment benefits);

4           “(B) the facilitation of credit checks or the  
5 facilitation of background checks of employees,  
6 prospective employees, or volunteers;

7           “(C) the retrieval of other information  
8 from other businesses, commercial enterprises,  
9 government entities, or private nonprofit orga-  
10 nizations; or

11           “(D) when the transmission of the number  
12 is incidental to, and in the course of, the sale,  
13 lease, franchising, or merger of all, or a portion  
14 of, a business;

15           “(6) if the transfer of such a number is part of  
16 a data matching program involving a Federal, State,  
17 or local agency; or

18           “(7) if such number is required to be submitted  
19 as part of the process for applying for any type of  
20 Federal, State, or local government benefit or pro-  
21 gram;

22 except that, nothing in this subsection shall be construed  
23 as permitting a professional or commercial user to display  
24 or sell a social security number to the general public.

1       “(f) LIMITATION.—Nothing in this section shall pro-  
2 hibit or limit the display, sale, or purchase of social secu-  
3 rity numbers as permitted under title V of the Gramm-  
4 Leach-Bliley Act, or for the purpose of affiliate sharing  
5 as permitted under the Fair Credit Reporting Act, except  
6 that no entity regulated under such Acts may make social  
7 security numbers available to the general public, as may  
8 be determined by the appropriate regulators under such  
9 Acts. For purposes of this subsection, the general public  
10 shall not include affiliates or unaffiliated third-party busi-  
11 ness entities as may be defined by the appropriate regu-  
12 lators.”.

13           (2) CONFORMING AMENDMENT.—The chapter  
14 analysis for chapter 47 of title 18, United States  
15 Code, is amended by inserting after the item relating  
16 to section 1028 the following:

“1028A. Prohibition of the display, sale, or purchase of social security num-  
bers.”.

17       (b) STUDY; REPORT.—

18           (1) IN GENERAL.—The Attorney General shall  
19 conduct a study and prepare a report on all of the  
20 uses of social security numbers permitted, required,  
21 authorized, or excepted under any Federal law. The  
22 report shall include a detailed description of the uses  
23 allowed as of the date of enactment of this Act and

1 shall evaluate whether such uses should be continued  
2 or discontinued by appropriate legislative action.

3 (2) REPORT.—Not later than 1 year after the  
4 date of enactment of this Act, the Attorney General  
5 shall report to Congress findings under this sub-  
6 section. The report shall include such recommenda-  
7 tions for legislation based on criteria the Attorney  
8 General determines to be appropriate.

9 (c) EFFECTIVE DATE.—The amendments made by  
10 this section shall take effect on the date that is 30 days  
11 after the date on which the final regulations promulgated  
12 under section 5 are published in the Federal Register.

13 **SEC. 203. APPLICATION OF PROHIBITION OF THE DISPLAY,**  
14 **SALE, OR PURCHASE OF SOCIAL SECURITY**  
15 **NUMBERS TO PUBLIC RECORDS.**

16 (a) PUBLIC RECORDS EXCEPTION.—

17 (1) IN GENERAL.—Chapter 47 of title 18,  
18 United States Code (as amended by section 3(a)(1)),  
19 is amended by inserting after section 1028A the fol-  
20 lowing:

21 **“§ 1028B. Display, sale, or purchase of public records**  
22 **containing social security numbers**

23 “(a) DEFINITION.—In this section, the term ‘public  
24 record’ means any governmental record that is made avail-  
25 able to the general public.

1       “(b) IN GENERAL.—Except as provided in sub-  
2 sections (c), (d), and (e), section 1028A shall not apply  
3 to a public record.

4       “(c) PUBLIC RECORDS ON THE INTERNET OR IN AN  
5 ELECTRONIC MEDIUM.—

6           “(1) IN GENERAL.—Section 1028A shall apply  
7 to any public record first posted onto the Internet  
8 or provided in an electronic medium by, or on behalf  
9 of a government entity after the date of enactment  
10 of this section, except as limited by the Attorney  
11 General in accordance with paragraph (2).

12           “(2) EXCEPTION FOR GOVERNMENT ENTITIES  
13 ALREADY PLACING PUBLIC RECORDS ON THE INTER-  
14 NET OR IN ELECTRONIC FORM.—Not later than 60  
15 days after the date of enactment of this section, the  
16 Attorney General shall issue regulations regarding  
17 the applicability of section 1028A to any record of  
18 a category of public records first posted onto the  
19 Internet or provided in an electronic medium by, or  
20 on behalf of a government entity prior to the date  
21 of enactment of this section. The regulations will de-  
22 termine which individual records within categories of  
23 records of these government entities, if any, may  
24 continue to be posted on the Internet or in electronic  
25 form after the effective date of this section. In pro-

1 mulgating these regulations, the Attorney General  
2 may include in the regulations a set of procedures  
3 for implementing the regulations and shall consider  
4 the following:

5 “(A) The cost and availability of tech-  
6 nology available to a governmental entity to re-  
7 duct social security numbers from public  
8 records first provided in electronic form after  
9 the effective date of this section.

10 “(B) The cost or burden to the general  
11 public, businesses, commercial enterprises, non-  
12 profit organizations, and to Federal, State, and  
13 local governments of complying with section  
14 1028A with respect to such records.

15 “(C) The benefit to the general public,  
16 businesses, commercial enterprises, non-profit  
17 organizations, and to Federal, State, and local  
18 governments if the Attorney General were to  
19 determine that section 1028A should apply to  
20 such records.

21 Nothing in the regulation shall permit a public enti-  
22 ty to post a category of public records on the Inter-  
23 net or in electronic form after the effective date of  
24 this section if such category had not been placed on

1 the Internet or in electronic form prior to such effective date.

2  
3 “(d) HARVESTED SOCIAL SECURITY NUMBERS.—  
4 Section 1028A shall apply to any public record of a government entity which contains social security numbers extracted from other public records for the purpose of displaying or selling such numbers to the general public.

5  
6  
7  
8 “(e) ATTORNEY GENERAL RULEMAKING ON PAPER  
9 RECORDS.—

10 “(1) IN GENERAL.—Not later than 60 days  
11 after the date of enactment of this section, the Attorney General shall determine the feasibility and  
12 advisability of applying section 1028A to the records  
13 listed in paragraph (2) when they appear on paper  
14 or on another nonelectronic medium. If the Attorney  
15 General deems it appropriate, the Attorney General  
16 may issue regulations applying section 1028A to  
17 such records.  
18

19 “(2) LIST OF PAPER AND OTHER NONELECTRONIC RECORDS.—The records listed in this paragraph are as follows:

20  
21  
22 “(A) Professional or occupational licenses.

23 “(B) Marriage licenses.

24 “(C) Birth certificates.

25 “(D) Death certificates.



1           “(E) Other short public documents that  
2           display a social security number in a routine  
3           and consistent manner on the face of the docu-  
4           ment.

5           “(3) CRITERIA FOR ATTORNEY GENERAL RE-  
6           VIEW.—In determining whether section 1028A  
7           should apply to the records listed in paragraph (2),  
8           the Attorney General shall consider the following:

9           “(A) The cost or burden to the general  
10          public, businesses, commercial enterprises, non-  
11          profit organizations, and to Federal, State, and  
12          local governments of complying with section  
13          1028A.

14          “(B) The benefit to the general public,  
15          businesses, commercial enterprises, non-profit  
16          organizations, and to Federal, State, and local  
17          governments if the Attorney General were to  
18          determine that section 1028A should apply to  
19          such records.”.

20          (2) CONFORMING AMENDMENT.—The chapter  
21          analysis for chapter 47 of title 18, United States  
22          Code (as amended by section 202(a)(2)), is amended  
23          by inserting after the item relating to section 1028A  
24          the following:

“1028B. Display, sale, or purchase of public records containing social security  
numbers.”.

1 (b) STUDY AND REPORT ON SOCIAL SECURITY NUM-  
2 BERS IN PUBLIC RECORDS.—

3 (1) STUDY.—The Comptroller General of the  
4 United States shall conduct a study and prepare a  
5 report on social security numbers in public records.  
6 In developing the report, the Comptroller General  
7 shall consult with the Administrative Office of the  
8 United States Courts, State and local governments  
9 that store, maintain, or disseminate public records,  
10 and other stakeholders, including members of the  
11 private sector who routinely use public records that  
12 contain social security numbers.

13 (2) REPORT.—Not later than 1 year after the  
14 date of enactment of this Act, the Comptroller Gen-  
15 eral of the United States shall submit to Congress  
16 a report on the study conducted under paragraph  
17 (1). The report shall include a detailed description  
18 of the activities and results of the study and rec-  
19 ommendations for such legislative action as the  
20 Comptroller General considers appropriate. The re-  
21 port, at a minimum, shall include—

22 (A) a review of the uses of social security  
23 numbers in non-federal public records;

1 (B) a review of the manner in which public  
2 records are stored (with separate reviews for  
3 both paper records and electronic records);

4 (C) a review of the advantages or utility of  
5 public records that contain social security num-  
6 bers, including the utility for law enforcement,  
7 and for the promotion of homeland security;

8 (D) a review of the disadvantages or draw-  
9 backs of public records that contain social secu-  
10 rity numbers, including criminal activity, com-  
11 promised personal privacy, or threats to home-  
12 land security;

13 (E) the costs and benefits for State and  
14 local governments of removing social security  
15 numbers from public records, including a review  
16 of current technologies and procedures for re-  
17 moving social security numbers from public  
18 records; and

19 (F) an assessment of the benefits and  
20 costs to businesses, their customers, and the  
21 general public of prohibiting the display of so-  
22 cial security numbers on public records (with  
23 separate assessments for both paper records  
24 and electronic records).

1 (c) EFFECTIVE DATE.—The prohibition with respect  
2 to electronic versions of new classes of public records  
3 under section 1028B(b) of title 18, United States Code  
4 (as added by subsection (a)(1)) shall not take effect until  
5 the date that is 60 days after the date of enactment of  
6 this Act.

