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[Report No. 107-240]

To protect the online privacy of individuals who use the Internet.

IN THE SENATE OF THE UNITED STATES

APRIL 18, 2002

Mr. HOLLINGS (for himself, Mr. STEVENS, Mr. BURNS, Mr. INOUE, Mr. ROCKEFELLER, Mr. KERRY, Mr. BREAUX, Mrs. CARNAHAN, Mr. CLELAND, Mr. NELSON of Florida, Mrs. CARNAHAN, and Mr. TORRICELLI) introduced the following bill; which was read twice and referred to the Committee on Commerce, Science, and Transportation

AUGUST 1, 2002

Reported by Mr. HOLLINGS, with an amendment

[Strike all after the enacting clause and insert the part printed in italic]

A BILL

To protect the online privacy of individuals who use the
Internet.

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 “Online Personal Pri-
5 vacy Act”.

1 **SEC. 2. TABLE OF CONTENTS.**

2 The table of contents of this Act is as follows:

- Sec. 1. Short title.
- Sec. 2. Table of contents.
- Sec. 3. Findings.
- Sec. 4. Preemption of State law or regulations.
 - Title I—Online Privacy Protection
 - Sec. 101. Collection, use, or disclosure of personally identifiable information.
 - Sec. 102. Notice and consent requirements.
 - Sec. 103. Policy changes; privacy breach.
 - Sec. 104. Exceptions.
 - Sec. 105. Access.
 - Sec. 106. Security.
 - Title H—Enforcement
 - Sec. 201. Enforcement by Federal Trade Commission.
 - Sec. 202. Violation is unfair or deceptive act or practice.
 - Sec. 203. Private right of action.
 - Sec. 204. Actions by States.
 - Sec. 205. Whistleblower protection.
 - Sec. 206. No effect on other remedies.
 - Title III—Application to Congress and Federal Agencies
 - Sec. 301. Exercise of rulemaking power.
 - Sec. 302. Senate.
 - Sec. 303. Application to Federal agencies.
 - Title IV—Miscellaneous
 - Sec. 401. Definitions.
 - Sec. 402. Effective date.
 - Sec. 403. FTC rulemaking.
 - Sec. 404. FTC report.
 - Sec. 405. Development of automated privacy controls.

3 **SEC. 3. FINDINGS.**

4 The Congress finds the following:

5 (1) The right to privacy is a personal and fun-
 6 damental right worthy of protection through appro-
 7 priate legislation.

8 (2) Individuals engaging in and interacting with
 9 companies engaged in interstate commerce have a
 10 significant interest in their personal information, as
 11 well as a right to control how that information is
 12 collected, used, or transferred.

1 (3) Absent the recognition of these rights and
2 the establishment of consequent industry responsibil-
3 ities to safeguard those rights, the privacy of indi-
4 viduals who use the Internet will soon be more
5 gravely threatened.

6 (4) To extent that States regulate, their efforts
7 to address Internet privacy will lead to a patchwork
8 of inconsistent standards and protections.

9 (5) Existing State, local, and Federal laws pro-
10 vide minimal privacy protection for Internet users.

11 (6) With the exception of Federal Trade Com-
12 mission enforcement of laws against unfair and de-
13 ceptive practices, the Federal Government thus far
14 has eschewed general Internet privacy laws in favor
15 of industry self-regulation, which has led to several
16 self-policing schemes, none of which are enforceable
17 in any meaningful way or provide sufficient privacy
18 protection to individuals.

19 (7) State governments have been reluctant to
20 enter the field of Internet privacy regulation because
21 use of the Internet often crosses State, or even na-
22 tional, boundaries.

23 (8) States are nonetheless interested in pro-
24 viding greater privacy protection to their citizens as
25 evidenced by recent lawsuits brought against offline

1 and online companies by State attorneys general to
2 protect the privacy of individuals using the Internet.

3 (9) The ease of gathering and compiling per-
4 sonal information on the Internet, both overtly and
5 surreptitiously, is becoming increasingly efficient
6 and effortless due to advances in digital communica-
7 tions technology which have provided information
8 gatherers the ability to compile seamlessly highly de-
9 tailed personal histories of Internet users.

10 (10) Personal information flowing over the
11 Internet requires greater privacy protection than is
12 currently available today. Vast amounts of personal
13 information, including sensitive information, about
14 individual Internet users are collected on the Inter-
15 net and sold or otherwise transferred to third par-
16 ties.

17 (11) Poll after poll consistently demonstrates
18 that individual Internet users are highly troubled
19 over their lack of control over their personal infor-
20 mation.

21 (12) Market research demonstrates that tens of
22 billions of dollars in e-commerce are lost due to indi-
23 vidual fears about a lack of privacy protection on the
24 Internet.

1 (13) Market research demonstrates that as
2 many as one-third of all Internet users give false in-
3 formation about themselves to protect their privacy,
4 due to fears about a lack of privacy protection on
5 the Internet.

6 (14) Notwithstanding these concerns, the Inter-
7 net is becoming a major part of the personal and
8 commercial lives of millions of Americans, providing
9 increased access to information, as well as commu-
10 nications and commercial opportunities.

11 (15) It is important to establish personal pri-
12 vacy rights and industry obligations now so that in-
13 dividuals have confidence that their personal privacy
14 is fully protected on the Internet.

15 (16) The social and economic costs of estab-
16 lishing baseline privacy standards now will be lower
17 than if Congress waits until the Internet becomes
18 more prevalent in our everyday lives in coming
19 years.

20 (17) Whatever costs may be borne by industry
21 will be significantly offset by the economic benefits
22 to the commercial Internet created by increased con-
23 sumer confidence occasioned by greater privacy pro-
24 tection.

1 (18) Toward the close of the 20th Century, as
2 individuals' personal information was increasingly
3 collected, profiled, and shared for commercial pur-
4 poses, and as technology advanced to facilitate these
5 practices, the Congress enacted numerous statutes
6 to protect privacy.

7 (19) Those statutes apply to the government,
8 telephones, cable television, e-mail, video tape rent-
9 als, and the Internet (but only with respect to chil-
10 dren).

11 (20) Those statutes all provide significant pri-
12 vacy protections, but neither limit technology nor
13 stifle business.

14 (21) Those statutes ensure that the collection
15 and commercialization of individuals' personal infor-
16 mation is fair, transparent, and subject to law.

17 **SEC. 4. PREEMPTION OF STATE LAW OR REGULATIONS.**

18 This Act supersedes any State statute, regulation, or
19 rule regulating Internet privacy to the extent that it re-
20 lates to the collection, use, or disclosure of personally iden-
21 tifiable information obtained through the Internet.

1 **TITLE I—ONLINE PRIVACY**
2 **PROTECTION**

3 **SEC. 101. COLLECTION, USE, OR DISCLOSURE OF PERSON-**
4 **ALLY IDENTIFIABLE INFORMATION.**

5 (a) **IN GENERAL.**—An internet service provider, on-
6 line service provider, or operator of a commercial website
7 on the Internet may not collect personally identifiable in-
8 formation from a user, or use or disclose personally identi-
9 fiable information about a user, of that service or website
10 except in accordance with the provisions of this Act.

11 (b) **APPLICATION TO CERTAIN THIRD-PARTY OPERA-**
12 **TORS.**—The provisions of this Act applicable to internet
13 service providers, online service providers, and commercial
14 website operators apply to any third party, including an
15 advertising network, that uses an internet service provider,
16 online service provider, or commercial website operator to
17 collect information about users of that service or website.

18 **SEC. 102. NOTICE AND CONSENT REQUIREMENTS.**

19 (a) **NOTICE.**—Except as provided in section 104, an
20 internet service provider, online service provider, or oper-
21 ator of a commercial website may not collect personally
22 identifiable information from a user of that service or
23 website online unless that provider or operator provides
24 clear and conspicuous notice to the user in the manner
25 required by this section for the kind of personally identifi-

1 able information to be collected. The notice shall
2 disclose—

3 (1) the specific types of information that will be
4 collected;

5 (2) the methods of collecting and using the in-
6 formation collected; and

7 (3) all disclosure practices of that provider or
8 operator for personally identifiable information so
9 collected, including whether it will be disclosed to
10 third parties.

11 (b) SENSITIVE PERSONALLY IDENTIFIABLE INFOR-
12 MATION REQUIRES OPT-IN CONSENT.—An internet serv-
13 ice provider, online service provider, or operator of a com-
14 mercial website may not—

15 (1) collect sensitive personally identifiable infor-
16 mation online; or

17 (2) disclose or otherwise use such information
18 collected online, from a user of that service or
19 website;

20 unless the provider or operator obtains that user's affirm-
21 ative consent to the collection and disclosure or use of that
22 information before, or at the time, the information is col-
23 lected.

24 (c) NONSENSITIVE PERSONALLY IDENTIFIABLE IN-
25 FORMATION REQUIRES ROBUST NOTICE AND OPT-OUT

1 CONSENT.—An internet service provider, online service
2 provider, or operator of a commercial website may not—

3 (1) collect personally identifiable information
4 not described in subsection (b) online, or

5 (2) disclose or otherwise use such information
6 collected online, from a user of that service or
7 website,

8 unless the provider or operator provides robust notice to
9 the user, in addition to clear and conspicuous notice, and
10 has given the user an opportunity to decline consent for
11 such collection and use by the provider or operator before,
12 or at the time, the information is collected.

13 (d) INITIAL NOTICE ONLY FOR ROBUST NOTICE.—

14 An internet service provider, online service provider, or op-
15 erator of a commercial website shall provide robust notice
16 under subsection (c) of this section to a user only upon
17 its first collection of non-sensitive personally identifiable
18 information from that user, except that a subsequent col-
19 lection of additional or materially different non-sensitive
20 personally identifiable information from that user shall be
21 treated as a first collection of such information from that
22 user.

23 (e) PERMANENCE OF CONSENT.—

24 (1) IN GENERAL.—The consent or denial of
25 consent by a user of permission to an internet serv-

1 ice provider, online service provider, or operator of
2 a commercial website to collect, disclose, or other-
3 wise use any information about that user for which
4 consent is required under this Act—

5 (A) shall remain in effect until changed by
6 the user; and

7 (B) shall apply to the collection, disclosure,
8 or other use of that information by any entity
9 that is a commercial successor of, or legal suc-
10 cessor-in-interest to, that provider or operator,
11 without regard to the legal form in which such
12 succession was accomplished (including any en-
13 tity that collects, discloses, or uses such infor-
14 mation as a result of a proceeding under chap-
15 ter 7 or chapter 11 of title 11, United States
16 Code, with respect to the provider or operator).

17 (2) EXCEPTION.—The consent by a user to the
18 collection, disclosure, or other use of information
19 about that user for which consent is required under
20 this Act does not apply to the collection, disclosure,
21 or use of that information by a successor entity
22 under paragraph (1)(B) if—

23 (A) the kind of information collected by
24 the successor entity about the user is materially

1 different from the kind of information collected
2 by the predecessor entity;

3 ~~(B)~~ the methods of collecting and using
4 the information employed by the successor enti-
5 ty are materially different from the methods
6 employed by the predecessor entity; or

7 ~~(C)~~ the disclosure practices of the suc-
8 cessor entity are materially different from the
9 practices of the predecessor entity.

10 **SEC. 103. POLICY CHANGES; BREACH OF PRIVACY.**

11 ~~(a) NOTICE OF POLICY CHANGE.—Whenever an~~
12 ~~internet service provider, online service provider, or oper-~~
13 ~~ator of a commercial website makes a material change in~~
14 ~~its policy for the collection, use, or disclosure of sensitive~~
15 ~~or nonsensitive personally identifiable information, it—~~

16 ~~(1) shall notify all users of that service or~~
17 ~~website of the change in policy; and~~

18 ~~(2) may not collect, disclose, or otherwise use~~
19 ~~any sensitive or nonsensitive personally identifiable~~
20 ~~information in accordance with the changed policy~~
21 ~~unless the user has been afforded an opportunity to~~
22 ~~consent, or withhold consent, to its collection, disclo-~~
23 ~~sure, or use in accordance with the requirements of~~
24 ~~section 102(b) or (c), whichever is applicable.~~

25 ~~(b) NOTICE OF BREACH OF PRIVACY.—~~

1 (1) IN GENERAL.—If the sensitive or nonsen-
2 sitive personally identifiable information of a user of
3 an internet service provider, online service provider,
4 or operator of a commercial website—

5 (A) is collected, disclosed, or otherwise
6 used by the provider or operator in violation of
7 any provision of this Act, or

8 (B) the security, confidentiality, or integ-
9 rity of such information is compromised by a
10 hacker or other third party, or by any act or
11 failure to act of the provider or operator,

12 then the provider or operator shall notify all users
13 whose sensitive or nonsensitive personally identifi-
14 able information was affected by the unlawful collec-
15 tion, disclosure, use, or compromise. The notice shall
16 describe the nature of the unlawful collection, disclo-
17 sure, use, or compromise and the steps taken by the
18 provider or operator to remedy it.

