

115TH CONGRESS
1ST SESSION

H. R. 4543

To establish a regulatory framework for the comprehensive protection of personal data for individuals under the aegis of the Federal Trade Commission, to amend the Children's Online Privacy Protection Act of 1998 to improve provisions relating to collection, use, and disclosure of personal information of children, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

DECEMBER 4, 2017

Mr. SIRES introduced the following bill; which was referred to the Committee on Energy and Commerce

A BILL

To establish a regulatory framework for the comprehensive protection of personal data for individuals under the aegis of the Federal Trade Commission, to amend the Children's Online Privacy Protection Act of 1998 to improve provisions relating to collection, use, and disclosure of personal information of children, 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. TABLE OF CONTENTS.**

4 The table of contents for this Act is as follows:

Sec. 1. Table of contents.

TITLE I—COMMERCIAL PRIVACY

- Sec. 101. Short title.
- Sec. 102. Findings.
- Sec. 103. Definitions.

Subtitle A—Right to Security and Accountability

- Sec. 111. Security.
- Sec. 112. Accountability.
- Sec. 113. Privacy by design.

Subtitle B—Right to Notice and Individual Participation

- Sec. 121. Transparent notice of practices and purposes.
- Sec. 122. Individual participation.

Subtitle C—Rights Relating to Data Minimization, Constraints on Distribution, and Data Integrity

- Sec. 131. Data minimization.
- Sec. 132. Constraints on distribution of information.
- Sec. 133. Data integrity.

Subtitle D—Right to Notice of Breaches of Security

- Sec. 141. Definitions.
- Sec. 142. Notice to individuals.
- Sec. 143. Notice to law enforcement.

Subtitle E—Enforcement

- Sec. 151. General application.
- Sec. 152. Enforcement by the Federal Trade Commission.
- Sec. 153. Enforcement by Attorney General.
- Sec. 154. Enforcement by States.
- Sec. 155. Civil penalties.
- Sec. 156. Effect on other laws.
- Sec. 157. No private right of action.

Subtitle F—Co-Regulatory Safe Harbor Programs

- Sec. 161. Establishment of safe harbor programs.
- Sec. 162. Participation in safe harbor program.

Subtitle G—Application With Other Federal Laws

- Sec. 171. Application with other Federal laws.

Subtitle H—Development of Commercial Data Privacy Policy in the Department of Commerce

- Sec. 181. Direction to develop commercial data privacy policy.

TITLE II—ONLINE PRIVACY OF CHILDREN

- Sec. 201. Short title.
- Sec. 202. Findings.
- Sec. 203. Definitions.

Sec. 204. Online collection, use, and disclosure of personal information of children.

Sec. 205. Targeted marketing to children or minors.

Sec. 206. Digital Marketing Bill of Rights for Teens and Fair Information Practices Principles.

Sec. 207. Online collection of geolocation information of children and minors.

Sec. 208. Removal of content.

Sec. 209. Enforcement and applicability.

Sec. 210. Rule for treatment of users of websites, services, and applications directed to children or minors.

Sec. 211. Effective dates.

1 **TITLE I—COMMERCIAL PRIVACY**

2 **SEC. 101. SHORT TITLE.**

3 This title may be cited as the “Commercial Privacy
4 Bill of Rights Act of 2017”.

5 **SEC. 102. FINDINGS.**

6 The Congress finds the following:

7 (1) Personal privacy is worthy of protection
8 through appropriate legislation.

9 (2) Trust in the treatment of personally identi-
10 fiable information collected on and off the Internet
11 is essential for businesses to succeed.

12 (3) Persons interacting with others engaged in
13 interstate commerce have a significant interest in
14 their personal information, as well as a right to con-
15 trol how that information is collected, used, stored,
16 or transferred.

17 (4) Persons engaged in interstate commerce
18 and collecting personally identifiable information on
19 individuals have a responsibility to treat that infor-

1 mation with respect and in accordance with common
2 standards.

3 (5) On the day before the date of enactment of
4 this Act, the laws of the Federal Government and
5 State and local governments provided inadequate
6 privacy protection for individuals engaging in and
7 interacting with persons engaged in interstate com-
8 merce.

9 (6) As of the day before the date of enactment
10 of this Act, with the exception of Federal Trade
11 Commission enforcement of laws against unfair and
12 deceptive practices, the Federal Government has es-
13 chewed general commercial privacy laws in favor of
14 industry self-regulation, which has led to several
15 self-policing schemes, some of which are enforceable,
16 and some of which provide insufficient privacy pro-
17 tection to individuals.

18 (7) As of the day before the date of enactment
19 of this Act, many collectors of personally identifiable
20 information have yet to provide baseline fair infor-
21 mation practice protections for individuals.

22 (8) The ease of gathering and compiling per-
23 sonal information on the Internet and off, both
24 overtly and surreptitiously, is becoming increasingly
25 efficient and effortless due to advances in technology

1 which have provided information gatherers the abil-
2 ity to compile seamlessly highly detailed personal
3 histories of individuals.

4 (9) Personal information requires greater pri-
5 vacy protection than is available on the day before
6 the date of enactment of this Act. Vast amounts of
7 personal information, including sensitive informa-
8 tion, about individuals are collected on and off the
9 Internet, often combined and sold or otherwise
10 transferred to third parties, for purposes unknown
11 to an individual to whom the personally identifiable
12 information pertains.

13 (10) Toward the close of the 20th century, as
14 individuals' personal information was increasingly
15 collected, profiled, and shared for commercial pur-
16 poses, and as technology advanced to facilitate these
17 practices, Congress enacted numerous statutes to
18 protect privacy.

19 (11) Those statutes apply to the Government,
20 telephones, cable television, e-mail, video tape rent-
21 als, and the Internet (but only with respect to chil-
22 dren and law enforcement requests).

23 (12) As in those instances, the Federal Govern-
24 ment has a substantial interest in creating a level
25 playing field of protection across all collectors of per-

1 sonally identifiable information, both in the United
2 States and abroad.

3 (13) Enhancing individual privacy protection in
4 a balanced way that establishes clear, consistent
5 rules, both domestically and internationally, will
6 stimulate commerce by instilling greater consumer
7 confidence at home and greater confidence abroad as
8 more and more entities digitize personally identifi-
9 able information, whether collected, stored, or used
10 online or offline.

11 **SEC. 103. DEFINITIONS.**

12 (a) IN GENERAL.—Subject to subsection (b), in this
13 title:

14 (1) COMMISSION.—The term “Commission”
15 means the Federal Trade Commission.

16 (2) COVERED ENTITY.—The term “covered en-
17 tity” means any person to whom this title applies
18 under section 151.

19 (3) COVERED INFORMATION.—

20 (A) IN GENERAL.—Except as provided in
21 subparagraph (B), the term “covered informa-
22 tion” means only the following:

- 23 (i) Personally identifiable information.
24 (ii) Unique identifier information.

1 (iii) Any information that is collected,
2 used, or stored in connection with person-
3 ally identifiable information or unique
4 identifier information in a manner that
5 may reasonably be used by the party col-
6 lecting the information to identify a spe-
7 cific individual.

8 (B) EXCEPTION.—The term “covered in-
9 formation” does not include the following:

10 (i) Personally identifiable information
11 obtained from public records that is not
12 merged with covered information gathered
13 elsewhere.

14 (ii) Personally identifiable information
15 that is obtained from a forum—

16 (I) where the individual volun-
17 tarily shared the information or au-
18 thorized the information to be shared;
19 and

20 (II) that—

21 (aa) is widely and publicly
22 available and was not made pub-
23 licly available in bad faith; and

1 (bb) contains no restrictions
2 on who can access and view such
3 information.

4 (iii) Personally identifiable informa-
5 tion reported in public media.

6 (iv) Personally identifiable informa-
7 tion dedicated to contacting an individual
8 at the individual's place of work.

9 (4) ESTABLISHED BUSINESS RELATIONSHIP.—

10 The term “established business relationship” means,
11 with respect to a covered entity and a person, a rela-
12 tionship formed with or without the exchange of con-
13 sideration, involving the establishment of an account
14 by the person with the covered entity for the receipt
15 of products or services offered by the covered entity.

16 (5) PERSONALLY IDENTIFIABLE INFORMA-
17 TION.—The term “personally identifiable informa-
18 tion” means only the following:

19 (A) Any of the following information about
20 an individual:

21 (i) The first name (or initial) and last
22 name of an individual, whether given at
23 birth or time of adoption, or resulting from
24 a lawful change of name.

1 (ii) The postal address of a physical
2 place of residence of such individual.

3 (iii) An e-mail address.

4 (iv) A telephone number or mobile de-
5 vice number.

6 (v) A Social Security number or other
7 Government issued identification number
8 issued to such individual.

9 (vi) The account number of a credit
10 card issued to such individual.

11 (vii) Unique identifier information
12 that alone can be used to identify a spe-
13 cific individual.

14 (viii) Biometric data about such indi-
15 vidual, including fingerprints and retina
16 scans.

17 (B) If used, transferred, or stored in con-
18 nection with one or more of the items of infor-
19 mation described in subparagraph (A), any of
20 the following:

21 (i) A date of birth.

22 (ii) The number of a certificate of
23 birth or adoption.

24 (iii) A place of birth.

1 (iv) Unique identifier information that
2 alone cannot be used to identify a specific
3 individual.

4 (v) Precise geographic location, at the
5 same degree of specificity as a global posi-
6 tioning system or equivalent system, and
7 not including any general geographic infor-
8 mation that may be derived from an Inter-
9 net Protocol address.

10 (vi) Information about an individual's
11 quantity, technical configuration, type, des-
12 tination, location, and amount of uses of
13 voice services, regardless of technology
14 used.

15 (vii) Any other information concerning
16 an individual that may reasonably be used
17 by the party using, collecting, or storing
18 that information to identify that individual.

19 (6) SENSITIVE PERSONALLY IDENTIFIABLE IN-
20 FORMATION.—The term “sensitive personally identi-
21 fiable information” means—

22 (A) personally identifiable information
23 which, if lost, compromised, or disclosed with-
24 out authorization either alone or with other in-

1 formation, carries a significant risk of economic
2 or physical harm; or

3 (B) information related to—

4 (i) a particular medical condition or a
5 health record; or

6 (ii) the religious affiliation of an indi-
7 vidual.

8 (7) THIRD PARTY.—

9 (A) IN GENERAL.—The term “third party”
10 means, with respect to a covered entity, a per-
11 son that—

12 (i) is—

13 (I) not related to the covered en-
14 tity by common ownership or cor-
15 porate control; or

16 (II) related to the covered entity
17 by common ownership or corporate
18 control and an ordinary consumer
19 would not understand that the covered
20 entity and the person were related by
21 common ownership or corporate con-
22 trol;

23 (ii) is not a service provider used by
24 the covered entity to receive personally
25 identifiable information or sensitive person-

1 ally identifiable information in performing
2 services or functions on behalf of and
3 under the instruction of the covered entity;
4 and

5 (iii) with respect to the collection of
6 covered information of an individual, does
7 not have an established business relation-
8 ship with the individual and does not iden-
9 tify itself to the individual at the time of
10 such collection in a clear and conspicuous
11 manner that is visible to the individual.

12 (B) COMMON BRANDS.—The term “third
13 party” may include, with respect to a covered
14 entity, a person who operates under a common
15 brand with the covered entity.

16 (8) UNAUTHORIZED USE.—

17 (A) IN GENERAL.—The term “unauthor-
18 ized use” means the use of covered information
19 by a covered entity or its service provider for
20 any purpose not authorized by the individual to
21 whom such information relates.

22 (B) EXCEPTIONS.—Except as provided in
23 subparagraph (C), the term “unauthorized use”
24 does not include use of covered information re-

1 lating to an individual by a covered entity or its
2 service provider as follows:

3 (i) To process and enforce a trans-
4 action or deliver a service requested by
5 that individual.

6 (ii) To operate the covered entity that
7 is providing a transaction or delivering a
8 service requested by that individual, such
9 as inventory management, financial report-
10 ing and accounting, planning, and product
11 or service improvement or forecasting.

12 (iii) To prevent or detect fraud or to
13 provide for a physically or virtually secure
14 environment.

15 (iv) To investigate a possible crime.

16 (v) That is required by a provision of
17 law or legal process.

18 (vi) To market or advertise to an indi-
19 vidual from a covered entity within the
20 context of a covered entity's own Internet
21 website, services, or products if the covered
22 information used for such marketing or ad-
23 vertising was—

24 (I) collected directly by the cov-
25 ered entity; or

1 (II) shared with the covered enti-
2 ty—

3 (aa) at the affirmative re-
4 quest of the individual; or

5 (bb) by an entity with which
6 the individual has an established
7 business relationship.

8 (vii) Use that is necessary for the im-
9 provement of transaction or service deliv-
10 ery through research, testing, analysis, and
11 development.

12 (viii) Use that is necessary for inter-
13 nal operations, including the following:

14 (I) Collecting customer satisfac-
15 tion surveys and conducting customer
16 research to improve customer service
17 information.

18 (II) Information collected by an
19 Internet website about the visits to
20 such website and the click-through
21 rates at such website—

22 (aa) to improve website
23 navigation and performance; or

24 (bb) to understand and im-
25 prove the interaction of an indi-

1 vidual with the advertising of a
2 covered entity.

3 (ix) Use—

4 (I) by a covered entity with
5 which an individual has an established
6 business relationship;

7 (II) which the individual could
8 have reasonably expected, at the time
9 such relationship was established, was
10 related to a service provided pursuant
11 to such relationship; and

12 (III) which does not constitute a
13 material change in use or practice
14 from what could have reasonably been
15 expected.

16 (C) SAVINGS.—A use of covered informa-
17 tion regarding an individual by a covered entity
18 or its service provider may only be excluded
19 under subparagraph (B) from the definition of
20 “unauthorized use” under subparagraph (A) if
21 the use is reasonable and consistent with the
22 practices and purposes described in the notice
23 given the individual in accordance with section
24 121(a)(1).