7 **SEC. 204. RULEMAKING AUTHORITY OF THE ATTORNEY**  
8 **GENERAL.**

9 (a) IN GENERAL.—Except as provided in subsection  
10 (b), the Attorney General may prescribe such rules and  
11 regulations as the Attorney General deems necessary to  
12 carry out the provisions of section 1028A(e)(5) of title 18,  
13 United States Code (as added by section 202(a)(1)).

14 (b) DISPLAY, SALE, OR PURCHASE RULEMAKING  
15 WITH RESPECT TO INTERACTIONS BETWEEN BUSI-  
16 NESSES, GOVERNMENTS, OR BUSINESS AND GOVERN-  
17 MENT.—

18 (1) IN GENERAL.—Not later than 1 year after  
19 the date of enactment of this Act, the Attorney Gen-  
20 eral, in consultation with the Commissioner of Social  
21 Security, the Chairman of the Federal Trade Com-  
22 mission, and such other heads of Federal agencies as  
23 the Attorney General determines appropriate, shall  
24 conduct such rulemaking procedures in accordance  
25 with subchapter II of chapter 5 of title 5, United

1 States Code, as are necessary to promulgate regula-  
2 tions to implement and clarify the uses occurring as  
3 a result of an interaction between businesses, gov-  
4 ernments, or business and government (regardless of  
5 which entity initiates the interaction) permitted  
6 under section 1028A(e)(5) of title 18, United States  
7 Code (as added by section 202(a)(1)).

8 (2) FACTORS TO BE CONSIDERED.—In promul-  
9 gating the regulations required under paragraph (1),  
10 the Attorney General shall, at a minimum, consider  
11 the following:

12 (A) The benefit to a particular business, to  
13 customers of the business, and to the general  
14 public of the display, sale, or purchase of an in-  
15 dividual’s social security number.

16 (B) The costs that businesses, customers  
17 of businesses, and the general public may incur  
18 as a result of prohibitions on the display, sale,  
19 or purchase of social security numbers.

20 (C) The risk that a particular business  
21 practice will promote the use of a social security  
22 number to commit fraud, deception, or crime.

23 (D) The presence of adequate safeguards  
24 and procedures to prevent—

1 (i) misuse of social security numbers  
2 by employees within a business; and

3 (ii) misappropriation of social security  
4 numbers by the general public, while per-  
5 mitting internal business uses of such  
6 numbers.

7 (E) The presence of procedures to prevent  
8 identity thieves, stalkers, and other individuals  
9 with ill intent from posing as legitimate busi-  
10 nesses to obtain social security numbers.

11 **SEC. 205. TREATMENT OF SOCIAL SECURITY NUMBERS ON**  
12 **GOVERNMENT DOCUMENTS.**

13 (a) PROHIBITION OF USE OF SOCIAL SECURITY AC-  
14 COUNT NUMBERS ON CHECKS ISSUED FOR PAYMENT BY  
15 GOVERNMENTAL AGENCIES.—

16 (1) IN GENERAL.—Section 205(c)(2)(C) of the  
17 Social Security Act (42 U.S.C. 405(c)(2)(C)) is  
18 amended by adding at the end the following:

19 “(x) No Federal, State, or local agency may display  
20 the social security account number of any individual, or  
21 any derivative of such number, on any check issued for  
22 any payment by the Federal, State, or local agency.”.

23 (2) EFFECTIVE DATE.—The amendment made  
24 by this subsection shall apply with respect to viola-  
25 tions of section 205(c)(2)(C)(x) of the Social Secu-

1        rity Act (42 U.S.C. 405(c)(2)(C)(x)), as added by  
2        paragraph (1), occurring after the date that is 3  
3        years after the date of enactment of this Act.

4        (b) PROHIBITION OF APPEARANCE OF SOCIAL SECUR-  
5        RITY ACCOUNT NUMBERS ON DRIVER'S LICENSES OR  
6        MOTOR VEHICLE REGISTRATION.—

7            (1) IN GENERAL.—Section 205(c)(2)(C)(vi) of  
8        the Social Security Act (42 U.S.C. 405(c)(2)(C)(vi))  
9        is amended—

10            (A) by inserting “(I)” after “(vi)”; and

11            (B) by adding at the end the following:

12        “(II)(aa) An agency of a State (or political subdivi-  
13        sion thereof), in the administration of any driver’s license  
14        or motor vehicle registration law within its jurisdiction,  
15        may not display the social security account numbers  
16        issued by the Commissioner of Social Security, or any de-  
17        rivative of such numbers, on the face of any driver’s li-  
18        cense or motor vehicle registration or any other document  
19        issued by such State (or political subdivision thereof) to  
20        an individual for purposes of identification of such indi-  
21        vidual.

22        “(bb) Nothing in this subclause shall be construed  
23        as precluding an agency of a State (or political subdivision  
24        thereof), in the administration of any driver’s license or  
25        motor vehicle registration law within its jurisdiction, from

1 using a social security account number for an internal use  
2 or to link with the database of an agency of another State  
3 that is responsible for the administration of any driver’s  
4 license or motor vehicle registration law.”.

5 (2) EFFECTIVE DATE.—The amendments made  
6 by this subsection shall apply with respect to li-  
7 censes, registrations, and other documents issued or  
8 reissued after the date that is 1 year after the date  
9 of enactment of this Act.

10 (c) PROHIBITION OF INMATE ACCESS TO SOCIAL SE-  
11 CURITY ACCOUNT NUMBERS.—

12 (1) IN GENERAL.—Section 205(c)(2)(C) of the  
13 Social Security Act (42 U.S.C. 405(c)(2)(C)) (as  
14 amended by subsection (b)) is amended by adding at  
15 the end the following:

16 “(xi) No Federal, State, or local agency may employ,  
17 or enter into a contract for the use or employment of, pris-  
18 oners in any capacity that would allow such prisoners ac-  
19 cess to the social security account numbers of other indi-  
20 viduals. For purposes of this clause, the term ‘prisoner’  
21 means an individual confined in a jail, prison, or other  
22 penal institution or correctional facility pursuant to such  
23 individual’s conviction of a criminal offense.”.

24 (2) EFFECTIVE DATE.—The amendment made  
25 by this subsection shall apply with respect to em-



1       ployment of prisoners, or entry into contract with  
 2       prisoners, after the date that is 1 year after the date  
 3       of enactment of this Act.

4   **SEC. 206. LIMITS ON PERSONAL DISCLOSURE OF A SOCIAL**  
 5                   **SECURITY NUMBER FOR CONSUMER TRANS-**  
 6                   **ACTIONS.**

7       (a) IN GENERAL.—Part A of title XI of the Social  
 8       Security Act (42 U.S.C. 1301 et seq.) is amended by add-  
 9       ing at the end the following:

10   **“SEC. 1150A. LIMITS ON PERSONAL DISCLOSURE OF A SO-**  
 11                   **CIAL SECURITY NUMBER FOR CONSUMER**  
 12                   **TRANSACTIONS.**

13       “(a) IN GENERAL.—A commercial entity may not re-  
 14       quire an individual to provide the individual’s social secu-  
 15       rity number when purchasing a commercial good or service  
 16       or deny an individual the good or service for refusing to  
 17       provide that number except—

18               “(1) for any purpose relating to—

19                   “(A) obtaining a consumer report for any  
 20                   purpose permitted under the Fair Credit Re-  
 21                   porting Act;

22                   “(B) a background check of the individual  
 23                   conducted by a landlord, lessor, employer, vol-  
 24                   untary service agency, or other entity as deter-  
 25                   mined by the Attorney General;

1 “(C) law enforcement; or

2 “(D) a Federal, State, or local law require-  
3 ment; or

4 “(2) if the social security number is necessary  
5 to verify the identity of the consumer to effect, ad-  
6 minister, or enforce the specific transaction re-  
7 quested or authorized by the consumer, or to prevent  
8 fraud.

9 “(b) APPLICATION OF CIVIL MONEY PENALTIES.—  
10 A violation of this section shall be deemed to be a violation  
11 of section 1129(a)(3)(F).

12 “(c) APPLICATION OF CRIMINAL PENALTIES.—A vio-  
13 lation of this section shall be deemed to be a violation of  
14 section 208(a)(8).

15 “(d) LIMITATION ON CLASS ACTIONS.—No class ac-  
16 tion alleging a violation of this section shall be maintained  
17 under this section by an individual or any private party  
18 in Federal or State court.

19 “(e) STATE ATTORNEY GENERAL ENFORCEMENT.—

20 “(1) IN GENERAL.—

21 “(A) CIVIL ACTIONS.—In any case in  
22 which the attorney general of a State has rea-  
23 son to believe that an interest of the residents  
24 of that State has been or is threatened or ad-  
25 versely affected by the engagement of any per-

1 son in a practice that is prohibited under this  
2 section, the State, as *parens patriae*, may bring  
3 a civil action on behalf of the residents of the  
4 State in a district court of the United States of  
5 appropriate jurisdiction to—

6 “(i) enjoin that practice;

7 “(ii) enforce compliance with such  
8 section;

9 “(iii) obtain damages, restitution, or  
10 other compensation on behalf of residents  
11 of the State; or

12 “(iv) obtain such other relief as the  
13 court may consider appropriate.

14 “(B) NOTICE.—

15 “(i) IN GENERAL.—Before filing an  
16 action under subparagraph (A), the attor-  
17 ney general of the State involved shall pro-  
18 vide to the Attorney General—

19 “(I) written notice of the action;

20 and

21 “(II) a copy of the complaint for  
22 the action.

23 “(ii) EXEMPTION.—

24 “(I) IN GENERAL.—Clause (i)  
25 shall not apply with respect to the fil-

1           ing of an action by an attorney gen-  
2           eral of a State under this subsection,  
3           if the State attorney general deter-  
4           mines that it is not feasible to provide  
5           the notice described in such subpara-  
6           graph before the filing of the action.

