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To require the Federal Trade Commission to prescribe regulations to protect the privacy of personal information collected from and about individuals who are not covered by the Children's Online Privacy Protection Act of 1998 on the Internet, to provide greater individual control over the collection and use of that information, and for other purposes.

IN THE SENATE OF THE UNITED STATES

APRIL 15, 1999

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

A BILL

To require the Federal Trade Commission to prescribe regulations to protect the privacy of personal information collected from and about individuals who are not covered by the Children's Online Privacy Protection Act of 1998 on the Internet, to provide greater individual 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,*

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Online Privacy Protec-
3 tion Act of 1999”.

4 **SEC. 2. REGULATION OF UNFAIR AND DECEPTIVE ACTS**
5 **AND PRACTICES IN CONNECTION WITH THE**
6 **COLLECTION, USE AND DISCLOSURE OF PER-**
7 **SONAL INFORMATION.**

8 (a) ACTS PROHIBITED.—

9 (1) IN GENERAL.—It is unlawful for an oper-
10 ator of a Web site or online service to collect, use
11 or disclose personal information in a manner that
12 violates the regulations prescribed under subsection
13 (b).

14 (2) DISCLOSURE.—Notwithstanding paragraph
15 (1), neither an operator of a Web site or online serv-
16 ice nor the operator’s agent shall be held to be liable
17 under this Act for any disclosure made in good faith
18 and following reasonable procedures in responding to
19 a request under subsection (b)(1)(B) by an indi-
20 vidual for disclosure of personal information per-
21 taining to such individual.

22 (b) REGULATIONS.—

23 (1) IN GENERAL.—Not later than 1 year after
24 the date of the enactment of this Act, the Commis-
25 sion shall promulgate under section 553 of title 5,
26 United States Code, regulations that—

1 (A) require the operator of any Web site or
2 online service—

3 (i) to provide notice on its Web site,
4 in a clear and conspicuous manner, of the
5 identity of the operator, what personal in-
6 formation is collected by the operator, how
7 the operator uses such information, and
8 what information may be shared with other
9 companies; and

10 (ii) to provide a meaningful and sim-
11 ple online process for individuals to con-
12 sent to or limit the disclosure of personal
13 information for purposes unrelated to
14 those for which such information was ob-
15 tained or described in the notice under
16 clause (i);

17 (B) require the operator to provide, upon
18 request of an individual under this subpara-
19 graph who has provided personal information to
20 that Web site or online service, upon proper
21 identification—

22 (i) a description of the specific types
23 of personal information collected by that
24 operator that was sold or transferred to an
25 external company; and

1 (ii) notwithstanding any other provi-
2 sion of law, a means that is reasonable
3 under the circumstances for the individual
4 to obtain the personal information de-
5 scribed in paragraph (i) from such indi-
6 vidual; and

7 (C) require the operator of such Web site
8 or online service to establish and maintain rea-
9 sonable procedures to protect the confiden-
10 tiality, security, and integrity of personal infor-
11 mation it collects or maintains.

12 (2) WHEN PURPOSE LIMITATION NOT RE-
13 QUIRED.—The regulations shall provide that the
14 purpose limitation required under paragraph
15 (1)(A)(ii) is not required for—

16 (A) transactional information where identi-
17 fiable information is not removed;

18 (B) personal information where it is used
19 to render or conduct a legitimate business activ-
20 ity related to the business of the operator (for
21 example, the use of an e-mail address to re-
22 spond to an e-mail communication); or

23 (C) the collection, use, or dissemination of
24 such information by the operator of such a Web

1 site or online service necessary to the extent
2 permitted under other provisions of law.

3 (3) WHEN ACCESS NOT REQUIRED.—The regu-
4 lations shall provide that access as required under
5 paragraph (1)(B)(ii) is not required—

6 (A) to transactional information where
7 identifiable information is not removed;

8 (B) to information that is commercially
9 confidential to the operator and is obtained
10 from sources outside of the individual’s contact
11 with the operator’s web site;

12 (C) to information that is solely for inter-
13 nal company processes and is neither sold,
14 transferred, nor used for activities external to
15 the web site’s operator;

16 (D) to information that is discarded upon
17 the conclusion of the process that generates it;
18 or

19 (E) to information that has no impact
20 upon an individual.