1 (9) UNIQUE IDENTIFIER INFORMATION.—The
2 term “unique identifier information” means a
3 unique persistent identifier associated with an indi-
4 vidual or a networked device, including a customer
5 number held in a cookie, a user identification, a
6 processor serial number, or a device serial number.

7 (b) MODIFIED DEFINITION BY RULEMAKING.—If the
8 Commission determines that a term defined in any of
9 paragraphs (3) through (8) is not reasonably sufficient to
10 protect an individual from unfair or deceptive acts or prac-
11 tices, the Commission may by rule modify such definition
12 as the Commission considers appropriate to protect such
13 individual from an unfair or deceptive act or practice to
14 the extent that the Commission determines will not unrea-
15 sonably impede interstate commerce.

16 **Subtitle A—Right to Security and** 17 **Accountability**

18 **SEC. 111. SECURITY.**

19 (a) RULEMAKING REQUIRED.—Not later than 180
20 days after the date of enactment of this Act, the Commis-
21 sion shall initiate a rulemaking proceeding to require each
22 covered entity to carry out security measures to protect
23 the covered information it collects and maintains.

24 (b) PROPORTION.—The requirements prescribed
25 under subsection (a) shall provide for security measures

1 that are proportional to the size, type, nature, and sensi-
2 tivity of the covered information a covered entity collects.

3 (c) CONSISTENCY.—The requirements prescribed
4 under subsection (a) shall be consistent with guidance pro-
5 vided by the Commission and recognized industry prac-
6 tices for safety and security on the day before the date
7 of enactment of this Act.

8 (d) TECHNOLOGICAL MEANS.—In a rule prescribed
9 under subsection (a), the Commission may not require a
10 specific technological means of meeting a requirement.

11 **SEC. 112. ACCOUNTABILITY.**

12 Each covered entity shall, in a manner proportional
13 to the size, type, and nature of the covered information
14 it collects—

15 (1) have managerial accountability, proportional
16 to the size and structure of the covered entity, for
17 the adoption and implementation of policies con-
18 sistent with this title;

19 (2) have a process to respond to non-frivolous
20 inquiries from individuals regarding the collection,
21 use, transfer, or storage of covered information re-
22 lating to such individuals; and

23 (3) describe the means of compliance of the cov-
24 ered entity with the requirements of this Act upon
25 request from—

1 (A) the Commission; or

2 (B) an appropriate safe harbor program
3 established under section 151.

4 **SEC. 113. PRIVACY BY DESIGN.**

5 Each covered entity shall, in a manner proportional
6 to the size, type, and nature of the covered information
7 that it collects, implement a comprehensive information
8 privacy program by—

9 (1) incorporating necessary development proc-
10 esses and practices throughout the product life cycle
11 that are designed to safeguard the personally identi-
12 fiable information that is covered information of in-
13 dividuals based on—

14 (A) the reasonable expectations of such in-
15 dividuals regarding privacy; and

16 (B) the relevant threats that need to be
17 guarded against in meeting those expectations;
18 and

19 (2) maintaining appropriate management proc-
20 esses and practices throughout the data life cycle
21 that are designed to ensure that information systems
22 comply with—

23 (A) the provisions of this title;

24 (B) the privacy policies of a covered entity;

25 and

1 (C) the privacy preferences of individuals
2 that are consistent with the consent choices and
3 related mechanisms of individual participation
4 as described in section 122.

5 **Subtitle B—Right to Notice and**
6 **Individual Participation**

7 **SEC. 121. TRANSPARENT NOTICE OF PRACTICES AND PUR-**
8 **POSES.**

9 (a) IN GENERAL.—Not later than 60 days after the
10 date of enactment of this Act, the Commission shall ini-
11 tiate a rulemaking proceeding to require each covered enti-
12 ty—

13 (1) to provide accurate, clear, concise, and
14 timely notice to individuals of—

15 (A) the practices of the covered entity re-
16 garding the collection, use, transfer, and stor-
17 age of covered information; and

18 (B) the specific purposes of those prac-
19 tices;

20 (2) to provide accurate, clear, concise, and
21 timely notice to individuals before implementing a
22 material change in such practices; and

23 (3) to maintain the notice required by para-
24 graph (1) in a form that individuals can readily ac-
25 cess.

1 (b) COMPLIANCE AND OTHER CONSIDERATIONS.—In
2 the rulemaking required by subsection (a), the Commis-
3 sion—

4 (1) shall consider the types of devices and
5 methods individuals will use to access the required
6 notice;

7 (2) may provide that a covered entity unable to
8 provide the required notice when information is col-
9 lected may comply with the requirement of sub-
10 section (a)(1) by providing an alternative time and
11 means for an individual to receive the required no-
12 tice promptly;

13 (3) may draft guidance for covered entities to
14 use in designing their own notice and may include
15 a draft model template for covered entities to use in
16 designing their own notice; and

17 (4) may provide guidance on how to construct
18 computer-readable notices or how to use other tech-
19 nology to deliver the required notice.

20 **SEC. 122. INDIVIDUAL PARTICIPATION.**

21 (a) IN GENERAL.—Not later than 180 days after the
22 date of enactment of this Act, the Commission shall ini-
23 tiate a rulemaking proceeding to require each covered enti-
24 ty—

1 (1) to offer individuals a clear and conspicuous
2 mechanism for opt-in consent for any use of their
3 covered information that would otherwise be unau-
4 thorized use;

5 (2) to offer individuals a robust, clear, and con-
6 spicuous mechanism for opt-in consent for the use
7 by third parties of the individuals' covered informa-
8 tion for behavioral advertising or marketing;

9 (3) to provide any individual to whom the per-
10 sonally identifiable information that is covered infor-
11 mation pertains, and which the covered entity or its
12 service provider stores, appropriate and reasonable—

13 (A) access to such information; and

14 (B) mechanisms to correct such informa-
15 tion to improve the accuracy of such informa-
16 tion; and

17 (4) in the case that a covered entity enters
18 bankruptcy or an individual requests the termination
19 of a service provided by the covered entity to the in-
20 dividual or termination of some other relationship
21 with the covered entity, to permit the individual to
22 easily request that—

23 (A) all of the personally identifiable infor-
24 mation that is covered information that the cov-
25 ered entity maintains relating to the individual,

1 except for information the individual authorized
2 the sharing of or which the individual shared
3 with the covered entity in a forum that is wide-
4 ly and publicly available, be rendered not per-
5 sonally identifiable; or

6 (B) if rendering such information not per-
7 sonally identifiable is not possible, to cease the
8 unauthorized use or transfer to a third party
9 for an unauthorized use of such information or
10 to cease use of such information for marketing,
11 unless such unauthorized use or transfer is oth-
12 erwise required by a provision of law.

13 (b) UNAUTHORIZED USE TRANSFERS.—In the rule-
14 making required by subsection (a), the Commission shall
15 provide that with respect to transfers of covered informa-
16 tion to a third party for which an individual provides opt-
17 in consent, the third party to which the information is
18 transferred may not use such information for any unau-
19 thorized use other than a use—

20 (1) specified pursuant to the purposes stated in
21 the required notice under section 121(a); and

22 (2) authorized by the individual when the indi-
23 vidual granted consent for the transfer of the infor-
24 mation to the third party.

1 (c) ALTERNATIVE MEANS TO TERMINATE USE OF
2 COVERED INFORMATION.—In the rulemaking required by
3 subsection (a), the Commission shall allow a covered entity
4 to provide individuals an alternative means, in lieu of the
5 access, consent, and correction requirements, of prohib-
6 iting a covered entity from use or transfer of that individ-
7 ual’s covered information.

8 (d) SERVICE PROVIDERS.—

9 (1) IN GENERAL.—The use of a service provider
10 by a covered entity to receive covered information in
11 performing services or functions on behalf of and
12 under the instruction of the covered entity does not
13 constitute an unauthorized use of such information
14 by the covered entity if the covered entity and the
15 service provider execute a contract that requires the
16 service provider to collect, use, and store the infor-
17 mation on behalf of the covered entity in a manner
18 consistent with—

19 (A) the requirements of this title; and

20 (B) the policies and practices related to
21 such information of the covered entity.

22 (2) TRANSFERS BETWEEN SERVICE PROVIDERS
23 FOR A COVERED ENTITY.—The disclosure by a serv-
24 ice provider of covered information pursuant to a
25 contract with a covered entity to another service pro-

vider in order to perform the same service or functions for that covered entity does not constitute an unauthorized use.

(3) LIABILITY REMAINS WITH COVERED ENTITY.—A covered entity remains responsible and liable for the protection of covered information that has been transferred to a service provider for processing, notwithstanding any agreement to the contrary between a covered entity and the service provider.

Subtitle C—Rights Relating to Data Minimization, Constraints on Distribution, and Data Integrity

SEC. 131. DATA MINIMIZATION.

Each covered entity shall—

(1) collect only as much covered information relating to an individual as is reasonably necessary—

(A) to process or enforce a transaction or deliver a service requested by such individual;

(B) for the covered entity to provide a transaction or delivering a service requested by such individual, such as inventory management, financial reporting and accounting, planning, product or service improvement or forecasting, and customer support and service;

1 (C) to prevent or detect fraud or to provide
2 for a secure environment;

3 (D) to investigate a possible crime;

4 (E) to comply with a provision of law;

5 (F) for the covered entity to market or ad-
6 vertise to such individual if the covered infor-
7 mation used for such marketing or advertising
8 was collected directly by the covered entity; or

9 (G) for internal operations, including—

10 (i) collecting customer satisfaction
11 surveys and conducting customer research
12 to improve customer service; and

13 (ii) collection from an Internet website
14 of information about visits and click-
15 through rates relating to such website to
16 improve—

17 (I) website navigation and per-
18 formance; and

19 (II) the customer's experience;

20 (2) retain covered information for only such du-
21 ration as—

22 (A) with respect to the provision of a
23 transaction or delivery of a service to an indi-
24 vidual—

1 (i) is necessary to provide such trans-
 2 action or deliver such service to such indi-
 3 vidual; or

4 (ii) if such service is ongoing, is rea-
 5 sonable for the ongoing nature of the serv-
 6 ice; or

7 (B) is required by a provision of law;

8 (3) retain covered information only for the pur-
 9 pose it was collected, or reasonably related purposes;
 10 and

11 (4) exercise reasonable data retention proce-
 12 dures with respect to both the initial collection and
 13 subsequent retention.

14 **SEC. 132. CONSTRAINTS ON DISTRIBUTION OF INFORMA-**
 15 **TION.**

16 (a) IN GENERAL.—Each covered entity shall—

17 (1) require by contract that any third party to
 18 which it transfers covered information use the infor-
 19 mation only for purposes that are consistent with—

20 (A) the provisions of this title; and

21 (B) as specified in the contract;

22 (2) require by contract that such third party
 23 may not combine information that the covered entity
 24 has transferred to it, that relates to an individual,
 25 and that is not personally identifiable information

1 with other information in order to identify such indi-
 2 vidual, unless the covered entity has obtained the
 3 opt-in consent of such individual for such combina-
 4 tion and identification; and

5 (3) before executing a contract with a third
 6 party—

7 (A) assure through due diligence that the
 8 third party is a legitimate organization; and

9 (B) in the case of a material violation of
 10 the contract, at a minimum notify the Commis-
 11 sion of such violation.

12 (b) TRANSFERS TO UNRELIABLE THIRD PARTIES
 13 PROHIBITED.—A covered entity may not transfer covered
 14 information to a third party that the covered entity
 15 knows—

16 (1) has intentionally or willfully violated a con-
 17 tract required by subsection (a); and

18 (2) is reasonably likely to violate such contract.

19 (c) APPLICATION OF RULES TO THIRD PARTIES.—

20 (1) IN GENERAL.—Except as provided in para-
 21 graph (2), a third party that receives covered infor-
 22 mation from a covered entity shall be subject to the
 23 provisions of this Act as if it were a covered entity.

24 (2) EXEMPTION.—The Commission may, as it
 25 determines appropriate, exempt classes of third par-

1 ties from liability under any provision of subtitle B
2 if the Commission finds that—

3 (A) such class of third parties cannot rea-
4 sonably comply with such provision; or

5 (B) with respect to covered information re-
6 lating to individuals that is transferred to such
7 class, compliance by such class with such provi-
8 sion would not sufficiently benefit such individ-
9 uals.

10 **SEC. 133. DATA INTEGRITY.**

11 (a) IN GENERAL.—Each covered entity shall attempt
12 to establish and maintain reasonable procedures to ensure
13 that personally identifiable information that is covered in-
14 formation and maintained by the covered entity is accu-
15 rate in those instances where the covered information
16 could be used to deny consumers benefits or cause signifi-
17 cant harm.

18 (b) EXCEPTION.—Subsection (a) shall not apply to
19 covered information of an individual maintained by a cov-
20 ered entity that is provided—

21 (1) directly to the covered entity by the indi-
22 vidual;

23 (2) to the covered entity by another entity at
24 the request of the individual;

25 (3) to prevent or detect fraud; or

(4) to provide for a secure environment.

Subtitle D—Right to Notice of Breaches of Security

SEC. 141. DEFINITIONS.

In this subtitle:

(1) BREACH OF SECURITY.—

(A) IN GENERAL.—The term “breach of security” means compromise of the security, confidentiality, or integrity of, or loss of, data in electronic form that results in, or there is a reasonable basis to conclude has resulted in, unauthorized access to or acquisition of personally identifiable information from a covered entity.

(B) EXCLUSIONS.—The term “breach of security” does not include—

(i) a good faith acquisition of personally identifiable information by a covered entity, or an employee or agent of a covered entity, if the personally identifiable information is not subject to further use or unauthorized disclosure;

(ii) any lawfully authorized investigative, protective, or intelligence activity of a law enforcement or an intelligence agency

1 of the United States, a State, or a political
2 subdivision of a State; or

3 (iii) the release of a public record not
4 otherwise subject to confidentiality or non-
5 disclosure requirements.

6 (2) DATA IN ELECTRONIC FORM.—The term
7 “data in electronic form” means any data stored
8 electronically or digitally on any computer system or
9 other database, including recordable tapes and other
10 mass storage devices.

