

116TH CONGRESS
2D SESSION

S. 3749

To protect the privacy of health information during a national health emergency.

IN THE SENATE OF THE UNITED STATES

MAY 14, 2020

Mr. BLUMENTHAL (for himself and Mr. WARNER) introduced the following bill; which was read twice and referred to the Committee on Health, Education, Labor, and Pensions

A BILL

To protect the privacy of health information during a national health emergency.

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 “Public Health Emer-
5 gency Privacy Act”.

6 **SEC. 2. DEFINITIONS.**

7 In this Act:

8 (1) **AFFIRMATIVE EXPRESS CONSENT.**—The
9 term “affirmative express consent” means an affirm-
10 ative act by an individual that—

1 (A) clearly and conspicuously commu-
2 nicates the individual’s authorization of an act
3 or practice;

4 (B) is made in the absence of any mecha-
5 nism in the user interface that has the purpose
6 or substantial effect of obscuring, subverting, or
7 impairing decision making or choice to obtain
8 consent; and

9 (C) cannot be inferred from inaction.

10 (2) COLLECT.—The term “collect”, with re-
11 spect to emergency health data, means obtaining in
12 any manner by a covered organization.

13 (3) COMMISSION.—The term “Commission”
14 means the Federal Trade Commission.

15 (4) COVERED ORGANIZATION.—

16 (A) IN GENERAL.—The term “covered or-
17 ganization” means any person (including a gov-
18 ernment entity)—

19 (i) that collects, uses, or discloses
20 emergency health data electronically or
21 through communication by wire or radio;
22 or

23 (ii) that develops or operates a
24 website, web application, mobile applica-
25 tion, mobile operating system feature, or

1 smart device application for the purpose of
2 tracking, screening, monitoring, contact
3 tracing, or mitigation, or otherwise re-
4 sponding to the COVID–19 public health
5 emergency.

6 (B) EXCLUSIONS.—The term “covered or-
7 ganization” does not include—

8 (i) a health care provider;

9 (ii) a person engaged in a de minimis
10 collection or processing of emergency
11 health data;

12 (iii) a service provider;

13 (iv) a person acting in their individual
14 or household capacity; or

15 (v) a public health authority.

16 (5) DEMOGRAPHIC DATA.—The term “demo-
17 graphic data” means information relating to the ac-
18 tual or perceived race, color, ethnicity, national ori-
19 gin, religion, sex, gender, gender identity, sexual ori-
20 entation, age, Tribal affiliation, disability, domicile,
21 employment status, familial status, immigration sta-
22 tus, or veteran status of an individual or group of
23 individuals.

1 (6) DEVICE.—The term “device” means any
2 electronic equipment that is primarily designed for
3 or marketed to consumers.

4 (7) DISCLOSURE.—The term “disclosure”, with
5 respect to emergency health data, means the releas-
6 ing, transferring, selling, providing access to, licens-
7 ing, or divulging in any manner by a covered organi-
8 zation to a third party.

9 (8) EMERGENCY HEALTH DATA.—The term
10 “emergency health data” means data linked or rea-
11 sonably linkable to an individual or device, including
12 data inferred or derived about the individual or de-
13 vice from other collected data provided such data is
14 still linked or reasonably linkable to the individual or
15 device, that concerns the public COVID–19 health
16 emergency. Such data includes—

17 (A) information that reveals the past,
18 present, or future physical or behavioral health
19 or condition of, or provision of healthcare to, an
20 individual, including—

21 (i) data derived from the testing or
22 examination of a body part or bodily sub-
23 stance, or a request for such testing;

24 (ii) whether or not an individual has
25 contracted or been tested for, or an esti-

mate of the likelihood that a particular individual may contract, such disease or disorder; and

(iii) genetic data, biological samples, and biometrics; and

(B) other data collected in conjunction with other emergency health data or for the purpose of tracking, screening, monitoring, contact tracing, or mitigation, or otherwise responding to the COVID–19 public health emergency, including—

(i) geolocation data, when such term means data capable of determining the past or present precise physical location of an individual at a specific point in time, taking account of population densities, including cell-site location information, triangulation data derived from nearby wireless or radio frequency networks, and global positioning system data;

(ii) proximity data, when such term means information that identifies or estimates the past or present physical proximity of one individual or device to another, including information derived from

Bluetooth, audio signatures, nearby wireless networks, and near-field communications;

(iii) demographic data;

(iv) contact information for identifiable individuals or a history of the individual's contacts over a period of time, such as an address book or call log; and

(v) any other data collected from a personal device.