21 (4) TERMINATION OF SERVICE.—The regula-
22 tions shall permit the operator of a Web site or an
23 online service to terminate service provided to an in-
24 dividual who has refused, under the regulations pre-
25 scribed under paragraph (1)(B)(ii), to permit the op-

1 erator’s further use or maintenance in retrievable
2 form, or future collection, of personal information.

3 (c) ENFORCEMENT.—Subject to sections 3 and 5, a
4 violation of a regulation prescribed under subsection (a)
5 shall be treated as a violation of a rule defining an unfair
6 or deceptive act or practice prescribed under section
7 18(a)(1)(B) of the Federal Trade Commission Act (15
8 U.S.C. 57a(a)(1)(B)).

9 (d) NO REQUIREMENT TO COLLECT OR MAINTAIN
10 DATA.—Nothing in this Act shall be interpreted to require
11 an operator to collect or maintain any data that would
12 not otherwise be collected or maintained.

13 **SEC. 3. SAFE HARBORS.**

14 (a) GUIDELINES.—An operator may satisfy the re-
15 quirements of regulations issued under section 2(b) by fol-
16 lowing a set of self-regulatory guidelines, issued by rep-
17 resentatives of the marketing or online industries, or by
18 other persons, approved under subsection (b).

19 (b) INCENTIVES.—

20 (1) SELF-REGULATORY INCENTIVES.—In pre-
21 scribing regulations under section 2, the Commission
22 shall provide incentives for self-regulation by opera-
23 tors to implement the protections afforded under the
24 regulatory requirements described in subsection (b)
25 of that section.

1 (2) DEEMED COMPLIANCE.—Such incentives
2 shall include provisions for ensuring that a person
3 will be deemed to be in compliance with the require-
4 ments of the regulations under section 2 if that per-
5 son complies with guidelines that, after notice and
6 comment, are approved by the Commission upon
7 making a determination that the guidelines meet the
8 requirements of the regulations issued under section
9 2.

10 (3) EXPEDITED RESPONSE TO REQUESTS.—The
11 Commission shall act upon requests for safe harbor
12 treatment within 180 days of the filing of the re-
13 quest, and shall set forth in writing its conclusions
14 with regard to such requests.

15 (c) APPEALS.—Final action by the Commission on a
16 request for approval of guidelines, or the failure to act
17 within 180 days on a request for approval of guidelines,
18 submitted under subsection (b) may be appealed to a dis-
19 trict court of the United States of appropriate jurisdiction
20 as provided for in section 706 of title 5, United States
21 Code.

22 **SEC. 4. ACTIONS BY STATES.**

23 (a) IN GENERAL.—

24 (1) CIVIL ACTIONS.—In any case in which the
25 attorney general of a State has reason to believe

1 that an interest of the residents of that State has
2 been or is threatened or adversely affected by the
3 engagement of any person in a practice that violates
4 any regulation of the Commission prescribed under
5 section 2(b) of this Act, the State may bring a civil
6 action on behalf of the residents of the State in a
7 district court of the United States of appropriate ju-
8 risdiction to—

9 (A) enjoin that practice;

10 (B) enforce compliance with the regulation;

11 (C) obtain damage, restitution, or other
12 compensation on behalf of residents of the
13 State; or

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

16 (2) NOTICE.—

17 (A) IN GENERAL.—Before filing an action
18 under paragraph (1), the attorney general of
19 the State involved shall provide to the
20 Commission—

21 (i) written notice of that action; and

22 (ii) a copy of the complaint for that
23 action.

24 (B) EXEMPTION.—

1 (i) IN GENERAL.—Subparagraph (A)
2 shall not apply with respect to the filing of
3 an action by an attorney general of a State
4 under this subsection, if the attorney gen-
5 eral determines that it is not feasible to
6 provide the notice described in that sub-
7 paragraph before the filing of the action.

8 (ii) NOTIFICATION.—In an action de-
9 scribed in clause (i), the attorney general
10 of a State shall provide notice and a copy
11 of the complaint to the Commission at the
12 same time as the attorney general files the
13 action.