11 (3) DESIGNATED ENTITY.—The term “des-
12 ignated entity” means the Federal Government enti-
13 ty designated by the Secretary of Homeland Security
14 under section 143(a).

15 (4) IDENTITY THEFT.—The term “identity
16 theft” means the unauthorized use of another per-
17 son’s personally identifiable information for the pur-
18 pose of engaging in commercial transactions under
19 the identity of such other person, including any con-
20 tact that violates section 1028A of title 18, United
21 States Code.

22 (5) MAJOR CREDIT REPORTING AGENCY.—The
23 term “major credit reporting agency” means a con-
24 sumer reporting agency that compiles and maintains
25 files on consumers on a nationwide basis within the

1 meaning of section 603(p) of the Fair Credit Re-
2 porting Act (15 U.S.C. 1681a(p)).

3 (6) SERVICE PROVIDER.—The term “service
4 provider” means a person that provides electronic
5 data transmission, routing, intermediate and tran-
6 sient storage, or connections to its system or net-
7 work, where the person providing such services does
8 not select or modify the content of the electronic
9 data, is not the sender or the intended recipient of
10 the data, and does not differentiate personally iden-
11 tifiable information from other information that
12 such person transmits, routes, or stores, or for
13 which such person provides connections. Any such
14 person shall be treated as a service provider under
15 this subtitle only to the extent that it is engaged in
16 the provision of such transmission, routing, inter-
17 mediate and transient storage, or connections.

18 **SEC. 142. NOTICE TO INDIVIDUALS.**

19 (a) IN GENERAL.—A covered entity that owns or pos-
20 sesses data in electronic form containing personally identi-
21 fiable information, following the discovery of a breach of
22 security of the system maintained by the covered entity
23 that contains such information, shall notify—

24 (1) each individual who is a citizen or resident
25 of the United States and whose personally identifi-

1 able information has been, or is reasonably believed
2 to have been, acquired or accessed from the covered
3 entity as a result of the breach of security; and

4 (2) the Commission, unless the covered entity
5 has notified the designated entity under section 143.

6 (b) SPECIAL NOTIFICATION REQUIREMENTS.—

7 (1) THIRD PARTIES.—In the event of a breach
8 of security of a system maintained by a third party
9 that has been contracted to maintain or process data
10 in electronic form containing personally identifiable
11 information on behalf of a covered entity who owns
12 or possesses such data, the third party shall notify
13 the covered entity of the breach of security.

14 (2) SERVICE PROVIDERS.—If a service provider
15 becomes aware of a breach of security of data in
16 electronic form containing personally identifiable in-
17 formation that is owned or possessed by another cov-
18 ered entity that connects to or uses a system or net-
19 work provided by the service provider for the pur-
20 pose of transmitting, routing, or providing inter-
21 mediate or transient storage of such data, the serv-
22 ice provider shall notify of the breach of security
23 only the covered entity who initiated such connec-
24 tion, transmission, routing, or storage if such cov-
25 ered entity can be reasonably identified.

1 (3) COORDINATION OF NOTIFICATION WITH
2 CREDIT REPORTING AGENCIES.—

3 (A) IN GENERAL.—If a covered entity is
4 required to provide notification to more than
5 5,000 individuals under subsection (a)(1), the
6 covered entity also shall notify each major cred-
7 it reporting agency of the timing and distribu-
8 tion of the notices, except when the only per-
9 sonally identifiable information that is the sub-
10 ject of the breach of security is the individual's
11 first name or initial and last name, or address,
12 or phone number, in combination with a credit
13 or debit card number, and any required security
14 code.

15 (B) NOTICE TO CREDIT REPORTING AGEN-
16 CIES BEFORE INDIVIDUALS.—Such notice shall
17 be given to each credit reporting agency without
18 unreasonable delay and, if it will not delay no-
19 tice to the affected individuals, prior to the dis-
20 tribution of notices to the affected individuals.

21 (c) TIMELINESS OF NOTIFICATION.—

22 (1) IN GENERAL.—All notifications required
23 under this section shall be made without unreason-
24 able delay following the discovery by the covered en-
25 tity of a security breach.

1 (2) REASONABLE DELAY.—

2 (A) IN GENERAL.—Reasonable delay under
3 this subsection may include any time necessary
4 to determine the scope of the security breach,
5 prevent further disclosures, restore the reason-
6 able integrity of the data system, and provide
7 notice to law enforcement when required.

8 (B) EXTENSION.—

9 (i) IN GENERAL.—Except as provided
10 in subsection (d), delay of notification shall
11 not exceed 60 days following the discovery
12 of the security breach, unless the covered
13 entity requests an extension of time and
14 the Commission determines in writing that
15 additional time is reasonably necessary to
16 determine the scope of the security breach,
17 prevent further disclosures, restore the rea-
18 sonable integrity of the data system, or to
19 provide notice to the designated entity.

20 (ii) APPROVAL OF REQUEST.—If the
21 Commission approves the request for delay,
22 the covered entity may delay the period for
23 notification for additional periods of up to
24 30 days.

1 (3) BURDEN OF PRODUCTION.—The covered
2 entity, third party, or service provider required to
3 provide notice under this title shall, upon the request
4 of the Commission provide records or other evidence
5 of the notifications required under this subtitle, in-
6 cluding to the extent applicable, the reasons for any
7 delay of notification.

8 (d) METHOD AND CONTENT OF NOTIFICATION.—

9 (1) DIRECT NOTIFICATION.—

10 (A) METHOD OF DIRECT NOTIFICATION.—

11 Except as provided in paragraph (2), a covered
12 entity shall be in compliance with the notifica-
13 tion requirement under subsection (a)(1) if—

14 (i) the covered entity provides con-
15 spicuous and clearly identified notifica-
16 tion—

17 (I) in writing; or

18 (II) by e-mail or other electronic
19 means if—

20 (aa) the covered entity's pri-
21 mary method of communication
22 with the individual is by e-mail or
23 such other electronic means; or

24 (bb) the individual has con-
25 sented to receive notification by

1 e-mail or such other electronic
2 means and such notification is
3 provided in a manner that is con-
4 sistent with the provisions per-
5 mitting electronic transmission of
6 notices under section 101 of the
7 Electronic Signatures in Global
8 and National Commerce Act (15
9 U.S.C. 7001); and

10 (ii) the method of notification selected
11 under clause (i) can reasonably be expected
12 to reach the intended individual.

13 (B) CONTENT OF DIRECT NOTIFICA-
14 TION.—Each method of notification under sub-
15 paragraph (A) shall include the following:

16 (i) The date, estimated date, or esti-
17 mated date range of the breach of security.

18 (ii) A description of the personally
19 identifiable information that was or is rea-
20 sonably believed to have been acquired or
21 accessed as a result of the breach of secu-
22 rity.

23 (iii) A telephone number that an indi-
24 vidual can use at no cost to the individual
25 to contact the covered entity to inquire

1 about the breach of security or the infor-
2 mation the covered entity maintained
3 about that individual.

4 (iv) Notice that the individual may be
5 entitled to consumer credit reports under
6 subsection (e)(1).

7 (v) Instructions how an individual can
8 request consumer credit reports under sub-
9 section (e)(1).

10 (vi) A telephone number, that an indi-
11 vidual can use at no cost to the individual,
12 and an address to contact each major cred-
13 it reporting agency.

14 (vii) A telephone number, that an in-
15 dividual can use at no cost to the indi-
16 vidual, and an Internet website address to
17 obtain information regarding identity theft
18 from the Commission.

19 (2) SUBSTITUTE NOTIFICATION.—

20 (A) CIRCUMSTANCES GIVING RISE TO SUB-
21 STITUTE NOTIFICATION.—A covered entity re-
22 quired to provide notification to individuals
23 under subsection (a)(1) may provide notifica-
24 tion under this paragraph instead of paragraph
25 (1) of this subsection if—

1 (i) notification under paragraph (1) is
2 not feasible due to lack of sufficient con-
3 tact information for the individual required
4 to be notified; or

5 (ii) the covered entity owns or pos-
6 sesses data in electronic form containing
7 personally identifiable information of fewer
8 than 10,000 individuals and direct notifica-
9 tion is not feasible due to excessive cost to
10 the covered entity required to provide such
11 notification relative to the resources of
12 such covered entity, as determined in ac-
13 cordance with the regulations issued by the
14 Commission under paragraph (3)(A).

15 (B) METHOD OF SUBSTITUTE NOTIFICA-
16 TION.—Notification under this paragraph shall
17 include the following:

18 (i) Conspicuous and clearly identified
19 notification by e-mail to the extent the cov-
20 ered entity has an e-mail address for an in-
21 dividual who is entitled to notification
22 under subsection (a)(1).

23 (ii) Conspicuous and clearly identified
24 notification on the Internet website of the

covered entity if the covered entity maintains an Internet website.

(iii) Notification to print and to broadcast media, including major media in metropolitan and rural areas where the individuals whose personally identifiable information was acquired or accessed reside.

(C) CONTENT OF SUBSTITUTE NOTIFICATION.—Each method of notification under this paragraph shall include the following:

(i) The date, estimated date, or estimated date range of the breach of security.

(ii) A description of the types of personally identifiable information that were or are reasonably believed to have been acquired or accessed as a result of the breach of security.

(iii) Notice that an individual may be entitled to consumer credit reports under subsection (e)(1).

(iv) Instructions how an individual can request consumer credit reports under subsection (e)(1).

(v) A telephone number that an individual can use at no cost to the individual

1 to learn whether the individual's personally
2 identifiable information is included in the
3 breach of security.

4 (vi) A telephone number, that an indi-
5 vidual can use at no cost to the individual,
6 and an address to contact each major cred-
7 it reporting agency.

8 (vii) A telephone number, that an in-
9 dividual can use at no cost to the indi-
10 vidual, and an Internet website address to
11 obtain information from the Commission
12 regarding identity theft.

13 (3) REGULATIONS AND GUIDANCE.—

14 (A) REGULATIONS CONCERNING SUB-
15STITUTE NOTIFICATION.—

16 (i) IN GENERAL.—Not later than 1
17 year after the date of enactment of this
18 Act, the Commission shall prescribe cri-
19 teria for determining circumstances under
20 which notification may be provided under
21 paragraph (2), including criteria for deter-
22 mining whether providing notification
23 under paragraph (1) is not feasible due to
24 excessive costs to the covered entity re-

1 quired to provide such notification relative
2 to the resources of such covered entity.

3 (ii) OTHER CIRCUMSTANCES.—The
4 regulations required by clause (i) may also
5 identify other circumstances in which noti-
6 fication under paragraph (2) would be ap-
7 propriate, including circumstances under
8 which the cost of providing direct notifica-
9 tion exceeds the benefits to individuals.

10 (B) GUIDANCE.—

11 (i) IN GENERAL.—The Commission, in
12 consultation with the Administrator of the
13 Small Business Administration, shall pub-
14 lish and otherwise make available general
15 guidance with respect to compliance with
16 this subsection.

17 (ii) CONTENTS.—The guidance re-
18 quired by clause (i) shall include the fol-
19 lowing:

20 (I) A description of written or e-
21 mail notification that complies with
22 paragraph (1).

23 (II) Guidance on the content of
24 notification under paragraph (2), in-
25 cluding the extent of notification to

1 print and broadcast media that com-
2 plies with subparagraph (B)(iii) of
3 such paragraph.

4 (e) OTHER OBLIGATIONS FOLLOWING BREACH.—

5 (1) IN GENERAL.—Subject to the provisions of
6 this subsection, not later than 60 days after the date
7 of a request by an individual who received notifica-
8 tion under subsection (a)(1) and quarterly thereafter
9 for 2 years, a covered entity required to provide no-
10 tification under such subsection to such individual
11 shall provide, or arrange for the provision of, to such
12 individual at no cost to such individual, consumer
13 credit reports from at least 1 major credit reporting
14 agency.

15 (2) LIMITATION.—Paragraph (1) shall not
16 apply if the only personally identifiable information
17 that is the subject of the breach of security is the
18 individual's first name or initial and last name, or
19 address, or phone number, in combination with a
20 credit or debit card number, and any required secu-
21 rity code.

22 (3) RULEMAKING.—Not later than 1 year after
23 the date of enactment of this Act, the Commission
24 shall prescribe the following:

1 (A) Criteria for determining the cir-
2 cumstances under which a covered entity re-
3 quired to provide notification under subsection
4 (a)(1) must provide or arrange for the provision
5 of free consumer credit reports under this sub-
6 section.

7 (B) A simple process under which a cov-
8 ered entity that is a small business concern or
9 small nonprofit organization may request a full
10 or a partial waiver or a modified or an alter-
11 native means of complying with this subsection
12 if providing free consumer credit reports is not
13 feasible due to excessive costs relative to the re-
14 sources of such covered entity and relative to
15 the level of harm, to affected individuals,
16 caused by the breach of security.

17 (4) DEFINITIONS.—In this subsection:

18 (A) SMALL BUSINESS CONCERN.—The
19 term “small business concern” has the meaning
20 given such term under section 3 of the Small
21 Business Act (15 U.S.C. 632).

22 (B) SMALL NONPROFIT ORGANIZATION.—
23 The term “small nonprofit organization” has
24 the meaning the Commission shall give such
25 term for purposes of this subsection.

1 (f) DELAY OF NOTIFICATION AUTHORIZED FOR NA-
2 TIONAL SECURITY AND LAW ENFORCEMENT PUR-
3 POSES.—

4 (1) IN GENERAL.—If the United States Secret
5 Service or the Federal Bureau of Investigation de-
6 termines that notification under this section would
7 impede a criminal investigation or a national secu-
8 rity activity, such notification shall be delayed upon
9 written notice from the United States Secret Service
10 or the Federal Bureau of Investigation to the cov-
11 ered entity that experienced the breach of security.
12 The notification from the United States Secret Serv-
13 ice or the Federal Bureau of Investigation shall
14 specify the period of delay requested for national se-
15 curity or law enforcement purposes.