7                   “(II) NOTIFICATION.—With re-  
8                   spect to an action described in sub-  
9                   clause (I), the attorney general of a  
10                  State shall provide notice and a copy  
11                  of the complaint to the Attorney Gen-  
12                  eral at the same time as the State at-  
13                  torney general files the action.

14                  “(2) INTERVENTION.—

15                   “(A) IN GENERAL.—On receiving notice  
16                  under paragraph (1)(B), the Attorney General  
17                  shall have the right to intervene in the action  
18                  that is the subject of the notice.

19                   “(B) EFFECT OF INTERVENTION.—If the  
20                  Attorney General intervenes in the action under  
21                  paragraph (1), the Attorney General shall have  
22                  the right to be heard with respect to any matter  
23                  that arises in that action.

24                  “(3) CONSTRUCTION.—For purposes of bring-  
25                  ing any civil action under paragraph (1), nothing in

1 this section shall be construed to prevent an attorney  
2 general of a State from exercising the powers  
3 conferred on such attorney general by the laws of  
4 that State to—

5 “(A) conduct investigations;

6 “(B) administer oaths or affirmations; or

7 “(C) compel the attendance of witnesses or  
8 the production of documentary and other evidence.  
9

10 “(4) ACTIONS BY THE ATTORNEY GENERAL OF  
11 THE UNITED STATES.—In any case in which an action  
12 is instituted by or on behalf of the Attorney  
13 General for violation of a practice that is prohibited  
14 under this section, no State may, during the pendency  
15 of that action, institute an action under paragraph  
16 (1) against any defendant named in the complaint  
17 in that action for violation of that practice.

18 “(5) VENUE; SERVICE OF PROCESS.—

19 “(A) VENUE.—Any action brought under  
20 paragraph (1) may be brought in the district  
21 court of the United States that meets applicable  
22 requirements relating to venue under section  
23 1391 of title 28, United States Code.

1           “(B) SERVICE OF PROCESS.—In an action  
2           brought under paragraph (1), process may be  
3           served in any district in which the defendant—

4                   “(i) is an inhabitant; or

5                   “(ii) may be found.

6           “(f) SUNSET.—This section shall not apply on or  
7           after the date that is 6 years after the effective date of  
8           this section.”.

9           (b) EVALUATION AND REPORT.—Not later than the  
10          date that is 6 years and 6 months after the date of enact-  
11          ment of this Act, the Attorney General, in consultation  
12          with the chairman of the Federal Trade Commission, shall  
13          issue a report evaluating the effectiveness and efficiency  
14          of section 1150A of the Social Security Act (as added by  
15          subsection (a)) and shall make recommendations to Con-  
16          gress as to any legislative action determined to be nec-  
17          essary or advisable with respect to such section, including  
18          a recommendation regarding whether to reauthorize such  
19          section.

20          (c) EFFECTIVE DATE.—The amendment made by  
21          subsection (a) shall apply to requests to provide a social  
22          security number occurring after the date that is 1 year  
23          after the date of enactment of this Act.

1 **SEC. 207. EXTENSION OF CIVIL MONETARY PENALTIES FOR**  
2 **MISUSE OF A SOCIAL SECURITY NUMBER.**

3 (a) TREATMENT OF WITHHOLDING OF MATERIAL  
4 FACTS.—

5 (1) CIVIL PENALTIES.—The first sentence of  
6 section 1129(a)(1) of the Social Security Act (42  
7 U.S.C. 1320a–8(a)(1)) is amended—

8 (A) by striking “who” and inserting  
9 “who—”;

10 (B) by striking “makes” and all that fol-  
11 lows through “shall be subject to” and inserting  
12 the following:

13 “(A) makes, or causes to be made, a statement  
14 or representation of a material fact, for use in deter-  
15 mining any initial or continuing right to or the  
16 amount of monthly insurance benefits under title II  
17 or benefits or payments under title VIII or XVI,  
18 that the person knows or should know is false or  
19 misleading;

20 “(B) makes such a statement or representation  
21 for such use with knowing disregard for the truth;  
22 or

23 “(C) omits from a statement or representation  
24 for such use, or otherwise withholds disclosure of, a  
25 fact which the individual knows or should know is  
26 material to the determination of any initial or con-

1       tinuing right to or the amount of monthly insurance  
2       benefits under title II or benefits or payments under  
3       title VIII or XVI and the individual knows, or  
4       should know, that the statement or representation  
5       with such omission is false or misleading or that the  
6       withholding of such disclosure is misleading, shall be  
7       subject to”;

8               (C) by inserting “or each receipt of such  
9       benefits while withholding disclosure of such  
10      fact” after “each such statement or representa-  
11      tion”;

12              (D) by inserting “or because of such with-  
13      holding of disclosure of a material fact” after  
14      “because of such statement or representation”;  
15      and

16              (E) by inserting “or such a withholding of  
17      disclosure” after “such a statement or rep-  
18      resentation”.

19              (2) ADMINISTRATIVE PROCEDURE FOR IMPOS-  
20      ING PENALTIES.—The first sentence of section  
21      1129A(a) of the Social Security Act (42 U.S.C.  
22      1320a–8a(a)) is amended—

23              (A) by striking “who” and inserting  
24      “who—”; and



1 (B) by striking “makes” and all that fol-  
2 lows through “shall be subject to” and inserting  
3 the following:

4 “(1) makes, or causes to be made, a statement  
5 or representation of a material fact, for use in deter-  
6 mining any initial or continuing right to or the  
7 amount of monthly insurance benefits under title II  
8 or benefits or payments under title VIII or XVI,  
9 that the person knows or should know is false or  
10 misleading;

11 “(2) makes such a statement or representation  
12 for such use with knowing disregard for the truth;  
13 or

14 “(3) omits from a statement or representation  
15 for such use, or otherwise withholds disclosure of, a  
16 fact which the individual knows or should know is  
17 material to the determination of any initial or con-  
18 tinuing right to or the amount of monthly insurance  
19 benefits under title II or benefits or payments under  
20 title VIII or XVI and the individual knows, or  
21 should know, that the statement or representation  
22 with such omission is false or misleading or that the  
23 withholding of such disclosure is misleading, shall be  
24 subject to”.

1 (b) APPLICATION OF CIVIL MONEY PENALTIES TO  
2 ELEMENTS OF CRIMINAL VIOLATIONS.—Section 1129(a)  
3 of the Social Security Act (42 U.S.C. 1320a–8(a)), as  
4 amended by subsection (a)(1), is amended—

5 (1) by redesignating paragraph (2) as para-  
6 graph (4);

7 (2) by redesignating the last sentence of para-  
8 graph (1) as paragraph (2) and inserting such para-  
9 graph after paragraph (1); and

10 (3) by inserting after paragraph (2) (as so re-  
11 designated) the following:

12 “(3) Any person (including an organization, agency,  
13 or other entity) who—

14 “(A) uses a social security account number that  
15 such person knows or should know has been as-  
16 signed by the Commissioner of Social Security (in an  
17 exercise of authority under section 205(c)(2) to es-  
18 tablish and maintain records) on the basis of false  
19 information furnished to the Commissioner by any  
20 person;

21 “(B) falsely represents a number to be the so-  
22 cial security account number assigned by the Com-  
23 missioner of Social Security to any individual, when  
24 such person knows or should know that such number

1 is not the social security account number assigned  
2 by the Commissioner to such individual;

3 “(C) knowingly alters a social security card  
4 issued by the Commissioner of Social Security, or  
5 possesses such a card with intent to alter it;

6 “(D) knowingly displays, sells, or purchases a  
7 card that is, or purports to be, a card issued by the  
8 Commissioner of Social Security, or possesses such  
9 a card with intent to display, purchase, or sell it;

10 “(E) counterfeits a social security card, or pos-  
11 sesses a counterfeit social security card with intent  
12 to display, sell, or purchase it;

13 “(F) discloses, uses, compels the disclosure of,  
14 or knowingly displays, sells, or purchases the social  
15 security account number of any person in violation  
16 of the laws of the United States;

17 “(G) with intent to deceive the Commissioner of  
18 Social Security as to such person’s true identity (or  
19 the true identity of any other person) furnishes or  
20 causes to be furnished false information to the Com-  
21 missioner with respect to any information required  
22 by the Commissioner in connection with the estab-  
23 lishment and maintenance of the records provided  
24 for in section 205(c)(2);

1           “(H) offers, for a fee, to acquire for any indi-  
2           vidual, or to assist in acquiring for any individual,  
3           an additional social security account number or a  
4           number which purports to be a social security ac-  
5           count number; or

6           “(I) being an officer or employee of a Federal,  
7           State, or local agency in possession of any individ-  
8           ual’s social security account number, willfully acts or  
9           fails to act so as to cause a violation by such agency  
10          of clause (vi)(II) or (x) of section 205(e)(2)(C), shall  
11          be subject to, in addition to any other penalties that  
12          may be prescribed by law, a civil money penalty of  
13          not more than \$5,000 for each violation. Such per-  
14          son shall also be subject to an assessment, in lieu of  
15          damages sustained by the United States resulting  
16          from such violation, of not more than twice the  
17          amount of any benefits or payments paid as a result  
18          of such violation.”.

19          (c) CLARIFICATION OF TREATMENT OF RECOVERED  
20          AMOUNTS.—Section 1129(e)(2)(B) of the Social Security  
21          Act (42 U.S.C. 1320a–8(e)(2)(B)) is amended by striking  
22          “In the case of amounts recovered arising out of a deter-  
23          mination relating to title VIII or XVI,” and inserting “In  
24          the case of any other amounts recovered under this sec-  
25          tion,”.

1 (d) CONFORMING AMENDMENTS.—

2 (1) Section 1129(b)(3)(A) of the Social Secu-  
3 rity Act (42 U.S.C. 1320a–8(b)(3)(A)) is amended  
4 by striking “charging fraud or false statements”.

5 (2) Section 1129(c)(1) of the Social Security  
6 Act (42 U.S.C. 1320a–8(c)(1)) is amended by strik-  
7 ing “and representations” and inserting “, represen-  
8 tations, or actions”.

