

105TH CONGRESS  
2D SESSION

# S. 2326

To require the Federal Trade Commission to prescribe regulations to protect the privacy of personal information collected from and about children on the Internet, to provide greater parental control over the collection and use of that information, and for other purposes.

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## IN THE SENATE OF THE UNITED STATES

JULY 17, 1998

Mr. BRYAN (for himself and Mr. MCCAIN) introduced the following bill; which was read twice and referred to the Committee on Commerce, Science, and Transportation

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## A BILL

To require the Federal Trade Commission to prescribe regulations to protect the privacy of personal information collected from and about children on the Internet, to provide greater parental control over the collection and use of that information, and for other purposes.

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

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Children’s Online Pri-  
5 vacy Protection Act of 1998”.

6 **SEC. 2. DEFINITIONS.**

7 In this Act:

1           (1) CHILD.—The term “child” means an indi-  
2           vidual under the age of 16.

3           (2) CHILDREN.—The term “children” means  
4           more than 1 child.

5           (3) COMMERCIAL WEBSITE OPERATOR.—The  
6           term “commercial website operator” means any per-  
7           son operating a website on the World Wide Webs for  
8           commercial purposes, including any person offering  
9           products or services for sale through that website, in-  
10          volving commerce—

11                   (A) among the several States or with 1 or  
12                   more foreign nations;

13                   (B) in any territory of the United States  
14                   or in the District of Columbia, or between any  
15                   such territory—

16                           (i) and another such territory; or

17                           (ii) and any State or foreign nation;

18                   or

19                   (C) between the District of Columbia and  
20                   any State, territory, or foreign nation.

21           (4) COMMISSION.—The term “Commission”  
22           means the Federal Trade Commission.

23           (5) DISCLOSURE.—The term “disclosure”  
24           means, with respect to personal information—

1 (A) the release of information in identifi-  
2 able form by a person to any other person for  
3 any purpose; or

4 (B) making publicly available information  
5 in identifiable form by any means including by  
6 a public posting, through the use of a computer  
7 on or through—

8 (i) a home page of a website;

9 (ii) a pen pal service;

10 (iii) an electronic mail service;

11 (iv) a message board; or

12 (v) a chat room.

13 (6) FEDERAL AGENCY.—The term “Federal  
14 agency” means an agency, as that term is defined  
15 in section 551(1) of title 5, United States Code.

16 (7) INTERNET.—The term “Internet” means  
17 the international computer network of both Federal  
18 and non-Federal interoperable packet switched data  
19 networks.

20 (8) PARENT.—The term “parent” means a  
21 legal guardian, including a biological or adoptive  
22 parent.

23 (9) PERSONAL INFORMATION.—The term “per-  
24 sonal information” means individually, identifiable  
25 information about an individual, including—

- 1 (A) a first and last name;  
2 (B) a home or other physical address;  
3 (C) an e-mail address;  
4 (D) a telephone number;  
5 (E) a Social Security number; or  
6 (F) any other information that would fa-  
7 cilitate or enable the physical or online locating  
8 and contacting of a specific individual, includ-  
9 ing information that is associated with an iden-  
10 tifier described in this paragraph in such man-  
11 ner as to become identifiable to a specific indi-  
12 vidual.

13 (10) VERIFIABLE PARENTAL CONSENT.—The  
14 term “verifiable parental consent” means any rea-  
15 sonable effort (taking into consideration available  
16 technology) to ensure that a parent of a child au-  
17 thorizes the disclosure of personal information and  
18 subsequent use of that information before that infor-  
19 mation is collected from that child.

20 (11) WEBSITE DIRECTED TO CHILDREN.—The  
21 term “website directed to children”—

- 22 (A) means a commercial website that is—  
23 (i) targeted to children;  
24 (ii) directed to children by reason of  
25 the subject matter, visual content, age of

1 models, language, characters, tone, mes-  
2 sage, or any other similar characteristic of  
3 the website; or

4 (iii) used by a commercial website op-  
5 erator to knowingly collect information  
6 from children; and

7 (B) includes any commercial website any  
8 portion of which is directed to children, as spec-  
9 ified in subparagraph (A).

10 (12) PERSON.—The term “person” means any  
11 individual, partnership, corporation, trust, estate, co-  
12 operative, association, or other entity.

13 **SEC. 3. REGULATION OF UNFAIR AND DECEPTIVE ACTS**  
14 **AND PRACTICES IN CONNECTION WITH THE**  
15 **COLLECTION AND USE OF PERSONAL INFOR-**  
16 **MATION FROM AND ABOUT CHILDREN ON**  
17 **THE INTERNET.**

18 (a) REGULATIONS.—

19 (1) IN GENERAL.—Not later than 1 year after  
20 the date of enactment of this Act, the Commission  
21 shall, in a manner consistent with section 553 of  
22 title 5, United States Code, prescribe regulations re-  
23 quiring commercial website operators to follow fair  
24 information practices in connection with the collec-  
25 tion and use of personal information from children.