16 (2) SUBSEQUENT DELAY OF NOTIFICATION.—

17 (A) IN GENERAL.—If the notification re-
18 quired under subsection (a)(1) is delayed pursu-
19 ant to paragraph (1), a covered entity shall give
20 notice not more than 30 days after the day
21 such law enforcement or national security delay
22 was invoked unless a Federal law enforcement
23 or intelligence agency provides written notifica-
24 tion that further delay is necessary.

1 (B) WRITTEN JUSTIFICATION REQUIRE-
2 MENTS.—

3 (i) UNITED STATES SECRET SERV-
4 ICE.—If the United States Secret Service
5 instructs a covered entity to delay notifica-
6 tion under this section beyond the 30-day
7 period set forth in subparagraph (A) (re-
8 ferred to in this clause as “subsequent
9 delay”), the United States Secret Service
10 shall submit written justification for the
11 subsequent delay to the Secretary of
12 Homeland Security before the subsequent
13 delay begins.

14 (ii) FEDERAL BUREAU OF INVESTIGA-
15 TION.—If the Federal Bureau of Investiga-
16 tion instructs a covered entity to delay no-
17 tification under this section beyond the 30-
18 day period set forth in subparagraph (A)
19 (referred to in this clause as “subsequent
20 delay”), the Federal Bureau of Investiga-
21 tion shall submit written justification for
22 the subsequent delay to the Attorney Gen-
23 eral before the subsequent delay begins.

24 (3) LAW ENFORCEMENT IMMUNITY.—No cause
25 of action shall lie in any court against any Federal

1 agency for acts relating to the delay of notification
2 for national security or law enforcement purposes
3 under this subtitle.

4 (g) GENERAL EXEMPTION.—

5 (1) IN GENERAL.—A covered entity shall be ex-
6 empt from the requirements under this section if,
7 following a breach of security, the covered entity
8 reasonably concludes that there is no reasonable risk
9 of identity theft, fraud, or other unlawful conduct.

10 (2) FTC GUIDANCE.—Not later than 1 year
11 after the date of enactment of this Act, the Commis-
12 sion, after consultation with the Director of the Na-
13 tional Institute of Standards and Technology, shall
14 issue guidance regarding the application of the ex-
15 emption under paragraph (1).

16 (h) EXEMPTIONS FOR NATIONAL SECURITY AND
17 LAW ENFORCEMENT PURPOSES.—

18 (1) IN GENERAL.—A covered entity shall be ex-
19 empt from the notice requirements under this sec-
20 tion if—

21 (A) a determination is made—

22 (i) by the United States Secret Serv-
23 ice or the Federal Bureau of Investigation
24 that notification of the breach of security
25 could be reasonably expected to reveal sen-

1 sitive sources and methods or similarly im-
2 pede the ability of the Government to con-
3 duct law enforcement or intelligence inves-
4 tigations; or

5 (ii) by the Federal Bureau of Inves-
6 tigation that notification of the breach of
7 security could be reasonably expected to
8 cause damage to the national security; and

9 (B) the United States Secret Service or the
10 Federal Bureau of Investigation, as the case
11 may be, provides written notice of its deter-
12 mination under subparagraph (A) to the cov-
13 ered entity.

14 (2) UNITED STATES SECRET SERVICE.—If the
15 United States Secret Service invokes an exemption
16 under paragraph (1), the United States Secret Serv-
17 ice shall submit written justification for invoking the
18 exemption to the Secretary of Homeland Security
19 before the exemption is invoked.

20 (3) FEDERAL BUREAU OF INVESTIGATION.—If
21 the Federal Bureau of Investigation invokes an ex-
22 emption under paragraph (1), the Federal Bureau of
23 Investigation shall submit written justification for
24 invoking the exemption to the Attorney General be-
25 fore the exemption is invoked.

1 (4) IMMUNITY.—No cause of action shall lie in
2 any court against any Federal agency for acts relat-
3 ing to the exemption from notification for national
4 security or law enforcement purposes under this sub-
5 title.

6 (5) REPORTS.—Not later than 540 days after
7 the date of enactment of this Act, and upon request
8 by Congress thereafter, the United States Secret
9 Service and the Federal Bureau of Investigation
10 shall submit to Congress a report on the number
11 and nature of breaches of security subject to the ex-
12 emptions for national security and law enforcement
13 purposes under this subsection.

14 (i) FINANCIAL FRAUD PREVENTION EXEMPTION.—

15 (1) IN GENERAL.—A covered entity shall be ex-
16 empt from the notice requirements under this sec-
17 tion if the covered entity utilizes or participates in
18 a security program that—

19 (A) effectively blocks the use of the person-
20 ally identifiable information to initiate an unau-
21 thorized financial transaction before it is
22 charged to the account of the individual; and

23 (B) provides notice to each affected indi-
24 vidual after a breach of security that resulted in

1 attempted fraud or an attempted unauthorized
2 transaction.

3 (2) LIMITATIONS.—An exemption under para-
4 graph (1) shall not apply if—

5 (A) the breach of security includes person-
6 ally identifiable information, other than a credit
7 card number or credit card security code, of
8 any type; or

9 (B) the breach of security includes both
10 the individual's credit card number and the in-
11 dividual's first and last name.

12 (j) FINANCIAL INSTITUTIONS REGULATED BY FED-
13 ERAL FUNCTIONAL REGULATORS.—

14 (1) IN GENERAL.—A covered financial institu-
15 tion shall be deemed in compliance with this section
16 if—

17 (A) the Federal functional regulator with
18 jurisdiction over the covered financial institu-
19 tion has issued a standard by regulation or
20 guideline under title V of the Gramm-Leach-
21 Bliley Act (15 U.S.C. 6801 et seq.) that—

22 (i) requires financial institutions with-
23 in its jurisdiction to provide notification to
24 individuals following a breach of security;
25 and

1 (ii) provides protections substantially
2 similar to, or greater than, those required
3 under this Act; and

4 (B) the covered financial institution is in
5 compliance with the standard under subpara-
6 graph (A).

7 (2) DEFINITIONS.—In this subsection:

8 (A) COVERED FINANCIAL INSTITUTION.—
9 The term “covered financial institution” means
10 a financial institution that is subject to—

11 (i) the data security requirements of
12 the Gramm-Leach-Bliley Act (15 U.S.C.
13 6801 et seq.);

14 (ii) any implementing standard issued
15 by regulation or guideline issued under
16 that Act; and

17 (iii) the jurisdiction of a Federal func-
18 tional regulator under that Act.

19 (B) FEDERAL FUNCTIONAL REGULATOR.—
20 The term “Federal functional regulator” has
21 the meaning given the term in section 509 of
22 the Gramm-Leach-Bliley Act (15 U.S.C. 6809).

23 (C) FINANCIAL INSTITUTION.—The term
24 “financial institution” has the meaning given

1 the term in section 509 of the Gramm-Leach-
2 Bliley Act (15 U.S.C. 6809).

3 (k) EXEMPTION; HEALTH PRIVACY.—

4 (1) COVERED ENTITY OR BUSINESS ASSOCIATE
5 UNDER HITECH ACT.—To the extent that a covered
6 entity under this section acts as a covered entity or
7 a business associate under section 13402 of the
8 Health Information Technology for Economic and
9 Clinical Health Act (42 U.S.C. 17932), has the obli-
10 gation to provide notification to individuals following
11 a breach of security under that Act or its imple-
12 menting regulations, and is in compliance with that
13 obligation, the covered entity shall be deemed in
14 compliance with this section.

15 (2) ENTITY SUBJECT TO HITECH ACT.—To the
16 extent that a covered entity under this section acts
17 as a vendor of personal health records, a third party
18 service provider, or other entity subject to section
19 13407 of the Health Information Technology for Ec-
20 onomical and Clinical Health Act (42 U.S.C.
21 17937), has the obligation to provide notification to
22 individuals following a breach of security under that
23 Act or its implementing regulations, and is in com-
24 pliance with that obligation, the covered entity shall
25 be deemed in compliance with this section.

1 (3) LIMITATION OF STATUTORY CONSTRUC-
2 TION.—Nothing in this subtitle may be construed in
3 any way to give effect to the sunset provision under
4 section 13407(g)(2) of the Health Information Tech-
5 nology for Economic and Clinical Health Act (42
6 U.S.C. 17937(g)(2)) or to otherwise limit or affect
7 the applicability, under section 13407 of that Act, of
8 the requirement to provide notification to individuals
9 following a breach of security for vendors of personal
10 health records and each entity described in clause
11 (ii), (iii), or (iv) of section 13424(b)(1)(A) of that
12 Act (42 U.S.C. 17953(b)(1)(A)).

13 (l) INTERNET WEBSITE NOTICE OF FEDERAL TRADE
14 COMMISSION.—If the Commission, upon receiving notifi-
15 cation of any breach of security that is reported to the
16 Commission, finds that notification of the breach of secu-
17 rity via the Commission’s Internet website would be in the
18 public interest or for the protection of consumers, the
19 Commission shall place such a notice in a clear and con-
20 spicuous location on its Internet website.

21 (m) FTC STUDY ON NOTIFICATION IN LANGUAGES
22 IN ADDITION TO ENGLISH.—Not later than 1 year after
23 the date of enactment of this Act, the Commission shall
24 conduct a study on the feasibility and advisability of re-
25 quiring notification provided pursuant to subsection (d)(1)

1 to be provided in a language in addition to English to indi-
2 viduals known to speak only such other language.

3 **SEC. 143. NOTICE TO LAW ENFORCEMENT.**

4 (a) DESIGNATION OF GOVERNMENT ENTITY TO RE-
5 CEIVE NOTICE.—Not later than 60 days after the date
6 of enactment of this Act, the Secretary of Homeland Secu-
7 rity shall designate a Federal Government entity to receive
8 notice under this section.

9 (b) NOTICE TO DESIGNATED ENTITY.—A covered en-
10 tity shall notify the designated entity of a breach of secu-
11 rity if—

12 (1) the number of individuals whose personally
13 identifiable information was, or is reasonably be-
14 lieved to have been, acquired or accessed as a result
15 of the breach of security exceeds 10,000;

16 (2) the breach of security involves a database,
17 networked or integrated databases, or other data
18 system containing the personally identifiable infor-
19 mation of more than 1,000,000 individuals;

20 (3) the breach of security involves databases
21 owned by the Federal Government; or

22 (4) the breach of security involves primarily
23 personally identifiable information of individuals
24 known to the covered entity to be employees or con-

1 tractors of the Federal Government involved in na-
2 tional security or law enforcement.

3 (c) CONTENT OF NOTICES.—

4 (1) IN GENERAL.—Each notice under sub-
5 section (b) shall contain the following:

6 (A) The date, estimated date, or estimated
7 date range of the breach of security.

8 (B) A description of the nature of the
9 breach of security.

10 (C) A description of each type of person-
11 ally identifiable information that was or is rea-
12 sonably believed to have been acquired or
13 accessed as a result of the breach of security.

14 (D) A statement of each paragraph under
15 subsection (b) that applies to the breach of se-
16 curity.

17 (2) CONSTRUCTION.—Nothing in this section
18 shall be construed to require a covered entity to re-
19 veal specific or identifying information about an in-
20 dividual as part of the notice under paragraph (1).

21 (d) NOTICE BY DESIGNATED ENTITY.—The des-
22 ignated entity shall promptly provide each notice it re-
23 ceives under subsection (b) to the following:

24 (1) The United States Secret Service.

25 (2) The Federal Bureau of Investigation.

1 (3) The Commission.

2 (4) The United States Postal Inspection Serv-
3 ice, if the breach of security involves mail fraud.

4 (5) The attorney general of each State affected
5 by the breach of security.

6 (6) Such other Federal agencies as the des-
7 ignated entity considers appropriate for law enforce-
8 ment, national security, or data security purposes.

9 (e) TIMING OF NOTICES.—Notice under this section
10 shall be delivered as follows:

11 (1) Notice under subsection (b) shall be deliv-
12 ered as promptly as possible, but—

13 (A) not less than 3 business days before
14 notification to an individual section 142(a)(1);
15 and

16 (B) not later than 10 days after the date
17 of discovery of the events requiring notice.

18 (2) Notice under subsection (d) shall be deliv-
19 ered as promptly as possible, but not later than 1
20 business day after the date that the designated enti-
21 ty receives notice of a breach of security from a cov-
22 ered entity.

Subtitle E—Enforcement

SEC. 151. GENERAL APPLICATION.

The requirements of this title shall apply to any person who—

(1) collects, uses, transfers, or stores covered information concerning more than 5,000 individuals during any consecutive 12-month period; and

(2) is—

(A) a person over which the Commission has authority pursuant to section 5(a)(2) of the Federal Trade Commission Act (15 U.S.C. 45(a)(2));

(B) a common carrier subject to the Communications Act of 1934 (47 U.S.C. 151 et seq.), notwithstanding the definition of the term “Acts to regulate commerce” in section 4 of the Federal Trade Commission Act (15 U.S.C. 44) and the exception provided by section 5(a)(2) of the Federal Trade Commission Act (15 U.S.C. 45(a)(2)) for such carriers; or

(C) a nonprofit organization, including any organization described in section 501(c) of the Internal Revenue Code of 1986 that is exempt from taxation under section 501(a) of such Code, notwithstanding the definition of the

1 term “Acts to regulate commerce” in section 4
2 of the Federal Trade Commission Act (15
3 U.S.C. 44) and the exception provided by sec-
4 tion 5(a)(2) of the Federal Trade Commission
5 Act (15 U.S.C. 45(a)(2)) for such organiza-
6 tions.

7 **SEC. 152. ENFORCEMENT BY THE FEDERAL TRADE COM-**
8 **MISSION.**

9 (a) UNFAIR OR DECEPTIVE ACTS OR PRACTICES.—
10 A reckless or repetitive violation of a provision of this title,
11 except section 143, shall be treated as an unfair or decep-
12 tive act or practice in violation of a regulation under sec-
13 tion 18(a)(1)(B) of the Federal Trade Commission Act
14 (15 U.S.C. 57a(a)(1)(B)) regarding unfair or deceptive
15 acts or practices.

