

106TH CONGRESS
2D SESSION

S. 3040

To establish the Commission for the Comprehensive Study of Privacy Protection, and for other purposes.

IN THE SENATE OF THE UNITED STATES

SEPTEMBER 13, 2000

Mr. THOMPSON (for himself, Mr. KOHL, Mr. ABRAHAM, Mr. TORRICELLI, Mr. VOINOVICH, Mrs. LINCOLN, Mr. ROTH, Mr. GREGG, Mr. HUTCHINSON, Ms. COLLINS, Mr. DEWINE, Mr. LEVIN, Ms. LANDRIEU, and Mr. STEVENS) introduced the following bill; which was read twice and referred to the Committee on Governmental Affairs

A BILL

To establish the Commission for the Comprehensive Study of Privacy Protection, 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 “Privacy Commission
5 Act”.

6 **SEC. 2. FINDINGS.**

7 Congress finds the following:

8 (1) Americans are increasingly concerned about
9 their civil liberties and the security and use of their

1 personal information, including medical records, edu-
2 cational records, library records, magazine subscrip-
3 tion records, records of purchases of goods and other
4 payments, and driver's license numbers.

5 (2) The shift from an industry-focused economy
6 to an information-focused economy calls for a reas-
7 sessment of the most effective way to balance per-
8 sonal privacy and information use, keeping in mind
9 the potential for unintended effects on technology
10 development, innovation, the marketplace, and pri-
11 vacy needs.

12 (3) This Act shall not be construed to prohibit
13 the enactment of legislation on privacy issues by
14 Congress during the existence of the Commission. It
15 is the responsibility of Congress to act to protect the
16 privacy of individuals, including individuals' medical
17 and financial information. Various committees of
18 Congress are currently reviewing legislation in the
19 area of medical and financial privacy. Further study
20 by the Commission established by this Act should
21 not be considered a prerequisite for further consider-
22 ation or enactment of financial or medical privacy
23 legislation by Congress.

1 **SEC. 3. ESTABLISHMENT.**

2 There is established a commission to be known as the
3 “Commission for the Comprehensive Study of Privacy
4 Protection” (in this Act referred to as the “Commission”).

5 **SEC. 4. DUTIES OF COMMISSION.**

6 (a) **STUDY.**—The Commission shall conduct a study
7 of issues relating to protection of individual privacy and
8 the appropriate balance to be achieved between protecting
9 individual privacy and allowing appropriate uses of infor-
10 mation, including the following:

11 (1) The monitoring, collection, and distribution
12 of personal information by Federal, State, and local
13 governments.

14 (2) Current efforts to address the monitoring,
15 collection, and distribution of personal information
16 by Federal and State governments, individuals, or
17 entities, including—

18 (A) existing statutes and regulations relat-
19 ing to the protection of individual privacy, such
20 as section 552a of title 5, United States Code
21 (commonly referred to as the Privacy Act of
22 1974) and section 552 of title 5, United States
23 Code (commonly referred to as the Freedom of
24 Information Act);

25 (B) legislation pending before the Con-
26 gress;

1 (C) privacy protection efforts undertaken
2 by the Federal Government, State governments,
3 foreign governments, and international gov-
4 erning bodies;

5 (D) privacy protection efforts undertaken
6 by the private sector; and

7 (E) self-regulatory efforts initiated by the
8 private sector to respond to privacy issues.

9 (3) The monitoring, collection, and distribution
10 of personal information by individuals or entities, in-
11 cluding access to and use of medical records, finan-
12 cial records (including credit cards, automated teller
13 machine cards, bank accounts, and Internet trans-
14 actions), personal information provided to on-line
15 sites accessible through the Internet, Social Security
16 numbers, insurance records, education records, and
17 driver's license numbers.

18 (4) Employer practices and policies with respect
19 to the financial and health information of employees,
20 including—

21 (A) whether employers use or disclose em-
22 ployee financial or health information for mar-
23 keting, employment, or insurance underwriting
24 purposes;

1 (B) what restrictions employers place on
2 disclosure or use of employee financial or health
3 information;

4 (C) employee rights to access, copy, and
5 amend their own health records and financial
6 information;

7 (D) what type of notice employers provide
8 to employees regarding employer practices with
9 respect to employee financial and health infor-
10 mation; and

11 (E) practices of employer medical depart-
12 ments with respect to disclosing employee
13 health information to administrative or other
14 personnel of the employer.