(9) GOVERNMENT ENTITY.—The term “government entity” includes a Federal agency, a State, a local government, and other organizations, as such terms are defined in section 3371 of title 5, United States Code.

(10) HEALTH CARE PROVIDER.—The term “health care provider” has the meaning given the term “eligible health care provider” in title VIII of division B of the CARES Act (Public Law 116–136).

(11) HIPAA REGULATIONS.—The term “HIPAA regulations” means parts 160 and 164 of title 45, Code of Federal Regulations.

(12) PUBLIC HEALTH AUTHORITY.—The term “public health authority” means an entity that is

1 authorized by law to collect or receive information
2 for the purpose of preventing or controlling disease,
3 injury, or disability including, but not limited to, the
4 reporting of disease, injury, vital events such as
5 birth or death, and the conduct of public health sur-
6 veillance, public health investigations, and public
7 health interventions, and a person, such as a des-
8 ignated agency or associate, acting under a grant of
9 authority from, or under a contract with, such public
10 entity, including the employees or agents of such en-
11 tity or its contractors or persons or entities to whom
12 it has granted authority.

13 (13) COVID-19 PUBLIC HEALTH EMER-
14 GENCY.—The term “COVID-19 public health emer-
15 gency” means the outbreak and public health re-
16 sponse pertaining to Coronavirus Disease 2019
17 (COVID-19), associated with the emergency de-
18 clared by the Secretary on January 31, 2020, under
19 section 319 of the Public Health Service Act (42
20 U.S.C. 247d), and any renewals thereof and any
21 subsequent declarations by the Secretary related to
22 the coronavirus.

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

25 (15) SERVICE PROVIDER.—

1 (A) IN GENERAL.—The term “service pro-
2 vider” means a person that collects, uses, or
3 discloses emergency health data for the sole
4 purpose of, and only to the extent that such en-
5 tity is, conducting business activities on behalf
6 of, for the benefit of, under instruction of, and
7 under contractual agreement with a covered or-
8 ganization.

9 (B) LIMITATION OF APPLICATION.—Such
10 person shall only be considered a service pro-
11 vider in the course of activities described in
12 subparagraph (A).

13 (C) EXCLUSIONS.—The term “service pro-
14 vider” excludes a person that develops or oper-
15 ates a website, web application, mobile applica-
16 tion, or smart device application for the purpose
17 of tracking, screening, monitoring, contact trac-
18 ing, or mitigation, or otherwise responding to
19 the COVID–19 public health emergency.

20 (16) STATE.—The term “State” means each
21 State of the United States, the District of Columbia,
22 each commonwealth, territory, or possession of the
23 United States, and each federally recognized Indian
24 Tribe.

25 (17) THIRD PARTY.—

1 (A) IN GENERAL.—The term “third party”
 2 means, with respect to a covered organization—

3 (i) another person to whom such cov-
 4 ered organization disclosed emergency
 5 health data; and

6 (ii) a corporate affiliate or a related
 7 party of the covered organization that does
 8 not have a direct relationship with an indi-
 9 vidual with whom the emergency health
 10 data is linked or is reasonably linkable.

11 (B) EXCLUSION.—The term “third party”
 12 excludes, with respect to a covered organiza-
 13 tion—

14 (i) a service provider of such covered
 15 organization; or

16 (ii) a public health authority.

17 (18) USE.—The term “use”, with respect to
 18 emergency health data, means the processing, em-
 19 ployment, application, utilization, examination, or
 20 analysis of such data by a covered organization that
 21 maintains such data.

22 **SEC. 3. PROTECTING THE PRIVACY AND SECURITY OF**
 23 **EMERGENCY HEALTH DATA.**

24 (a) RIGHT TO PRIVACY.—A covered organization that
 25 collects emergency health data shall—

1 (1) only collect, use, or disclose such data that
 2 is necessary, proportionate, and limited for a good
 3 faith public health purpose, including a service or
 4 feature to support such a purpose;

5 (2) take reasonable measures, where possible, to
 6 ensure the accuracy of emergency health data and
 7 provide an effective mechanism for an individual to
 8 correct inaccurate information;

9 (3) adopt reasonable safeguards to prevent un-
 10 lawful discrimination on the basis of emergency
 11 health data; and

12 (4) only disclose such data to a government en-
 13 tity when the disclosure—

14 (A) is to a public health authority; and

15 (B) is made in solely for good faith public
 16 health purposes and in direct response to exi-
 17 gent circumstances.