16 (b) POWERS OF COMMISSION.—

17 (1) IN GENERAL.—Except as provided in para-
18 graph (3), the Commission shall enforce this title,
19 except section 143, in the same manner, by the same
20 means, and with the same jurisdiction, powers, and
21 duties as though all applicable terms and provisions
22 of the Federal Trade Commission Act (15 U.S.C. 41
23 et seq.) were incorporated into and made a part of
24 this title.

1 (2) PRIVILEGES AND IMMUNITIES.—Except as
2 provided in paragraph (3), any person who violates
3 a provision of this title, except section 143, shall be
4 subject to the penalties and entitled to the privileges
5 and immunities provided in the Federal Trade Com-
6 mission Act (15 U.S.C. 41 et seq.).

7 (3) COMMON CARRIERS AND NONPROFIT ORGA-
8 NIZATIONS.—The Commission shall enforce this
9 title, except section 143, with respect to common
10 carriers and nonprofit organizations described in
11 section 151 to the extent necessary to effectuate the
12 purposes of this title as if such carriers and non-
13 profit organizations were persons over which the
14 Commission has authority pursuant to section
15 5(a)(2) of the Federal Trade Commission Act (15
16 U.S.C. 45(a)(2)).

17 (c) RULEMAKING AUTHORITY.—

18 (1) LIMITATION.—In promulgating rules under
19 this title, the Commission may not require the de-
20 ployment or use of any specific products or tech-
21 nologies, including any specific computer software or
22 hardware.

23 (2) ADMINISTRATIVE PROCEDURE.—The Com-
24 mission shall promulgate regulations under this title

1 in accordance with section 553 of title 5, United
2 States Code.

3 (d) RULE OF CONSTRUCTION.—Nothing in this title
4 shall be construed to limit the authority of the Commission
5 under any other provision of law.

6 **SEC. 153. ENFORCEMENT BY ATTORNEY GENERAL.**

7 (a) IN GENERAL.—The Attorney General may bring
8 a civil action in the appropriate United States district
9 court against any covered entity that engages in conduct
10 constituting a violation of section 143.

11 (b) PENALTIES.—

12 (1) IN GENERAL.—Upon proof of such conduct
13 by a preponderance of the evidence, a covered entity
14 shall be subject to a civil penalty of not more than
15 \$1,000 per individual whose personally identifiable
16 information was or is reasonably believed to have
17 been accessed or acquired as a result of the breach
18 of security that is the basis of the violation, up to
19 a maximum of \$100,000 per day while such violation
20 persists.

21 (2) LIMITATIONS.—The total amount of the
22 civil penalty assessed under this subsection against
23 a covered entity for acts or omissions relating to a
24 single breach of security shall not exceed
25 \$3,000,000, unless the conduct constituting a viola-

1 tion of subtitle D was reckless or repeated, in which
2 case an additional civil penalty of up to \$3,000,000
3 may be imposed.

4 (3) ADJUSTMENT FOR INFLATION.—Beginning
5 on the date that the Consumer Price Index is first
6 published by the Bureau of Labor Statistics that is
7 after 1 year after the date of enactment of this Act,
8 and each year thereafter, the amounts specified in
9 paragraphs (1) and (2) shall be increased by the
10 percentage increase in the Consumer Price Index
11 published on that date from the Consumer Price
12 Index published the previous year.

13 (c) INJUNCTIVE ACTIONS.—If it appears that a cov-
14 ered entity has engaged, or is engaged, in any act or prac-
15 tice that constitutes a violation of subtitle D, the Attorney
16 General may petition an appropriate United States district
17 court for an order enjoining such practice or enforcing
18 compliance with such subtitle.

19 (d) ISSUANCE OF ORDER.—A court may issue such
20 an order under paragraph (c) if it finds that the conduct
21 in question constitutes a violation of subtitle D.

22 **SEC. 154. ENFORCEMENT BY STATES.**

23 (a) CIVIL ACTION.—In any case in which the attor-
24 ney general of a State has reason to believe that an inter-
25 est of the residents of that State has been or is adversely

1 affected by a covered entity who violates any part of this
 2 title in a manner that results in economic or physical harm
 3 to an individual or engages in a pattern or practice that
 4 violates any part of this title other than section 143, the
 5 attorney general may, as *parens patriae*, bring a civil ac-
 6 tion on behalf of the residents of the State in an appro-
 7 priate district court of the United States—

8 (1) to enjoin further violation of this title or a
 9 regulation promulgated under this title by the de-
 10 fendant;

11 (2) to compel compliance with this title or a
 12 regulation promulgated under this title; or

13 (3) for violations of this title or a regulation
 14 promulgated under this title to obtain civil penalties
 15 in the amount determined under section title.

16 (b) RIGHTS OF FEDERAL TRADE COMMISSION.—

17 (1) NOTICE TO FEDERAL TRADE COMMIS-
 18 SION.—

19 (A) IN GENERAL.—Except as provided in
 20 subparagraph (C), the attorney general of a
 21 State shall notify the Commission in writing of
 22 any civil action under subsection (b), prior to
 23 initiating such civil action.

24 (B) CONTENTS.—The notice required by
 25 subparagraph (A) shall include a copy of the

1 complaint to be filed to initiate such civil ac-
2 tion.

3 (C) EXCEPTION.—If it is not feasible for
4 the attorney general of a State to provide the
5 notice required by subparagraph (A), the State
6 shall provide notice immediately upon insti-
7 tuting a civil action under subsection (b).

8 (2) INTERVENTION BY FEDERAL TRADE COM-
9 MISSION.—Upon receiving notice required by para-
10 graph (1) with respect to a civil action, the Commis-
11 sion may—

12 (A) intervene in such action; and

13 (B) upon intervening—

14 (i) be heard on all matters arising in
15 such civil action; and

16 (ii) file petitions for appeal of a deci-
17 sion in such action.

18 (c) PREEMPTIVE ACTION BY FEDERAL TRADE COM-
19 MISSION.—If the Commission institutes a civil action for
20 violation of this title or a regulation promulgated under
21 this title, no attorney general of a State may bring a civil
22 action under subsection (a) against any defendant named
23 in the complaint of the Commission for violation of this
24 title or a regulation promulgated under this title that is
25 alleged in such complaint.

1 (d) INVESTIGATORY POWERS.—Nothing in this sec-
2 tion may be construed to prevent the attorney general of
3 a State from exercising the powers conferred on such at-
4 torney general by the laws of such State to conduct inves-
5 tigation or to administer oaths or affirmations or to com-
6 pel the attendance of witnesses or the production of docu-
7 mentary and other evidence.

8 (e) VENUE; SERVICE OF PROCESS.—

9 (1) VENUE.—Any action brought under sub-
10 section (a) may be brought in—

11 (A) the district court of the United States
12 that meets applicable requirements relating to
13 venue under section 1391 of title 28, United
14 States Code; or

15 (B) another court of competent jurisdic-
16 tion.

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

20 (A) is an inhabitant; or

21 (B) may be found.

22 (f) ACTIONS BY OTHER STATE OFFICIALS.—

23 (1) IN GENERAL.—In addition to civil actions
24 brought by attorneys general under subsection (a),
25 any other officer of a State who is authorized by the

1 State to do so may bring a civil action under sub-
2 section (a), subject to the same requirements and
3 limitations that apply under this section to civil ac-
4 tions brought by attorneys general.

5 (2) SAVINGS PROVISION.—Nothing in this sec-
6 tion may be construed to prohibit an authorized offi-
7 cial of a State from initiating or continuing any pro-
8 ceeding in a court of the State for a violation of any
9 civil or criminal law of the State.

10 **SEC. 155. CIVIL PENALTIES.**

11 (a) IN GENERAL.—In an action brought under sec-
12 tion 154, in addition to any other penalty otherwise appli-
13 cable to a violation of this title or any regulation promul-
14 gated under this title, the following civil penalties shall
15 apply:

16 (1) SUBTITLE A VIOLATIONS.—A covered entity
17 that recklessly or repeatedly violates subtitle A is lia-
18 ble for a civil penalty equal to the amount calculated
19 by multiplying the number of days that the entity is
20 not in compliance with such subtitle by an amount
21 not to exceed \$33,000.

22 (2) SUBTITLE B VIOLATIONS.—A covered entity
23 that recklessly or repeatedly violates subtitle B is
24 liable for a civil penalty equal to the amount cal-
25 culated by multiplying the number of days that such

1 an entity is not in compliance with such subtitle, or
2 the number of individuals for whom the entity failed
3 to obtain consent as required by such subtitle,
4 whichever is greater, by an amount not to exceed
5 \$33,000.

6 (3) SUBTITLE D VIOLATIONS.—A covered entity
7 that recklessly or repeatedly violates section 142 is
8 liable for a civil penalty equal to the amount cal-
9 culated by multiplying the number of violations of
10 such section by an amount not to exceed \$33,000.
11 Each failure to send notification as required under
12 such section to a resident of the State shall be treat-
13 ed as a separate violation.

14 (b) ADJUSTMENT FOR INFLATION.—Beginning on
15 the date that the Consumer Price Index for All Urban
16 Consumers is first published by the Bureau of Labor Sta-
17 tistics that is after 1 year after the date of enactment of
18 this Act, and each year thereafter, each of the amounts
19 specified in subsection (a) shall be increased by the per-
20 centage increase in the Consumer Price Index published
21 on that date from the Consumer Price Index published
22 the previous year.

23 (c) MAXIMUM TOTAL LIABILITY.—Notwithstanding
24 the number of actions which may be brought against a
25 covered entity under section 154, the maximum civil pen-

1 alty for which any covered entity may be liable under this
 2 section in such actions shall not exceed—

3 (1) \$6,000,000 for any related series of viola-
 4 tions of any rule promulgated under subtitle A;

5 (2) \$6,000,000 for any related series of viola-
 6 tions of subtitle B; and

7 (3) \$6,000,000 for any related series of viola-
 8 tions of section 142.

9 **SEC. 156. EFFECT ON OTHER LAWS.**

10 (a) **PREEMPTION OF STATE LAWS.**—The provisions
 11 of this title shall supersede any provisions of the law of
 12 any State relating to those entities covered by the regula-
 13 tions issued pursuant to this title, to the extent that such
 14 provisions relate to the collection, use, or disclosure of—

15 (1) covered information addressed in this title;

16 or

17 (2) personally identifiable information or per-
 18 sonal identification information addressed in provi-
 19 sions of the law of a State.

20 (b) **UNAUTHORIZED CIVIL ACTIONS; CERTAIN STATE**
 21 **LAWS.**—

22 (1) **UNAUTHORIZED ACTIONS.**—No person
 23 other than a person specified in section 154 may
 24 bring a civil action under the laws of any State if
 25 such action is premised in whole or in part upon the

1 defendant violating this title or a regulation promul-
 2 gated under this title.

3 (2) PROTECTION OF CERTAIN STATE LAWS.—

4 This title shall not be construed to preempt the ap-
 5 plicability of—

6 (A) State laws that address the collection,
 7 use, or disclosure of health information or fi-
 8 nancial information; or

9 (B) other State laws to the extent that
 10 those laws relate to acts of fraud.

11 (c) RULE OF CONSTRUCTION RELATING TO RE-
 12 QUIRED DISCLOSURES TO GOVERNMENT ENTITIES.—

13 This title shall not be construed to expand or limit the
 14 duty or authority of a covered entity or third party to dis-
 15 close personally identifiable information to a Government
 16 entity under any provision of law.

17 **SEC. 157. NO PRIVATE RIGHT OF ACTION.**

18 This title may not be construed to provide any private
 19 right of action.

20 **Subtitle F—Co-Regulatory Safe** 21 **Harbor Programs**

22 **SEC. 161. ESTABLISHMENT OF SAFE HARBOR PROGRAMS.**

23 (a) IN GENERAL.—Not later than 1 year after the
 24 date of enactment of this Act, the Commission shall ini-
 25 tiate a rulemaking proceeding to establish requirements

1 for the establishment and administration of safe harbor
2 programs under which a nongovernmental organization
3 will administer a program that—

4 (1) establishes a mechanism for participants to
5 implement the requirements of this title with regards
6 to—

7 (A) certain types of unauthorized uses of
8 covered information as described in paragraph
9 (2); or

10 (B) any unauthorized use of covered infor-
11 mation; and

12 (2) offers consumers a clear, conspicuous, per-
13 sistent, and effective means of opting out of the
14 transfer of covered information by a covered entity
15 participating in the safe harbor program to a third
16 party for—

17 (A) behavioral advertising purposes;

18 (B) location-based advertising purposes;

19 (C) other specific types of unauthorized
20 use; or

21 (D) any unauthorized use.

22 (b) SELECTION OF NONGOVERNMENTAL ORGANIZA-
23 TIONS TO ADMINISTER PROGRAM.—

24 (1) SUBMITTAL OF APPLICATIONS.—An appli-
25 cant seeking to administer a program under the re-

1 requirements established pursuant to subsection (a)
2 shall submit to the Commission an application there-
3 for at such time, in such manner, and containing
4 such information as the Commission may require.

5 (2) NOTICE AND RECEIPT OF APPLICATIONS.—

6 Upon completion of the rulemaking proceedings re-
7 quired by subsection (a), the Commission shall—

8 (A) publish a notice in the Federal Reg-
9 ister that it will receive applications for ap-
10 proval of safe harbor programs under this sub-
11 title; and

12 (B) begin receiving applications under
13 paragraph (1).

14 (3) SELECTION.—Not later than 270 days after
15 the date on which the Commission receives a com-
16 pleted application under this subsection, the Com-
17 mission shall grant or deny the application on the
18 basis of the Commission’s evaluation of the appli-
19 cant’s capacity to provide protection of individuals’
20 covered information with regard to specific types of
21 unauthorized uses of covered information as de-
22 scribed in subsection (a)(2) that is substantially
23 equivalent to or superior to the protection otherwise
24 provided under this title.