19 (2) DELAY OF NOTIFICATION.—

20 (A) ACTION TAKEN BY INDIVIDUALS.—If
21 the compromise of the security, confidentiality,
22 or integrity of the information is caused by a
23 hacker or other external interference with the
24 service or website, or by an employee of the
25 service or website, the provider or operator may

1 postpone issuing the notice required by para-
2 graph (1) for a reasonable period of time in
3 order to—

4 (i) facilitate the detection and appre-
5 hension of the person responsible for the
6 compromise; and

7 (ii) take such measures as may be
8 necessary to restore the integrity of the
9 service or website and prevent any further
10 compromise of the security, confidentiality,
11 and integrity of such information.

12 ~~(B) SYSTEM FAILURES AND OTHER FUNC-~~
13 ~~TIONAL CAUSES.—~~If the unlawful collection,
14 disclosure, use, or compromise of the security,
15 confidentiality, and integrity of the information
16 is the result of a system failure, a problem with
17 the operating system, software, or program
18 used by the internet service provider, online
19 service provider, or operator of the commercial
20 website, or other non-external interference with
21 the service or website, the provider or operator
22 may postpone issuing the notice required by
23 paragraph (1) for a reasonable period of time
24 in order to—

1 (i) restore the system's functionality
2 or fix the problem; and

3 (ii) take such measures as may be
4 necessary to restore the integrity of the
5 service or website and prevent any further
6 compromise of the security, confidentiality,
7 and integrity of the information after the
8 failure or problem has been fixed and the
9 integrity of the service or website has been
10 restored.

11 **SEC. 104. EXCEPTIONS.**

12 (a) IN GENERAL.—Section 102 does not apply to the
13 collection, disclosure, or use by an internet service pro-
14 vider, online service provider, or operator of a commercial
15 website of information about a user of that service or
16 website necessary—

17 (1) to protect the security or integrity of the
18 service or website or to ensure the safety of other
19 people or property;

20 (2) to conduct a transaction, deliver a product
21 or service, or complete an arrangement for which the
22 user provided the information; or

23 (3) to provide other products and services inte-
24 grally related to the transaction, service, product, or

1 arrangement for which the user provided the infor-
2 mation.

3 (b) ~~PROTECTED DISCLOSURES.~~—An internet service
4 provider, online service provider, or operator of a commer-
5 cial website may not be held liable under this Act, any
6 other Federal law, or any State law for any disclosure
7 made in good faith and following reasonable procedures
8 in responding to—

9 (1) a request for disclosure of personal informa-
10 tion under section 1302(b)(1)(B)(iii) of the Chil-
11 dren’s Online Privacy Protection Act of 1998 (15
12 U.S.C. 6501 et seq.) to the parent of a child; or

13 (2) a request for access to, or correction or de-
14 letion of, personally identifiable information under
15 section 105 of this Act.

16 (c) ~~DISCLOSURE TO LAW ENFORCEMENT AGENCY OR~~
17 ~~UNDER COURT ORDER.~~—

18 (1) ~~IN GENERAL.~~—Notwithstanding any other
19 provision of this Act, an internet service provider,
20 online service provider, operator of a commercial
21 website, or third party that uses such a service or
22 website to collect information about users of that
23 service or website may disclose personally identifi-
24 able information about a user of that service or
25 website—

1 (A) to a law enforcement, investigatory,
2 national security, or regulatory agency or de-
3 partment of the United States in response to a
4 request or demand made under authority grant-
5 ed to that agency or department, including a
6 warrant issued under the Federal Rules of
7 Criminal Procedure, an equivalent State war-
8 rant, a court order, or a properly executed ad-
9 ministrative compulsory process; and

10 (B) in response to a court order in a civil
11 proceeding granted upon a showing of compel-
12 ling need for the information that cannot be ac-
13 commodated by any other means if—

14 (i) the user to whom the information
15 relates is given reasonable notice by the
16 person seeking the information of the court
17 proceeding at which the order is requested;
18 and

19 (ii) that user is afforded a reasonable
20 opportunity to appear and contest the
21 issuance of requested order or to narrow
22 its scope.

23 (2) SAFEGUARDS AGAINST FURTHER DISCLO-
24 SURE.—A court that issues an order described in
25 paragraph (1) shall impose appropriate safeguards

1 on the use of the information to protect against its
2 unauthorized disclosure.

3 **SEC. 105. ACCESS.**

4 (a) ~~IN GENERAL.~~—An internet service provider, on-
5 line service provider, or operator of a commercial website
6 shall—

7 (1) upon request provide reasonable access to a
8 user to personally identifiable information that the
9 provider or operator has collected from the user on-
10 line, or that the provider or operator has combined
11 with personally identifiable information collected
12 from the user online after the effective date of this
13 Act;

14 (2) provide a reasonable opportunity for a user
15 to suggest a correction or deletion of any such infor-
16 mation maintained by that provider or operator to
17 which the user was granted access; and

18 (3) make the correction a part of that user's
19 sensitive personally identifiable information or non-
20 sensitive personally identifiable information (which-
21 ever is appropriate), or make the deletion, for all fu-
22 ture disclosure and other use purposes.

23 (b) ~~EXCEPTION.~~—An internet service provider, online
24 service provider, or operator of a commercial website may
25 decline to make a suggested correction a part of that

1 user's sensitive personally identifiable information or non-
2 sensitive personally identifiable information (whichever is
3 appropriate); or to make a suggested deletion if the pro-
4 vider or operator—

5 (1) reasonably believes that the suggested cor-
6 rection or deletion is inaccurate or otherwise inap-
7 propriate;

8 (2) notifies the user in writing, or in digital or
9 other electronic form, of the reasons the provider or
10 operator believes the suggested correction or deletion
11 is inaccurate or otherwise inappropriate; and

12 (3) provides a reasonable opportunity for the
13 user to refute the reasons given by the provider or
14 operator for declining to make the suggested correc-
15 tion or deletion.

16 (c) REASONABLENESS TEST.—The reasonableness of
17 the access or opportunity provided under subsection (a)
18 or (b) by an internet service provider, online service pro-
19 vider, or operator of a commercial website shall be deter-
20 mined by taking into account such factors as the sensi-
21 tivity of the information requested and the burden or ex-
22 pense on the provider or operator of complying with the
23 request, correction, or deletion.

24 (d) REASONABLE ACCESS FEE.—

1 (1) ~~IN GENERAL.~~—An internet service provider,
2 online service provider, or operator of a commercial
3 website may impose a reasonable charge for access
4 under subsection (a).

5 (2) ~~AMOUNT.~~—The amount of the fee shall not
6 exceed \$3, except that upon request of a user, a pro-
7 vider or operator shall provide such access without
8 charge to that user if the user certifies in writing
9 that the user—

10 (A) is unemployed and intends to apply for
11 employment in the 60-day period beginning on
12 the date on which the certification is made;

13 (B) is a recipient of public welfare assist-
14 ance; or

15 (C) has reason to believe that the incorrect
16 information is due to fraud.

17 **SEC. 106. SECURITY.**

18 An internet service provider, online service provider,
19 or operator of a commercial website shall establish and
20 maintain reasonable procedures necessary to protect the
21 security, confidentiality, and integrity of personally identi-
22 fiable information maintained by that provider or oper-
23 ator.

1 **TITLE II—ENFORCEMENT**

2 **SEC. 201. ENFORCEMENT BY FEDERAL TRADE COMMIS-**
 3 **SION.**

4 Except as provided in section 202(b) of this Act and
 5 section 2710(d) of title 18, United States Code, this Act
 6 shall be enforced by the Commission.

7 **SEC. 202. VIOLATION IS UNFAIR OR DECEPTIVE ACT OR**
 8 **PRACTICE.**

9 (a) **IN GENERAL.**—The violation of any provision of
 10 title I is an unfair or deceptive act or practice proscribed
 11 under section 18(a)(1)(B) of the Federal Trade Commis-
 12 sion Act (15 U.S.C. 57a(a)(1)(B)).

13 (b) **ENFORCEMENT BY CERTAIN OTHER AGEN-**
 14 **CIES.**—Compliance with title I of this Act shall be en-
 15 forced 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 ~~25A~~ of the Federal Reserve Act
4 (~~12 U.S.C. 601 and 611~~), by the Board; and

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

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

16 (3) the Federal Credit Union Act (~~12 U.S.C.~~
17 ~~1751 et seq.~~) by the National Credit Union Adminis-
18 tration Board with respect to any Federal credit
19 union;

20 (4) part A of subtitle VII of title 49, United
21 States Code, by the Secretary of Transportation
22 with respect to any air carrier or foreign air carrier
23 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 (b) of its powers under any Act referred to in that
12 subsection, a violation of title I is deemed to be a violation
13 of a requirement imposed under that Act. In addition to
14 its powers under any provision of law specifically referred
15 to in subsection (b), each of the agencies referred to in
16 that subsection may exercise, for the purpose of enforcing
17 compliance with any requirement imposed under title I,
18 any other authority conferred on it by law.

19 (d) ACTIONS BY THE COMMISSION.—The Commis-
20 sion shall prevent any person from violating title I in the
21 same manner, by the same means, and with the same ju-
22 risdiction, powers, and duties as though all applicable
23 terms and provisions of the Federal Trade Commission
24 Act (15 U.S.C. 41 et seq.) were incorporated into and
25 made a part of this Act. Any entity that violates any provi-

1 sion of that subtitle is subject to the penalties and entitled
 2 to the privileges and immunities provided in the Federal
 3 Trade Commission Act in the same manner, by the same
 4 means, and with the same jurisdiction, power, and duties
 5 as though all applicable terms and provisions of the Fed-
 6 eral Trade Commission Act were incorporated into and
 7 made a part of that subtitle.

8 (e) DISPOSITION OF CIVIL PENALTIES OBTAINED BY
 9 FTC ENFORCEMENT ACTION INVOLVING NONSENSITIVE
 10 PERSONALLY IDENTIFIABLE INFORMATION.—

11 (1) IN GENERAL.—If a civil penalty is imposed
 12 on an internet service provider, online service pro-
 13 vider, or commercial website operator in an enforce-
 14 ment action brought by the Commission for a viola-
 15 tion of title I with respect to nonsensitive personally
 16 identifiable information of users of the service or
 17 website, the penalty shall be—

18 (A) paid to the Commission;

19 (B) held by the Commission in trust for
 20 distribution under paragraph (2); and

21 (C) distributed in accordance with para-
 22 graph (2).

23 (2) DISTRIBUTION TO USERS.—Under proce-
 24 dures to be established by the Commission, the Com-
 25 mission shall hold any amount received as a civil

1 penalty for violation of title I for a period of not less
2 than 180 days for distribution under those proce-
3 dures to users—

4 (A) whose nonsensitive personally identifi-
5 able information was the subject of the viola-
6 tion; and

7 (B) who file claims with the Commission
8 for compensation for loss or damage from the
9 violation at such time, in such manner, and
10 containing such information as the Commission
11 may require.

12 ~~(3) AMOUNT OF PAYMENT.~~—The amount a user
13 may receive under paragraph ~~(2)~~—

14 (i) shall not exceed \$200; and

15 (ii) may be limited by the Commission
16 as necessary to afford each such user a
17 reasonable opportunity to secure that
18 user's appropriate portion of the amount
19 available for distribution.

20 ~~(4) REMAINDER.~~—If the amount of any such
21 penalty held by the Commission exceeds the sum of
22 the amounts distributed under paragraph ~~(2)~~ attrib-
23 utable to that penalty, the excess shall be covered
24 into the Treasury of the United States as miscella-

1 neous receipts no later than 12 months after it was
2 paid to the Commission.

3 (f) EFFECT ON OTHER LAWS.—

4 (1) PRESERVATION OF COMMISSION AUTHOR-
5 ITY.—Nothing contained in this subtitle shall be
6 construed to limit the authority of the Commission
7 under any other provision of law.

8 (2) RELATION TO TITLE II OF COMMUNICA-
9 TIONS ACT.—Nothing in title I requires an operator
10 of a website or online service to take any action that
11 is inconsistent with the requirements of section 222
12 of the Communications Act of 1934 (47 U.S.C.
13 222).

14 (3) RELATION TO TITLE VI OF COMMUNICA-
15 TIONS ACT.—Section 631 of the Communications
16 Act of 1934 (47 U.S.C. 551) is amended by adding
17 at the end the following:

18 “(i) To the extent that the application of any provi-
19 sion of this title to a cable operator as an internet service
20 provider, online service provider, or operator of a commer-
21 cial website (as those terms are defined in section 401 of
22 the Online Personal Privacy Act) with respect to the provi-
23 sion of Internet service or online service, or the operation
24 of a commercial website, conflicts with the application of
25 any provision of that Act to such provision or operation,

1 the Act shall be applied in lieu of the conflicting provision
2 of this title.”.