15 (5) The extent to which individuals in the
16 United States can obtain redress for privacy viola-
17 tions.

18 (6) The extent to which older individuals and
19 disabled individuals are subject to exploitation in-
20 volving the disclosure or use of their financial infor-
21 mation.

22 (b) FIELD HEARINGS.—The Commission shall con-
23 duct at least 3 field hearings in different geographical re-
24 gions of the United States.

25 (c) REPORT.—

1 (1) IN GENERAL.—Not later than December 31,
2 2001—

3 (A) a majority of the members of the Com-
4 mission shall approve a report; and

5 (B) the Commission shall submit the ap-
6 proved report to the Congress and the Presi-
7 dent.

8 (2) CONTENTS.—The report shall include a de-
9 tailed statement of findings, conclusions, and rec-
10 ommendations, including the following:

11 (A) Findings on potential threats posed to
12 individual privacy.

13 (B) Analysis of purposes for which sharing
14 of information is appropriate and beneficial to
15 consumers.

16 (C) Analysis of the effectiveness of existing
17 statutes, regulations, private sector self-regu-
18 latory efforts, technology advances, and market
19 forces in protecting individual privacy.

20 (D) Recommendations on whether addi-
21 tional legislation is necessary, and if so, specific
22 suggestions on proposals to reform or augment
23 current laws and regulations relating to indi-
24 vidual privacy.

1 (E) Analysis of purposes for which addi-
2 tional regulations may impose undue costs or
3 burdens, or cause unintended consequences in
4 other policy areas, such as security, law en-
5 forcement, medical research, employee benefits,
6 or critical infrastructure protection.

7 (F) Cost analysis of legislative or regu-
8 latory changes proposed in the report.

9 (G) Recommendations on non-legislative
10 solutions to individual privacy concerns, includ-
11 ing education, market-based measures, industry
12 best practices, and new technology.

13 (H) Review of the effectiveness and utility
14 of third-party verification, including specifically
15 with respect to existing private sector self-regu-
16 latory efforts.

17 (d) ADDITIONAL REPORT.—Together with the report
18 under subsection (c), the Commission shall submit to the
19 Congress and the President any additional report of dis-
20 senting opinions or minority views by a member of the
21 Commission.

22 (e) INTERIM REPORT.—The Commission may submit
23 to the Congress and the President an interim report ap-
24 proved by a majority of the members of the Commission.

1 **SEC. 5. MEMBERSHIP.**

2 (a) NUMBER AND APPOINTMENT.—The Commission
3 shall be composed of 17 members appointed as follows:

4 (1) 4 members appointed by the President.

5 (2) 4 members appointed by the majority leader
6 of the Senate.

7 (3) 2 members appointed by the minority leader
8 of the Senate.

9 (4) 4 members appointed by the Speaker of the
10 House of Representatives.

11 (5) 2 members appointed by the minority leader
12 of the House of Representatives.

13 (6) 1 member, who shall serve as Chairperson
14 of the Commission, appointed jointly by the Presi-
15 dent, the majority leader of the Senate, and the
16 Speaker of the House of Representatives.

17 (b) DIVERSITY OF VIEWS.—The appointing authori-
18 ties under subsection (a) shall seek to ensure that the
19 membership of the Commission has a diversity of views
20 and experiences on the issues to be studied by the Com-
21 mission, such as views and experiences of Federal, State,
22 and local governments, the media, the academic commu-
23 nity, consumer groups, public policy groups and other ad-
24 vocacy organizations, business and industry (including
25 small business), the medical community, the health care

1 industry, civil liberties experts, and the financial services
2 industry.

3 (c) DATE OF APPOINTMENT.—The appointment of
4 the members of the Commission shall be made not later
5 than 30 days after the date of the enactment of this Act.

6 (d) TERMS.—Each member of the Commission shall
7 be appointed for the life of the Commission.

8 (e) VACANCIES.—A vacancy in the Commission shall
9 be filled in the same manner in which the original appoint-
10 ment was made.