1 (4) WRITTEN FINDINGS.—Any decision reached
2 by the Commission under this subsection shall be ac-
3 companyed by written findings setting forth the basis
4 for and reasons supporting such decision.

5 (c) SCOPE OF SAFE HARBOR PROTECTION.—The
6 scope of protection offered by safe harbor programs ap-
7 proved by the Commission that establish mechanisms for
8 participants to implement the requirements of the title
9 only for certain uses of covered information as described
10 in subsection (a)(2) shall be limited to participating enti-
11 ties' use of those particular types of covered information.

12 (d) SUPERVISION BY FEDERAL TRADE COMMIS-
13 SION.—

14 (1) IN GENERAL.—The Commission shall exer-
15 cise oversight and supervisory authority of a safe
16 harbor program approved under this section
17 through—

18 (A) ongoing review of the practices of the
19 nongovernmental organization administering
20 the program;

21 (B) the imposition of civil penalties on the
22 nongovernmental organization if it is not com-
23 pliant with the requirements established under
24 subsection (a); and

1 (C) withdrawal of authorization to admin-
2 ister the safe harbor program under this sub-
3 title.

4 (2) ANNUAL REPORTS BY NONGOVERNMENTAL
5 ORGANIZATIONS.—Each year, each nongovernmental
6 organization administering a safe harbor program
7 under this section shall submit to the Commission a
8 report on its activities under this subtitle during the
9 preceding year.

10 **SEC. 162. PARTICIPATION IN SAFE HARBOR PROGRAM.**

11 (a) EXEMPTION.—Any covered entity that partici-
12 pates in, and demonstrates compliance with, a safe harbor
13 program administered under section 161 shall be exempt
14 from any provision of subtitle B or subtitle C if the Com-
15 mission finds that the requirements of the safe harbor pro-
16 gram are substantially the same as or more protective of
17 privacy of individuals than the requirements of the provi-
18 sion from which the exemption is granted.

19 (b) LIMITATION.—Nothing in this subtitle shall be
20 construed to exempt any covered entity participating in
21 a safe harbor program from compliance with any other
22 requirement of the regulations promulgated under this
23 title for which the safe harbor does not provide an excep-
24 tion.

1 **Subtitle G—Application With Other**
2 **Federal Laws**

3 **SEC. 171. APPLICATION WITH OTHER FEDERAL LAWS.**

4 (a) QUALIFIED EXEMPTION FOR PERSONS SUBJECT
5 TO OTHER FEDERAL PRIVACY LAWS.—If a person is sub-
6 ject to a provision of this title and a provision of a Federal
7 privacy law described in subsection (d), such provision of
8 this title shall not apply to such person to the extent that
9 such provision of Federal privacy law applies to such per-
10 son.

11 (b) PROTECTION OF OTHER FEDERAL PRIVACY
12 LAWS.—Nothing in this title may be construed to modify,
13 limit, or supersede the operation of the Federal privacy
14 laws described in subsection (d) or the provision of infor-
15 mation permitted or required, expressly or by implication,
16 by such laws, with respect to Federal rights and practices.

17 (c) COMMUNICATIONS INFRASTRUCTURE AND PRI-
18 VACY.—If a person is subject to a provision of section 222
19 or 631 of the Communications Act of 1934 (47 U.S.C.
20 222 and 551) and a provision of this title, such provision
21 of such section 222 or 631 shall not apply to such person
22 to the extent that such provision of this title applies to
23 such person.

1 (d) OTHER FEDERAL PRIVACY LAWS DESCRIBED.—

2 The Federal privacy laws described in this subsection are
3 as follows:

4 (1) Section 552a of title 5, United States Code
5 (commonly known as the Privacy Act of 1974).

6 (2) The Right to Financial Privacy Act of 1978
7 (12 U.S.C. 3401 et seq.).

8 (3) The Fair Credit Reporting Act (15 U.S.C.
9 1681 et seq.).

10 (4) The Fair Debt Collection Practices Act (15
11 U.S.C. 1692 et seq.).

12 (5) The Children’s Online Privacy Protection
13 Act of 1998 (15 U.S.C. 6501 et seq.).

14 (6) Title V of the Gramm-Leach-Bliley Act of
15 1999 (15 U.S.C. 6801 et seq.).

16 (7) Chapters 119, 123, and 206 of title 18,
17 United States Code.

18 (8) Section 2710 of title 18, United States
19 Code.

20 (9) Section 444 of the General Education Pro-
21 visions Act (20 U.S.C. 1232g) (commonly referred
22 to as the “Family Educational Rights and Privacy
23 Act of 1974”).

24 (10) Section 445 of the General Education Pro-
25 visions Act (20 U.S.C. 1232h).

1 (11) The Privacy Protection Act of 1980 (42
2 U.S.C. 2000aa et seq.).

3 (12) The regulations promulgated under section
4 264(c) of the Health Insurance Portability and Ac-
5 countability Act of 1996 (42 U.S.C. 1320d–2 note),
6 as such regulations relate to a person described in
7 section 1172(a) of the Social Security Act (42
8 U.S.C. 1320d–1(a)) or to transactions referred to in
9 section 1173(a)(1) of such Act (42 U.S.C. 1320d–
10 2(a)(1)).

11 (13) The Communications Assistance for Law
12 Enforcement Act (47 U.S.C. 1001 et seq.).

13 (14) Section 227 of the Communications Act of
14 1934 (47 U.S.C. 227).

15 **Subtitle H—Development of Com-**
16 **mercial Data Privacy Policy in**
17 **the Department of Commerce**

18 **SEC. 181. DIRECTION TO DEVELOP COMMERCIAL DATA PRI-**
19 **VACY POLICY.**

20 The Secretary of Commerce shall contribute to the
21 development of commercial data privacy policy by—

22 (1) convening private sector stakeholders, in-
23 cluding members of industry, civil society groups,
24 academia, in open forums, to develop codes of con-

duct in support of applications for safe harbor programs under subtitle F;

(2) expanding interoperability between the United States commercial data privacy framework and other national and regional privacy frameworks;

(3) conducting research related to improving privacy protection under this title; and

(4) conducting research related to improving data sharing practices, including the use of anonymised data, and growing the information economy.

TITLE II—ONLINE PRIVACY OF CHILDREN

SEC. 201. SHORT TITLE.

This title may be cited as the “Do Not Track Kids Act of 2017”.

SEC. 202. FINDINGS.

Congress finds the following:

(1) Since the enactment of the Children’s Online Privacy Protection Act of 1998, the World Wide Web has changed dramatically, with the creation of tens of millions of websites, the proliferation of entirely new media platforms, and the emergence of a diverse ecosystem of services, devices, and applications that enable users to connect wirelessly within

1 an online environment without being tethered to a
2 desktop computer.

3 (2) The explosive growth of the Internet eco-
4 system has unleashed a wide array of opportunities
5 to learn, communicate, participate in civic life, ac-
6 cess entertainment, and engage in commerce.

7 (3) In addition to these significant benefits, the
8 Internet also presents challenges, particularly with
9 respect to the efforts of entities to track the online
10 activities of children and minors and to collect, use,
11 and disclose personal information about them, in-
12 cluding their geolocation, for commercial purposes.

13 (4) Children and teens are visiting numerous
14 companies' websites, and marketers are using multi-
15 media games, online quizzes, and mobile phone and
16 tablet applications to create ties to children and
17 teens.

18 (5) According to a study by the Wall Street
19 Journal in 2010, websites directed to children and
20 teens were more likely to use cookies and other
21 tracking tools than sites directed to a general audi-
22 ence.

23 (6) This study examined 50 popular websites
24 for children and teens in the United States and
25 found that these 50 sites placed 4,123 cookies, bea-

1 cons, and other tracking tools on the test computer
2 used for the study.

3 (7) This is 30-percent greater than the number
4 of such tracking tools that were placed on the test
5 computer in a similar study of the 50 overall most
6 popular websites in the United States, which are
7 generally directed to adults.

8 (8) Children and teens lack the cognitive ability
9 to distinguish advertising from program content and
10 to understand that the purpose of advertising is to
11 persuade them, making them unable to activate the
12 defenses on which adults rely.

13 (9) Children and teens are less able than adults
14 to understand the potential long-term consequences
15 of having their information available to third parties,
16 including advertisers, and other individuals.

17 (10) According to Common Sense Media and
18 the Center for Digital Democracy, 90 percent of
19 teens have used some form of social media, 75 per-
20 cent have a social networking site, and 51 percent
21 check their social networking site at least once a
22 day.

23 (11) Ninety-one percent of parents and 91 per-
24 cent of adults believe it is not okay for advertisers

1 to collect information about a child's location from
2 that child's mobile phone.

3 (12) Ninety-four percent of parents and 91 per-
4 cent of adults agree that advertisers should receive
5 the parent's permission before putting tracking soft-
6 ware on a child's computer.

7 (13) Ninety-six percent of parents and 94 per-
8 cent of adults expressed disapproval when asked if
9 it is "okay for a website to ask children for personal
10 information about their friends".

11 (14) Eighty-eight percent of parents would sup-
12 port a law that requires search engines and social
13 networking sites to get users' permission before
14 using their personal information.

15 (15) A Commonsense Media/Zogby poll found
16 that 94 percent of parents and 94 percent of adults
17 believe individuals should have the ability to request
18 the deletion, after a specific period of time, of all of
19 their personal information held by an online search
20 engine, social networking site, or marketing com-
21 pany.

22 (16) According to a Pew/Berkman Center poll,
23 69 percent of parents of teens who engage in online
24 activity are concerned about how that activity might

1 affect their children’s future academic or employ-
2 ment opportunities.

3 (17) Eighty-one percent of parents of teens who
4 engage in online activity say they are concerned
5 about how much information advertisers can learn
6 about their children’s online activity.

7 **SEC. 203. DEFINITIONS.**

8 (a) IN GENERAL.—In this title:

9 (1) MINOR.—The term “minor” means an indi-
10 vidual who is older than 12 years of age and young-
11 er than 16 years of age.

12 (2) TARGETED MARKETING.—The term “tar-
13 geted marketing” means advertising or other efforts
14 to market a product or service that are directed to
15 a specific individual or device—

16 (A) based on the personal information of
17 the individual or a unique identifier of the de-
18 vice; and

19 (B) as a result of use by the individual, or
20 access by the device, of a website, online serv-
21 ice, online application, or mobile application.

22 (b) TERMS DEFINED BY COMMISSION.—In this title,
23 the terms “directed to minors” and “geolocation informa-
24 tion” shall have the meanings given such terms by the
25 Commission by regulation. Not later than 1 year after the

1 date of enactment of this Act, the Commission shall pro-
2 mulgate, under section 553 of title 5, United States Code,
3 regulations that define such terms broadly enough so that
4 they are not limited to current technology, consistent with
5 the principles articulated by the Commission regarding the
6 definition of the term “Internet” in its statement of basis
7 and purpose on the final rule under the Children’s Online
8 Privacy Protection Act of 1998 (15 U.S.C. 6501 et seq.)
9 promulgated on November 3, 1999 (64 Fed. Reg. 59891).

10 (c) OTHER DEFINITIONS.—The definitions set forth
11 in section 1302 of the Children’s Online Privacy Protec-
12 tion Act of 1998 (15 U.S.C. 6501), as amended by section
13 3(a), shall apply in this title, except to the extent the Com-
14 mission provides otherwise by regulations issued under
15 section 553 of title 5, United States Code.

16 **SEC. 204. ONLINE COLLECTION, USE, AND DISCLOSURE OF**
17 **PERSONAL INFORMATION OF CHILDREN.**

18 (a) DEFINITIONS.—Section 1302 of the Children’s
19 Online Privacy Protection Act of 1998 (15 U.S.C. 6501)
20 is amended—

21 (1) by amending paragraph (2) to read as fol-
22 lows:

23 “(2) OPERATOR.—The term ‘operator’—

24 “(A) means any person who, for commer-
25 cial purposes, in interstate or foreign commerce,

operates or provides a website on the Internet,
online service, online application, or mobile ap-
plication, and who—

“(i) collects or maintains, either di-
rectly or through a service provider, per-
sonal information from or about the users
of such website, service, or application;

“(ii) allows another person to collect
personal information directly from users of
such website, service, or application (in
which case the operator is deemed to have
collected the information); or

“(iii) allows users of such website,
service, or application to publicly disclose
personal information (in which case the op-
erator is deemed to have collected the in-
formation); and

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

(2) in paragraph (4)—

(A) by amending subparagraph (A) to read
as follows:

1 “(A) the release of personal information
2 for any purpose, except where such information
3 is provided to a person other than an operator
4 who provides support for the internal operations
5 of the website, online service, online application,
6 or mobile application of the operator and does
7 not disclose or use that information for any
8 other purpose; and”;

9 (B) in subparagraph (B), by striking
10 “website or online service” and inserting
11 “website, online service, online application, or
12 mobile application”;

13 (3) in paragraph (8)—

14 (A) by amending subparagraph (G) to read
15 as follows:

16 “(G) information concerning a child or the
17 parents of that child (including any unique or
18 substantially unique identifier, such as a cus-
19 tomer number) that an operator collects online
20 from the child and combines with an identifier
21 described in subparagraphs (A) through (G).”;

22 (B) by redesignating subparagraphs (F)
23 and (G) as subparagraphs (G) and (H), respec-
24 tively; and

1 (C) by inserting after subparagraph (E)
2 the following new subparagraph:

3 “(F) information (including an Internet
4 protocol address) that permits the identification
5 of an individual, the computer of an individual,
6 or any other device used by an individual to ac-
7 cess the Internet or an online service, online ap-
8 plication, or mobile application;”;

9 (4) by striking paragraph (10) and redesign-
10 ating paragraphs (11) and (12) as paragraphs (10)
11 and (11), respectively; and

12 (5) by adding at the end the following new
13 paragraph:

14 “(12) ONLINE, ONLINE SERVICE, ONLINE AP-
15 PPLICATION, MOBILE APPLICATION, DIRECTED TO
16 CHILDREN.—The terms ‘online’, ‘online service’, ‘on-
17 line application’, ‘mobile application’, and ‘directed
18 to children’ shall have the meanings given such
19 terms by the Commission by regulation. Not later
20 than 1 year after the date of enactment of the Com-
21 mercial Privacy Bill of Rights Act of 2017, the Com-
22 mission shall promulgate, under section 553 of title
23 5, United States Code, regulations that define such
24 terms broadly enough so that they are not limited to
25 current technology, consistent with the principles ar-

1 ticated by the Commission regarding the definition
 2 of the term ‘Internet’ in its statement of basis and
 3 purpose on the final rule under this title promul-
 4 gated on November 3, 1999 (64 Fed. Reg. 59891).
 5 The definition of the term ‘online service’ in such
 6 regulations shall include broadband Internet access
 7 service (as defined in the Report and Order of the
 8 Federal Communications Commission relating to the
 9 matter of preserving the open Internet and
 10 broadband industry practices (FCC 10–201, adopted
 11 by the Commission on December 21, 2010)).”.