3 **SEC. 203. ACTIONS BY USERS.**

4 (a) PRIVATE RIGHT OF ACTION FOR SENSITIVE PER-
5 SONALLY IDENTIFIABLE INFORMATION.—If an internet
6 service provider, online service provider, or commercial
7 website operator collects, discloses, or uses the sensitive
8 personally identifiable information of any person or fails
9 to provide reasonable access to or reasonable security for
10 such sensitive personally identifiable information in viola-
11 tion of any provision of title I then that person may bring
12 an action in a district court of the United States of appro-
13 priate jurisdiction—

14 (1) to enjoin or restrain a violation of title I or
15 to obtain other appropriate relief; and

16 (2) upon a showing of actual harm to that per-
17 son caused by the violation; to recover the greater
18 of—

19 (A) the actual monetary loss from the vio-
20 lation; or

21 (B) \$5,000.

22 (b) REPEATED VIOLATIONS.—If the court finds, in
23 an action brought under subsection (a) to recover dam-
24 ages, that the defendant repeatedly and knowingly violated
25 title I, the court may, in its discretion, increase the

1 amount of the award available under subsection (a)(2)(B)
 2 to an amount not in excess of \$100,000.

3 (c) ~~EXCEPTION.~~—Neither an action to enjoin or re-
 4 strain a violation, nor an action to recover for loss or dam-
 5 age, may be brought under this section for the accidental
 6 disclosure of information if the disclosure was caused by
 7 an Act of God, unforeseeable network or systems failure,
 8 or other event beyond the control of the Internet service
 9 provider, online service provider, or operator of a commer-
 10 cial website.

11 **SEC. 204. ACTIONS BY STATES.**

12 (a) ~~IN GENERAL.~~—

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

22 (A) to enjoin that practice;

23 (B) to enforce compliance with the rule;

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

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

6 (2) NOTICE.—

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

11 (i) written notice of that action; and

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

14 (B) EXEMPTION.—

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

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

1 same time as the attorney general files the
2 action.

3 (b) INTERVENTION.—

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

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

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

13 (B) to file a petition for appeal.

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

19 (1) conduct investigations;

20 (2) administer oaths or affirmations; or

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

23 (d) ACTIONS BY THE COMMISSION.—In any case
24 in which an action is instituted by or on behalf of the
25 Commission for violation of title I, no State may, during

1 the pendency of that action, institute an action under
 2 subsection (a) against any defendant named in the com-
 3 plaint in that action for violation of that rule.

4 (c) VENUE; SERVICE OF PROCESS.—

5 (1) VENUE.—Any action brought under sub-
 6 section (a) may be brought in the district court of
 7 the United States that meets applicable require-
 8 ments relating to venue under section 1391 of title
 9 28, United States Code.

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

13 (A) is an inhabitant; or

14 (B) may be found.

15 **SEC. 205. WHISTLEBLOWER PROTECTION.**

16 (a) IN GENERAL.—No internet service provider, on-
 17 line service provider, or commercial website operator may
 18 discharge or otherwise discriminate against any employee
 19 with respect to compensation, terms, conditions, or privi-
 20 leges of employment because the employee (or any person
 21 acting pursuant to the request of the employee) provided
 22 information to any Federal or State agency or to the At-
 23 torney General of the United States or of any State re-
 24 garding a violation of any provision of title I.

1 (b) ENFORCEMENT.—Any employee or former em-
2 ployee who believes he has been discharged or discrimi-
3 nated against in violation of subsection (a) may file a civil
4 action in the appropriate United States district court be-
5 fore the close of the 2-year period beginning on the date
6 of such discharge or discrimination. The complainant shall
7 also file a copy of the complaint initiating such action with
8 the appropriate Federal agency.

9 (c) REMEDIES.—If the district court determines that
10 a violation of subsection (a) has occurred, it may order
11 the Internet service provider, online service provider, or
12 commercial website operator that committed the
13 violation—

14 (1) to reinstate the employee to his former posi-
15 tion;

16 (2) to pay compensatory damages; or

17 (3) to take other appropriate actions to remedy
18 any past discrimination.

19 (d) LIMITATION.—The protections of this section
20 shall not apply to any employee who—

21 (1) deliberately causes or participates in the al-
22 leged violation; or

23 (2) knowingly or recklessly provides substan-
24 tially false information to such an agency or the At-
25 torney General.

1 (e) **BURDENS OF PROOF.**—The legal burdens of proof
 2 that prevail under subchapter III of chapter 12 of title
 3 5, United States Code (5 U.S.C. 1221 et seq.) shall govern
 4 adjudication of protected activities under this section.

5 **SEC. 206. NO EFFECT ON OTHER REMEDIES.**

6 The remedies provided by sections 203 and 204 are
 7 in addition to any other remedy available under any provi-
 8 sion of law.

9 **TITLE III—APPLICATION TO**
 10 **CONGRESS AND FEDERAL**
 11 **AGENCIES**

12 **SEC. 301. SENATE.**

13 The Sergeant at Arms of the United States Senate
 14 shall develop regulations setting forth an information se-
 15 curity and electronic privacy policy governing use of the
 16 Internet by officers and employees of the Senate that
 17 meets the requirements of title I.

18 **SEC. 302. APPLICATION TO FEDERAL AGENCIES.**

19 (a) **IN GENERAL.**—Except as provided in subsection
 20 (b), this Act applies to each Federal agency that is an
 21 internet service provider or an online service provider, or
 22 that operates a website, to the extent provided by section
 23 2674 of title 28, United States Code.

24 (b) **EXCEPTIONS.**—This Act does not apply to any
 25 Federal agency to the extent that the application of this

1 Act would compromise law enforcement activities or the
2 administration of any investigative, security, or safety op-
3 eration conducted in accordance with Federal law.

4 **TITLE IV—MISCELLANEOUS**

5 **SEC. 401. DEFINITIONS.**

6 In this Act:

7 (1) COLLECT.—The term “collect” means the
8 gathering of personally identifiable information
9 about a user of an Internet service, online service, or
10 commercial website by or on behalf of the provider
11 or operator of that service or website by any means,
12 direct or indirect, active or passive, including—

13 (A) an online request for such information
14 by the provider or operator, regardless of how
15 the information is transmitted to the provider
16 or operator;

17 (B) the use of a chat room, message board,
18 or other online service to gather the informa-
19 tion; or

20 (C) tracking or use of any identifying code
21 linked to a user of such a service or website, in-
22 cluding the use of cookies or other tracking
23 technology.

24 (2) COMMISSION.—The term “Commission”
25 means the Federal Trade Commission.

1 (3) **COOKIE.**—The term “cookie” means any
2 program, function, or device, commonly known as a
3 “cookie”, that makes a record on the user’s com-
4 puter (or other electronic device) of that user’s ac-
5 cess to an internet service, online service, or com-
6 mercial website.

7 (4) **DISCLOSE.**—The term “disclose” means the
8 release of personally identifiable information about a
9 user of an Internet service, online service, or com-
10 mercial website by an internet service provider, on-
11 line service provider, or operator of a commercial
12 website for any purpose, except where such informa-
13 tion is provided to a person who provides support for
14 the internal operations of the service or website and
15 who does not disclose or use that information for
16 any other purpose.

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

20 (6) **INTERNAL OPERATIONS SUPPORT.**—The
21 term “support for the internal operations of a serv-
22 ice or website” means any activity necessary to
23 maintain the technical functionality of that service
24 or website.

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

10 (8) INTERNET SERVICE PROVIDER; ONLINE
11 SERVICE PROVIDER; WEBSITE.—The Commission
12 shall by rule define the terms “internet service pro-
13 vider”, “online service provider”, and “website”, and
14 shall revise or amend such rule to take into account
15 changes in technology, practice, or procedure with
16 respect to the collection of personal information over
17 the Internet.

18 (9) ONLINE.—The term “online” refers to any
19 activity regulated by this Act or by section 2710 of
20 title 18, United States Code, that is effected by ac-
21 tive or passive use of an Internet connection, regard-
22 less of the medium by or through which that connec-
23 tion is established.

24 (10) OPERATOR OF A COMMERCIAL WEBSITE.—
25 The term “operator of a commercial website”—

1 (A) means any person who operates a
2 website located on the Internet or an online
3 service and who collects or maintains personal
4 information from or about the users of or visi-
5 tors to such website or online service, or on
6 whose behalf such information is collected or
7 maintained, where such website or online serv-
8 ice is operated for commercial purposes, includ-
9 ing any person offering products or services for
10 sale through that website or online service, in-
11 volving commerce—

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

14 (ii) in any territory of the United
15 States or in the District of Columbia, or
16 between any such territory and—

17 (I) another such territory; or

18 (II) any State or foreign nation;

19 or

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

22 but

23 (B) does not include any nonprofit entity
24 that would otherwise be exempt from coverage

1 under section 5 of the Federal Trade Commis-
2 sion Act (15 U.S.C. 45).

3 (11) PERSONALLY IDENTIFIABLE INFORMA-
4 TION.—

5 (A) IN GENERAL.—The term “personally
6 identifiable information” means individually
7 identifiable information about an individual col-
8 lected online, including—

9 (i) a first and last name, whether
10 given at birth or adoption, assumed, or le-
11 gally changed;

12 (ii) a home or other physical address
13 including street name and name of a city
14 or town;

15 (iii) an e-mail address;

16 (iv) a telephone number;

17 (v) a birth certificate number;

18 (vi) any other identifier for which the
19 Commission finds there is a substantial
20 likelihood that the identifier would permit
21 the physical or online contacting of a spe-
22 cific individual; or

23 (vii) information that an Internet
24 service provider, online service provider, or
25 operator of a commercial website collects

1 and combines with an identifier described
2 in clauses (i) through (vi) of this subpara-
3 graph.

4 ~~(B) INFERENTIAL INFORMATION EX-~~
5 ~~CLUDED.—~~Information about an individual de-
6 rived or inferred from data collected online but
7 not actually collected online is not personally
8 identifiable information.

9 ~~(12) RELEASE.—~~The term “release of person-
10 ally identifiable information” means the direct or in-
11 direct, sharing, selling, renting, or other provision of
12 personally identifiable information of a user of an
13 internet service, online service, or commercial
14 website to any other person other than the user.

15 ~~(13) ROBUST NOTICE.—~~The term “robust no-
16 tice” means actual notice at the point of collection
17 of the personally identifiable information describing
18 briefly and succinctly the intent of the Internet serv-
19 ice provider, online service provider, or operator of
20 a commercial website to use or disclose that infor-
21 mation for marketing or other purposes.

22 ~~(14) SENSITIVE FINANCIAL INFORMATION.—~~
23 The term “sensitive financial information” means—

24 ~~(A) the amount of income earned or losses~~
25 suffered by an individual;

1 (B) an individual's account number or bal-
 2 ance information for a savings, checking, money
 3 market, credit card, brokerage, or other finan-
 4 cial services account;

5 (C) the access code, security password, or
 6 similar mechanism that permits access to an in-
 7 dividual's financial services account;

8 (D) an individual's insurance policy infor-
 9 mation, including the existence, premium, face
 10 amount, or coverage limits of an insurance pol-
 11 icy held by or for the benefit of an individual;
 12 or

13 (E) an individual's outstanding credit card,
 14 debt, or loan obligations.

15 (15) SENSITIVE PERSONALLY IDENTIFIABLE IN-
 16 FORMATION.—The term “sensitive personally identi-
 17 fiable information” means personally identifiable in-
 18 formation about an individual's—

19 (A) individually identifiable health infor-
 20 mation (as defined in section 164.501 of title
 21 45, Code of Federal Regulations);

22 (B) race or ethnicity;

23 (C) political party affiliation;

24 (D) religious beliefs;

25 (E) sexual orientation;

- 1 ~~(F) a Social Security number; or~~
2 ~~(G) sensitive financial information.~~

3 **SEC. 402. EFFECTIVE DATE OF TITLE I.**

4 Title I of this Act takes effect on the day after the
5 date on which the Commission publishes a final rule under
6 section 403.

7 **SEC. 403. FTC RULEMAKING.**

8 The Commission shall—

9 ~~(1) initiate a rulemaking within 90 days after~~
10 ~~the date of enactment of this Act for regulations to~~
11 ~~implement the provisions of title I; and~~

12 ~~(2) complete that rulemaking within 270 days~~
13 ~~after initiating it.~~

14 **SEC. 404. FTC REPORT.**

15 ~~(a) REPORT.—The Commission shall submit a report~~
16 ~~to the Senate Committee on Commerce, Science, and~~
17 ~~Transportation and the House of Representatives Com-~~
18 ~~mittee on Commerce 18 months after the effective date~~
19 ~~of title I, and annually thereafter, on—~~

20 ~~(1) whether this Act is accomplishing the pur-~~
21 ~~poses for which it was enacted;~~

22 ~~(2) whether technology that protects privacy is~~
23 ~~being utilized in the marketplace in such a manner~~
24 ~~as to facilitate administration of and compliance~~
25 ~~with title I;~~

1 (3) whether additional legislation is required to
2 accomplish those purposes or improve the admin-
3 istrability or effectiveness of this Act;

4 (4) whether legislation is appropriate or nec-
5 essary to regulate the collection, use, and distribu-
6 tion of personally identifiable information collected
7 other than via the Internet;

8 (5) whether and how the government might as-
9 sist industry in developing standard online privacy
10 notices that substantially comply with the require-
11 ments of section 102(a);

12 (6) whether and how the creation of a set of
13 self-regulatory guidelines established by independent
14 safe harbor organizations and approved by the Com-
15 mission would facilitate administration of and com-
16 pliance with title I; and

17 (7) whether additional legislation is necessary
18 or appropriate to regulate the collection, use, and
19 disclosure of personally identifiable information col-
20 lected online before the effective date of title I.