18 (b) RIGHT TO SECURITY.—A covered organization or
 19 service provider that collects, uses, or discloses emergency
 20 health data shall establish and implement reasonable data
 21 security policies, practices, and procedures to protect the
 22 security and confidentiality of emergency health data.

23 (c) PROHIBITED USES.—A covered organization shall
 24 not collect, use, or disclose emergency health data for any
 25 purpose not authorized under this section, including—

1 (1) commercial advertising, recommendation for
2 e-commerce, or the training of machine-learning al-
3 gorithms related to, or subsequently for use in, com-
4 mercial advertising and e-commerce;

5 (2) soliciting, offering, selling, leasing, licensing,
6 renting, advertising, marketing, or otherwise com-
7 mercially contracting for employment, finance, cred-
8 it, insurance, housing, or education opportunities in
9 a manner that discriminates or otherwise makes op-
10 portunities unavailable on the basis of emergency
11 health data; and

12 (3) segregating, discriminating in, or otherwise
13 making unavailable the goods, services, facilities,
14 privileges, advantages, or accommodations of any
15 place of public accommodation (as such term is de-
16 fined in section 301 of the Americans With Disabil-
17 ities Act of 1990 (42 U.S.C. 12181)), except as au-
18 thorized by a State or Federal Government entity
19 for a public health purpose notwithstanding sub-
20 section (g).

21 (d) CONSENT.—

22 (1) IN GENERAL.—It shall be unlawful for a
23 covered organization to collect, use, or disclose emer-
24 gency health data, unless—

1 (A) the individual to whom the data per-
2 tains has given affirmative express consent to
3 such collection, use, or disclosure;

4 (B) such collection, use, or disclosure is
5 necessary and for the sole purpose of—

6 (i) protecting against malicious, de-
7 ceptive, fraudulent, or illegal activity; or

8 (ii) detecting, responding to, or pre-
9 venting information security incidents or
10 threats; or

11 (C) the covered organization is compelled
12 to do so by a legal obligation.

13 (2) REVOCATION.—

14 (A) IN GENERAL.—A covered organization
15 shall provide an effective mechanism for an in-
16 dividual to revoke consent after it is given.

17 (B) EFFECT.—After an individual revokes
18 consent, the covered organization shall cease
19 collecting, using, or disclosing the individual's
20 emergency health data as soon as practicable,
21 but in no case later than 15 days after the re-
22 ceipt of the individual's revocation of consent.

23 (C) DESTRUCTION.—Not later than 30
24 days after the receipt of an individual's revoca-
25 tion of consent, a covered organization shall de-

1 stroy or render not linkable that individuals
2 emergency health data under the same proce-
3 dures in subsection (f).

4 (e) NOTICE.—A covered organization that collects,
5 uses, or discloses emergency health data shall provide to
6 an individual a privacy policy that—

7 (1) is disclosed in a clear and conspicuous man-
8 ner, in the language in which the individual typically
9 interacts with the covered organization, prior to or
10 at the point of the collection of emergency health
11 data;

12 (2) describes how and for what purposes the
13 covered organization collects, uses, and discloses
14 emergency health data, including the categories of
15 recipients to whom it discloses data and the purpose
16 of disclosure for each category;

17 (3) describes the covered organization’s data re-
18 tention and data security policies and practices for
19 emergency health data; and

20 (4) describes how an individual may exercise
21 the rights under this Act and how to contact the
22 Commission to file a complaint.

23 (f) PUBLIC REPORTING.—

24 (1) IN GENERAL.—A covered organization that
25 collects, uses, or discloses emergency health data of

1 at least 100,000 individuals shall, at least once every
2 90 days, issue a public report—

3 (A) stating in aggregate terms the number
4 of individuals whose emergency health data the
5 covered organization collected, used, or dis-
6 closed to the extent practicable; and

7 (B) describing the categories of emergency
8 health data collected, used, or disclosed, the
9 purposes for which each such category of emer-
10 gency health data was collected, used, or dis-
11 closed, and the categories of third parties to
12 whom it was disclosed.