14 (b) INTERVENTION.—

15 (1) IN GENERAL.—On receiving notice under
16 subsection (a)(2), the Commission shall have the
17 right to intervene in the action that is the subject
18 of the notice.

19 (2) EFFECT OF INTERVENTION.—If the Com-
20 mission intervenes in an action under subsection (a),
21 it shall have the right—

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

24 (B) to file a petition for appeal.

1 (3) *AMICUS CURIAE*.—Upon application to the
2 court, a person whose self-regulatory guidelines have
3 been approved by the Commission and are relied
4 upon as a defense by any defendant to a proceeding
5 under this section may file *amicus curiae* in that
6 proceeding.

7 (c) *CONSTRUCTION*.—For purposes of bringing any
8 civil action under subsection (a), nothing in this Act shall
9 be construed to prevent an attorney general of a State
10 from exercising the powers conferred on the attorney gen-
11 eral by the laws of that State to—

12 (1) conduct investigations;

13 (2) administer oaths or affirmations; or

14 (3) compel the attendance of witnesses or the
15 production of documentary and other evidence.

16 (d) *VENUE; SERVICE OF PROCESS*.—

17 (1) *VENUE*.—Any action brought under sub-
18 section (a) may be brought in the district court of
19 the United States that meets applicable require-
20 ments relating to venue under section 1391 of title
21 28, United States Code.

22 (2) *SERVICE OF PROCESS*.—In an action
23 brought under subsection (a), process may be served
24 in any district in which the defendant—

25 (A) is an inhabitant; or

1 (B) may be found.

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

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

6 (b) PROVISIONS.—Compliance with the requirements
7 imposed under this Act shall be enforced under—

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

10 (A) national banks, and Federal branches
11 and Federal agencies of foreign banks, by the
12 Office of the Comptroller of the Currency;

13 (B) member banks of the Federal Reserve
14 System (other than national banks), branches
15 and agencies of foreign banks (other than Fed-
16 eral branches, Federal agencies, and insured
17 State branches of foreign banks), commercial
18 lending companies owned or controlled by for-
19 eign banks, and organizations operating under
20 section 25 or 25(a) of the Federal Reserve Act
21 (12 U.S.C. 601 et seq. and 611 et. seq.), by the
22 Board; and

23 (C) banks insured by the Federal Deposit
24 Insurance Corporation (other than members of
25 the Federal Reserve System) and insured State

1 branches of foreign banks, by the Board of Di-
2 rectors of the Federal Deposit Insurance Cor-
3 poration;

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

9 (3) the Federal Credit Union Act (12 U.S.C.
10 1751 et seq.) by the National Credit Union Adminis-
11 tration Board with respect to any Federal credit
12 union;

13 (4) part A of subtitle VII of title 49, United
14 States Code, by the Secretary of Transportation
15 with respect to any air carrier or foreign air carrier
16 subject to that part;

17 (5) the Packers and Stockyards Act, 1921 (7
18 U.S.C. 181 et seq.) (except as provided in section
19 406 of that Act (7 U.S.C. 226, 227)), by the Sec-
20 retary of Agriculture with respect to any activities
21 subject to that Act; and

22 (6) the Farm Credit Act of 1971 (12 U.S.C.
23 2001 et seq.) by the Farm Credit Administration
24 with respect to any Federal land bank, Federal land

1 bank association, Federal intermediate credit bank,
2 or production credit association.

3 (c) EXERCISE OF CERTAIN POWERS.—For the pur-
4 pose of the exercise by any agency referred to in sub-
5 section (b) of its powers under any other Act referred to
6 in that subsection, a violation of any requirement imposed
7 under this Act shall be deemed to be a violation of a re-
8 quirement imposed under that other Act. In addition to
9 its powers under any provision of law specifically referred
10 to in subsection (b), each of the agencies referred to in
11 that subsection may exercise, for the purpose of enforcing
12 compliance with any requirement imposed under this Act,
13 any other authority conferred on such agency by law.