21 (b) FTC NOTICE OF INQUIRY.—The Commission
22 shall initiate a notice of inquiry within 90 days after the
23 date of enactment of this Act to request comment on the
24 matter described in paragraphs (1) through (7) of sub-
25 section (a).

1 **SEC. 405. DEVELOPMENT OF AUTOMATED PRIVACY CON-**
 2 **TROLS.**

3 Section 20 of the National Institute of Standards and
 4 Technology Act (15 U.S.C. 278g-3) is amended—

5 (1) by redesignating subsection (d) as sub-
 6 section (e); and

7 (2) by inserting after subsection (e) the fol-
 8 lowing:

9 “(d) DEVELOPMENT OF INTERNET PRIVACY PRO-
 10 GRAM.—The Institute shall encourage and support the de-
 11 velopment of one or more computer programs, protocols,
 12 or other software, such as the World Wide Web Consor-
 13 tium’s P3P program, capable of being installed on com-
 14 puters, or computer networks, with Internet access that
 15 would reflect the user’s preferences for protecting person-
 16 ally-identifiable or other sensitive, privacy-related informa-
 17 tion, and automatically execute the program, once acti-
 18 vated, without requiring user intervention.”

19 **SECTION 1. SHORT TITLE.**

20 *This Act may be cited as the “Online Personal Privacy*
 21 *Act”.*

22 **SEC. 2. TABLE OF CONTENTS.**

23 *The table of contents of this Act is as follows:*

Sec. 1. Short title.

Sec. 2. Table of contents.

Sec. 3. Findings.

Sec. 4. Preemption of State law or regulations.

TITLE I—ONLINE PRIVACY PROTECTION

- Sec. 101. Collection, use, or disclosure of personally identifiable information.*
Sec. 102. Notice and consent requirements.
Sec. 103. Policy changes; privacy breach.
Sec. 104. Exceptions.
Sec. 105. Access.
Sec. 106. Security.

TITLE II—ENFORCEMENT

- Sec. 201. Enforcement by Federal Trade Commission.*
Sec. 202. Violation is unfair or deceptive act or practice.
Sec. 203. Safe harbor self-regulatory programs.
Sec. 204. Small business safe harbor.
Sec. 205. Private right of action.
Sec. 206. Actions by States.
Sec. 207. Whistleblower protection.
Sec. 208. No effect on other remedies.

TITLE III—APPLICATION TO CONGRESS AND FEDERAL AGENCIES

- Sec. 301. Exercise of rulemaking power.*
Sec. 302. Senate.
Sec. 303. Application to Federal agencies.

TITLE IV—MISCELLANEOUS

- Sec. 401. Definitions.*
Sec. 402. Effective date.
Sec. 403. FTC rulemaking.
Sec. 404. FTC report.
Sec. 405. Development of automated privacy controls.

TITLE V—OFFLINE PRIVACY

- Sec. 501. Collection, use, and disclosure of personally identifiable information collected offline.*

1 SEC. 3. FINDINGS.

2 *The Congress finds the following:*

3 (1) *The right to privacy is a personal and fun-*
4 *damental right worthy of protection through appro-*
5 *priate legislation.*

6 (2) *Individuals engaging in and interacting*
7 *with companies engaged in interstate commerce have*
8 *a significant interest in their personal information,*

1 *as well as a right to control how that information is*
2 *collected, used, or transferred.*

3 *(3) Absent the recognition of these rights and the*
4 *establishment of consequent industry responsibilities*
5 *to safeguard those rights, the privacy of individuals*
6 *who use the Internet will soon be more gravely threat-*
7 *ened.*

8 *(4) To extent that States regulate, their efforts to*
9 *address Internet privacy will lead to a patchwork of*
10 *inconsistent standards and protections.*

11 *(5) Existing State, local, and Federal laws pro-*
12 *vide minimal privacy protection for Internet users.*

13 *(6) With the exception of Federal Trade Commis-*
14 *sion enforcement of laws against unfair and deceptive*
15 *practices, the Federal Government thus far has es-*
16 *chewed general Internet privacy laws in favor of in-*
17 *dustry self-regulation, which has led to several self-po-*
18 *licing schemes, some of which are enforceable, and*
19 *some of which provide insufficient privacy protection*
20 *to individuals.*

21 *(7) Many Internet businesses have developed*
22 *good Internet privacy policies that provide consumers*
23 *notice, choice, access, and security with respect to*
24 *their personal information.*

1 (8) *Many other Internet businesses, however,*
2 *have yet to provide these baseline fair information*
3 *practices, and, absent legislative requirements to the*
4 *contrary, seem unlikely to do so in the near future.*

5 (9) *State governments have been reluctant to*
6 *enter the field of Internet privacy regulation because*
7 *use of the Internet often crosses State, or even na-*
8 *tional, boundaries.*

9 (10) *States are nonetheless interested in pro-*
10 *viding greater privacy protection to their citizens as*
11 *evidenced by recent lawsuits brought against offline*
12 *and online companies by State attorneys general to*
13 *protect the privacy of individuals using the Internet.*

14 (11) *The ease of gathering and compiling per-*
15 *sonal information on the Internet, both overtly and*
16 *surreptitiously, is becoming increasingly efficient and*
17 *effortless due to advances in digital communications*
18 *technology which have provided information gatherers*
19 *the ability to compile seamlessly highly detailed per-*
20 *sonal histories of Internet users.*

21 (12) *Personal information flowing over the Inter-*
22 *net requires greater privacy protection than is cur-*
23 *rently available today. Vast amounts of personal in-*
24 *formation, including sensitive information, about in-*

1 *dividual Internet users are collected on the Internet*
2 *and sold or otherwise transferred to third parties.*

3 (13) *Poll after poll consistently demonstrates*
4 *that individual Internet users are highly troubled*
5 *over their lack of control over their personal informa-*
6 *tion.*

7 (14) *Market research demonstrates that tens of*
8 *billions of dollars in e-commerce are lost due to indi-*
9 *vidual fears about a lack of privacy protection on the*
10 *Internet.*

11 (15) *Market research demonstrates that as many*
12 *as one-third of all Internet users give false informa-*
13 *tion about themselves to protect their privacy, due to*
14 *fears about a lack of privacy protection on the Inter-*
15 *net.*

16 (16) *Notwithstanding these concerns, the Internet*
17 *is becoming a major part of the personal and com-*
18 *mercial lives of millions of Americans, providing in-*
19 *creased access to information, as well as communica-*
20 *tions and commercial opportunities.*

21 (17) *It is important to establish personal pri-*
22 *vacv rights and industry obligations now so that in-*
23 *dividuals have confidence that their personal privacy*
24 *is fully protected on the Internet.*

1 (18) *The social and economic costs of estab-*
2 *lishing baseline privacy standards now will be lower*
3 *than if Congress waits until the Internet becomes*
4 *more prevalent in our everyday lives in coming years.*

5 (19) *Whatever costs may be borne by industry*
6 *will be significantly offset by the economic benefits to*
7 *the commercial Internet created by increased con-*
8 *sumer confidence occasioned by greater privacy pro-*
9 *tection.*

10 (20) *Toward the close of the 20th Century, as in-*
11 *dividuals' personal information was increasingly col-*
12 *lected, profiled, and shared for commercial purposes,*
13 *and as technology advanced to facilitate these prac-*
14 *tices, the Congress enacted numerous statutes to pro-*
15 *tect privacy.*

16 (21) *Those statutes apply to the government, tele-*
17 *phones, cable television, e-mail, video tape rentals,*
18 *and the Internet (but only with respect to children).*

19 (22) *Those statutes all provide significant pri-*
20 *vacy protections, but neither limit technology nor sti-*
21 *fle business.*

22 (23) *Those statutes ensure that the collection and*
23 *commercialization of individuals' personal informa-*
24 *tion is fair, transparent, and subject to law.*

1 (24) *As in those instances, the Federal govern-*
 2 *ment has a substantial interest in promoting privacy*
 3 *on the Internet.*

4 **SEC. 4. PREEMPTION OF STATE LAW OR REGULATIONS.**

5 *This Act supersedes any State statute, regulation, or*
 6 *rule regulating Internet privacy to the extent that it relates*
 7 *to the collection, use, or disclosure of personally identifiable*
 8 *information obtained through the Internet.*

9 **TITLE I—ONLINE PRIVACY**
 10 **PROTECTION**

11 **SEC. 101. COLLECTION, USE, OR DISCLOSURE OF PERSON-**
 12 **ALLY IDENTIFIABLE INFORMATION.**

13 (a) *IN GENERAL.*—*An internet service provider, online*
 14 *service provider, or operator of a commercial website on the*
 15 *Internet may not collect personally identifiable information*
 16 *online from a user, or use or disclose personally identifiable*
 17 *information about a user, of that service or website except*
 18 *in accordance with the provisions of this Act.*

19 (b) *APPLICATION TO CERTAIN THIRD-PARTY OPERA-*
 20 *TORS.*—*The provisions of this Act applicable to internet*
 21 *service providers, online service providers, and commercial*
 22 *website operators apply to any third party, including an*
 23 *advertising network, that—*

1 (1) *uses an internet service provider, online serv-*
 2 *ice provider, or commercial website operator to collect*
 3 *information about users of that service or website; or*

4 (2) *makes computer software available to the*
 5 *public, by sale or otherwise, that is capable of—*

6 (A) *collecting personally identifiable infor-*
 7 *mation about the user, the hardware on which it*
 8 *is used, or the manner in which it is used; and*

9 (B) *disclosing such information to any per-*
 10 *son other than the user.*

11 **SEC. 102. NOTICE AND CONSENT REQUIREMENTS.**

12 (a) *NOTICE.—Except as provided in section 104, an*
 13 *internet service provider, online service provider, or oper-*
 14 *ator of a commercial website may not collect personally*
 15 *identifiable information from a user of that service or*
 16 *website online unless that provider or operator provides*
 17 *clear and conspicuous notice to the user in the manner re-*
 18 *quired by this section for the kind of personally identifiable*
 19 *information to be collected. The notice shall disclose—*

20 (1) *the specific types of information that will be*
 21 *collected;*

22 (2) *the methods of collecting and using the infor-*
 23 *mation collected; and*

24 (3) *all disclosure practices of that provider or*
 25 *operator for personally identifiable information so*

1 *collected, including whether it will be disclosed to*
2 *third parties.*

3 *(b) SENSITIVE PERSONALLY IDENTIFIABLE INFORMA-*
4 *TION REQUIRES OPT-IN CONSENT.—An internet service*
5 *provider, online service provider, or operator of a commer-*
6 *cial website may not—*

7 *(1) collect sensitive personally identifiable infor-*
8 *mation online, or*

9 *(2) disclose or otherwise use such information*
10 *collected online, from a user of that service or website,*
11 *unless the provider or operator obtains that user’s consent*
12 *to the collection and disclosure or use of that information*
13 *before, or at the time, the information is collected and the*
14 *user’s consent is manifested by an affirmative act in a writ-*
15 *ten or electronic communication.*

16 *(c) NONSENSITIVE PERSONALLY IDENTIFIABLE INFOR-*
17 *MATION REQUIRES ROBUST NOTICE AND OPT-OUT CON-*
18 *SENT.—An internet service provider, online service pro-*
19 *vider, or operator of a commercial website may not—*

20 *(1) collect personally identifiable information*
21 *not described in subsection (b) online, or*

22 *(2) disclose or otherwise use such information*
23 *collected online, from a user of that service or website,*
24 *unless the provider or operator provides robust notice to the*
25 *user, in addition to clear and conspicuous notice, and has*

1 *given the user an opportunity to decline consent for such*
 2 *collection and use by the provider or operator before, or at*
 3 *the time, the information is collected.*

4 (d) *INITIAL NOTICE ONLY FOR ROBUST NOTICE.—An*
 5 *internet service provider, online service provider, or oper-*
 6 *ator of a commercial website shall provide robust notice*
 7 *under subsection (c) of this section to a user only upon its*
 8 *first collection of non-sensitive personally identifiable infor-*
 9 *mation from that user, except that a subsequent collection*
 10 *of materially different non-sensitive personally identifiable*
 11 *information from that user shall be treated as a first collec-*
 12 *tion of such information from that user.*

13 (e) *PERMANENCE OF CONSENT.—*

14 (1) *IN GENERAL.—The consent or denial of con-*
 15 *sent by a user of permission to an internet service*
 16 *provider, online service provider, or operator of a*
 17 *commercial website to collect, disclose, or otherwise*
 18 *use any information about that user for which con-*
 19 *sent is required under this Act—*