13 (2) RULES OF CONSTRUCTION.—Nothing in
14 this subsection shall be construed to require a cov-
15 ered organization to—

16 (A) take an action that would convert data
17 that is not emergency health data into emer-
18 gency health data;

19 (B) collect or maintain emergency health
20 data that the covered organization would other-
21 wise not maintain; or

22 (C) maintain emergency health data longer
23 than the covered organization would otherwise
24 maintain such data.

25 (g) REQUIRED DATA DESTRUCTION.—

1 (1) IN GENERAL.—A covered organization may
2 not use or maintain emergency health data of an in-
3 dividual after the later of—

4 (A) the date that is 60 days after the ter-
5 mination of the public health emergency de-
6 clared by the Secretary on January 31, 2020,
7 pertaining to Coronavirus Disease 2019
8 (COVID–19) under section 319 of the Public
9 Health Service Act (42 U.S.C. 247d) and any
10 renewals thereof;

11 (B) the date that is 60 days after the ter-
12 mination of a public health emergency declared
13 by a governor or chief executive of a State per-
14 taining to Coronavirus Disease 2019 (COVID–
15 19) in which the individual resides; or

16 (C) 60 days after collection.

17 (2) REQUIREMENT.—For the requirements
18 under paragraph (1), data shall be destroyed or ren-
19 dered not linkable in such a manner that it is impos-
20 sible or demonstrably impracticable to identify any
21 individual from the data.

22 (3) RELATION TO CERTAIN REQUIREMENTS.—
23 The provisions of this subsection shall not supersede
24 any requirements or authorizations under—

1 (A) the Privacy Act of 1974 (Public Law
2 93–79);

3 (B) the HIPPA regulations; or

4 (C) Federal or State medical records reten-
5 tion and health privacy laws or regulations, or
6 other applicable Federal or State laws.

7 (h) EMERGENCY DATA COLLECTED, USED, OR DIS-
8 CLOSED BEFORE ENACTMENT.—

9 (1) INITIATING A RULEMAKING.—Not later
10 than 7 days after the date of enactment of this Act,
11 the Commission shall initiate a public rulemaking to
12 promulgate regulations to ensure a covered organiza-
13 tion that has collected, used, or disclosed emergency
14 health data before the date of enactment of this Act
15 is in compliance with this Act, to the degree prac-
16 ticable.

17 (2) COMPLETING A RULEMAKING.—The Com-
18 mission shall complete the rulemaking within 45
19 days after the date of enactment of this Act.

20 (i) NON-APPLICATION TO MANUAL CONTACT TRAC-
21 ING AND CASE INVESTIGATION.—Nothing in this Act shall
22 be construed to limit or prohibit a public health authority
23 from administering programs or activities to identify indi-
24 viduals who have contracted, or may have been exposed
25 to, COVID–19 through interviews, outreach, case inves-

1 tigation, and other recognized investigatory measures by
 2 a public health authority or their designated agent by a
 3 public health authority or their designated agent intended
 4 to monitor and mitigate the transmission of a disease or
 5 disorder.

6 (j) RESEARCH AND DEVELOPMENT.—This section
 7 shall not be construed to prohibit—

8 (1) public health or scientific research associ-
 9 ated with the COVID–19 public health emergency
 10 by—

11 (A) a public health authority;

12 (B) a nonprofit organization, as described
 13 in section 501(c)(3) of the Internal Revenue
 14 Code of 1986; or

15 (C) an institution of higher education, as
 16 such term is defined in section 101 of the High-
 17 er Education Act of 1965 (20 U.S.C. 1001); or

18 (2) research, development, manufacture, or dis-
 19 tribution of a drug, biological product, or vaccine
 20 that relates to a disease or disorder that is associ-
 21 ated or potentially associated with a public health
 22 emergency.

23 (k) LEGAL REQUIREMENTS.—Notwithstanding sub-
 24 section (a)(5), nothing in this Act shall be construed to
 25 prohibit a good faith response to, or compliance with, oth-

1 erwise valid subpoenas, court orders, or other legal proc-
 2 esses, or to prohibit storage or providing information as
 3 otherwise required by law.

4 (l) APPLICATION TO HIPAA COVERED ENTITIES.—

5 (1) IN GENERAL.—This Act does not apply to
 6 a “covered entity” or a person acting as a “business
 7 associate” under the HIPAA regulations (to the ex-
 8 tent that such entities or associates are acting in
 9 such capacity) or any health care provider.