11 (f) COMPENSATION; TRAVEL EXPENSES.—Members
12 of the Commission shall serve without pay, but shall re-
13 ceive travel expenses, including per diem in lieu of subsist-
14 ence, in accordance with sections 5702 and 5703 of title
15 5, United States Code.

16 (g) QUORUM.—A majority of the members of the
17 Commission shall constitute a quorum, but a lesser num-
18 ber may hold hearings.

19 (h) MEETINGS.—

20 (1) IN GENERAL.—The Commission shall meet
21 at the call of the Chairperson or a majority of its
22 members.

23 (2) INITIAL MEETING.—Not later than 45 days
24 after the date of the enactment of this Act, the
25 Commission shall hold its initial meeting.

1 **SEC. 6. DIRECTOR; STAFF; EXPERTS AND CONSULTANTS.**

2 (a) DIRECTOR.—

3 (1) IN GENERAL.—Not later than 40 days after
4 the date of enactment of this Act, the Chairperson
5 of the Commission shall appoint a Director without
6 regard to the provisions of title 5, United States
7 Code, governing appointments to the competitive
8 service.

9 (2) PAY.—The Director shall be paid at the
10 rate payable for level III of the Executive Schedule
11 established under section 5314 of such title.

12 (b) STAFF.—The Director may appoint staff as the
13 Director determines appropriate.

14 (c) APPLICABILITY OF CERTAIN CIVIL SERVICE
15 LAWS.—

16 (1) IN GENERAL.—The staff of the Commission
17 shall be appointed without regard to the provisions
18 of title 5, United States Code, governing appoint-
19 ments in the competitive service.

20 (2) PAY.—The staff of the Commission shall be
21 paid in accordance with the provisions of chapter 51
22 and subchapter III of chapter 53 of that title relat-
23 ing to classification and General Schedule pay rates,
24 but at rates not in excess of the maximum rate for
25 grade GS–15 of the General Schedule under section
26 5332 of that title.

1 (d) EXPERTS AND CONSULTANTS.—The Director
2 may procure temporary and intermittent services under
3 section 3109(b) of title 5, United States Code.

4 (e) STAFF OF FEDERAL AGENCIES.—

5 (1) IN GENERAL.—Upon request of the Direc-
6 tor, the head of any Federal department or agency
7 may detail, on a reimbursable basis, any of the per-
8 sonnel of that department or agency to the Commis-
9 sion to assist it in carrying out this Act.

10 (2) NOTIFICATION.—Before making a request
11 under this subsection, the Director shall give notice
12 of the request to each member of the Commission.

13 **SEC. 7. POWERS OF COMMISSION.**

14 (a) HEARINGS AND SESSIONS.—The Commission
15 may, for the purpose of carrying out this Act, hold hear-
16 ings, sit and act at times and places, take testimony, and
17 receive evidence as the Commission considers appropriate.
18 The Commission may administer oaths or affirmations to
19 witnesses appearing before it.

20 (b) POWERS OF MEMBERS AND AGENTS.—Any mem-
21 ber or agent of the Commission may, if authorized by the
22 Commission, take any action which the Commission is au-
23 thorized to take by this section.

24 (c) OBTAINING OFFICIAL INFORMATION.—

1 (1) IN GENERAL.—Except as provided in para-
2 graph (2), if the Chairperson of the Commission
3 submits a request to a Federal department or agen-
4 cy for information necessary to enable the Commis-
5 sion to carry out this Act, the head of that depart-
6 ment or agency shall furnish that information to the
7 Commission.

8 (2) EXCEPTION FOR NATIONAL SECURITY.—If
9 the head of that department or agency determines
10 that it is necessary to guard that information from
11 disclosure to protect the national security interests
12 of the United States, the head shall not furnish that
13 information to the Commission.

14 (d) WEBSITE.—The Commission shall establish a
15 website to facilitate public participation and the submis-
16 sion of public comments.

17 (e) MAILS.—The Commission may use the United
18 States mails in the same manner and under the same con-
19 ditions as other departments and agencies of the United
20 States.