9 (3) Section 1129(e)(1)(A) of the Social Security  
10 Act (42 U.S.C. 1320a–8(e)(1)(A)) is amended by  
11 striking “statement or representation referred to in  
12 subsection (a) was made” and inserting “violation  
13 occurred”.

14 (e) EFFECTIVE DATES.—

15 (1) IN GENERAL.—Except as provided in para-  
16 graph (2), the amendments made by this section  
17 shall apply with respect to violations of sections  
18 1129 and 1129A of the Social Security Act (42  
19 U.S.C. 1320–8 and 1320a–8a), as amended by this  
20 section, committed after the date of enactment of  
21 this Act.

22 (2) VIOLATIONS BY GOVERNMENT AGENTS IN  
23 POSSESSION OF SOCIAL SECURITY NUMBERS.—Sec-  
24 tion 1129(a)(3)(I) of the Social Security Act (42  
25 U.S.C. 1320a–8(a)(3)(I)), as added by subsection

1 (b), shall apply with respect to violations of that sec-  
2 tion occurring on or after the effective date de-  
3 scribed in section 202(e).

4 **SEC. 208. CRIMINAL PENALTIES FOR THE MISUSE OF A SO-**  
5 **CIAL SECURITY NUMBER.**

6 (a) PROHIBITION OF WRONGFUL USE AS PERSONAL  
7 IDENTIFICATION NUMBER.—No person may obtain any  
8 individual’s social security number for purposes of locating  
9 or identifying an individual with the intent to physically  
10 injure, harm, or use the identity of the individual for any  
11 illegal purpose.

12 (b) CRIMINAL SANCTIONS.—Section 208(a) of the  
13 Social Security Act (42 U.S.C. 408(a)) is amended—

14 (1) in paragraph (8), by inserting “or” after  
15 the semicolon; and

16 (2) by inserting after paragraph (8) the fol-  
17 lowing:

18 “(9) except as provided in subsections (e) and  
19 (f) of section 1028A of title 18, United States Code,  
20 knowingly and willfully displays, sells, or purchases  
21 (as those terms are defined in section 1028A(a) of  
22 title 18, United States Code) any individual’s social  
23 security account number without having met the  
24 prerequisites for consent under section 1028A(d) of  
25 title 18, United States Code; or

1           “(10) obtains any individual’s social security  
2           number for the purpose of locating or identifying the  
3           individual with the intent to injure or to harm that  
4           individual, or to use the identity of that individual  
5           for an illegal purpose;”.

6 **SEC. 209. CIVIL ACTIONS AND CIVIL PENALTIES.**

7           (a) CIVIL ACTION IN STATE COURTS.—

8           (1) IN GENERAL.—Any individual aggrieved by  
9           an act of any person in violation of this title or any  
10          amendments made by this title may, if otherwise  
11          permitted by the laws or rules of the court of a  
12          State, bring in an appropriate court of that State—

13                   (A) an action to enjoin such violation;

14                   (B) an action to recover for actual mone-  
15                   etary loss from such a violation, or to receive up  
16                   to \$500 in damages for each such violation,  
17                   whichever is greater; or

18                   (C) both such actions.

19          It shall be an affirmative defense in any action  
20          brought under this paragraph that the defendant  
21          has established and implemented, with due care, rea-  
22          sonable practices and procedures to effectively pre-  
23          vent violations of the regulations prescribed under  
24          this title. If the court finds that the defendant will-  
25          fully or knowingly violated the regulations prescribed

1 under this subsection, the court may, in its discre-  
2 tion, increase the amount of the award to an amount  
3 equal to not more than 3 times the amount available  
4 under subparagraph (B).

5 (2) STATUTE OF LIMITATIONS.—An action may  
6 be commenced under this subsection not later than  
7 the earlier of—

8 (A) 5 years after the date on which the al-  
9 leged violation occurred; or

10 (B) 3 years after the date on which the al-  
11 leged violation was or should have been reason-  
12 ably discovered by the aggrieved individual.

13 (3) NONEXCLUSIVE REMEDY.—The remedy pro-  
14 vided under this subsection shall be in addition to  
15 any other remedies available to the individual.

16 (b) CIVIL PENALTIES.—

17 (1) IN GENERAL.—Any person who the Attor-  
18 ney General determines has violated any section of  
19 this title or of any amendments made by this title  
20 shall be subject, in addition to any other penalties  
21 that may be prescribed by law—

22 (A) to a civil penalty of not more than  
23 \$5,000 for each such violation; and

24 (B) to a civil penalty of not more than  
25 \$50,000, if the violations have occurred with



1           such frequency as to constitute a general busi-  
2           ness practice.

3           (2) DETERMINATION OF VIOLATIONS.—Any  
4           willful violation committed contemporaneously with  
5           respect to the social security numbers of 2 or more  
6           individuals by means of mail, telecommunication, or  
7           otherwise, shall be treated as a separate violation  
8           with respect to each such individual.

9           (3) ENFORCEMENT PROCEDURES.—The provi-  
10          sions of section 1128A of the Social Security Act  
11          (42 U.S.C. 1320a–7a), other than subsections (a),  
12          (b), (f), (h), (i), (j), (m), and (n) and the first sen-  
13          tence of subsection (c) of such section, and the pro-  
14          visions of subsections (d) and (e) of section 205 of  
15          such Act (42 U.S.C. 405) shall apply to a civil pen-  
16          alty action under this subsection in the same man-  
17          ner as such provisions apply to a penalty or pro-  
18          ceeding under section 1128A(a) of such Act (42  
19          U.S.C. 1320a–7a(a)), except that, for purposes of  
20          this paragraph, any reference in section 1128A of  
21          such Act (42 U.S.C. 1320a–7a) to the Secretary  
22          shall be deemed to be a reference to the Attorney  
23          General.

1 **SEC. 210. FEDERAL INJUNCTIVE AUTHORITY.**

2 In addition to any other enforcement authority con-  
 3 ferred under this title or the amendments made by this  
 4 title, the Federal Government shall have injunctive author-  
 5 ity with respect to any violation by a public entity of any  
 6 provision of this title or of any amendments made by this  
 7 title.

8 **TITLE III—LIMITATIONS ON**  
 9 **SALE AND SHARING OF NON-**  
 10 **PUBLIC PERSONAL FINAN-**  
 11 **CIAL INFORMATION**

12 **SEC. 301. DEFINITION OF SALE.**

13 Section 509 of the Gramm-Leach-Bliley Act (15  
 14 U.S.C. 6809) is amended by adding at the end the fol-  
 15 lowing:

16 “(12) SALE.—The terms ‘sale’, ‘sell’, and ‘sold’,  
 17 with respect to nonpublic personal information,  
 18 mean the exchange of such information for any  
 19 thing of value, directly or indirectly, including the li-  
 20 censing, bartering, or renting of such information.”.

21 **SEC. 302. RULES APPLICABLE TO SALE OF NONPUBLIC**  
 22 **PERSONAL INFORMATION.**

23 Section 502 of the Gramm-Leach-Bliley Act (15  
 24 U.S.C. 6802) is amended—

25 (1) in the section heading, by inserting “SALES,  
 26 AND OTHER SHARING” after “DISCLOSURES”;

1           (2) in subsection (a), by striking “disclose to”  
2           and inserting “sell or otherwise disclose to an affil-  
3           iate or”;

4           (3) in subsection (b)—

5                 (A) in the subsection heading, by inserting  
6                 “FOR DISCLOSURES TO AFFILIATES” before the  
7                 period;

8                 (B) by striking “a nonaffiliated third  
9                 party” each place that term appears and insert-  
10                ing “an affiliate”;

11                (C) by striking “such third party” each  
12                place that term appears and inserting “such af-  
13                filiate”;

14                (D) by striking “may not disclose” and in-  
15                serting “may not sell or otherwise disclose”;  
16                and

17                (E) by striking paragraph (2) and insert-  
18                ing the following:

19                “(2) EXCEPTION.—This subsection shall not  
20                prevent a financial institution from providing non-  
21                public personal information to an affiliated third  
22                party to perform services for or functions on behalf  
23                of the financial institution, including marketing of  
24                the financial institution’s own products or services,  
25                if the financial institution fully discloses the provi-

1 sion of such information and requires the affiliate to  
2 maintain the confidentiality of such information.”;

3 (4) in subsection (d), by striking “disclose” and  
4 inserting “sell or otherwise disclose”;

5 (5) by striking subsection (e);

6 (6) by redesignating subsections (c) and (d) as  
7 subsections (e) and (f), respectively; and

8 (7) by inserting after subsection (b) the fol-  
9 lowing:

10 “(c) OPT IN FOR DISCLOSURES TO NONAFFILIATED  
11 THIRD PARTIES.—

12 “(1) AFFIRMATIVE CONSENT REQUIRED.—A fi-  
13 nancial institution may not sell or otherwise disclose  
14 nonpublic personal information to any nonaffiliated  
15 third party, unless the consumer to whom the infor-  
16 mation pertains—

17 “(A) has affirmatively consented to the  
18 sale or disclosure of such information; and

19 “(B) has not withdrawn the consent.

20 “(2) EXCEPTION.—This subsection shall not  
21 prevent a financial institution from providing non-  
22 public personal information to a nonaffiliated third  
23 party to perform services for or functions on behalf  
24 of the financial institution, including marketing of  
25 the financial institution’s own products or services

1 (subject to subsection (d) with respect to joint agree-  
2 ments between 2 or more financial institutions), if  
3 the financial institution fully discloses the provision  
4 of such information and enters into a contractual  
5 agreement with the nonaffiliated third party that re-  
6 quires that third party to maintain the confiden-  
7 tiality of such information.

