

110<sup>TH</sup> CONGRESS  
2<sup>D</sup> SESSION

# H. R. 5811

To amend title 44, United States Code, to require preservation of certain electronic records by Federal agencies, to require a certification and reports relating to Presidential records, and for other purposes.

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## IN THE HOUSE OF REPRESENTATIVES

APRIL 15, 2008

Mr. WAXMAN (for himself, Mr. CLAY, and Mr. HODES) introduced the following bill; which was referred to the Committee on Oversight and Government Reform

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## A BILL

To amend title 44, United States Code, to require preservation of certain electronic records by Federal agencies, to require a certification and reports relating to Presidential records, and for other purposes.

1        *Be it enacted by the Senate and House of Representa-*  
2        *tives of the United States of America in Congress assembled,*

3        **SECTION 1. SHORT TITLE.**

4        This Act may be cited as the “Electronic Communica-  
5        tions Preservation Act”.

1 **SEC. 2. PRESERVATION OF ELECTRONIC COMMUNICA-**  
2 **TIONS.**

3 (a) REQUIREMENT FOR PRESERVATION OF ELEC-  
4 TRONIC COMMUNICATIONS.—

5 (1) IN GENERAL.—Chapter 31 of title 44,  
6 United States Code, is amended by adding at the  
7 end the following new section:

8 **“§ 3108. Electronic communications**

9 “(a) REGULATIONS REQUIRED.—Not later than 18  
10 months after the date of the enactment of this section,  
11 the Archivist shall promulgate regulations governing agen-  
12 cy preservation of electronic communications that are  
13 records. Such regulations shall, at a minimum—

14 “(1) require the electronic capture, manage-  
15 ment, and preservation of such electronic records;

16 “(2) require that such electronic records are  
17 readily accessible for retrieval through electronic  
18 searches;

19 “(3) establish mandatory minimum functional  
20 requirements and a software certification testing  
21 process to certify electronic records management ap-  
22 plications to be used by Federal agencies for pur-  
23 poses of complying with the requirements in para-  
24 graphs (1) and (2); and

25 “(4) include timelines for agency compliance  
26 with the regulations that ensure compliance as expe-

1           ditiously as practicable but not later than four years  
2           after the date of the enactment of this section.

3           “(b) COVERAGE OF OTHER ELECTRONIC  
4 RECORDS.—To the extent practicable, the regulations pro-  
5 mulgated under subsection (a) shall also include require-  
6 ments for the capture, management, and preservation of  
7 other electronic records.

8           “(c) COMPLIANCE BY FEDERAL AGENCIES.—Each  
9 Federal agency shall comply with the regulations promul-  
10 gated under subsection (a).

11          “(d) REVIEW OF REGULATIONS REQUIRED.—The  
12 Archivist shall periodically review and, as necessary,  
13 amend the regulations promulgated under this section.

14          “(e) REPORTS ON IMPLEMENTATION OF REGULA-  
15 TIONS.—

16               “(1) AGENCY REPORT TO ARCHIVIST.—Not  
17 later than four years after the date of the enactment  
18 of this section, the head of each Federal agency shall  
19 submit to the Archivist a report on the agency’s  
20 compliance with the regulations promulgated under  
21 this section.

22               “(2) ARCHIVIST REPORT TO CONGRESS.—Not  
23 later than 90 days after receipt of all reports re-  
24 quired by paragraph (1), the Archivist shall submit  
25 to the Committee on Homeland Security and Gov-

1       ernmental Affairs of the Senate and the Committee  
2       on Oversight and Government Reform of the House  
3       of Representatives a report on Federal agency com-  
4       pliance with the regulations promulgated under this  
5       section.”.

6               (2) CLERICAL AMENDMENT.—The table of sec-  
7       tions for chapter 31 of title 44, United States Code,  
8       is amended by adding after the item relating to sec-  
9       tion 3107 the following new item:

“3108. Electronic communications.”.