12 (b) **ONLINE COLLECTION, USE, AND DISCLOSURE OF**
 13 **PERSONAL INFORMATION OF CHILDREN.**—Section 1303
 14 of the Children’s Online Privacy Protection Act of 1998
 15 (15 U.S.C. 6502) is amended—

16 (1) by striking the heading and inserting the
 17 following: “**ONLINE COLLECTION, USE, AND DIS-**
 18 **CLOSURE OF PERSONAL INFORMATION OF**
 19 **CHILDREN.**”;

20 (2) in subsection (a)—

21 (A) by amending paragraph (1) to read as
 22 follows:

23 “(1) **IN GENERAL.**—It is unlawful for an oper-
 24 ator of a website, online service, online application,
 25 or mobile application directed to children, or an op-

erator having actual knowledge that personal information being collected is from a child, to collect personal information from a child in a manner that violates the regulations prescribed under subsection (b).”; and

(B) in paragraph (2)—

(i) by striking “of such a website or online service”; and

(ii) by striking “subsection (b)(1)(B)(iii)” and inserting “subsection (b)(1)(C)(iii)”; and

(3) in subsection (b)—

(A) by amending paragraph (1) to read as follows:

“(1) IN GENERAL.—Not later than 1 year after the date of enactment of the Commercial Privacy Bill of Rights Act of 2017, the Commission shall promulgate, under section 553 of title 5, United States Code, regulations to require an operator of a website, online service, online application, or mobile application directed to children, or an operator having actual knowledge that personal information being collected is from a child—

“(A) to provide clear and conspicuous notice in clear and plain language of the types of

1 personal information the operator collects, how
2 the operator uses such information, whether the
3 operator discloses such information, and the
4 procedures or mechanisms the operator uses to
5 ensure that personal information is not col-
6 lected from children except in accordance with
7 the regulations promulgated under this para-
8 graph;

9 “(B) to obtain verifiable parental consent
10 for the collection, use, or disclosure of personal
11 information of a child;

12 “(C) to provide to a parent whose child
13 has provided personal information to the oper-
14 ator, upon request by and proper identification
15 of the parent—

16 “(i) a description of the specific types
17 of personal information collected from the
18 child by the operator;

19 “(ii) the opportunity at any time to
20 refuse to permit the further use or mainte-
21 nance in retrievable form, or future collec-
22 tion, by the operator of personal informa-
23 tion collected from the child; and

24 “(iii) a means that is reasonable
25 under the circumstances for the parent to

1 obtain any personal information collected
2 from the child, if such information is avail-
3 able to the operator at the time the parent
4 makes the request;

5 “(D) not to condition participation in a
6 game, or use of a website, service, or applica-
7 tion, by a child on the provision by the child of
8 more personal information than is reasonably
9 required to participate in the game or use the
10 website, service, or application; and

11 “(E) to establish and maintain reasonable
12 procedures to protect the confidentiality, secu-
13 rity, and integrity of personal information col-
14 lected from children.”;

15 (B) in paragraph (2)—

16 (i) in the matter preceding subpara-
17 graph (A), by striking “paragraph
18 (1)(A)(ii)” and inserting “paragraph
19 (1)(B)”;

20 (ii) in subparagraph (A), by inserting
21 “or to contact a different child” after “to
22 recontact the child”;

23 (C) by amending paragraph (3) to read as
24 follows:

1 “(3) CONTINUATION OF SERVICE.—The regula-
2 tions shall prohibit an operator from discontinuing
3 service provided to a child on the basis of refusal by
4 the parent of the child, under the regulations pre-
5 scribed under paragraph (1)(C)(ii), to permit the
6 further use or maintenance in retrievable form, or
7 future collection, by the operator of personal infor-
8 mation collected from the child, to the extent that
9 the operator is capable of providing such service
10 without such information.”; and

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

12 “(4) RULE FOR TREATMENT OF USERS OF
13 WEBSITES, SERVICES, AND APPLICATIONS DIRECTED
14 TO CHILDREN.—An operator of a website, online
15 service, online application, or mobile application that
16 is directed to children shall treat all users of such
17 website, service, or application as children for pur-
18 poses of this title, except as permitted by the Com-
19 mission by a regulation promulgated under this
20 title.”.

21 (c) ADMINISTRATION AND APPLICABILITY OF ACT.—
22 Section 1306 of the Children’s Online Privacy Protection
23 Act of 1998 (15 U.S.C. 6505) is amended—

24 (1) in subsection (b)—

1 (A) in paragraph (1), by striking “, in the
2 case of” and all that follows and inserting the
3 following: “by the appropriate Federal banking
4 agency with respect to any insured depository
5 institution (as such terms are defined in section
6 3 of such Act (12 U.S.C. 1813));”; and

7 (B) by striking paragraph (2) and redesign-
8 ating paragraphs (3) through (6) as para-
9 graphs (2) through (5), respectively; and

10 (2) by adding at the end the following new sub-
11 section:

12 “(f) TELECOMMUNICATIONS CARRIERS AND CABLE
13 OPERATORS.—

14 “(1) ENFORCEMENT BY FTC.—Notwithstanding
15 section 5(a)(2) of the Federal Trade Commission
16 Act (15 U.S.C. 45(a)(2)), compliance with the re-
17 quirements imposed under this title shall be enforced
18 by the Commission with respect to any telecommuni-
19 cations carrier (as defined in section 3 of the Com-
20 munications Act of 1934 (47 U.S.C. 153)).

21 “(2) RELATIONSHIP TO OTHER LAW.—To the
22 extent that sections 222, 338(i), and 631 of the
23 Communications Act of 1934 (47 U.S.C. 222;
24 338(i); 551) are inconsistent with this title, this title
25 controls.”.

1 **SEC. 205. TARGETED MARKETING TO CHILDREN OR MI-**
2 **NORS.**

3 (a) ACTS PROHIBITED.—It is unlawful for—

4 (1) an operator of a website, online service, on-
5 line application, or mobile application directed to
6 children, or an operator having actual knowledge
7 that personal information being collected is from a
8 child, to use, disclose to third parties, or compile
9 personal information for targeted marketing pur-
10 poses without verifiable parental consent; or

11 (2) an operator of a website, online service, on-
12 line application, or mobile application directed to mi-
13 nors, or an operator having actual knowledge that
14 personal information being collected is from a minor,
15 to use, disclose to third parties, or compile personal
16 information for targeted marketing purposes without
17 the consent of the minor.

18 (b) REGULATIONS.—Not later than 1 year after the
19 date of enactment of this Act, the Commission shall pro-
20 mulgate, under section 553 of title 5, United States Code,
21 regulations to implement this section.

22 **SEC. 206. DIGITAL MARKETING BILL OF RIGHTS FOR TEENS**
23 **AND FAIR INFORMATION PRACTICES PRIN-**
24 **CIPLES.**

25 (a) ACTS PROHIBITED.—It is unlawful for an oper-
26 ator of a website, online service, online application, or mo-

1 bile application directed to minors, or an operator having
2 actual knowledge that personal information being collected
3 is from a minor, to collect personal information from a
4 minor unless such operator has adopted and complies with
5 a Digital Marketing Bill of Rights for Teens that is con-
6 sistent with the Fair Information Practices Principles de-
7 scribed in subsection (b).

8 (b) FAIR INFORMATION PRACTICES PRINCIPLES.—
9 The Fair Information Practices Principles described in
10 this subsection are the following:

11 (1) COLLECTION LIMITATION PRINCIPLE.—Ex-
12 cept as provided in paragraph (3), personal informa-
13 tion should be collected from a minor only when col-
14 lection of the personal information is—

15 (A) consistent with the context of a par-
16 ticular transaction or service or the relationship
17 of the minor with the operator, including collec-
18 tion necessary to fulfill a transaction or provide
19 a service requested by the minor; or

20 (B) required or specifically authorized by
21 law.

22 (2) DATA QUALITY PRINCIPLE.—The personal
23 information of a minor should be accurate, complete,
24 and kept up-to-date to the extent necessary to fulfill

1 the purposes described in subparagraphs (A)
2 through (D) of paragraph (3).

3 (3) PURPOSE SPECIFICATION PRINCIPLE.—The
4 purposes for which personal information is collected
5 should be specified to the minor not later than at
6 the time of the collection of the information. The
7 subsequent use or disclosure of the information
8 should be limited to—

9 (A) fulfillment of the transaction or service
10 requested by the minor;

11 (B) support for the internal operations of
12 the website, service, or application, as described
13 in section 312.2 of title 16, Code of Federal
14 Regulations;

15 (C) compliance with legal process or other
16 purposes expressly authorized under specific
17 legal authority; or

18 (D) other purposes—

19 (i) that are specified in a notice to the
20 minor; and

21 (ii) to which the minor has consented
22 under paragraph (7) before the informa-
23 tion is used or disclosed for such other
24 purposes.

1 (4) RETENTION LIMITATION PRINCIPLE.—The
2 personal information of a minor should not be re-
3 tained for longer than is necessary to fulfill a trans-
4 action or provide a service requested by the minor
5 or such other purposes specified in subparagraphs
6 (A) through (D) of paragraph (3). The operator
7 should implement a reasonable and appropriate data
8 disposal policy based on the nature and sensitivity of
9 such personal information.

10 (5) SECURITY SAFEGUARDS PRINCIPLE.—The
11 personal information of a minor should be protected
12 by reasonable and appropriate security safeguards
13 against risks such as loss or unauthorized access,
14 destruction, use, modification, or disclosure.

15 (6) OPENNESS PRINCIPLE.—

16 (A) IN GENERAL.—The operator should
17 maintain a general policy of openness about de-
18 velopments, practices, and policies with respect
19 to the personal information of a minor. The op-
20 erator should provide each minor using the
21 website, online service, online application, or
22 mobile application of the operator with a clear
23 and prominent means—

24 (i) to identify and contact the oper-
25 ator, by, at a minimum, disclosing, clearly

1 and prominently, the identity of the oper-
2 ator and—

3 (I) in the case of an operator
4 who is an individual, the address of
5 the principal residence of the operator
6 and an e-mail address and telephone
7 number for the operator; or

8 (II) in the case of any other op-
9 erator, the address of the principal
10 place of business of the operator and
11 an e-mail address and telephone num-
12 ber for the operator;

13 (ii) to determine whether the operator
14 possesses any personal information of the
15 minor, the nature of any such information,
16 and the purposes for which the information
17 was collected and is being retained;

18 (iii) to obtain any personal informa-
19 tion of the minor that is in the possession
20 of the operator from the operator, or from
21 a person specified by the operator, within
22 a reasonable time after making a request,
23 at a charge (if any) that is not excessive,
24 in a reasonable manner, and in a form that
25 is readily intelligible to the minor;

1 (iv) to challenge the accuracy of per-
2 sonal information of the minor that is in
3 the possession of the operator; and

4 (v) if the minor establishes the inaccu-
5 racy of personal information in a challenge
6 under clause (iv), to have such information
7 erased, corrected, completed, or otherwise
8 amended.

9 (B) LIMITATION.—Nothing in this para-
10 graph shall be construed to permit an operator
11 to erase or otherwise modify personal informa-
12 tion requested by a law enforcement agency
13 pursuant to legal authority.

14 (7) INDIVIDUAL PARTICIPATION PRINCIPLE.—
15 The operator should—

16 (A) obtain consent from a minor before
17 using or disclosing the personal information of
18 the minor for any purpose other than the pur-
19 poses described in subparagraphs (A) through
20 (C) of paragraph (3); and

21 (B) obtain affirmative express consent
22 from a minor before using or disclosing pre-
23 viously collected personal information of the
24 minor for purposes that constitute a material

1 change in practice from the original purposes
2 specified to the minor under paragraph (3).

3 (c) REGULATIONS.—Not later than 1 year after the
4 date of enactment of this Act, the Commission shall pro-
5 mulgate, under section 553 of title 5, United States Code,
6 regulations to implement this section, including regula-
7 tions further defining the Fair Information Practices
8 Principles described in subsection (b).

9 **SEC. 207. ONLINE COLLECTION OF GEOLOCATION INFOR-**
10 **MATION OF CHILDREN AND MINORS.**

11 (a) ACTS PROHIBITED.—

12 (1) IN GENERAL.—It is unlawful for an oper-
13 ator of a website, online service, online application,
14 or mobile application directed to children or minors,
15 or an operator having actual knowledge that
16 geolocation information being collected is from a
17 child or minor, to collect geolocation information
18 from a child or minor in a manner that violates the
19 regulations prescribed under subsection (b).

20 (2) DISCLOSURE TO PARENT OR MINOR PRO-
21 TECTED.—Notwithstanding paragraph (1), neither
22 an operator nor the operator's agent shall be held to
23 be liable under any Federal or State law for any dis-
24 closure made in good faith and following reasonable
25 procedures in responding to a request for disclosure

1 of geolocation information under subparagraph
2 (C)(ii)(III) or (D)(ii)(III) of subsection (b)(1).