8 “(d) OPT OUT FOR JOINT AGREEMENTS.—A finan-  
9 cial institution may not sell or otherwise disclose nonpublic  
10 personal information to a nonaffiliated third party for the  
11 purpose of offering financial products or services pursuant  
12 to a joint agreement between 2 or more financial institu-  
13 tions, unless—

14 “(1) the financial institution clearly and con-  
15 spicuously discloses to the consumer to whom the in-  
16 formation pertains, in writing or in electronic form  
17 or other form permitted by the regulations pre-  
18 scribed under section 504, that such information  
19 may be disclosed to such nonaffiliated third party;

20 “(2) the consumer is given the opportunity, be-  
21 fore the time that such information is initially dis-  
22 closed, to direct that such information not be dis-  
23 closed to such nonaffiliated third party;

1           “(3) the consumer is given an explanation of  
2           how the consumer can exercise that nondisclosure  
3           option; and

4           “(4) the financial institution receiving the non-  
5           public personal information signs a written agree-  
6           ment obliging it—

7                   “(A) to maintain the confidentiality of the  
8                   information; and

9                   “(B) to refrain from using, selling, or oth-  
10                  erwise disclosing the information other than to  
11                  carry out the joint offering or servicing of the  
12                  financial product or financial service that is the  
13                  subject of the written agreement.”.

14 **SEC. 303. EXCEPTIONS TO DISCLOSURE PROHIBITION.**

15           (a) IN GENERAL.—Section 502 of the Gramm-Leach-  
16           Bliley Act (15 U.S.C. 6802), as amended by this title, is  
17           amended by adding at the end the following:

18           “(g) GENERAL EXCEPTIONS.—Notwithstanding any  
19           other provision of this section, this section does not pro-  
20           hibit—

21                   “(1) the sale or other disclosure of nonpublic  
22                   personal information to an affiliate or a nonaffiliated  
23                   third party—

24                           “(A) as necessary to effect, administer, or  
25                           enforce a transaction requested or authorized

1 by the consumer to whom the information per-  
2 tains, or in connection with—

3 “(i) servicing or processing a financial  
4 product or service requested or authorized  
5 by the consumer;

6 “(ii) maintaining or servicing the ac-  
7 count of the consumer with the financial  
8 institution, or with another entity as part  
9 of a private label credit card program or  
10 other extension of credit on behalf of such  
11 entity; or

12 “(iii) a proposed or actual  
13 securitization, secondary market sale (in-  
14 cluding sales of servicing rights), or similar  
15 transaction related to a transaction of the  
16 consumer;

17 “(B) with the consent or at the direction  
18 of the consumer, in accordance with applicable  
19 rules prescribed under this subtitle;

20 “(C) to the extent specifically permitted or  
21 required under other provisions of law and in  
22 accordance with the Right to Financial Privacy  
23 Act of 1978; or

24 “(D) to law enforcement agencies (includ-  
25 ing a Federal functional regulator, the Sec-

1           retary of the Treasury, with respect to sub-  
2           chapter II of chapter 53 of title 31, United  
3           States Code, and chapter 2 of title I of Public  
4           Law 91–508 (12 U.S.C. 1951–1959), a State  
5           insurance authority, or the Federal Trade Com-  
6           mission), self-regulatory organizations, or for  
7           an investigation on a matter related to public  
8           safety;

9           “(2) the disclosure, other than the sale, of non-  
10          public personal information to identify or locate  
11          missing and abducted children, witnesses, criminals,  
12          and fugitives, parties to lawsuits, parents,  
13          delinquents in child support payments, organ and  
14          bone marrow donors, pension fund beneficiaries, and  
15          missing heirs; or

16          “(3) the disclosure, other than the sale, of non-  
17          public personal information—

18                 “(A) to protect the confidentiality or secu-  
19                 rity of the records of the financial institution  
20                 pertaining to the consumer, the service or prod-  
21                 uct, or the transaction therein;

22                 “(B) to protect against or prevent actual  
23                 or potential fraud, unauthorized transactions,  
24                 claims, or other liability;



1           “(C) for required institutional risk control,  
2 or for resolving customer disputes or inquiries;

3           “(D) to persons holding a legal or bene-  
4 ficial interest relating to the consumer;

5           “(E) to persons acting in a fiduciary or  
6 representative capacity on behalf of the con-  
7 sumer;

8           “(F) to provide information to insurance  
9 rate advisory organizations, guaranty funds or  
10 agencies, applicable rating agencies of the fi-  
11 nancial institution, persons assessing the com-  
12 pliance of the institution with industry stand-  
13 ards, or the attorneys, accountants, or auditors  
14 of the institution;

15           “(G) to a consumer reporting agency, in  
16 accordance with the Fair Credit Reporting Act  
17 or from a consumer report reported by a con-  
18 sumer reporting agency, as those terms are de-  
19 fined in that Act;

20           “(H) in connection with a proposed or ac-  
21 tual sale, merger, transfer, or exchange of all or  
22 a portion of a business or operating unit if the  
23 disclosure of nonpublic personal information  
24 concerns solely consumers of such business or  
25 unit;

1           “(I) to comply with Federal, State, or local  
2 laws, rules, or other applicable legal require-  
3 ments, or with a properly authorized civil,  
4 criminal, or regulatory investigation or sub-  
5 poena or summons by Federal, State, or local  
6 authorities; or

7           “(J) to respond to judicial process or gov-  
8 ernment regulatory authorities having jurisdic-  
9 tion over the financial institution for examina-  
10 tion, compliance, or other purposes, as author-  
11 ized by law.

12       “(h) DENIAL OF SERVICE PROHIBITED.—A financial  
13 institution may not deny any consumer a financial product  
14 or a financial service as a result of the refusal by the con-  
15 sumer to grant consent to disclosure under this section  
16 or the exercise by the consumer of a nondisclosure option  
17 under this section, except that nothing in this subsection  
18 may be construed to prohibit a financial institution from  
19 offering incentives to elicit consumer consent to the use  
20 of his or her nonpublic personal information.”.

21       (b) REPEAL OF REGULATORY EXEMPTION AUTHOR-  
22 ITY.—Section 504 of the Gramm-Leach-Bliley Act (15  
23 U.S.C. 6804) is amended—

24           (1) by striking subsection (b);

1           (2) by striking “(a) REGULATORY AUTHOR-  
2           ITY.—”;

3           (3) by redesignating paragraphs (1), (2), and  
4           (3) as subsections (a), (b), and (c), respectively, and  
5           moving the margins 2 ems to the left; and

6           (4) by striking “paragraph (1)” and inserting  
7           “subsection (a)”.

8   **SEC. 304. CONFORMING AMENDMENTS.**

9           Title V of the Gramm-Leach-Bliley Act (15 U.S.C.  
10 6801 et seq.) is amended—

11           (1) in section 503(b)(1) (15 U.S.C.  
12 6803(b)(1))—

13           (A) by inserting “affiliates and” before  
14           “nonaffiliated”; and

15           (B) in subparagraph (A), by striking  
16           “502(e)” and inserting “502(g)”; and

17           (2) in section 509(3)(D) (15 U.S.C.  
18 6809(3)(D)), by striking “502(e)(1)(C)” and insert-  
19           ing “502(g)(1)(A)(iii)”.

20   **SEC. 305. REGULATORY AUTHORITY.**

21           Not later than 6 months after the date of enactment  
22 of this Act, the agencies referred to in section 504(a)(1)  
23 of the Gramm-Leach-Bliley Act (15 U.S.C. 6804(a)(1))  
24 shall promulgate final regulations in accordance with that

1 section 504 to carry out the amendments made by this  
2 Act.

3 **SEC. 306. EFFECTIVE DATE.**

4 This title and the amendments made by this title  
5 shall take effect 6 months after the date of enactment of  
6 this Act.

7 **TITLE IV—LIMITATIONS ON THE**  
8 **PROVISION OF PROTECTED**  
9 **HEALTH INFORMATION**

10 **SEC. 401. DEFINITIONS.**

11 In this title:

12 (1) BUSINESS ASSOCIATE.—

13 (A) IN GENERAL.—Except as provided in  
14 subparagraph (B), the term “business asso-  
15 ciate” means, with respect to a covered entity,  
16 a person who—

17 (i) on behalf of such covered entity or  
18 of an organized health care arrangement in  
19 which the covered entity participates, but  
20 other than in the capacity of a member of  
21 the workforce of such covered entity or ar-  
22 rangement, performs, or assists in the per-  
23 formance of—

24 (I) a function or activity involv-  
25 ing the use or disclosure of individ-

1 ually identifiable health information,  
2 including claims processing or admin-  
3 istration, data analysis, processing or  
4 administration, utilization review,  
5 quality assurance, billing, benefit  
6 management, practice management,  
7 and repricing; or

8 (II) any other function or activity  
9 regulated under subchapter C of title  
10 45, Code of Federal Regulations; or

11 (ii) provides, other than in the capac-  
12 ity of a member of the workforce of such  
13 covered entity, legal, actuarial, accounting,  
14 consulting, data aggregation (as defined in  
15 section 164.501 of title 45, Code of Fed-  
16 eral Regulations), management, adminis-  
17 trative, accreditation, or financial services  
18 to or for such covered entity, or to or for  
19 an organized health care arrangement in  
20 which the covered entity participates,  
21 where the provision of the service involves  
22 the disclosure of individually identifiable  
23 health information from such covered enti-  
24 ty or arrangement, or from another busi-

1           ness associate of such covered entity or ar-  
2           rangement, to the person.

3           (B) LIMITATIONS.—

4                 (i) IN GENERAL.—A covered entity  
5           participating in an organized health care  
6           arrangement that performs a function or  
7           activity as described by subparagraph  
8           (A)(i) for or on behalf of such organized  
9           health care arrangement, or that provides  
10          a service as described in subparagraph  
11          (A)(ii) to or for such organized health care  
12          arrangement, does not, simply through the  
13          performance of such function or activity or  
14          the provision of such service, become a  
15          business associate of other covered entities  
16          participating in such organized health care  
17          arrangement.

18                 (ii) LIMITATION.—A covered entity  
19          may be a business associate of another cov-  
20          ered entity.