10 (2) GUIDANCE FOR CONSISTENCY.—Not later
 11 than 30 days after the date of enactment of this
 12 Act, the Secretary shall promulgate guidance on the
 13 applicability of requirements, similar to those in this
 14 section to “covered entities” and persons acting as
 15 “business associates” under the HIPAA regulations.
 16 In promulgating such guidance, the Secretary shall
 17 reduce duplication of requirements and may exclude
 18 a requirement of this section if such requirement is
 19 already a requirement of the HIPAA regulations.

20 **SEC. 4. PROTECTING THE RIGHT TO VOTE.**

21 (a) IN GENERAL.—A government entity may not, and
 22 a covered organization may not knowingly facilitate, on
 23 the basis of an individual’s emergency health data, medical
 24 condition, or participation or non-participation in a pro-
 25 gram to collect emergency health data—

1 (1) deny, restrict, or interfere with the right to
2 vote in a Federal, State, or local election;

3 (2) attempt to deny, restrict, or interfere with
4 the right to vote in a Federal, State, or local elec-
5 tion; or

6 (3) retaliate against an individual for voting in
7 a Federal, State, or local election.

8 (b) CIVIL ACTION.—In the case of any violation of
9 subsection (a), an individual may bring a civil action to
10 obtain appropriate relief against a government entity in
11 a Federal district court.

12 **SEC. 5. REPORTS ON CIVIL RIGHTS IMPACTS.**

13 (a) REPORT REQUIRED.—The Secretary, in consulta-
14 tion with the United States Commission on Civil Rights
15 and the Commission, shall prepare and submit to Con-
16 gress reports that examines the civil rights impact of the
17 collection, use, and disclosure of health information in re-
18 sponse to the COVID–19 public health emergency.

19 (b) SCOPE OF REPORT.—Each report required under
20 subsection (a) shall, at a minimum—

21 (1) evaluate the impact of such practices on
22 civil rights and protections for individuals based on
23 race, color, ethnicity, national origin, religion, sex,
24 gender, gender identity, sexual orientation, age,
25 Tribal affiliation, disability, domicile, employment

1 status, familial status, immigration status, or vet-
2 eran status;

3 (2) analyze the impact, risks, costs, legal con-
4 siderations, disparate impacts, and other implica-
5 tions to civil rights of policies to incentivize or re-
6 quire the adoption of digital tools or apps used for
7 contact tracing, exposure notification, or health
8 monitoring; and

9 (3) include recommendations on preventing and
10 addressing undue or disparate impact, segregation,
11 discrimination, or infringements of civil rights in the
12 collection and use of health information, including
13 during a national health emergency.

14 (c) TIMING.—

15 (1) INITIAL REPORT.—The Secretary shall sub-
16 mit an initial report under subsection (a) not sooner
17 than 9 months, and not later than 12 months after
18 the date of enactment of this Act.

19 (2) SUBSEQUENT REPORTS.—The Secretary
20 shall submit reports annually after the initial report
21 required under paragraph (1) until 1 year after the
22 termination of any public health emergency per-
23 taining to Coronavirus Disease 2019 (COVID–19)
24 under section 319 of the Public Health Service Act
25 (42 U.S.C. 247d).

1 **SEC. 6. ENFORCEMENT.**

2 (a) FEDERAL TRADE COMMISSION.—

3 (1) UNFAIR OR DECEPTIVE ACTS OR PRAC-
4 TICES.—A violation of this Act or a regulation pro-
5 mulgated under this Act shall be treated as a viola-
6 tion of a rule defining an unfair or deceptive act or
7 practice under section 18(a)(1)(B) of the Federal
8 Trade Commission Act (15 U.S.C. 57a(a)(1)(B)) re-
9 garding unfair or deceptive acts or practices.