3 (b) REGULATIONS.—

4 (1) IN GENERAL.—Not later than 1 year after
5 the date of enactment of this Act, the Commission
6 shall promulgate, under section 553 of title 5,
7 United States Code, regulations that require an op-
8 erator of a website, online service, online application,
9 or mobile application directed to children or minors,
10 or an operator having actual knowledge that
11 geolocation information being collected is from a
12 child or minor—

13 (A) to provide clear and conspicuous notice
14 in clear and plain language of any geolocation
15 information the operator collects, how the oper-
16 ator uses such information, and whether the op-
17 erator discloses such information;

18 (B) to establish procedures or mechanisms
19 to ensure that geolocation information is not
20 collected from children or minors except in ac-
21 cordance with regulations promulgated under
22 this paragraph;

23 (C) in the case of collection of geolocation
24 information from a child—

1 (i) prior to collecting such informa-
2 tion, to obtain verifiable parental consent;
3 and

4 (ii) after collecting such information,
5 to provide to the parent of the child, upon
6 request by and proper identification of the
7 parent—

8 (I) a description of the
9 geolocation information collected from
10 the child by the operator;

11 (II) the opportunity at any time
12 to refuse to permit the further use or
13 maintenance in retrievable form, or
14 future collection, by the operator of
15 geolocation information from the
16 child; and

17 (III) a means that is reasonable
18 under the circumstances for the par-
19 ent to obtain any geolocation informa-
20 tion collected from the child, if such
21 information is available to the oper-
22 ator at the time the parent makes the
23 request; and

24 (D) in the case of collection of geolocation
25 information from a minor—

1 (i) prior to collecting such informa-
2 tion, to obtain affirmative express consent
3 from such minor; and

4 (ii) after collecting such information,
5 to provide to the minor, upon request—

6 (I) a description of the
7 geolocation information collected from
8 the minor by the operator;

9 (II) the opportunity at any time
10 to refuse to permit the further use or
11 maintenance in retrievable form, or
12 future collection, by the operator of
13 geolocation information from the
14 minor; and

15 (III) a means that is reasonable
16 under the circumstances for the minor
17 to obtain any geolocation information
18 collected from the minor, if such in-
19 formation is available to the operator
20 at the time the minor makes the re-
21 quest.

22 (2) WHEN CONSENT NOT REQUIRED.—The reg-
23 ulations promulgated under paragraph (1) shall pro-
24 vide that verifiable parental consent under subpara-
25 graph (C)(i) of such paragraph or affirmative ex-

1 press consent under subparagraph (D)(i) of such
2 paragraph is not required when the collection of the
3 geolocation information of a child or minor is nec-
4 essary, to the extent permitted under other provi-
5 sions of law, to provide information to law enforce-
6 ment agencies or for an investigation on a matter re-
7 lated to public safety.

8 (3) CONTINUATION OF SERVICE.—The regula-
9 tions promulgated under paragraph (1) shall pro-
10 hibit an operator from discontinuing service provided
11 to—

12 (A) a child on the basis of refusal by the
13 parent of the child, under subparagraph
14 (C)(ii)(II) of such paragraph, to permit the fur-
15 ther use or maintenance in retrievable form, or
16 future online collection, of geolocation informa-
17 tion from the child by the operator, to the ex-
18 tent that the operator is capable of providing
19 such service without such information; or

20 (B) a minor on the basis of refusal by the
21 minor, under subparagraph (D)(ii)(II) of such
22 paragraph, to permit the further use or mainte-
23 nance in retrievable form, or future online col-
24 lection, of geolocation information from the
25 minor by the operator, to the extent that the

1 operator is capable of providing such service
2 without such information.

3 (c) INCONSISTENT STATE LAW.—No State or local
4 government may impose any liability for commercial ac-
5 tivities or actions by operators in interstate or foreign
6 commerce in connection with an activity or action de-
7 scribed in this section that is inconsistent with the treat-
8 ment of those activities or actions under this section.

9 **SEC. 208. REMOVAL OF CONTENT.**

10 (a) ACTS PROHIBITED.—It is unlawful for an oper-
11 ator of a website, online service, online application, or mo-
12 bile application to make publicly available through the
13 website, service, or application content or information that
14 contains or displays personal information of children or
15 minors in a manner that violates the regulations pre-
16 scribed under subsection (b).

17 (b) REGULATIONS.—

18 (1) IN GENERAL.—Not later than 1 year after
19 the date of enactment of this Act, the Commission
20 shall promulgate, under section 553 of title 5,
21 United States Code, regulations that require an op-
22 erator—

23 (A) to the extent technologically feasible,
24 to implement mechanisms that permit a user of
25 the website, service, or application of the oper-

1 ator to erase or otherwise eliminate content or
2 information submitted to the website, service, or
3 application by such user that is publicly avail-
4 able through the website, service, or application
5 and contains or displays personal information of
6 children or minors; and

7 (B) to take appropriate steps to make
8 users aware of such mechanisms and to provide
9 notice to users that such mechanisms do not
10 necessarily provide comprehensive removal of
11 the content or information submitted by such
12 users.

13 (2) EXCEPTION.—The regulations promulgated
14 under paragraph (1) may not require an operator or
15 third party to erase or otherwise eliminate content
16 or information that—

17 (A) any other provision of Federal or State
18 law requires the operator or third party to
19 maintain; or

20 (B) was submitted to the website, service,
21 or application of the operator by any person
22 other than the user who is attempting to erase
23 or otherwise eliminate such content or informa-
24 tion, including content or information submitted

1 by such user that was republished or resub-
2 mitted by another person.

3 (3) LIMITATION.—Nothing in this section shall
4 be construed to limit the authority of a law enforce-
5 ment agency to obtain any content or information
6 from an operator as authorized by law or pursuant
7 to an order of a court of competent jurisdiction.

8 **SEC. 209. ENFORCEMENT AND APPLICABILITY.**

9 (a) ENFORCEMENT BY THE COMMISSION.—

10 (1) IN GENERAL.—Except as otherwise pro-
11 vided, this title and the regulations prescribed under
12 this title shall be enforced by the Commission under
13 the Federal Trade Commission Act (15 U.S.C. 41 et
14 seq.).

15 (2) UNFAIR OR DECEPTIVE ACTS OR PRAC-
16 TICES.—Subject to subsection (b), a violation of this
17 title or a regulation prescribed under this title shall
18 be treated as a violation of a rule defining an unfair
19 or deceptive act or practice prescribed under section
20 18(a)(1)(B) of the Federal Trade Commission Act
21 (15 U.S.C. 57a(a)(1)(B)).

22 (3) ACTIONS BY THE COMMISSION.—

23 (A) IN GENERAL.—Subject to subsection
24 (b), and except as provided in subsection (d)(1),
25 the Commission shall prevent any person from

1 violating this title or a regulation prescribed
2 under this title in the same manner, by the
3 same means, and with the same jurisdiction,
4 powers, and duties as though all applicable
5 terms and provisions of the Federal Trade
6 Commission Act (15 U.S.C. 41 et seq.) were in-
7 corporated into and made a part of this title.

8 (B) PRIVILEGES AND IMMUNITIES.—Any
9 person who violates this title or a regulation
10 prescribed under this title shall be subject to
11 the penalties and entitled to the privileges and
12 immunities provided in the Federal Trade Com-
13 mission Act (15 U.S.C. 41 et seq.).

14 (b) ENFORCEMENT BY CERTAIN OTHER AGEN-
15 CIES.—Notwithstanding subsection (a), compliance with
16 the requirements imposed under this title shall be enforced
17 as follows:

18 (1) Under section 8 of the Federal Deposit In-
19 surance Act (12 U.S.C. 1818) by the appropriate
20 Federal banking agency, with respect to an insured
21 depository institution (as such terms are defined in
22 section 3 of such Act (12 U.S.C. 1813)).

23 (2) Under the Federal Credit Union Act (12
24 U.S.C. 1751 et seq.) by the National Credit Union

1 Administration Board, with respect to any Federal
2 credit union.

3 (3) Under part A of subtitle VII of title 49,
4 United States Code, by the Secretary of Transpor-
5 tation, with respect to any air carrier or foreign air
6 carrier subject to such part.

7 (4) Under the Packers and Stockyards Act,
8 1921 (7 U.S.C. 181 et seq.) (except as provided in
9 section 406 of such Act (7 U.S.C. 226; 227)) by the
10 Secretary of Agriculture, with respect to any activi-
11 ties subject to such Act.

12 (5) Under the Farm Credit Act of 1971 (12
13 U.S.C. 2001 et seq.) by the Farm Credit Adminis-
14 tration, with respect to any Federal land bank, Fed-
15 eral land bank association, Federal intermediate
16 credit bank, or production credit association.

17 (c) ENFORCEMENT BY STATES.—

18 (1) CIVIL ACTIONS.—In any case in which the
19 attorney general of a State has reason to believe
20 that an interest of the residents of that State has
21 been or is threatened or adversely affected by the
22 engagement of any person in a practice that violates
23 this title or a regulation prescribed under this title,
24 the State, as *parens patriae*, may bring a civil action
25 on behalf of the residents of the State in a district

1 court of the United States of appropriate jurisdic-
2 tion to—

3 (A) enjoin that practice;

4 (B) enforce compliance with this title or
5 such regulation;

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

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

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

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

15 (i) IN GENERAL.—Except as provided
16 in clause (iii), the attorney general of a
17 State shall notify the Federal Trade Com-
18 mission in writing that the attorney gen-
19 eral intends to bring a civil action under
20 paragraph (1) before initiating the civil ac-
21 tion.

22 (ii) CONTENTS.—The notification re-
23 quired by clause (i) with respect to a civil
24 action shall include a copy of the complaint
25 to be filed to initiate the civil action.

1 (iii) EXCEPTION.—If it is not feasible
2 for the attorney general of a State to pro-
3 vide the notification required by clause (i)
4 before initiating a civil action under para-
5 graph (1), the attorney general shall notify
6 the Federal Trade Commission imme-
7 diately upon instituting the civil action.

8 (B) INTERVENTION BY FEDERAL TRADE
9 COMMISSION.—The Federal Trade Commission
10 may—

11 (i) intervene in any civil action
12 brought by the attorney general of a State
13 under paragraph (1); and

14 (ii) upon intervening—

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

17 (II) file petitions for appeal of a
18 decision in the civil action.

19 (3) INVESTIGATORY POWERS.—For purposes of
20 bringing any civil action under paragraph (1), noth-
21 ing in this title shall be construed to prevent an at-
22 torney general of a State from exercising the powers
23 conferred on the attorney general by the laws of that
24 State to—

25 (A) conduct investigations;

1 (B) administer oaths or affirmations; or

2 (C) compel the attendance of witnesses or
3 the production of documentary and other evi-
4 dence.

5 (4) PREEMPTIVE ACTION BY FEDERAL TRADE
6 COMMISSION.—If the Federal Trade Commission in-
7 stitutes a civil action or an administrative action
8 with respect to a violation of this title, the attorney
9 general of a State may not, during the pendency of
10 such action, bring a civil action under paragraph (1)
11 against any defendant named in the complaint of the
12 Commission for the violation with respect to which
13 the Commission instituted such action.

14 (5) VENUE; SERVICE OF PROCESS.—

15 (A) VENUE.—Any action brought under
16 paragraph (1) may be brought in the district
17 court of the United States that meets applicable
18 requirements relating to venue under section
19 1391 of title 28, United States Code.

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

23 (i) is an inhabitant; or

24 (ii) may be found.

25 (6) ACTIONS BY OTHER STATE OFFICIALS.—

1 (A) IN GENERAL.—In addition to civil ac-
 2 tions brought by attorneys general under para-
 3 graph (1), any other officer of a State who is
 4 authorized by the State to do so may bring a
 5 civil action under paragraph (1), subject to the
 6 same requirements and limitations that apply
 7 under this subsection to civil actions brought by
 8 attorneys general.

9 (B) SAVINGS PROVISION.—Nothing in this
 10 subsection may be construed to prohibit an au-
 11 thorized official of a State from initiating or
 12 continuing any proceeding in a court of the
 13 State for a violation of any civil or criminal law
 14 of the State.

15 (d) TELECOMMUNICATIONS CARRIERS AND CABLE
 16 OPERATORS.—

17 (1) ENFORCEMENT BY FTC.—Notwithstanding
 18 section 5(a)(2) of the Federal Trade Commission
 19 Act (15 U.S.C. 45(a)(2)), compliance with the re-
 20 quirements imposed under this title shall be enforced
 21 by the Commission with respect to any telecommuni-
 22 cations carrier (as defined in section 3 of the Com-
 23 munications Act of 1934 (47 U.S.C. 153)).

24 (2) RELATIONSHIP TO OTHER LAW.—To the ex-
 25 tent that sections 222, 338(i), and 631 of the Com-

1 munications Act of 1934 (47 U.S.C. 222; 338(i);
2 551) are inconsistent with this title, this title con-
3 trols.

4 **SEC. 210. RULE FOR TREATMENT OF USERS OF WEBSITES,**
5 **SERVICES, AND APPLICATIONS DIRECTED TO**
6 **CHILDREN OR MINORS.**

7 An operator of a website, online service, online appli-
8 cation, or mobile application that is directed to children
9 or minors shall treat all users of such website, service, or
10 application as children or minors (as the case may be) for
11 purposes of this title, except as permitted by the Commis-
12 sion by a regulation promulgated under this title.

13 **SEC. 211. EFFECTIVE DATES.**

14 (a) IN GENERAL.—Except as provided in subsections
15 (b) and (c), this title and the amendments made by this
16 title shall take effect on the date that is 1 year after the
17 date of enactment of this Act.

18 (b) AUTHORITY TO PROMULGATE REGULATIONS.—
19 The following shall take effect on the date of enactment
20 of this Act:

21 (1) The amendments made by subsections
22 (a)(5) and (b)(3)(A) of section 204.

23 (2) Sections 205(b), 206(c), 207(b), and
24 208(b).

25 (3) Subsections (b) and (c) of section 203.

1 (c) DIGITAL MARKETING BILL OF RIGHTS FOR
2 TEENS.—Section 206, except for subsection (c) of such
3 section, shall take effect on the date that is 180 days after
4 the promulgation of regulations under such subsection.