1           (2) CONTENTS.—The regulations issued under  
2 this subsection shall—

3           (A) require that any website directed to  
4 children that collects personal information from  
5 children—

6           (i) provide clear, prominent, under-  
7 standable notice of the information collec-  
8 tion and use practices of the website opera-  
9 tor through the website;

10          (ii) obtain verifiable parental consent  
11 for the collection, use, or disclosure of per-  
12 sonal information from children who are  
13 under the age of 13;

14          (iii) use reasonable efforts to provide  
15 the parents with notice and an opportunity  
16 to prevent or curtail the collection or use  
17 of personal information collected from chil-  
18 dren over the age of 12 and under the age  
19 of 17;

20          (iv) provide a parent—

21           (I) access to the personal infor-  
22 mation of the child of that parent col-  
23 lected by that website; and

24           (II) the opportunity to refuse to  
25 permit any further use or future col-

1                   lection of personal information re-  
2                   ferred to in subclause (I) and notice  
3                   of that opportunity; and

4                   (B) require that the commercial website  
5                   operator concerned establish and maintain rea-  
6                   sonable procedures to ensure the confidentiality,  
7                   security, accuracy, and integrity of personal in-  
8                   formation collected from children through the  
9                   website.

10           (b) ENFORCEMENT.—

11               (1) TREATMENT OF REGULATIONS.—A regula-  
12               tion prescribed under subsection (a) shall be treated  
13               as a rule defining an unfair or deceptive act or prac-  
14               tice under section 18(a)(1)(B) of the Federal Trade  
15               Commission Act (15 U.S.C. 57a(a)(1)(B)).

16               (2) ENFORCEMENT.—Subject to section 6, a  
17               violation of a regulation prescribed under subsection  
18               (a) shall be treated as a violation of a rule defining  
19               an unfair or deceptive act or practice prescribed  
20               under section 18(a)(1)(B) of the Federal Trade  
21               Commission Act.

22   **SEC. 4. SAFE HARBORS.**

23               (a) IN GENERAL.—In prescribing regulations under  
24               section 3, the Commission shall provide incentives for ef-  
25               forts of self-regulation by commercial website operators to

1 implement the protections described in subsection (a) of  
2 that section.

3 (b) SAFE HARBORS.—The incentives referred to in  
4 subsection (a) shall include provisions for ensuring that  
5 a person will be deemed to be in compliance with the re-  
6 quirements of the regulations under section 3 if that per-  
7 son applies guidelines that—

8 (1) are issued by appropriate representatives of  
9 the computer industry; and

10 (2) are approved by the Commission upon mak-  
11 ing a determination that the guidelines meet the re-  
12 quirements of the regulations issued under section 3.

13 **SEC. 5. ACTIONS BY STATES.**

14 (a) IN GENERAL.—

15 (1) CIVIL ACTIONS.—In any case in which the  
16 attorney general of a State has reason to believe  
17 that an interest of the residents of that State has  
18 been or is threatened or adversely affected by the  
19 engagement of any person in a practice that violates  
20 any regulation of the Commission prescribed under  
21 section 3, the State, as *parens patriae*, may bring a  
22 civil action on behalf of the residents of the State in  
23 a district court of the United States of appropriate  
24 jurisdiction to—

25 (A) enjoin that practice;

1 (B) enforce compliance with the regulation;

2 (C) obtain damage, restitution, or other  
3 compensation on behalf of residents of the  
4 State; or

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

7 (2) NOTICE.—

8 (A) IN GENERAL.—Before filing an action  
9 under paragraph (1), the attorney general of  
10 the State involved shall provide to the Commis-  
11 sion—

12 (i) written notice of that action; and

13 (ii) a copy of the complaint for that  
14 action.

15 (B) EXEMPTION.—

16 (i) IN GENERAL.—Subparagraph (A)  
17 shall not apply with respect to the filing of  
18 an action by an attorney general of a State  
19 under this subsection, if the attorney gen-  
20 eral determines that it is not feasible to  
21 provide the notice described in that sub-  
22 paragraph before the filing of the action.

23 (ii) NOTIFICATION.—In an action de-  
24 scribed in clause (i), the attorney general  
25 of a State shall provide notice and a copy

1 of the complaint to the Commission at the  
2 same time as the attorney general files the  
3 action.

4 (b) INTERVENTION.—

5 (1) IN GENERAL.—On receiving notice under  
6 paragraph (2), the Commission shall have the right  
7 to intervene in the action that is the subject of the  
8 notice.

9 (2) EFFECT OF INTERVENTION.—If the Com-  
10 mission intervenes in an action under subparagraph  
11 (A), the Commission shall have the right—

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

14 (B) to file a petition for appeal.

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

20 (1) conduct investigations;

21 (2) administer oaths or affirmations; or

22 (3) compel the attendance of witnesses or the  
23 production of documentary and other evidence.

24 (d) ACTIONS BY THE COMMISSION.—In any case in  
25 which an action is instituted by or on behalf of the Com-

1 mission for violation of any regulation prescribed under  
2 section 3, no State may, during the pendency of that ac-  
3 tion, institute an action under subsection (a) against any  
4 defendant named in the complaint in that action for viola-  
5 tion of that regulation.