20 (A) *shall remain in effect until changed by*
 21 *the user; and*

22 (B) *shall apply to the collection, disclosure,*
 23 *or other use of that information by any entity*
 24 *that is a commercial successor of, or legal suc-*
 25 *cessor-in-interest to, that provider or operator,*

1 *without regard to the legal form in which such*
2 *succession was accomplished (including any enti-*
3 *ty that collects, discloses, or uses such informa-*
4 *tion as a result of a proceeding under chapter 7*
5 *or chapter 11 of title 11, United States Code,*
6 *with respect to the provider or operator).*

7 (2) *EXCEPTION.*—*The consent by a user to the*
8 *collection, disclosure, or other use of information*
9 *about that user for which consent is required under*
10 *this Act does not apply to the collection, disclosure, or*
11 *use of that information by a successor entity under*
12 *paragraph (1)(B) if—*

13 (A) *the kind of information collected by the*
14 *successor entity about the user is materially dif-*
15 *ferent from the kind of information collected by*
16 *the predecessor entity;*

17 (B) *the methods of collecting and using the*
18 *information employed by the successor entity are*
19 *materially different from the methods employed*
20 *by the predecessor entity; or*

21 (C) *the disclosure practices of the successor*
22 *entity are materially different from the practices*
23 *of the predecessor entity.*

1 **SEC. 103. POLICY CHANGES; BREACH OF PRIVACY.**

2 (a) *NOTICE OF POLICY CHANGE.*—Whenever an inter-
3 net service provider, online service provider, or operator of
4 a commercial website makes a material change in its policy
5 for the collection, use, or disclosure of sensitive or nonsen-
6 sitive personally identifiable information, it—

7 (1) shall notify all users of that service or
8 website of the change in policy; and

9 (2) may not collect, disclose, or otherwise use
10 any sensitive or nonsensitive personally identifiable
11 information in accordance with the changed policy
12 unless the user has been afforded an opportunity to
13 consent, or withhold consent, to its collection, disclo-
14 sure, or use in accordance with the requirements of
15 section 102(b) or (c), whichever is applicable.

16 (b) *NOTICE OF BREACH OF PRIVACY.*—

17 (1) *IN GENERAL.*—If the sensitive or nonsensitive
18 personally identifiable information of a user of an
19 internet service provider, online service provider, or
20 operator of a commercial website—

21 (A) is disclosed by the provider or operator
22 in violation of any provision of this Act, or

23 (B) the security, confidentiality, or integ-
24 rity of such information is compromised by a
25 hacker or other third party, or by any act or
26 failure to act of the provider or operator and the

1 *compromise, act, or failure to act results in a*
2 *disclosure of personally identifiable information*
3 *in violation of any provision of this Act,*
4 *then the provider or operator shall notify all users*
5 *whose sensitive or nonsensitive personally identifiable*
6 *information was affected by the unlawful collection,*
7 *disclosure, use, compromise, act, or failure to act. The*
8 *notice shall describe the nature of the unlawful collec-*
9 *tion, disclosure, use, compromise, act, or failure to act*
10 *and the steps taken by the provider or operator to*
11 *remedy it.*

12 (2) *DELAY OF NOTIFICATION.—*

13 (A) *ACTION TAKEN BY INDIVIDUALS.—If the*
14 *compromise of the security, confidentiality, or*
15 *integrity of the information is caused by a hack-*
16 *er or other external interference with the service*
17 *or website, or by an employee of the service or*
18 *website, the provider or operator may postpone*
19 *issuing the notice required by paragraph (1) for*
20 *a reasonable period of time in order to—*

21 (i) *facilitate the detection and appre-*
22 *hension of the person responsible for the*
23 *compromise; and*

24 (ii) *take such measures as may be nec-*
25 *essary to restore the integrity of the service*

1 *or website and prevent any further com-*
2 *promise of the security, confidentiality, and*
3 *integrity of such information.*

4 (B) *SYSTEM FAILURES AND OTHER FUNC-*
5 *TIONAL CAUSES.—If the unlawful collection, dis-*
6 *closure, use, or compromise of the security, con-*
7 *fidentiality, and integrity of the information is*
8 *the result of a system failure, a problem with the*
9 *operating system, software, or program used by*
10 *the internet service provider, online service pro-*
11 *vider, or operator of the commercial website, or*
12 *other non-external interference with the service*
13 *or website, the provider or operator may post-*
14 *pone issuing the notice required by paragraph*
15 *(1) for a reasonable period of time in order to—*

16 *(i) restore the system’s functionality or*
17 *fix the problem; and*

18 *(ii) take such measures as may be nec-*
19 *essary to restore the integrity of the service*
20 *or website and prevent any further com-*
21 *promise of the security, confidentiality, and*
22 *integrity of the information after the failure*
23 *or problem has been fixed and the integrity*
24 *of the service or website has been restored.*

1 (c) *COMPLIANCE OFFICERS.*—*Each internet service*
2 *provider, online service provider, and operator of a com-*
3 *mercial website shall designate a privacy compliance offi-*
4 *cer, who shall be responsible for ensuring compliance with*
5 *the requirements of this title and the privacy policies of that*
6 *provider or operator.*

7 **SEC. 104. EXCEPTIONS.**

8 (a) *IN GENERAL.*—*Section 102 does not apply to the*
9 *collection, disclosure, or use by an internet service provider,*
10 *online service provider, or operator of a commercial website*
11 *of information about a user of that service or website*
12 *necessary—*

13 (1) *to protect the security or integrity of the*
14 *service or website or to ensure the safety, health, or*
15 *life of other people or property;*

16 (2) *to conduct a transaction, deliver a product or*
17 *service, or complete an arrangement for which the*
18 *user provided the information;*

19 (3) *to provide other products and services or con-*
20 *duct activities integrally related to the transaction,*
21 *service, product, or arrangement for which the user*
22 *provided the information; or*

23 (4) *to comply with the Fair Credit Reporting*
24 *Act (15 U.S.C. 1681 et seq.) determined without re-*

1 *gard to section 603(d)(2) of that Act (15 U.S.C.*
2 *1681a(d)(2)).*

3 **(b) PROTECTED DISCLOSURES AND OTHER REGU-**
4 **LATED ACTIVITIES.—**

5 **(1) IN GENERAL.—***An internet service provider,*
6 *online service provider, or operator of a commercial*
7 *website may not be held liable under this Act, any*
8 *other Federal law, or any State law for any disclo-*
9 *sure made in good faith and following reasonable pro-*
10 *cedures in responding to—*

11 **(A)** *a request for disclosure of personal in-*
12 *formation under section 1302(b)(1)(B)(iii) of the*
13 *Children’s Online Privacy Protection Act of 1998*
14 *(15 U.S.C. 6501 et seq.) to the parent of a child;*
15 *or*

16 **(B)** *a request for access to, or correction or*
17 *deletion of, personally identifiable information*
18 *under section 105 of this Act.*

19 **(2) FINANCIAL INSTITUTIONS.—***A financial in-*
20 *stitution (as defined in section 509(3) of the Gramm-*
21 *Leach-Bliley Act (15 U.S.C. 6809(3)) that is an inter-*
22 *net service provider, online service provider, or oper-*
23 *ator of a commercial website may not be held liable*
24 *under this Act for any disclosure described in section*
25 *502(e) of that Act (15 U.S.C. 6802(e)).*

1 (c) *DISCLOSURE TO LAW ENFORCEMENT AGENCY OR*
2 *UNDER COURT ORDER.*—

3 (1) *IN GENERAL.*—*Notwithstanding any other*
4 *provision of this Act, an internet service provider, on-*
5 *line service provider, operator of a commercial*
6 *website, or third party that uses such a service or*
7 *website to collect information about users of that serv-*
8 *ice or website, may disclose personally identifiable in-*
9 *formation about a user of that service or website—*

10 (A) *to a law enforcement, investigatory, na-*
11 *tional security, or regulatory agency or depart-*
12 *ment of the United States in response to a re-*
13 *quest or demand made under authority granted*
14 *to that agency or department by statute, rule, or*
15 *regulation, or pursuant to a warrant issued*
16 *under the Federal Rules of Criminal Procedure,*
17 *an equivalent State warrant, a court order, or a*
18 *properly executed administrative compulsory*
19 *process; or*

20 (B) *in response to a court order in a civil*
21 *proceeding granted upon a showing of compel-*
22 *ling need for the information that cannot be ac-*
23 *commodated by any other means if—*

24 (i) *the user to whom the information*
25 *relates is given reasonable notice by the per-*

1 son seeking the information of the court
2 proceeding at which the order is requested;
3 and

4 (ii) that user is afforded a reasonable
5 opportunity to appear and contest the
6 issuance of requested order or to narrow its
7 scope.

8 (2) *SAFEGUARDS AGAINST FURTHER DISCLO-*
9 *SURE.—A court that issues an order described in*
10 *paragraph (1)(B) shall impose appropriate safe-*
11 *guards on the use of the information to protect*
12 *against its unauthorized disclosure.*

13 (d) *EMERGENCY DISCLOSURES.—Notwithstanding*
14 *any other provision of this Act, an internet service provider,*
15 *online service provider, operator of a commercial website,*
16 *or third party that uses such a service or website to collect*
17 *information about users of that service or website, may dis-*
18 *close personally identifiable information about a user of*
19 *that service or website to a law enforcement officer, hospital,*
20 *clinic, or other lawful medical organization or a licensed*
21 *physician or other healthcare professional if—*

22 (1) *the disclosure is critical to the life, safety, or*
23 *health of the user or other individuals;*

24 (2) *it is not feasible under the circumstances to*
25 *obtain timely consent; and*

1 (3) *the disclosure is no greater than necessary to*
2 *accomplish the purpose for which the information is*
3 *disclosed.*

4 (e) *DISCLOSURE FOR PROFESSIONAL SERVICES PUR-*
5 *POSES.—Notwithstanding any other provision of this Act,*
6 *an internet service provider, online service provider, oper-*
7 *ator of a commercial website, or third party that uses such*
8 *a service or website to collect information about users of*
9 *that service or website, may disclose personally identifiable*
10 *information about a user of that service or website to a pro-*
11 *vider of professional services, or any wholly-owned affiliate*
12 *thereof, of which the user is a client, patient, or customer*
13 *if the provider or affiliate is subject to professional ethical*
14 *standards, regulations, rules, or law requiring the provider*
15 *or affiliate not to disclose confidential client information*
16 *without the consent of the client.*

17 **SEC. 105. ACCESS.**

18 (a) *IN GENERAL.—An internet service provider, online*
19 *service provider, or operator of a commercial website*
20 *shall—*

21 (1) *upon request provide reasonable access to a*
22 *user to personally identifiable information that the*
23 *provider or operator has collected and retained from*
24 *the user online, or that the provider or operator has*
25 *combined with personally identifiable information*

1 *collected and retained from the user online after the*
2 *effective date of this Act, except that, as long as a user*
3 *is not denied reasonable access to personally identifi-*
4 *able information pertaining to that use, the provider*
5 *or operator is not required to disclose information*
6 *that would compromise its ability to protect propri-*
7 *etary information about how it collects and stores its*
8 *information;*

9 *(2) provide a reasonable opportunity for a user*
10 *to suggest a correction or deletion of any such infor-*
11 *mation maintained by that provider or operator to*
12 *which the user was granted access; and*

13 *(3) make the correction a part of that user's sen-*
14 *sitive personally identifiable information or nonsen-*
15 *sitive personally identifiable information (whichever*
16 *is appropriate), or make the deletion, for all future*
17 *disclosure and other use purposes.*

18 *(b) EXCEPTION.—An internet service provider, online*
19 *service provider, or operator of a commercial website may*
20 *decline to make a suggested correction a part of that user's*
21 *sensitive personally identifiable information or nonsensitive*
22 *personally identifiable information (whichever is appro-*
23 *priate), or to make a suggested deletion if the provider or*
24 *operator—*

1 (1) *reasonably believes that the suggested correc-*
2 *tion or deletion is inaccurate or otherwise inappro-*
3 *priate;*

4 (2) *notifies the user in writing, or in digital or*
5 *other electronic form, of the reasons the provider or*
6 *operator believes the suggested correction or deletion is*
7 *inaccurate or otherwise inappropriate; and*

8 (3) *provides a reasonable opportunity for the*
9 *user to refute the reasons given by the provider or op-*
10 *erator for declining to make the suggested correction*
11 *or deletion.*

12 (c) *REASONABLENESS TEST.*—*The reasonableness of*
13 *the access or opportunity provided under subsection (a) or*
14 *(b) by an internet service provider, online service provider,*
15 *or operator of a commercial website shall be determined by*
16 *taking into account such factors as the sensitivity of the*
17 *information requested and the burden or expense on the pro-*
18 *vider or operator of complying with the request, correction,*
19 *or deletion.*

20 (d) *REASONABLE ACCESS FEE.*—

21 (1) *IN GENERAL.*—*An internet service provider,*
22 *online service provider, or operator of a commercial*
23 *website may impose a reasonable charge for access*
24 *under subsection (a).*