14 (d) ACTIONS BY THE COMMISSION.—The Commis-
15 sion shall prevent any person from violating a rule of the
16 Commission under section 2 in the same manner, by the
17 same means, and with the same jurisdiction, powers, and
18 duties as though all applicable terms and provisions of the
19 Federal Trade Commission Act (15 U.S.C. 41 et seq.)
20 were incorporated into and made a part of this title. Any
21 entity that violates such rule shall be subject to the pen-
22 alties and entitled to the privileges and immunities pro-
23 vided in the Federal Trade Commission Act in the same
24 manner, by the same means, and with the same jurisdic-
25 tion, power, and duties as though all applicable terms and

1 provisions of the Federal Trade Commission Act were in
2 incorporated into and made a part of this title.

3 (e) EFFECT ON OTHER LAWS.—Nothing contained in
4 this Act shall be construed to limit the authority of the
5 Commission under any other provisions of law.

6 (f) PREEMPTION.—Except as otherwise provided in
7 this Act, this Act supersedes State law to the extent that
8 it establishes a rule of law applicable to an online privacy
9 action that is inconsistent with State law. Nothing in this
10 Act supersedes State law with respect to prosecution of
11 fraud.

12 **SEC. 6. REVIEW.**

13 Not later than 5 years after the effective date of the
14 regulations initially issued under section 2, the Commis-
15 sion shall—

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

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

22 **SEC. 7. EFFECTIVE DATE.**

23 Sections 3(a), 5, and 6 of this Act shall take effect
24 on the later of—

1 (1) the date that is 18 months after the date
2 of enactment of this Act; or

3 (2) the date on which the Commission rules on
4 the first application filed for safe harbor treatment
5 under section 3 if the Commission does not rule on
6 the first such application within one year after the
7 date of enactment of this Act, but in no case later
8 than the date that is 30 months after the date of
9 enactment of this Act.

10 **SEC. 8. DEFINITIONS.**

11 In this Act:

12 (1) **INDIVIDUAL.**—The term “individual” means
13 a natural person of age 13 and above.

14 (2) **OPERATOR.**—The term “operator”—

15 (A) means any person who operates a Web
16 site located on the Internet or an online service
17 and who collects or maintains personal informa-
18 tion from or about the users of or visitors to
19 such Web site or online service, or on whose be-
20 half such information is collected or main-
21 tained, where such Web site or online service is
22 operated for commercial purposes, including
23 any person offering products or services for sale
24 through that Web site or online service, involv-
25 ing commerce—

1 (i) among the several States or with 1
2 or more foreign nations;

3 (ii) in any territory of the United
4 States or in the District of Columbia, or
5 between any such territory and—

6 (I) another such territory; or

7 (II) any State or foreign nation;

8 or

9 (iii) between the District of Columbia
10 and any State, territory, or foreign nation;

11 but

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

16 (3) COMMISSION.—The term “Commission”
17 means the Federal Trade Commission.

18 (4) DISCLOSURE.—The term “disclosure”
19 means, with respect to personal information the re-
20 lease of personal information collected in identifiable
21 form by an operator for any purpose, except where
22 such information is provided to a person other than
23 the operator who provides support for the internal
24 operations of the Web site and does not disclose or
25 use that information for any other purpose.

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

4 (6) INTERNET.—The term “Internet” means
5 collectively the myriad of computer and tele-
6 communications facilities, including equipment and
7 operating software, which comprise the inter-
8 connected world-wide network of networks that em-
9 ploy the Transmission Control Protocol/Internet
10 Protocol, or any predecessor or successor protocols
11 to such protocol, to communicate information of all
12 kinds by wire or radio.

13 (7) TRANSACTIONAL INFORMATION.—The term
14 “transactional information” means information gen-
15 erated in connection with the process of requesting,
16 accessing, or otherwise using the Internet.

17 (8) PERSONAL INFORMATION.—The term “per-
18 sonal information” means information collected on-
19 line from an individual that identifies that indi-
20 vidual, including—

21 (A) first and last name;

22 (B) home and other physical address;

23 (C) email address;

24 (D) social security number;

25 (E) telephone number;

1 (F) any other identifier that the Commis-
2 sion determines identifies an individual; or

3 (G) information that is maintained with, or
4 can be searched or retrieved by means of, data
5 described in subparagraphs (A) through (F).

○