6 (e) VENUE; SERVICE OF PROCESS.—

7 (1) VENUE.—Any action brought under sub-  
8 section (a) may be brought in the district court of  
9 the United States—

10 (A) in which the defendant—

11 (i) is found;

12 (ii) is an inhabitant; or

13 (iii) transacts business; or

14 (B) that otherwise meets applicable re-  
15 quirements relating to venue under section  
16 1391 of title 28, United States Code.

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.—Nothing in this section may  
24 be construed to prohibit a State official from pro-  
25 ceeding a court of the State in accordance with the

1 laws of that State on the basis of an alleged viola-  
2 tion of any civil or criminal law of that State.

3 (2) CERTAIN ACTIONS IN STATE COURTS.—In  
4 addition to any actions brought by an attorney gen-  
5 eral of a State under subsection (a), an action de-  
6 scribed in paragraph (1) may be brought by any  
7 other officer of that State who is authorized by the  
8 State to bring such an action in that State on behalf  
9 of the residents of the State.

10 **SEC. 6. ADMINISTRATION AND APPLICABILITY OF ACT.**

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

14 (b) PROVISIONS.—Compliance with the requirements  
15 imposed under this subchapter shall be enforced under—

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

18 (A) national banks, and Federal branches  
19 and Federal agencies of foreign banks, by the  
20 Office of the Comptroller of the Currency;

21 (B) member banks of the Federal Reserve  
22 System (other than national banks), branches  
23 and agencies of foreign banks (other than Fed-  
24 eral branches, Federal agencies, and insured  
25 State branches of foreign banks), commercial

1 lending companies owned or controlled by for-  
2 eign banks, and organizations operating under  
3 section 25 or 25(a) of the Federal Reserve Act  
4 (12 U.S.C. 601 et seq. and 611 et seq.), by the  
5 Board; and

6 (C) banks insured by the Federal Deposit  
7 Insurance Corporation (other than members of  
8 the Federal Reserve System) and insured State  
9 branches of foreign banks, by the Board of Di-  
10 rectors of the Federal Deposit Insurance Cor-  
11 poration;

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

17 (3) the Federal Credit Union Act (12 U.S.C.  
18 1751 et seq.), by the National Credit Union Admin-  
19 istration Board with respect to any Federal credit  
20 union;

21 (4) part A of subtitle VII of title 49, by the  
22 Secretary of Transportation with respect to any air  
23 carrier or foreign air carrier subject to that part;

24 (5) the Packers and Stockyards Act, 1921 (7  
25 U.S.C. 181 et seq.) (except as provided in section

1 406 of that Act (7 U.S.C. 226, 227)), by the Sec-  
2 retary of Agriculture with respect to any activities  
3 subject to that Act; and

4 (6) the Farm Credit Act of 1971 (12 U.S.C.  
5 2001 et seq.) by the Farm Credit Administration  
6 with respect to any Federal land bank, Federal land  
7 bank association, Federal intermediate credit bank,  
8 or production credit association.

9 (c) EXERCISE OF CERTAIN POWERS.—For the pur-  
10 pose of the exercise by any agency referred to in sub-  
11 section (a) of its powers under any Act referred to in that  
12 subsection, a violation of any requirement imposed under  
13 this Act shall be deemed to be a violation of a requirement  
14 imposed under that Act. In addition to its powers under  
15 any provision of law specifically referred to in subsection  
16 (a), each of the agencies referred to in that subsection may  
17 exercise, for the purpose of enforcing compliance with any  
18 requirement imposed under this Act, any other authority  
19 conferred on it by law.

20 (d) ACTIONS BY THE COMMISSION.—The Commis-  
21 sion shall prevent any person from violating a rule of the  
22 Commission under section 3 in the same manner, by the  
23 same means, and with the same jurisdiction, powers, and  
24 duties as though all applicable terms and provisions of the  
25 Federal Trade Commission Act (15 U.S.C. 41 et seq.)

1 were incorporated into and made a part of this Act. Any  
2 entity that violates such rule shall be subject to the pen-  
3 alties and entitled to the privileges and immunities pro-  
4 vided in the Federal Trade Commission Act in the same  
5 manner, by the same means, and with the same jurisdic-  
6 tion, power, and duties as though all applicable terms and  
7 provisions of the Federal Trade Commission Act were in-  
8 corporated into and made a part of this Act.

9 (e) EFFECT ON OTHER LAWS.—Nothing contained in  
10 the Act shall be construed to limit the authority of the  
11 Commission under any other provisions of law.

12 **SEC. 7. REVIEW.**

13 (a) IN GENERAL.—Not later than 5 years after the  
14 effective date of the regulations initially issued under sec-  
15 tion 3, the Commission shall—

16 (1) review the implementation of this Act, in-  
17 cluding the effect of the implementation of this Act  
18 on practices relating to the disclosure of information  
19 relating to children; and

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

○