10       (b) DEFINITION OF ELECTRONIC RECORDS MANAGE-  
11       MENT APPLICATION.—Section 2901 of title 44, United  
12       States Code, is amended—

13               (1) by striking “and” at the end of paragraph  
14       (14);

15               (2) by striking the period at the end of para-  
16       graph (15) and inserting “; and”; and

17               (3) by adding at the end the following new  
18       paragraph:

19               “(16) the term ‘electronic records management  
20       application’ means a software system designed to  
21       manage electronic records within an information  
22       technology system, including by categorizing and lo-  
23       cating records, identifying records that are due for  
24       disposition, and storing, retrieving, and disposing of  
25       records stored in a repository.”.

1 **SEC. 3. PRESIDENTIAL RECORDS.**

2 (a) ADDITIONAL REGULATIONS RELATING TO PRESI-  
3 DENTIAL RECORDS.—

4 (1) IN GENERAL.—Section 2206 of title 44,  
5 United States Code, is amended—

6 (A) by striking “and” at the end of para-  
7 graph (4);

8 (B) by striking the period at the end of  
9 paragraph (5) and inserting “; and”; and

10 (C) by adding at the end the following:

11 “(5) provisions for establishing standards nec-  
12 essary for the economical and efficient management  
13 of Presidential records during the President’s term  
14 of office, including—

15 “(A) records management controls nec-  
16 essary for the capture, management, and pres-  
17 ervation of electronic communications;

18 “(B) records management controls nec-  
19 essary to ensure that electronic communications  
20 are readily accessible for retrieval through elec-  
21 tronic searches; and

22 “(C) a software certification testing proc-  
23 ess to certify the electronic records management  
24 application to be used by the President for the  
25 purposes of complying with the requirements in  
26 subparagraphs (A) and (B).”.

1           (2) DEFINITION.—Section 2201 of title 44,  
2           United States Code, is amended by adding at the  
3           end the following new paragraph:

4           “(6) The term ‘electronic records management  
5           application’ has the meaning provided in section  
6           2901(16) of this title.”.

7           (b) CERTIFICATION OF PRESIDENT’S MANAGEMENT  
8           OF PRESIDENTIAL RECORDS.—

9           (1) CERTIFICATION REQUIRED.—Chapter 22 of  
10          title 44, United States Code, is amended by adding  
11          at the end the following new section:

12       **“§ 2208. Certification of the President’s management**  
13               **of Presidential records**

14          “(a) ANNUAL CERTIFICATION.—The Archivist shall  
15          annually certify whether the records management controls  
16          established by the President meet requirements under sec-  
17          tions 2203(a) and 2206(5) of this title.

18          “(b) REPORT TO CONGRESS.—The Archivist shall re-  
19          port annually to the Committee on Homeland Security and  
20          Governmental Affairs of the Senate and the Committee  
21          on Oversight and Government Reform of the House of  
22          Representatives on the status of the certification.”.

23          (2) CLERICAL AMENDMENT.—The table of sec-  
24          tions for chapter 22 of title 44, United States Code,

1 is amended by adding at the end the following new  
2 item:

“2208. Certification of the President’s management of Presidential records.”.

3 (c) REPORT TO CONGRESS.—Section 2203(f) of title  
4 44, United States Code, is amended by adding at the end  
5 the following:

6 “(4) One year following the conclusion of a Presi-  
7 dent’s term of office, or if a President serves consecutive  
8 terms one year following the conclusion of the last term,  
9 the Archivist shall submit to the Committee on Homeland  
10 Security and Governmental Affairs of the Senate and the  
11 Committee on Oversight and Government Reform of the  
12 House of Representatives a report on—

13 “(A) the volume and format of Presidential  
14 records deposited into that President’s Presidential  
15 archival depository; and

16 “(B) whether the records management controls  
17 of that President met the requirements under sec-  
18 tions 2203(a) and 2206(5) of this title.”.

19 (d) EFFECTIVE DATE.—The amendments made by  
20 this section shall take effect one year after the date of  
21 the enactment of this Act.

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