10 (2) POWERS OF COMMISSION.—The Commis-
11 sion shall enforce this Act and the regulations pro-
12 mulgated under this Act in the same manner, by the
13 same means, and with the same jurisdiction, powers,
14 and duties as though all applicable terms and provi-
15 sions of the Federal Trade Commission Act (15
16 U.S.C. 41 et seq.) were incorporated into and made
17 a part of this Act. Any person who violates this Act
18 or a regulation promulgated under this Act shall be
19 subject to the penalties and entitled to the privileges
20 and immunities provided in the Federal Trade Com-
21 mission Act. Provided, however, that, notwith-
22 standing the requirements of section 16(a) of the
23 Federal Trade Commission Act (15 U.S.C. 56(a)),
24 the Commission shall have the exclusive authority to
25 commence or defend, and supervise the litigation of,
26 any action for a violation of this Act or a regulation

1 promulgated under this Act and any appeal of such
2 action in its own name by any of its attorneys des-
3 ignated by it for such purpose, without first refer-
4 ring the matter to the Attorney General.

5 (3) RULEMAKING AUTHORITY.—

6 (A) IN GENERAL.—The Commission shall
7 have authority under section 553 of title 5,
8 United States Code, to promulgate any regula-
9 tions necessary to implement this Act.

10 (B) CONSULTATION.—In promulgating any
11 regulations under this Act, the Commission
12 shall consult with the Secretary.

13 (4) COMMON CARRIERS AND NONPROFIT ORGA-
14 NIZATIONS.—Notwithstanding section 4, 5(a)(2), or
15 6 of the Federal Trade Commission Act (15 U.S.C.
16 44; 45(a)(2); 46) or any jurisdictional limitation of
17 the Commission, the Commission shall also enforce
18 this Act, in the same manner provided in paragraphs
19 (1) and (2) of this paragraph, with respect to—

20 (A) common carriers subject to the Acts to
21 regulate commerce, air carriers, and foreign air
22 carriers subject to part A of subtitle VII of title
23 49, and persons, partnerships, or corporations
24 insofar as they are subject to the Packers and
25 Stockyards Act, 1921 (7 U.S.C. 181 et seq.),

except as provided in section 406(b) of such Act
(7 U.S.C. 227(b)); and

(B) organizations not organized to carry
on business for their own profit or that of their
members.

(b) ENFORCEMENT BY STATES.—

(1) IN GENERAL.—In any case in which the at-
torney general of a State has reason to believe that
an interest of the residents of the State has been or
is threatened or adversely affected by the engage-
ment of any person subject to this Act in a practice
that violates such subsection, the attorney general of
the State may, as *parens patriae*, bring a civil action
on behalf of the residents of the State in an appro-
priate district court of the United States to obtain
appropriate relief.

(2) RIGHTS OF THE FEDERAL TRADE COMMIS-
SION.—

(A) NOTICE TO FEDERAL TRADE COMMIS-
SION.—

(i) IN GENERAL.—Except as provided
in clause (iii), the attorney general of a
State shall notify the Commission in writ-
ing that the attorney general intends to
bring a civil action under paragraph (1)

1 before initiating the civil action against a
 2 person subject to this Act.

3 (ii) CONTENTS.—The notification re-
 4 quired by clause (i) with respect to a civil
 5 action shall include a copy of the complaint
 6 to be filed to initiate the civil action.

7 (iii) EXCEPTION.—If it is not feasible
 8 for the attorney general of a State to pro-
 9 vide the notification required by clause (i)
 10 before initiating a civil action under para-
 11 graph (1), the attorney general shall notify
 12 the Commission immediately upon insti-
 13 tuting the civil action.

14 (B) INTERVENTION BY THE FEDERAL
 15 TRADE COMMISSION.—The Commission may—

16 (i) intervene in any civil action
 17 brought by the attorney general of a State
 18 under paragraph (1); and

19 (ii) upon intervening—

20 (I) be heard on all matters aris-
 21 ing in the civil action; and

22 (II) file petitions for appeal of a
 23 decision in the civil action.

24 (C) INVESTIGATORY POWERS.—Nothing in
 25 this subsection may be construed to prevent the

1 attorney general of a State from exercising the
2 powers conferred on the attorney general by the
3 laws of the State to conduct investigations, to
4 administer oaths or affirmations, or to compel
5 the attendance of witnesses or the production of
6 documentary or other evidence.

7 (3) ACTION BY THE FEDERAL TRADE COMMIS-
8 SION.—If the Commission institutes a civil action
9 with respect to a violation of this Act, the attorney
10 general of a State may not, during the pendency of
11 such action, bring a civil action under paragraph (1)
12 of this subsection against any defendant named in
13 the complaint of the Commission for the violation
14 with respect to which the Commission instituted
15 such action.