21                 (2) COVERED ENTITY.—The term “covered en-  
22          tity” means—

23                         (A) a health plan;

24                         (B) a health care clearinghouse; and

1 (C) a health care provider who transmits  
2 any health information in electronic form in  
3 connection with a transaction covered by parts  
4 160 through 164 of title 45, Code of Federal  
5 Regulations.

6 (3) DISCLOSURE.—The term “disclosure”  
7 means the release, transfer, provision of access to, or  
8 divulging in any other manner of information out-  
9 side the entity holding the information.

10 (4) EMPLOYER.—The term “employer” has the  
11 meaning given that term in section 3401(d) of the  
12 Internal Revenue Code of 1986.

13 (5) GROUP HEALTH PLAN.—The term “group  
14 health plan” means an employee welfare benefit plan  
15 (as defined in section 3(1) of the Employee Retirement  
16 Income and Security Act of 1974 (29 U.S.C.  
17 1002(1)), including insured and self-insured plans,  
18 to the extent that the plan provides medical care (as  
19 defined in section 2791(a)(2) of the Public Health  
20 Service Act, 42 U.S.C. 300gg–91(a)(2)), including  
21 items and services paid for as medical care, to em-  
22 ployees or their dependents directly or through in-  
23 surance, reimbursement, or otherwise, that—

24 (A) has 50 or more participants (as de-  
25 fined in section 3(7) of Employee Retirement

1           Income and Security Act of 1974, 29 U.S.C.  
2           1002(7)); or

3           (B) is administered by an entity other than  
4           the employer that established and maintains the  
5           plan.

6           (6) HEALTH CARE.—The term “health care”  
7           includes, but is not limited to, the following:

8           (A) Preventive, diagnostic, therapeutic, re-  
9           habilitative, maintenance, or palliative care and  
10          counseling, service, assessment, or procedure  
11          with respect to the physical or mental condition,  
12          or functional status, of an individual or that af-  
13          fects the structure or function of the body.

14          (B) The sale or dispensing of a drug, de-  
15          vice, equipment, or other item in accordance  
16          with a prescription.

17          (7) HEALTH CARE CLEARINGHOUSE.—The term  
18          “health care clearinghouse” means a public or pri-  
19          vate entity, including a billing service, repricing com-  
20          pany, community health management information  
21          system or community health information system,  
22          and value-added networks and switches, that—

23          (A) processes or facilitates the processing  
24          of health information received from another en-  
25          tity in a nonstandard format or containing non-



1 standard data content into standard data ele-  
2 ments or a standard transaction; or

3 (B) receives a standard transaction from  
4 another entity and processes or facilitates the  
5 processing of health information into non-  
6 standard format or nonstandard data content  
7 for the receiving entity.

8 (8) HEALTH CARE PROVIDER.—The term  
9 “health care provider” has the meaning given the  
10 terms “provider of services” and “provider of med-  
11 ical or health services” in subsections (u) and (s) of  
12 section 1861 of the Social Security Act (42 U.S.C.  
13 1395x), respectively, and includes any other person  
14 or organization who furnishes, bills, or is paid for  
15 health care in the normal course of business.

16 (9) HEALTH INFORMATION.—The term “health  
17 information” means any information, whether oral  
18 or recorded in any form or medium, that—

19 (A) is created or received by a health care  
20 provider, health plan, public health authority,  
21 employer, life insurer, school or university, or  
22 health care clearinghouse; and

23 (B) relates to the past, present, or future  
24 physical or mental health or condition of an in-  
25 dividual; the provision of health care to an indi-

1           vidual; or the past, present, or future payment  
2           for the provision of health care to an individual.

3           (10) HEALTH INSURANCE ISSUER.—The term  
4           “health insurance issuer” means a health insurance  
5           issuer (as defined in section 2791(b)(2) of the Pub-  
6           lic Health Service Act, 42 U.S.C. 300gg–91(b)(2))  
7           and used in the definition of health plan in this sec-  
8           tion and includes an insurance company, insurance  
9           service, or insurance organization (including an  
10          HMO) that is licensed to engage in the business of  
11          insurance in a State and is subject to State law that  
12          regulates insurance. Such term does not include a  
13          group health plan.

14          (11) HEALTH MAINTENANCE ORGANIZATION.—  
15          The term “health maintenance organization”  
16          (HMO) (as defined in section 2791(b)(3) of the  
17          Public Health Service Act, 42 U.S.C. 300gg–91  
18          (b)(3)) and used in the definition of health plan in  
19          this section, means a federally qualified HMO, an  
20          organization recognized as an HMO under State  
21          law, or a similar organization regulated for solvency  
22          under State law in the same manner and to the  
23          same extent as such an HMO.

24          (12) HEALTH OVERSIGHT AGENCY.—The term  
25          “health oversight agency” means an agency or au-

1       thority of the United States, a State, a territory, a  
2       political subdivision of a State or territory, or an In-  
3       dian tribe, or a person or entity acting under a  
4       grant of authority from or contract with such public  
5       agency, including the employees or agents of such  
6       public agency or its contractors or persons or enti-  
7       ties to whom it has granted authority, that is au-  
8       thorized by law to oversee the health care system  
9       (whether public or private) or government programs  
10      in which health information is necessary to deter-  
11      mine eligibility or compliance, or to enforce civil  
12      rights laws for which health information is relevant.

13           (13) HEALTH PLAN.—The term “health plan”  
14      means an individual or group plan that provides, or  
15      pays the cost of, medical care, as defined in section  
16      2791(a)(2) of the Public Health Service Act (42  
17      U.S.C. 300gg–91(a)(2))—

18           (A) including, singly or in combination—  
19           (i) a group health plan;  
20           (ii) a health insurance issuer;  
21           (iii) an HMO;  
22           (iv) part A or B of the medicare pro-  
23      gram under title XVIII of the Social Secu-  
24      rity Act (42 U.S.C. 1395 et seq.);

1 (v) the medicaid program under title  
2 XIX of the Social Security Act (42 U.S.C.  
3 1396 et seq.);

4 (vi) an issuer of a medicare supple-  
5 mental policy (as defined in section  
6 1882(g)(1) of the Social Security Act, 42  
7 U.S.C. 1395ss(g)(1));

8 (vii) an issuer of a long-term care pol-  
9 icy, excluding a nursing home fixed-indem-  
10 nity policy;

11 (viii) an employee welfare benefit plan  
12 or any other arrangement that is estab-  
13 lished or maintained for the purpose of of-  
14 fering or providing health benefits to the  
15 employees of 2 or more employers;

16 (ix) the health care program for active  
17 military personnel under title 10, United  
18 States Code;

19 (x) the veterans health care program  
20 under chapter 17 of title 38, United States  
21 Code;

22 (xi) the Civilian Health and Medical  
23 Program of the Uniformed Services  
24 (CHAMPUS) (as defined in section  
25 1072(4) of title 10, United States Code);

1 (xii) the Indian Health Service pro-  
2 gram under the Indian Health Care Im-  
3 provement Act (25 U.S.C. 1601 et seq.);

4 (xiii) the Federal Employees Health  
5 Benefits Program under chapter 89 of title  
6 5, United States Code;

7 (xiv) an approved State child health  
8 plan under title XXI of the Social Security  
9 Act (42 U.S.C. 1397aa et seq.), providing  
10 benefits for child health assistance that  
11 meet the requirements of section 2103 of  
12 such Act (42 U.S.C. 1397cc);

13 (xv) the Medicare+Choice program  
14 under part C of title XVIII of the Social  
15 Security Act (42 U.S.C. 1395w-21 et  
16 seq.);

17 (xvi) a high risk pool that is a mecha-  
18 nism established under State law to pro-  
19 vide health insurance coverage or com-  
20 parable coverage to eligible individuals; and

21 (xvii) any other individual or group  
22 plan, or combination of individual or group  
23 plans, that provides or pays for the cost of  
24 medical care (as defined in section

1 2791(a)(2) of the Public Health Service  
2 Act (42 U.S.C. 300gg–91(a)(2)); and

3 (B) excluding—

4 (i) any policy, plan, or program to the  
5 extent that it provides, or pays for the cost  
6 of, excepted benefits that are listed in sec-  
7 tion 2791(e)(1) of the Public Health Serv-  
8 ice Act (42 U.S.C. 300gg–91(c)(1)); and

9 (ii) a government-funded program  
10 (other than 1 listed in clause (i) through  
11 (xvi) of subparagraph (A)), whose principal  
12 purpose is other than providing, or paying  
13 the cost of, health care, or whose principal  
14 activity is the direct provision of health  
15 care to persons, or the making of grants to  
16 fund the direct provision of health care to  
17 persons.

18 (14) INDIVIDUALLY IDENTIFIABLE HEALTH IN-  
19 FORMATION.—The term “individually identifiable  
20 health information” means information that is a  
21 subset of health information, including demographic  
22 information collected from an individual, that—

23 (A) is created or received by a covered en-  
24 tity or employer; and

1 (B)(i) relates to the past, present, or fu-  
2 ture physical or mental health or condition of  
3 an individual, the provision of health care to an  
4 individual, or the past, present, or future pay-  
5 ment for the provision of health care to an indi-  
6 vidual; and

7 (ii)(I) identifies an individual; or

8 (II) with respect to which there is a rea-  
9 sonable basis to believe that the information  
10 can be used to identify an individual.

11 (15) LAW ENFORCEMENT OFFICIAL.—The term  
12 “law enforcement official” means an officer or em-  
13 ployee of any agency or authority of the United  
14 States, a State, a territory, a political subdivision of  
15 a State or territory, or an Indian tribe, who is em-  
16 powered by law to—

17 (A) investigate or conduct an official in-  
18 quiry into a potential violation of law; or

19 (B) prosecute or otherwise conduct a  
20 criminal, civil, or administrative proceeding  
21 arising from an alleged violation of law.

22 (16) LIFE INSURER.—The term “life insurer”  
23 means a life insurance company (as defined in sec-  
24 tion 816 of the Internal Revenue Code of 1986), in-  
25 cluding the employees and agents of such company.