1 (2) *AMOUNT.*—*The amount of the fee shall not*
 2 *exceed \$3, except that upon request of a user, a pro-*
 3 *vider or operator shall provide such access without*
 4 *charge to that user if the user certifies in writing that*
 5 *the user—*

6 (A) *is unemployed and intends to apply for*
 7 *employment in the 60-day period beginning on*
 8 *the date on which the certification is made;*

9 (B) *is a recipient of public welfare assist-*
 10 *ance; or*

11 (C) *has reason to believe that the incorrect*
 12 *information is due to fraud.*

13 **SEC. 106. SECURITY.**

14 *An internet service provider, online service provider,*
 15 *or operator of a commercial website shall establish and*
 16 *maintain reasonable procedures necessary to protect the se-*
 17 *curity, confidentiality, and integrity of personally identifi-*
 18 *able information maintained by that provider or operator.*

19 **TITLE II—ENFORCEMENT**

20 **SEC. 201. ENFORCEMENT BY FEDERAL TRADE COMMISSION.**

21 *Except as provided in section 202(b) of this Act and*
 22 *section 2710(d) of title 18, United States Code, this Act*
 23 *shall be enforced by the Commission.*

1 **SEC. 202. VIOLATION IS UNFAIR OR DECEPTIVE ACT OR**
2 **PRACTICE.**

3 (a) *IN GENERAL.*—*The violation of any provision of*
4 *title I is an unfair or deceptive act or practice proscribed*
5 *under section 18(a)(1)(B) of the Federal Trade Commission*
6 *Act (15 U.S.C. 57a(a)(1)(B)).*

7 (b) *ENFORCEMENT BY CERTAIN OTHER AGENCIES.*—
8 *Compliance with title I of this Act shall be enforced—*

9 (1) *under section 8 of the Federal Deposit Insur-*
10 *ance Act (12 U.S.C. 1818), in the case of—*

11 (A) *national banks, and Federal branches*
12 *and Federal agencies of foreign banks, and any*
13 *subsidiaries of such entities (except brokers, deal-*
14 *ers, persons providing insurance, investment*
15 *companies, and investment advisers), by the Of-*
16 *fice of the Comptroller of the Currency;*

17 (B) *member banks of the Federal Reserve*
18 *System (other than national banks), branches*
19 *and agencies of foreign banks (other than Fed-*
20 *eral branches, Federal agencies, and insured*
21 *State branches of foreign banks), commercial*
22 *lending companies owned or controlled by for-*
23 *oreign banks, organizations operating under sec-*
24 *tion 25 or 25A of the Federal Reserve Act (12*
25 *U.S.C. 601 and 611), and bank holding compa-*
26 *nies and their nonbank subsidiaries or affiliates*

1 *(except brokers, dealers, persons providing insur-*
2 *ance, investment companies, and investment ad-*
3 *visers), by the Board;*

4 *(C) banks insured by the Federal Deposit*
5 *Insurance Corporation (other than members of*
6 *the Federal Reserve System) insured State*
7 *branches of foreign banks, and any subsidiaries*
8 *of such entities (except brokers, dealers, persons*
9 *providing insurance, investment companies, and*
10 *investment advisers), by the Board of Directors*
11 *of the Federal Deposit Insurance Corporation;*
12 *and*

13 *(D) savings associations the deposits of*
14 *which are insured by the Federal Deposit Insur-*
15 *ance Corporation, and any subsidiaries of such*
16 *savings associations (except brokers, dealers, per-*
17 *sons providing insurance, investment companies,*
18 *and investment advisers), by the Director of the*
19 *Office of Thrift Supervision;*

20 *(2) under the Federal Credit Union Act (12*
21 *U.S.C. 1751 et seq.) by the Board of the National*
22 *Credit Union Administration with respect to any*
23 *Federally insured credit union, and any subsidiaries*
24 *of such a credit union;*

1 (3) *under the Securities Exchange Act of 1934*
2 (15 U.S.C. 78a et seq.) *by the Securities and Ex-*
3 *change Commission with respect to any broker or*
4 *dealer;*

5 (4) *under the Investment Company Act of 1940*
6 (15 U.S.C. 80a–1 et seq.) *by the Securities and Ex-*
7 *change Commission with respect to investment com-*
8 *panies;*

9 (5) *under the Investment Advisers Act of 1940*
10 (15 U.S.C. 80b–1 et seq.) *by the Securities and Ex-*
11 *change Commission with respect to investment advis-*
12 *ers registered under that Act;*

13 (6) *under State insurance law in the case of any*
14 *person engaged in providing insurance, by the appli-*
15 *cable State insurance authority of the State in which*
16 *the person is domiciled, subject to section 104 of the*
17 *Gramm-Bliley-Leach Act (15 U.S.C. 6701);*

18 (7) *under part A of subtitle VII of title 49,*
19 *United States Code, by the Secretary of Transpor-*
20 *tation with respect to any air carrier or foreign air*
21 *carrier subject to that part;*

22 (8) *under the Packers and Stockyards Act, 1921*
23 (7 U.S.C. 181 et seq.) *(except as provided in section*
24 *406 of that Act (7 U.S.C. 226, 227)), by the Secretary*

1 *of Agriculture with respect to any activities subject to*
2 *that Act;*

3 (9) *under the Farm Credit Act of 1971 (12*
4 *U.S.C. 2001 et seq.) by the Farm Credit Administra-*
5 *tion with respect to any Federal land bank, Federal*
6 *land bank association, Federal intermediate credit*
7 *bank, or production credit association; and*

8 (10) *under title XI of the Social Security Act (42*
9 *U.S.C. 1301 et seq.) by the Secretary of Health and*
10 *Human Services with respect to persons regulated*
11 *under that title.*

12 (c) *EXERCISE OF CERTAIN POWERS.—For the purpose*
13 *of the exercise by any agency referred to in subsection (b)*
14 *of its powers under any Act referred to in that subsection,*
15 *a violation of title I is deemed to be a violation of a require-*
16 *ment imposed under that Act. In addition to its powers*
17 *under any provision of law specifically referred to in sub-*
18 *section (b), each of the agencies referred to in that subsection*
19 *may exercise, for the purpose of enforcing compliance with*
20 *any requirement imposed under title I, any other authority*
21 *conferred on it by law.*

22 (d) *ACTIONS BY THE COMMISSION.—The Commission*
23 *shall prevent any person from violating title I in the same*
24 *manner, by the same means, and with the same jurisdic-*
25 *tion, powers, and duties as though all applicable terms and*

1 *provisions of the Federal Trade Commission Act (15 U.S.C.*
 2 *41 et seq.) were incorporated into and made a part of this*
 3 *Act. Any entity that violates any provision of that subtitle*
 4 *is subject to the penalties and entitled to the privileges and*
 5 *immunities provided in the Federal Trade Commission Act*
 6 *in the same manner, by the same means, and with the same*
 7 *jurisdiction, power, and duties as though all applicable*
 8 *terms and provisions of the Federal Trade Commission Act*
 9 *were incorporated into and made a part of that subtitle.*

10 *(e) DISPOSITION OF CIVIL PENALTIES OBTAINED BY*
 11 *FTC ENFORCEMENT ACTION INVOLVING NONSENSITIVE*
 12 *PERSONALLY IDENTIFIABLE INFORMATION.—*

13 *(1) IN GENERAL.—If a civil penalty is imposed*
 14 *on an internet service provider, online service pro-*
 15 *vider, or commercial website operator in an enforce-*
 16 *ment action brought by the Commission for a viola-*
 17 *tion of title I with respect to nonsensitive personally*
 18 *identifiable information of users of the service or*
 19 *website, the penalty shall be—*

20 *(A) paid to the Commission;*

21 *(B) held by the Commission in trust for dis-*
 22 *tribution under paragraph (2); and*

23 *(C) distributed in accordance with para-*
 24 *graph (2).*

1 (2) *DISTRIBUTION TO USERS.*—Under procedures
2 to be established by the Commission, the Commission
3 shall hold any amount received as a civil penalty for
4 violation of title I for a period of not less than 180
5 days for distribution under those procedures to
6 users—

7 (A) whose nonsensitive personally identifi-
8 able information was the subject of the violation;
9 and

10 (B) who file claims with the Commission
11 for compensation for loss or damage from the
12 violation at such time, in such manner, and con-
13 taining such information as the Commission
14 may require.

15 (3) *AMOUNT OF PAYMENT.*—The amount a user
16 may receive under paragraph (2)—

17 (i) shall not exceed \$200; and

18 (ii) may be limited by the Commission
19 as necessary to afford each such user a rea-
20 sonable opportunity to secure that user's ap-
21 propriate portion of the amount available
22 for distribution.

23 (4) *REMAINDER.*—If the amount of any such
24 penalty held by the Commission exceeds the sum of
25 the amounts distributed under paragraph (2) attrib-

1 *utable to that penalty, the excess shall be covered into*
 2 *the Treasury of the United States as miscellaneous re-*
 3 *ceipts no later than 12 months after it was paid to*
 4 *the Commission.*

5 *(f) EFFECT ON OTHER LAWS.—*

6 *(1) PRESERVATION OF COMMISSION AUTHOR-*
 7 *ITY.—Nothing contained in this subtitle shall be con-*
 8 *strued to limit the authority of the Commission under*
 9 *any other provision of law.*

10 *(2) RELATION TO TITLE II OF COMMUNICATIONS*
 11 *ACT.—Nothing in title I requires an operator of a*
 12 *website or online service to take any action that is in-*
 13 *consistent with the requirements of section 222 of the*
 14 *Communications Act of 1934 (47 U.S.C. 222).*

15 *(3) RELATION TO TITLE VI OF COMMUNICATIONS*
 16 *ACT.—Section 631 of the Communications Act of*
 17 *1934 (47 U.S.C. 551) is amended by adding at the*
 18 *end the following:*

19 *“(i) APPLICATION OF ONLINE PERSONAL PRIVACY*
 20 *ACT.—With respect to the provision by a cable operator of*
 21 *Internet service or online service and the operation by a*
 22 *cable operator of a commercial website, as such terms are*
 23 *defined in or under the Online Personal Privacy Act, the*
 24 *provisions of that Act shall apply in lieu of this section.”.*

1 **SEC. 203. SAFE HARBOR SELF-REGULATORY PROGRAMS.**

2 (a) *IN GENERAL.*—*An internet service provider, online*
3 *service provider, or operator of a commercial website shall*
4 *be presumed to be in compliance with the requirements of*
5 *this title if the provider or operator—*

6 (1) *is a participant in a self-regulatory program*
7 *approved by the Commission under subsection (b) and*
8 *has agreed in writing to meet the requirements for*
9 *participation established by the self-regulatory pro-*
10 *gram; and*

11 (2) *is deemed by the self-regulatory program to*
12 *be in full compliance with the requirements of that*
13 *self-regulatory program.*

14 (b) *APPROVAL OF SELF-REGULATORY PROGRAMS.*—
15 *The Commission may approve a self-regulatory program*
16 *under subsection (a) only if the Commission finds the fol-*
17 *lowing:*

18 (1) *PARTICIPATION REQUIREMENTS.*—*The self-*
19 *regulatory program will require participants, at a*
20 *minimum, to provide privacy protection to users of*
21 *the internet service, online service, or commercial*
22 *website that is substantially equivalent to or greater*
23 *than the protection afforded to users by title I.*

24 (2) *ELIGIBILITY AND VERIFICATION.*—*The self-*
25 *regulatory program—*

1 (A) will require, prior to determining eligi-
2 bility to participate in the self-regulatory pro-
3 gram, and on a periodic basis thereafter no less
4 frequent than annually—

5 (i) a review by the self-regulatory pro-
6 gram or a certified independent verification
7 organization of the prospective participant's
8 privacy statement and privacy policy; and

9 (ii) a determination by the self-regu-
10 latory program or a certified independent
11 verification organization that the privacy
12 statement and privacy policy comply with
13 the self-regulatory program's requirements;

14 (B) will obtain, prior to determining eligi-
15 bility to participate in the self-regulatory pro-
16 gram, and on a periodic basis thereafter no less
17 frequently than annually, a written certification
18 from a senior corporate officer or other respon-
19 sible executive of the participant that—

20 (i) the participant has procedures and
21 practices in place that are designed to fulfill
22 the representations in the participant's pri-
23 vacy policy and satisfy, at a minimum the
24 requirements of the self-regulatory program;
25 and

1 (ii) the participant is in compliance
2 with the privacy policy and the require-
3 ments of the self-regulatory program;

4 (C) will require each participant to obtain
5 written verification of each written certification
6 required by subparagraph (B) from a certified
7 independent verification organization or provide
8 sufficient information to the self-regulatory pro-
9 gram to enable the program reasonably to con-
10 clude that the certification is materially accu-
11 rate; and

12 (D) has a program for verification of con-
13 tinued eligibility of program participants under
14 which program resources are effectively utilized
15 to ensure compliance with, and discover viola-
16 tions of, the self-regulatory program's require-
17 ments, including random audits of participants.