21 (f) ADMINISTRATIVE SUPPORT SERVICES.—Upon the
22 request of the Director, the Administrator of General
23 Services shall provide to the Commission, on a reimburs-
24 able basis, the administrative support services necessary
25 for the Commission to carry out this Act.

1 (g) GIFTS AND DONATIONS.—The Commission may
2 accept, use, and dispose of gifts or donations of services
3 or property to carry out this Act, but only to the extent
4 or in the amounts provided in advance in appropriation
5 Acts.

6 (h) CONTRACTS.—The Commission may contract
7 with and compensate persons and government agencies for
8 supplies and services, without regard to section 3709 of
9 the Revised Statutes (41 U.S.C. 5).

10 (i) SUBPOENA POWER.—

11 (1) IN GENERAL.—The Commission may issue
12 subpoenas requiring the attendance and testimony of
13 witnesses and the production of any evidence relat-
14 ing to any matter that the Commission is empow-
15 ered to investigate by section 4. The attendance of
16 witnesses and the production of evidence may be re-
17 quired by such subpoena from any place within the
18 United States and at any specified place of hearing
19 within the United States.

20 (2) FAILURE TO OBEY A SUBPOENA.—If a per-
21 son refuses to obey a subpoena issued under para-
22 graph (1), the Commission may apply to a United
23 States district court for an order requiring that per-
24 son to appear before the Commission to give testi-
25 mony, produce evidence, or both, relating to the

1 matter under investigation. The application may be
2 made within the judicial district where the hearing
3 is conducted or where that person is found, resides,
4 or transacts business. Any failure to obey the order
5 of the court may be punished by the court as civil
6 contempt.

7 (3) SERVICE OF SUBPOENAS.—The subpoenas
8 of the Commission shall be served in the manner
9 provided for subpoenas issued by a United States
10 district court under the Federal Rules of Civil Pro-
11 cedure for the United States district courts.

12 (4) SERVICE OF PROCESS.—All process of any
13 court to which application is made under paragraph
14 (2) may be served in the judicial district in which
15 the person required to be served resides or may be
16 found.

17 **SEC. 8. PRIVACY PROTECTIONS.**

18 (a) DESTRUCTION OR RETURN OF INFORMATION RE-
19 QUIRED.—Upon the conclusion of the matter or need for
20 which individually identifiable information was disclosed
21 to the Commission, the Commission shall either destroy
22 the individually identifiable information or return it to the
23 person or entity from which it was obtained, unless the
24 individual that is the subject of the individually identifi-
25 able information has authorized its disclosure.

1 (b) DISCLOSURE OF INFORMATION PROHIBITED.—

2 The Commission—

3 (1) shall protect individually identifiable infor-
4 mation from improper use; and

5 (2) may not disclose such information to any
6 person, including the Congress or the President, un-
7 less the individual that is the subject of the informa-
8 tion has authorized such a disclosure.

9 (c) PROPRIETARY BUSINESS INFORMATION AND FI-
10 NANCIAL INFORMATION.—The Commission shall protect
11 from improper use, and may not disclose to any person,
12 proprietary business information and proprietary financial
13 information that may be viewed or obtained by the Com-
14 mission in the course of carrying out its duties under this
15 Act.

16 (d) INDIVIDUALLY IDENTIFIABLE INFORMATION DE-
17 FINED.—For the purposes of this Act, the term “individ-
18 ually identifiable information” means any information,
19 whether oral or recorded in any form or medium, that
20 identifies an individual, or with respect to which there is
21 a reasonable basis to believe that the information can be
22 used to identify an individual.

1 **SEC. 9. BUDGET ACT COMPLIANCE.**

2 Any new contract authority authorized by this Act
3 shall be effective only to the extent or in the amounts pro-
4 vided in advance in appropriation Acts.

5 **SEC. 10. TERMINATION.**

6 The Commission shall terminate 30 days after sub-
7 mitting a report under section 4(c).

8 **SEC. 11. AUTHORIZATION OF APPROPRIATIONS.**

9 (a) IN GENERAL.—There are authorized to be appro-
10 priated to the Commission \$5,000,000 to carry out this
11 Act.

12 (b) AVAILABILITY.—Any sums appropriated pursu-
13 ant to the authorization in subsection (a) shall remain
14 available until expended.

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