1           (17) **MARKETING.**—The term “marketing”  
2 means to make a communication about a product or  
3 service that encourages recipients of the communica-  
4 tion to purchase or use the product or service.

5           (18) **NONCOVERED ENTITY.**—The term “non-  
6 covered entity” means any person or public or pri-  
7 vate entity that is not a covered entity, including but  
8 not limited to a business associate of a covered enti-  
9 ty, a covered entity if such covered entity is acting  
10 as a business associate, a health researcher, school  
11 or university, life insurer, employer, public health  
12 authority, health oversight agency, or law enforce-  
13 ment official, or any person acting as an agent of  
14 such entities or persons.

15           (19) **ORGANIZED HEALTH CARE ARRANGE-**  
16 **MENT.**—The term “organized health care arrange-  
17 ment” means—

18                   (A) a clinically integrated care setting in  
19 which individuals typically receive health care  
20 from more than 1 health care provider;

21                   (B) an organized system of health care in  
22 which more than 1 covered entity participates,  
23 and in which the participating covered enti-  
24 ties—



- 1 (i) hold themselves out to the public  
2 as participating in a joint arrangement;  
3 and
- 4 (ii) participate in joint activities in-  
5 cluding at least—
- 6 (I) utilization review, in which  
7 health care decisions by participating  
8 covered entities are reviewed by other  
9 participating covered entities or by a  
10 third party on their behalf;
- 11 (II) quality assessment and im-  
12 provement activities, in which treat-  
13 ment provided by participating cov-  
14 ered entities is assessed by other par-  
15 ticipating covered entities or by a  
16 third party on their behalf; or
- 17 (III) payment activities, if the fi-  
18 nancial risk for delivering health care  
19 is shared, in part or in whole, by par-  
20 ticipating covered entities through the  
21 joint arrangement and if protected  
22 health information created or received  
23 by a covered entity is reviewed by  
24 other participating covered entities or  
25 by a third party on their behalf for

1 the purpose of administering the shar-  
2 ing of financial risk;

3 (C) a group health plan and a health in-  
4 surance issuer or HMO with respect to such  
5 group health plan, but only with respect to pro-  
6 tected health information created or received by  
7 such health insurance issuer or HMO that re-  
8 lates to individuals who are or who have been  
9 participants or beneficiaries in such group  
10 health plan;

11 (D) a group health plan and 1 or more  
12 other group health plans each of which are  
13 maintained by the same plan sponsor; or

14 (E) the group health plans described in  
15 subparagraph (D) and health insurance issuers  
16 or HMOs with respect to such group health  
17 plans, but only with respect to protected health  
18 information created or received by such health  
19 insurance issuers or HMOs that relates to indi-  
20 viduals who are or have been participants or  
21 beneficiaries in any of such group health plans.

22 (20) PROTECTED HEALTH INFORMATION.—

23 (A) IN GENERAL.—The term “protected  
24 health information” means individually identifi-

1           able health information that, except as provided  
2           in subparagraph (B), is—

3                   (i) transmitted by electronic media;

4                   (ii) maintained in any medium de-  
5                   scribed in the definition of electronic media  
6                   in section 162.103 of title 45, Code of  
7                   Federal Regulations; or

8                   (iii) transmitted or maintained in any  
9                   other form or medium.

10           (B) EXCLUSIONS.—Such term does not in-  
11           clude individually identifiable health informa-  
12           tion in—

13                   (i) education records covered by the  
14                   Family Educational Rights and Privacy  
15                   Act of 1974 (section 444 of the General  
16                   Education Provisions Act (20 U.S.C.  
17                   1232g));

18                   (ii) records described in subsection  
19                   (a)(4)(B)(iv) of that Act; or

20                   (iii) employment records held by a  
21                   covered entity in its role as an employer.

22           (21) PUBLIC HEALTH AUTHORITY.—The term  
23           “public health authority” means an agency or au-  
24           thority of the United States, a State, a territory, a  
25           political subdivision of a State or territory, or an In-

1       dian tribe, or a person or entity acting under a  
2       grant of authority from or contract with such public  
3       agency, including employees or agents of such public  
4       agency or its contractors or persons or entities to  
5       whom it has granted authority, that is responsible  
6       for public health matters as part of its official man-  
7       date.

8               (22) SCHOOL OR UNIVERSITY.—The term  
9       “school or university” means an institution or place  
10      for instruction or education, including an elementary  
11      school, secondary school, or institution of higher  
12      learning, a college, or an assemblage of colleges  
13      united under 1 corporate organization or govern-  
14      ment.

15              (23) SECRETARY.—The term “Secretary”  
16      means the Secretary of Health and Human Services.

17              (24) SALE; SELL; SOLD.—The terms “sale”,  
18      “sell”, and “sold”, with respect to protected health  
19      information, mean the exchange of such information  
20      for anything of value, directly or indirectly, including  
21      the licensing, bartering, or renting of such informa-  
22      tion.

23              (25) USE.—The term “use” means, with re-  
24      spect to individually identifiable health information,  
25      the sharing, employment, application, utilization, ex-

1 amination, or analysis of such information within an  
2 entity that maintains such information.

3 (26) WRITING.—The term “writing” means  
4 writing in either a paper-based or computer-based  
5 form, including electronic and digital signatures.

6 **SEC. 402. PROHIBITION AGAINST SELLING PROTECTED**  
7 **HEALTH INFORMATION.**

8 (a) VALID AUTHORIZATION REQUIRED.—

9 (1) IN GENERAL.—A noncovered entity shall  
10 not sell the protected health information of an indi-  
11 vidual or use such information for marketing pur-  
12 poses without an authorization that is valid under  
13 section 403. When a noncovered entity obtains or re-  
14 ceives authorization to sell such information, such  
15 sale must be consistent with such authorization.

16 (2) NO DUPLICATE AUTHORIZATION RE-  
17 QUIRED.—Nothing in paragraph (1) shall be con-  
18 strued as requiring a noncovered entity that receives  
19 from a covered entity an authorization that is valid  
20 under section 403 to obtain a separate authorization  
21 from an individual before the sale or use of the indi-  
22 vidual’s protected health information so long as the  
23 sale or use of the information is consistent with the  
24 terms of the authorization.

1 (b) SCOPE.—A sale of protected health information  
2 as described under subsection (a) shall be limited to the  
3 minimum amount of information necessary to accomplish  
4 the purpose for which the sale is made.

5 (c) PURPOSE.—A recipient of information sold pursu-  
6 ant to this title may use or disclose such information solely  
7 to carry out the purpose for which the information was  
8 sold.

9 (d) NOT REQUIRED.—Nothing in this title permitting  
10 the sale of protected health information shall be construed  
11 to require such sale.

12 (e) IDENTIFICATION OF INFORMATION AS PRO-  
13 TECTED HEALTH INFORMATION.—Information sold pur-  
14 suant to this title shall be clearly identified as protected  
15 health information.

16 (f) NO WAIVER.—Except as provided in this title, an  
17 individual's authorization to sell protected health informa-  
18 tion shall not be construed as a waiver of any rights that  
19 the individual has under other Federal or State laws, the  
20 rules of evidence, or common law.

21 **SEC. 403. AUTHORIZATION FOR SALE OR MARKETING OF**  
22 **PROTECTED HEALTH INFORMATION BY NON-**  
23 **COVERED ENTITIES.**

24 (a) VALID AUTHORIZATION.—A valid authorization is  
25 a document that complies with all requirements of this

1 section. Such authorization may include additional infor-  
2 mation not required under this section, provided that such  
3 information is not inconsistent with the requirements of  
4 this section.

5 (b) DEFECTIVE AUTHORIZATION.—An authorization  
6 is not valid, if the document submitted has any of the fol-  
7 lowing defects:

8 (1) The expiration date has passed or the expi-  
9 ration event is known by the noncovered entity to  
10 have occurred.

11 (2) The authorization has not been filled out  
12 completely, with respect to an element described in  
13 subsections (e) and (f).

14 (3) The authorization is known by the non-  
15 covered entity to have been revoked.

16 (4) The authorization lacks an element required  
17 by subsections (e) and (f).

18 (5) Any material information in the authoriza-  
19 tion is known by the noncovered entity to be false.

20 (c) REVOCATION OF AUTHORIZATION.—An individual  
21 may revoke an authorization provided under this section  
22 at any time provided that the revocation is in writing, ex-  
23 cept to the extent that the noncovered entity has taken  
24 action in reliance thereon.

25 (d) DOCUMENTATION.—

1           (1) IN GENERAL.—A noncovered entity must  
2 document and retain any signed authorization under  
3 this section as required under paragraph (2).

4           (2) STANDARD.—A noncovered entity shall, if a  
5 communication is required by this title to be in writ-  
6 ing, maintain such writing, or an electronic copy, as  
7 documentation.

8           (3) RETENTION PERIOD.—A noncovered entity  
9 shall retain the documentation required by this sec-  
10 tion for 6 years from the date of its creation or the  
11 date when it last was in effect, whichever is later.

12 (e) CONTENT OF AUTHORIZATION.—

13           (1) CONTENT.—An authorization described in  
14 subsection (a) shall—

15           (A) contain a description of the informa-  
16 tion to be sold that identifies such information  
17 in a specific and meaningful manner;

18           (B) contain the name or other specific  
19 identification of the person, or class of persons,  
20 authorized to sell the information;

21           (C) contain the name or other specific  
22 identification of the person, or class of persons,  
23 to whom the information is to be sold;

24           (D) include an expiration date or an expi-  
25 ration event relating to the selling of such infor-



1           mation that signifies that the authorization is  
2           valid until such date or event;

3           (E) include a statement that the individual  
4           has a right to revoke the authorization in writ-  
5           ing and the exceptions to the right to revoke,  
6           and a description of the procedure involved in  
7           such revocation;

8           (F) be in writing and include the signature  
9           of the individual and the date, or if the author-  
10          ization is signed by a personal representative of  
11          the individual, a description of such representa-  
12          tive's authority to act for the individual; and

13          (G) include a statement explaining the  
14          purpose for which such information is sold.