18 (3) *TRANSPARENCY.*—The self-regulatory pro-
19 gram will make available to the public via the Inter-
20 net the results of audits and violations of the pro-
21 gram's requirements, excluding information that
22 would reveal the identity of any complainant whose
23 privacy was violated.

24 (4) *COOPERATION WITH COMMISSION.*—The self-
25 regulatory program, and any independent

1 *verification organization used by participants in that*
2 *program, will report to the Commission any viola-*
3 *tions of its requirements by participants and any de-*
4 *terminations that a participant has failed to comply*
5 *with the self-regulatory program requirements after*
6 *being afforded a reasonable opportunity to do so.*

7 (5) *INDEPENDENCE.—The self-regulatory pro-*
8 *gram has established requirements that assure that*
9 *program eligibility and compliance determinations*
10 *concerning a participant are made exclusively by per-*
11 *sons who are independent of the participant.*

12 (c) *COMMISSION TO MONITOR COMPLIANCE.—*

13 (1) *PUBLICATION OF REPORTED FAILURES TO*
14 *COMPLY.—The Commission shall publish a list of all*
15 *violations reported to it by self-regulatory programs*
16 *and independent verification organizations.*

17 (2) *BIENNIAL REVIEW.—The Commission shall*
18 *re-evaluate its approval of each self-regulatory pro-*
19 *gram under subsection (b) at least once every 2 years.*

20 (d) *CERTIFICATION OF INDEPENDENT VERIFICATION*
21 *ORGANIZATIONS.—*

22 (1) *IN GENERAL.—The Commission may certify*
23 *an entity as an independent verification organization*
24 *for purposes of this section. In carrying out this sub-*
25 *section, the Commission shall consider both the tech-*

1 *nical expertise and the experience of a prospective*
2 *independent verification organization in providing*
3 *assurance services.*

4 (2) *ELIGIBLE ENTITIES.—An independent*
5 *verification organization may be—*

6 (A) *a self-regulatory program, but only with*
7 *respect to an internet service provider, online*
8 *service provider, or commercial website operator*
9 *that is not a participant in that program; or*

10 (B) *any other entity that provides assur-*
11 *ance services and that demonstrates to the satis-*
12 *faction of the Commission that it has the ability*
13 *and knowledge required to examine and evaluate*
14 *the business practices of a participant or pro-*
15 *spective participant.*

16 (e) *APPLICATION PROCESS.—*

17 (1) *APPLICATION.—The Commission shall estab-*
18 *lish an application process for the approval of a self-*
19 *regulatory program under subsection (b). The appli-*
20 *cation shall be submitted at such time, in such man-*
21 *ner, and contain such information as the Commission*
22 *may require. Upon receipt of an application, the*
23 *Commission shall provide notice of the application*
24 *and an opportunity for comment on the application*
25 *to the public. The Commission shall make a decision*

1 on an application within 120 days after receipt of the
2 application.

3 (2) *APPEAL.*—A self-regulatory program that is
4 aggrieved by final action of the Commission or a fail-
5 ure by the Commission to take action on a timely
6 basis as required by paragraph (1) may file an action
7 in a district court under section 706 of title 5, United
8 States Code, to obtain review of the decision without
9 regard to the amount in controversy.

10 (f) *UNAUTHORIZED CLAIM OF PARTICIPATION.*—An
11 internet service provider, online service provider, or oper-
12 ator of a commercial website that willfully and falsely rep-
13 resents to the public by a statement, display of an emblem,
14 or otherwise that it is a participant in an approved self-
15 regulatory program under this section shall be liable for a
16 civil penalty of up to \$50,000 for each such false representa-
17 tion. The civil penalty may be recovered in an action
18 brought by the Commission or a State attorney general in
19 any court of competent jurisdiction.

20 (g) *QUALIFIED PRIVILEGE.*—A self-regulatory pro-
21 gram is not liable to any person as a result of a publication
22 under subsection (b)(3) unless it is found to have acted with
23 malice or recklessness.

24 **SEC. 204. SMALL BUSINESS SAFE HARBOR.**

25 This Act does not apply to any entity that—

1 (1) *has annual gross revenue under \$1,000,000*
2 *(based on the value of such amount in fiscal year*
3 *2000, adjusted for current dollars);*

4 (2) *has fewer than 25 employees;*

5 (3) *collects or uses personally identifiable infor-*
6 *mation or sensitive personally identifiable informa-*
7 *tion from fewer than 1,000 consumers per year for a*
8 *purpose unrelated to a transaction with the consumer;*

9 (4) *does not process personally identifiable infor-*
10 *mation or sensitive personally identifiable informa-*
11 *tion of consumers; and*

12 (5) *does not sell or disclose for consideration such*
13 *information to another person.*

14 **SEC. 205. PRIVATE RIGHTS OF ACTION BY USERS.**

15 (a) *FRAUDULENT NOTICE; WRONGFUL DISCLOSURE.—*

16 *A person to whom fraudulent notice with respect to sensitive*
17 *personally identifiable information was given under this*
18 *Act or whose sensitive personally identifiable information*
19 *has been disclosed in violation of title I, may, if otherwise*
20 *permitted by the laws or rules of court of a State, bring*
21 *in an appropriate court of that State—*

22 (1) *an action based on the violation to enjoin the*
23 *violation;*

24 (2) *an action to recover the amount of any ac-*
25 *tual monetary loss from the violation or, to receive up*

1 to \$500 in damages for each such violation, whichever
2 is greater; or

3 (3) both such actions.

4 (b) *OTHER VIOLATIONS*.—A person harmed by any
5 violation of title I not described in subsection (a) but related
6 to sensitive personally identifiable information may, if oth-
7 erwise permitted by the laws or rules of court of a State,
8 bring in an appropriate court of that State—

9 (1) an action based on the violation to enjoin the
10 violation;

11 (2) an action to recover the amount of any ac-
12 tual monetary loss from the violation; or

13 (3) both such actions.

14 (c) *AFFIRMATIVE DEFENSE*.—It shall be an affirma-
15 tive defense in any action brought under this section that
16 the defendant—

17 (1) has established and implemented with due
18 care reasonable practices and procedures to ensure
19 compliance with the requirements of title I; or

20 (2) is a participant in, and is deemed by a self-
21 regulatory organization or a certified independent
22 verification organization to be in full compliance
23 with the requirements of, a self-regulatory program
24 approved by the Commission under section 203.

1 (d) *WILLFUL OR KNOWING VIOLATIONS.*—*If the court*
 2 *finds that the defendant willfully or knowingly violated title*
 3 *I, the court may, in its discretion, increase the amount of*
 4 *the award to an amount equal to not more than 3 times*
 5 *the amount available under this section.*

6 **SEC. 206. ACTIONS BY STATES.**

7 (a) *IN GENERAL.*—

8 (1) *CIVIL ACTIONS.*—*In any case in which the*
 9 *attorney general of a State has reason to believe that*
 10 *an interest of the residents of that State has been or*
 11 *is threatened or adversely affected by the engagement*
 12 *of any person in a practice that violates title I, the*
 13 *State, as parens patriae, may bring a civil action on*
 14 *behalf of the residents of the State in a district court*
 15 *of the United States of appropriate jurisdiction—*

16 (A) *to enjoin that practice;*

17 (B) *to enforce compliance with the rule;*

18 (C) *to obtain damage, restitution, or other*
 19 *compensation on behalf of residents of the State;*

20 *or*

21 (D) *to obtain such other relief as the court*
 22 *may consider to be appropriate.*

23 (2) *NOTICE.*—

24 (A) *IN GENERAL.*—*Before filing an action*
 25 *under paragraph (1), the attorney general of the*

1 *State involved shall provide to the*
2 *Commission—*

3 *(i) written notice of that action; and*
4 *(ii) a copy of the complaint for that*
5 *action.*

6 *(B) EXEMPTION.—*

7 *(i) IN GENERAL.—Subparagraph (A)*
8 *shall not apply with respect to the filing of*
9 *an action by an attorney general of a State*
10 *under this subsection, if the attorney gen-*
11 *eral determines that it is not feasible to pro-*
12 *vide the notice described in that subpara-*
13 *graph before the filing of the action.*

14 *(ii) NOTIFICATION.—In an action de-*
15 *scribed in clause (i), the attorney general of*
16 *a State shall provide notice and a copy of*
17 *the complaint to the Commission at the*
18 *same time as the attorney general files the*
19 *action.*

20 *(b) INTERVENTION.—*

21 *(1) IN GENERAL.—On receiving notice under*
22 *subsection (a)(2), the Commission shall have the right*
23 *to intervene in the action that is the subject of the no-*
24 *tice.*

1 (2) *EFFECT OF INTERVENTION.*—*If the Commis-*
2 *sion intervenes in an action under subsection (a), it*
3 *shall have the right—*

4 (A) *to be heard with respect to any matter*
5 *that arises in that action; and*

6 (B) *to file a petition for appeal.*

7 (c) *CONSTRUCTION.*—*For purposes of bringing any*
8 *civil action under subsection (a), nothing in this subtitle*
9 *shall be construed to prevent an attorney general of a State*
10 *from exercising the powers conferred on the attorney general*
11 *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) *ACTIONS BY THE COMMISSION.*—*In any case in*
17 *which an action is instituted by or on behalf of the Com-*
18 *mission for violation of title I, no State may, during the*
19 *pendency of that action, institute an action under sub-*
20 *section (a) against any defendant named in the complaint*
21 *in that action for violation of that rule.*

22 (e) *VENUE; SERVICE OF PROCESS.*—

23 (1) *VENUE.*—*Any action brought under sub-*
24 *section (a) may be brought in the district court of the*
25 *United States that meets applicable requirements re-*

1 *lating to venue under section 1391 of title 28, United*
2 *States Code.*

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

6 (A) *is an inhabitant; or*

7 (B) *may be found.*

8 **SEC. 207. WHISTLEBLOWER PROTECTION.**

9 (a) *IN GENERAL.*—*No internet service provider, online*
10 *service provider, or commercial website operator may dis-*
11 *charge or otherwise discriminate against any employee with*
12 *respect to compensation, terms, conditions, or privileges of*
13 *employment because the employee (or any person acting*
14 *pursuant to the request of the employee) provided informa-*
15 *tion to any Federal or State agency or to the Attorney Gen-*
16 *eral of the United States or of any State regarding a viola-*
17 *tion of any provision of title I.*

18 (b) *ENFORCEMENT.*—*Any employee or former em-*
19 *ployee who believes he has been discharged or discriminated*
20 *against in violation of subsection (a) may file a civil action*
21 *in the appropriate United States district court before the*
22 *close of the 2-year period beginning on the date of such dis-*
23 *charge or discrimination. The complainant shall also file*
24 *a copy of the complaint initiating such action with the ap-*
25 *propriate Federal agency.*

1 (c) *REMEDIES.*—If the district court determines that
2 a violation of subsection (a) has occurred, it may order the
3 Internet service provider, online service provider, or com-
4 mercial website operator that committed the violation—

5 (1) to reinstate the employee to his former posi-
6 tion;

7 (2) to pay compensatory damages; or

8 (3) to take other appropriate actions to remedy
9 any past discrimination.

10 (d) *LIMITATION.*—The protections of this section shall
11 not apply to any employee who—

12 (1) deliberately causes or participates in the al-
13 leged violation; or

14 (2) knowingly or recklessly provides substan-
15 tially false information to such an agency or the At-
16 torney General.

17 (e) *BURDENS OF PROOF.*—The legal burdens of proof
18 that prevail under subchapter III of chapter 12 of title 5,
19 United States Code (5 U.S.C. 1221 et seq.) shall govern ad-
20 judication of protected activities under this section.

21 **SEC. 208. NO EFFECT ON OTHER REMEDIES.**

22 The remedies provided by sections 205 and 206 are in
23 addition to any other remedy available under any provision
24 of law.

1 **TITLE III—APPLICATION TO**
 2 **CONGRESS AND FEDERAL**
 3 **AGENCIES**

4 **SEC. 301. SENATE.**

5 *The Sergeant at Arms of the United States Senate*
 6 *shall develop regulations setting forth an information secu-*
 7 *rity and electronic privacy policy governing use of the*
 8 *Internet by officers and employees of the Senate that meets*
 9 *the requirements of title I.*

10 **SEC. 302. APPLICATION TO FEDERAL AGENCIES.**

11 *(a) IN GENERAL.—Except as provided in subsection*
 12 *(b), this Act applies to each Federal agency that is an inter-*
 13 *net service provider or an online service provider, or that*
 14 *operates a website, to the extent provided by section 2674*
 15 *of title 28, United States Code.*

16 *(b) EXCEPTIONS.—This Act does not apply to any*
 17 *Federal agency to the extent that the application of this*
 18 *Act would compromise law enforcement activities or the ad-*
 19 *ministration of any investigative, security, or safety oper-*
 20 *ation conducted in accordance with Federal law.*

21 **TITLE IV—MISCELLANEOUS**

22 **SEC. 401. DEFINITIONS.**

23 *In this Act:*

24 *(1) COLLECT.—*

1 (A) *IN GENERAL.*—The term “collect”
2 means the online gathering of personally identi-
3 fiable information from a user of an Internet
4 service, online service, or commercial website by
5 or on behalf of the provider or operator of that
6 service or website by any means, direct or indi-
7 rect, active or passive, including—

8 (i) an online request for such informa-
9 tion by the provider or operator, regardless
10 of how the information is transmitted to the
11 provider or operator;

12 (ii) the use of a chat room, a message
13 board, e-mail, instant messaging, or any
14 other online service to gather the informa-
15 tion; or

16 (iii) tracking or use of any identifying
17 code linked to a user of such a service or
18 website, including the use of cookies or other
19 tracking technology.