16 (4) VENUE; SERVICE OF PROCESS.—

17 (A) VENUE.—Any action brought under
18 paragraph (1) may be brought in—

19 (i) the district court of the United
20 States that meets applicable requirements
21 relating to venue under section 1391 of
22 title 28, United States Code; or

23 (ii) another court of competent juris-
24 diction.

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 (C) ACTIONS BY OTHER STATE OFFI-
 7 CIALS.—

8 (i) IN GENERAL.—In addition to civil
 9 actions brought by attorneys general under
 10 paragraph (1), any other officer of a State
 11 who is authorized by the State to do so
 12 may bring a civil action under paragraph
 13 (1), subject to the same requirements and
 14 limitations that apply under this sub-
 15 section to civil actions brought by attor-
 16 neys general.

17 (ii) SAVINGS PROVISION.—Nothing in
 18 this subsection may be construed to pro-
 19 hibit an authorized official of a State from
 20 initiating or continuing any proceeding in
 21 a court of the State for a violation of any
 22 civil or criminal law of the State.

23 (c) PRIVATE RIGHT OF ACTION.—

24 (1) ENFORCEMENT BY INDIVIDUALS.—

1 (A) IN GENERAL.—Any individual alleging
2 a violation of this Act may bring a civil action
3 in any court of competent jurisdiction, State or
4 Federal.

5 (B) RELIEF.—In a civil action brought
6 under paragraph (1) in which the plaintiff pre-
7 vails, the court may award—

8 (i) an amount not less than \$100 and
9 not greater than \$1,000 per violation
10 against any person who negligently violates
11 a provision of this Act;

12 (ii) an amount not less than \$500 and
13 not greater than \$5,000 per violation
14 against any person who recklessly, will-
15 fully, or intentionally violates a provision of
16 this Act;

17 (iii) reasonable attorney's fees and
18 litigation costs; and

19 (iv) any other relief, including equi-
20 table or declaratory relief, that the court
21 determines appropriate.

22 (C) INJURY IN FACT.—A violation of this
23 Act with respect to the emergency health data
24 of an individual constitutes a concrete and par-
25 ticularized injury in fact to that individual.

1 (2) INVALIDITY OF PRE-DISPUTE ARBITRATION
 2 AGREEMENTS AND PRE-DISPUTE JOINT ACTION
 3 WAIVERS.—

4 (A) IN GENERAL.—Notwithstanding any
 5 other provision of law, no pre-dispute arbitra-
 6 tion agreement or pre-dispute joint action waiv-
 7 er shall be valid or enforceable with respect to
 8 a dispute arising under this Act.

9 (B) APPLICABILITY.—Any determination
 10 as to whether or how this subsection applies to
 11 any dispute shall be made by a court, rather
 12 than an arbitrator, without regard to whether
 13 such agreement purports to delegate such deter-
 14 mination to an arbitrator.

15 (C) DEFINITIONS.—In this subsection:

16 (i) The term “pre-dispute arbitration
 17 agreement” means any agreement to arbi-
 18 trate a dispute that has not arisen at the
 19 time of making the agreement.

20 (ii) The term “pre-dispute joint-action
 21 waiver” means an agreement, whether or
 22 not part of a pre-dispute arbitration agree-
 23 ment, that would prohibit, or waive the
 24 right of, one of the parties to the agree-
 25 ment to participate in a joint, class, or col-

lective action in a judicial, arbitral, administration, or other forum, concerning a dispute that has not yet arisen at the time of making the agreement.

(iii) The term “dispute” means any claim related to an alleged violation of this Act and between an individual and a covered organization.

SEC. 7. NONPREEMPTION.

Nothing in this Act shall preempt or supersede, or be interpreted to preempt or supersede, any Federal or State law or regulation, or limit the authority of the Commission or the Secretary under any other provision of law.

SEC. 8. EFFECTIVE DATE.

(a) IN GENERAL.—This Act shall apply beginning on the date that is 30 days after the date of enactment of this Act.

(b) AUTHORITY TO PROMULGATE REGULATIONS AND TAKE CERTAIN OTHER ACTIONS.—Nothing in subsection

(a) affects—

(1) the authority of any person to take an action expressly required by a provision of this Act before the effective date described in such subsection; or

1 (2) the authority of the Commission to promul-
2 gate regulations to implement this Act or begin a
3 rulemaking to promulgate such regulations.

○