15          (2) PLAIN LANGUAGE.—The authorization shall  
16          be written in plain language.

17          (f) NOTICE.—

18           (1) IN GENERAL.—The authorization shall in-  
19           clude a statement that the individual may—

20           (A) inspect or copy the protected health in-  
21           formation to be sold; and

22           (B) refuse to sign the authorization.

23          (2) COPY TO THE INDIVIDUAL.—A noncovered  
24          entity shall provide the individual with a copy of the  
25          signed authorization.

1 (g) MODEL AUTHORIZATIONS.—The Secretary, after  
2 notice and opportunity for public comment, shall develop  
3 and disseminate model written authorizations of the type  
4 described in this section and model statements of the limi-  
5 tations on such authorizations. Any authorization obtained  
6 on a model authorization form developed by the Secretary  
7 pursuant to the preceding sentence shall be deemed to sat-  
8 isfy the requirements of this section.

9 (h) NONCOERCION.—A covered entity or noncovered  
10 entity shall not condition the purchase of a product or the  
11 provision of a service to an individual based on whether  
12 such individual provides an authorization to such entity  
13 as described in this section.

14 **SEC. 404. PROHIBITION AGAINST RETALIATION.**

15 A noncovered entity that collects protected health in-  
16 formation, may not adversely affect another person, di-  
17 rectly or indirectly, because such person has exercised a  
18 right under this title, disclosed information relating to a  
19 possible violation of this title, or associated with, or as-  
20 sisted, a person in the exercise of a right under this title.

21 **SEC. 405. RULE OF CONSTRUCTION.**

22 The requirements of this title shall not be construed  
23 to impose any additional requirements or in any way alter  
24 the requirements imposed upon covered entities under

1 parts 160 through 164 of title 45, Code of Federal Regu-  
2 lations.

3 **SEC. 406. REGULATIONS.**

4 (a) IN GENERAL.—The Secretary shall promulgate  
5 regulations implementing the provisions of this title.

6 (b) TIMEFRAME.—Not later than 1 year after the  
7 date of enactment of this Act, the Secretary shall publish  
8 proposed regulations in the Federal Register. With regard  
9 to such proposed regulations, the Secretary shall provide  
10 an opportunity for submission of comments by interested  
11 persons during a period of not less than 90 days. Not later  
12 than 2 years after the date of enactment of this Act, the  
13 Secretary shall publish final regulations in the Federal  
14 Register.

15 **SEC. 407. ENFORCEMENT.**

16 (a) IN GENERAL.—A covered entity or noncovered  
17 entity that knowingly violates section 402 shall be subject  
18 to a civil money penalty under this section.

19 (b) AMOUNT.—The civil money penalty described in  
20 subsection (a) shall not exceed \$100,000. In determining  
21 the amount of any penalty to be assessed, the Secretary  
22 shall take into account the previous record of compliance  
23 of the entity being assessed with the applicable provisions  
24 of this title and the gravity of the violation.

25 (c) ADMINISTRATIVE REVIEW.—

1           (1) OPPORTUNITY FOR HEARING.—The entity  
2 assessed shall be afforded an opportunity for a hear-  
3 ing by the Secretary upon request made within 30  
4 days after the date of the issuance of a notice of as-  
5 sessment. In such hearing the decision shall be made  
6 on the record pursuant to section 554 of title 5,  
7 United States Code. If no hearing is requested, the  
8 assessment shall constitute a final and unappealable  
9 order.

10           (2) HEARING PROCEDURE.—If a hearing is re-  
11 quested, the initial agency decision shall be made by  
12 an administrative law judge, and such decision shall  
13 become the final order unless the Secretary modifies  
14 or vacates the decision. Notice of intent to modify or  
15 vacate the decision of the administrative law judge  
16 shall be issued to the parties within 30 days after  
17 the date of the decision of the judge. A final order  
18 which takes effect under this paragraph shall be  
19 subject to review only as provided under subsection  
20 (d).

21 (d) JUDICIAL REVIEW.—

22           (1) FILING OF ACTION FOR REVIEW.—Any enti-  
23 ty against whom an order imposing a civil money  
24 penalty has been entered after an agency hearing  
25 under this section may obtain review by the United

1 States district court for any district in which such  
2 entity is located or the United States District Court  
3 for the District of Columbia by filing a notice of ap-  
4 peal in such court within 30 days from the date of  
5 such order, and simultaneously sending a copy of  
6 such notice by registered mail to the Secretary.

7 (2) CERTIFICATION OF ADMINISTRATIVE  
8 RECORD.—The Secretary shall promptly certify and  
9 file in such court the record upon which the penalty  
10 was imposed.

11 (3) STANDARD FOR REVIEW.—The findings of  
12 the Secretary shall be set aside only if found to be  
13 unsupported by substantial evidence as provided by  
14 section 706(2)(E) of title 5, United States Code.

15 (4) APPEAL.—Any final decision, order, or  
16 judgment of the district court concerning such re-  
17 view shall be subject to appeal as provided in chap-  
18 ter 83 of title 28 of such Code.

19 (e) FAILURE TO PAY ASSESSMENT; MAINTENANCE  
20 OF ACTION.—

21 (1) FAILURE TO PAY ASSESSMENT.—If any en-  
22 tity fails to pay an assessment after it has become  
23 a final and unappealable order, or after the court  
24 has entered final judgment in favor of the Secretary,  
25 the Secretary shall refer the matter to the Attorney

1 General who shall recover the amount assessed by  
 2 action in the appropriate United States district  
 3 court.

4 (2) NONREVIEWABILITY.—In such action the  
 5 validity and appropriateness of the final order im-  
 6 posing the penalty shall not be subject to review.

7 (f) PAYMENT OF PENALTIES.—Except as otherwise  
 8 provided, penalties collected under this section shall be  
 9 paid to the Secretary (or other officer) imposing the pen-  
 10 alty and shall be available without appropriation and until  
 11 expended for the purpose of enforcing the provisions with  
 12 respect to which the penalty was imposed.

## 13 **TITLE V—DRIVER’S LICENSE** 14 **PRIVACY**

### 15 **SEC. 501. DRIVER’S LICENSE PRIVACY.**

16 Section 2725 of title 18, United States Code, is  
 17 amended by striking paragraphs (2) through (4) and add-  
 18 ing the following:

19 “(2) ‘person’ means an individual, organization,  
 20 or entity, but does not include a State or agency  
 21 thereof;

22 “(3) ‘personal information’ means information  
 23 that identifies an individual, including an individ-  
 24 ual’s photograph, social security number, driver  
 25 identification number, name, address (but not the 5-

1 digit zip code), telephone number, medical or dis-  
 2 ability information, any physical copy of a driver's li-  
 3 cense, birth date, information on physical character-  
 4 istics, including height, weight, sex or eye color, or  
 5 any biometric identifiers on a license, including a  
 6 finger print, but not information on vehicular acci-  
 7 dents, driving violations, and driver's status;

8 “(4) ‘highly restricted personal information’  
 9 means an individual's photograph or image, social  
 10 security number, medical or disability information,  
 11 any physical copy of a driver's license, driver identi-  
 12 fication number, birth date, information on physical  
 13 characteristics, including height, weight, sex, or eye  
 14 color, or any biometric identifiers on a license, in-  
 15 cluding a finger print; and”.

## 16 **TITLE VI—MISCELLANEOUS**

### 17 **SEC. 601. ENFORCEMENT BY STATE ATTORNEYS GENERAL.**

18 (a) IN GENERAL.—

19 (1) CIVIL ACTIONS.—In any case in which the  
 20 attorney general of a State has reason to believe  
 21 that an interest of the residents of that State has  
 22 been or is threatened or adversely affected by the  
 23 engagement of any person in a practice that is pro-  
 24 hibited under title I, II, or IV of this Act or under  
 25 any amendment made by such a title, the State, as

1       parens patriae, may bring a civil action on behalf of  
2       the residents of the State in a district court of the  
3       United States of appropriate jurisdiction to—

4               (A) enjoin that practice;

5               (B) enforce compliance with such titles or  
6       such amendments;

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

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

12       (2) NOTICE.—

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

17                      (i) written notice of the action; and

18                      (ii) a copy of the complaint for the ac-  
19       tion.

20       (B) EXEMPTION.—

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



1 provide the notice described in such sub-  
2 paragraph before the filing of the action.

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

9 (b) INTERVENTION.—

10 (1) IN GENERAL.—On receiving notice under  
11 subsection (a)(2), the Attorney General shall have  
12 the right to intervene in the action that is the sub-  
13 ject of the notice.

14 (2) EFFECT OF INTERVENTION.—If the Attor-  
15 ney General intervenes in an action under subsection  
16 (a), the Attorney General shall have the right to be  
17 heard with respect to any matter that arises in that  
18 action.

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

24 (1) conduct investigations;

25 (2) administer oaths or affirmations; or

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

3           (d) ACTIONS BY THE ATTORNEY GENERAL OF THE  
4 UNITED STATES.—In any case in which an action is insti-  
5 tuted by or on behalf of the Attorney General for violation  
6 of a practice that is prohibited under title I, II, IV, or  
7 V of this Act or under any amendment made by such a  
8 title, no State may, during the pendency of that action,  
9 institute an action under subsection (a) against any de-  
10 fendant named in the complaint in that action for violation  
11 of that practice.

12           (e) 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.

23 **SEC. 602. FEDERAL INJUNCTIVE AUTHORITY.**

24           In addition to any other enforcement authority con-  
25 ferred under this Act or under an amendment made by

1 this Act, the Federal Government shall have injunctive au-  
2 thority with respect to any violation of any provision of  
3 title I, II, or IV of this Act or of any amendment made  
4 by such a title, without regard to whether a public or pri-  
5 vate entity violates such provision.

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