20 (B) *TEMPORARY COLLECTION OR STORAGE*
21 *EXCEPTION.*—Notwithstanding subparagraph
22 (A)(ii), the term “collect” does not include the
23 temporary collection or storage of information by
24 a chat room, message board, e-mail server, in-
25 stant messaging service, or other online service

1 *for the sole purpose of operating that chat room,*
2 *message board, e-mail server, instant messaging*
3 *service, or other online service.*

4 (2) *COMMISSION.—The term “Commission”*
5 *means the Federal Trade Commission.*

6 (3) *COOKIE.—The term “cookie” means any pro-*
7 *gram, function, or device, commonly known as a*
8 *“cookie”, that makes a record on the user’s computer*
9 *(or other electronic device) of that user’s access to an*
10 *internet service, online service, or commercial website.*

11 (4) *DISCLOSE.—The term “disclose” means the*
12 *release of personally identifiable information about a*
13 *user of an Internet service, online service, or commer-*
14 *cial website by an internet service provider, online*
15 *service provider, or operator of a commercial website*
16 *for any purpose, except where such information is*
17 *provided to a person who provides support for the in-*
18 *ternal operations of the service or website and who*
19 *does not disclose or use that information for any other*
20 *purpose.*

21 (5) *FEDERAL AGENCY.—The term “Federal agen-*
22 *cy” means an agency, as that term is defined in sec-*
23 *tion 551(1) of title 5, United States Code.*

24 (6) *INTERNAL OPERATIONS SUPPORT.—The term*
25 *“support for the internal operations of a service or*

1 *website” means any activity necessary to maintain*
2 *the operational functionality of that service or*
3 *website.*

4 (7) *INTERNET.*—*The term “Internet” means col-*
5 *lectively the myriad of computer and telecommuni-*
6 *cations facilities, including equipment and operating*
7 *software, which comprise the interconnected world-*
8 *wide network of networks that employ the Trans-*
9 *mission Control Protocol/Internet Protocol, or any*
10 *predecessor or successor protocols to such protocol, to*
11 *communicate information of all kinds by wire or*
12 *radio.*

13 (8) *INTERNET SERVICE PROVIDER; ONLINE SERV-*
14 *ICE PROVIDER; WEBSITE.*—*The Commission shall by*
15 *rule define the terms “internet service provider”, “on-*
16 *line service provider”, and “website”, and shall revise*
17 *or amend such rule to take into account changes in*
18 *technology, practice, or procedure with respect to the*
19 *collection of personal information over the Internet.*

20 (9) *ONLINE.*—*The term “online” refers to any*
21 *activity regulated by this Act or by section 2710 of*
22 *title 18, United States Code, that is effected by active*
23 *or passive use of an Internet connection, regardless of*
24 *the medium by or through which that connection is*
25 *established.*

1 (10) *OPERATOR OF A COMMERCIAL WEBSITE.*—

2 *The term “operator of a commercial website” —*

3 *(A) means any person who operates a*
4 *website located on the Internet or an online serv-*
5 *ice and who collects or maintains personal infor-*
6 *mation from or about the users of or visitors to*
7 *such website or online service, or on whose behalf*
8 *such information is collected or maintained,*
9 *where such website or online service is operated*
10 *for commercial purposes, including any person*
11 *offering products or services for sale through that*
12 *website or online service, involving commerce—*

13 *(i) among the several States or with 1*
14 *or more foreign nations;*

15 *(ii) in any territory of the United*
16 *States or in the District of Columbia, or be-*
17 *tween any such territory and—*

18 *(I) another such territory; or*

19 *(II) any State or foreign nation;*

20 *or*

21 *(iii) between the District of Columbia*
22 *and any State, territory, or foreign nation;*

23 *but*

24 *(B) does not include any nonprofit entity*
25 *that would otherwise be exempt from coverage*

1 *under section 5 of the Federal Trade Commission*
2 *Act (15 U.S.C. 45).*

3 (11) *PERSONALLY IDENTIFIABLE INFORMA-*
4 *TION.—*

5 (A) *IN GENERAL.—The term “personally*
6 *identifiable information” means individually*
7 *identifiable information about an individual col-*
8 *lected online, including—*

9 (i) *a first and last name, whether*
10 *given at birth or adoption, assumed, or le-*
11 *gally changed;*

12 (ii) *a home or other physical address*
13 *including street name and name of a city or*
14 *town;*

15 (iii) *an e-mail address;*

16 (iv) *a telephone number;*

17 (v) *a birth certificate number;*

18 (vi) *any other identifier for which the*
19 *Commission finds there is a substantial*
20 *likelihood that the identifier would permit*
21 *the physical or online contacting of a spe-*
22 *cific individual; or*

23 (vii) *information that an Internet*
24 *service provider, online service provider, or*
25 *operator of a commercial website combines*

1 with an identifier described in clauses (i)
2 through (vi) of this subparagraph.

3 (B) *INFERENTIAL INFORMATION EX-*
4 *CLUDED.—Information about an individual de-*
5 *ived or inferred from data collected online but*
6 *not actually collected online is not personally*
7 *identifiable information.*

8 (12) *RELEASE.—The term “release of personally*
9 *identifiable information” means the direct or indirect,*
10 *sharing, selling, renting, or other provision of person-*
11 *ally identifiable information of a user of an internet*
12 *service, online service, or commercial website to any*
13 *other person other than the user.*

14 (13) *ROBUST NOTICE.—The term “robust notice”*
15 *means actual notice at the point of collection of the*
16 *personally identifiable information describing briefly*
17 *and succinctly the intent of the Internet service pro-*
18 *vider, online service provider, or operator of a com-*
19 *mercial website to use or disclose that information for*
20 *marketing or other purposes.*

21 (14) *SENSITIVE FINANCIAL INFORMATION.—The*
22 *term “sensitive financial information” means—*

23 (A) *the amount of income earned or losses*
24 *suffered by an individual;*

1 (B) *an individual's account number or bal-*
 2 *ance information for a savings, checking, money*
 3 *market, credit card, brokerage, or other financial*
 4 *services account;*

5 (C) *the access code, security password, or*
 6 *similar mechanism that permits access to an in-*
 7 *dividual's financial services account;*

8 (D) *an individual's insurance policy infor-*
 9 *mation, including the existence, premium, face*
 10 *amount, or coverage limits of an insurance pol-*
 11 *icy held by or for the benefit of an individual;*
 12 *or*

13 (E) *an individual's outstanding credit card,*
 14 *debt, or loan obligations.*

15 (15) *SENSITIVE PERSONALLY IDENTIFIABLE IN-*
 16 *FORMATION.—The term “sensitive personally identifi-*
 17 *able information” means personally identifiable infor-*
 18 *mation about an individual's—*

19 (A) *individually identifiable health infor-*
 20 *mation (as defined in section 164.501 of title 45,*
 21 *Code of Federal Regulations);*

22 (B) *race or ethnicity;*

23 (C) *political party affiliation;*

24 (D) *religious beliefs;*

25 (E) *sexual orientation;*

- 1 (F) a Social Security number; or
2 (G) sensitive financial information.

3 **SEC. 402. EFFECTIVE DATE OF TITLE I.**

4 *Title I of this Act takes effect on the day after the date*
5 *on which the Commission publishes a final rule under sec-*
6 *tion 403.*

7 **SEC. 403. FTC RULEMAKING.**

8 *The Commission shall—*

9 (1) *initiate a rulemaking within 90 days after*
10 *the date of enactment of this Act for regulations to*
11 *implement the provisions of title I; and*

12 (2) *complete that rulemaking within 270 days*
13 *after initiating it.*

14 **SEC. 404. FTC REPORT.**

15 (a) *REPORT.—The Commission shall submit a report*
16 *to the Senate Committee on Commerce, Science, and Trans-*
17 *portation and the House of Representatives Committee on*
18 *Commerce 18 months after the effective date of title I, and*
19 *annually thereafter, on—*

20 (1) *whether this Act is accomplishing the pur-*
21 *poses for which it was enacted;*

22 (2) *whether technology that protects privacy is*
23 *being utilized in the marketplace in such a manner*
24 *as to facilitate administration of and compliance*
25 *with title I;*

1 (3) *whether additional legislation is required to*
 2 *accomplish those purposes or improve the administra-*
 3 *bility or effectiveness of this Act;*

4 (4) *whether and how the government might assist*
 5 *industry in developing standard online privacy no-*
 6 *tices that substantially comply with the requirements*
 7 *of section 102(a); and*

8 (5) *whether additional legislation is necessary or*
 9 *appropriate to regulate the collection, use, and disclo-*
 10 *sure of personally identifiable information collected*
 11 *online before the effective date of title I.*

12 (b) *FTC NOTICE OF INQUIRY.—The Commission shall*
 13 *initiate a notice of inquiry within 90 days after the date*
 14 *of enactment of this Act to request comment on the matter*
 15 *described in paragraphs (1) through (7) of subsection (a).*

16 **SEC. 405. DEVELOPMENT OF AUTOMATED PRIVACY CON-**
 17 **TROLS.**

18 *Section 20 of the National Institute of Standards and*
 19 *Technology Act (15 U.S.C. 278g–3) is amended—*

20 (1) *by redesignating subsection (d) as subsection*
 21 *(e); and*

22 (2) *by inserting after subsection (c) the fol-*
 23 *lowing:*

24 “(d) *DEVELOPMENT OF INTERNET PRIVACY PRO-*
 25 *GRAM.—The Institute shall encourage and support the de-*

1 *velopment of one or more computer programs, protocols, or*
 2 *other software, such as the World Wide Web Consortium’s*
 3 *P3P program, capable of being installed on computers, or*
 4 *computer networks, with Internet access that would reflect*
 5 *the user’s preferences for protecting personally-identifiable*
 6 *or other sensitive, privacy-related information, and auto-*
 7 *matically execute the program, once activated, without re-*
 8 *quiring user intervention.”.*

9 **TITLE V—OFFLINE PRIVACY]**

10 **SEC. 501. COLLECTION, USE, AND DISCLOSURE OF PERSON-**
 11 **ALLY IDENTIFIABLE INFORMATION COL-**
 12 **LECTED OFFLINE.**

13 (a) *IN GENERAL.*—Not later than the date that is 6
 14 months after the date of the enactment of this Act, the
 15 Chairman of the Federal Trade Commission shall submit
 16 to the Committee on Commerce, Science, and Transpor-
 17 tation of the United States Senate, and the Committee on
 18 Energy and Commerce of the United States House of Rep-
 19 resentatives, detailed recommendations and proposed regu-
 20 lations on standards with respect to entities that engage in
 21 the collection of personally identifiable information, or em-
 22 ploy methods involving, or other actions involving, the col-
 23 lection of personally identifiable information, that are not
 24 covered in this Act, at a level of protection similar to that
 25 provided under this Act for similar types of information.

1 (b) *SUBJECTS FOR RECOMMENDATIONS.*—*The rec-*
2 *ommendations and proposed regulations under subsection*
3 *(a) shall address at least the following:*

4 (1) *How the fair information practices of notice,*
5 *choice, access, security, and enforcement should apply*
6 *to the uses and disclosures of such information in a*
7 *manner consistent with the level of protection pro-*
8 *vided by this Act.*

9 (2) *The fines that should be established for vio-*
10 *lating requirements promulgated under the regula-*
11 *tions.*

12 (c) *REGULATIONS.*—

13 (1) *CONTINGENT ON LEGISLATION.*—*If an Act of*
14 *Congress that—*

15 (A) *establishes standards with respect to en-*
16 *tities that engage in the collection of personally*
17 *identifiable information, or employ methods or*
18 *other actions involving the collection of person-*
19 *ally identifiable information that are not covered*
20 *in this Act, and*

21 (B) *refers to this paragraph,*
22 *does not become law within 18 months after the date*
23 *of enactment of this Act, then the Commission shall*
24 *promulgate final regulations (addressing at least the*
25 *subjects described in subsection (b)) containing such*

1 *standards not later than the date that is 19 months*
2 *after the date of enactment of this Act.*

3 (2) *PREEMPTION.—A regulation promulgated*
4 *under paragraph (1) shall supersede State law only*
5 *to the extent that this Act supersedes State law under*
6 *section 4 of this Act.*

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107TH CONGRESS
2^D SESSION

S. 2201

[Report No. 107-240]

A BILL

To protect the online privacy of individuals who use
the Internet.

AUGUST 1, 2002

Reported with an amendment