

112TH CONGRESS  
1ST SESSION

# H. R. 1528

To protect and enhance consumer privacy, and for other purposes.

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## IN THE HOUSE OF REPRESENTATIVES

APRIL 13, 2011

Mr. STEARNS (for himself, Mr. MATHESON, Mr. BILBRAY, and Mr. MANZULLO) introduced the following bill; which was referred to the Committee on Energy and Commerce

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## A BILL

To protect and enhance consumer privacy, and for other purposes.

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

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Consumer Privacy Pro-  
5 tection Act of 2011”.

6 **SEC. 3. DEFINITIONS.**

7 In this Act, the following definitions apply:

8 (1) **AFFILIATE.**—The term “affiliate” means  
9 any company that controls, is controlled by, or is  
10 under common control with another company.

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

3           (3) CONSUMER.—The term “consumer” means  
4 an individual acting in the individual’s personal,  
5 family, or household capacity.

6           (4) COVERED ENTITY.—(A) The term “covered  
7 entity” means an entity (or an agent or affiliate of  
8 the entity) that collects (by any means, through any  
9 medium), sells, discloses for consideration, or uses  
10 personally identifiable information of more than  
11 5,000 consumers during any consecutive 12-month  
12 period, and includes a non-profit organization, in-  
13 cluding any organization described in section 501(c)  
14 of the Internal Revenue Code of 1986 that is exempt  
15 from taxation under section 501(a) of such Code,  
16 notwithstanding the definition of the term “Acts to  
17 regulate commerce” in section 4 of the Federal  
18 Trade Commission Act (15 U.S.C. 44) and the ex-  
19 ception provided by section 5(a)(2) of such Act (15  
20 U.S.C. 45(a)(2)) for such organizations.

21           (B) Such term does not include—

22                   (i) a governmental agency;

23                   (ii) a provider of professional services, or  
24 any affiliate thereof, to the extent that such  
25 provider is obligated by rules of professional

1 ethics, or by applicable law or regulation, not to  
2 voluntarily disclose confidential client informa-  
3 tion without the consent of the client; or

4 (iii) a data processing outsourcing entity.

5 (5) DATA PROCESSING OUTSOURCING ENTI-  
6 TY.—The term “data processing outsourcing entity”  
7 means, with respect to a covered entity, a non-affili-  
8 ated entity that—

9 (A) provides information technology proc-  
10 essing, Web hosting, or telecommunications  
11 services to the covered entity;

12 (B) is contractually obligated to comply  
13 with security controls specified by the covered  
14 entity; and

15 (C) has no right to use the covered entity’s  
16 personally identifiable information other than  
17 for performing data processing outsourcing  
18 services for the covered entity or as required by  
19 contract or law.

20 (6) DISPLAY.—The term “display” means in-  
21 tentiously communicating or otherwise making  
22 available (on the Internet or in any other manner)  
23 to another person.

24 (7) INFORMATION-SHARING AFFILIATE.—The  
25 term “information-sharing affiliate” means any affil-

1 iate that is under common control with a covered en-  
2 tity, or is contractually obligated to comply with the  
3 practices enumerated under the privacy policy state-  
4 ment of the covered entity required under section 5.

5 (8) PERSONALLY IDENTIFIABLE INFORMA-  
6 TION.—(A) The term “personally identifiable infor-  
7 mation”, with respect to a covered entity means in-  
8 dividually identifiable information relating to a living  
9 individual who can be identified from that informa-  
10 tion, and includes:

11 (i) the combination of a first name (or  
12 initial) and last name of an individual,  
13 whether given at birth or time of adoption,  
14 or resulting from a lawful change of name;

15 (ii) the postal address of a physical  
16 place of residence of such individual;

17 (iii) an e-mail address of such indi-  
18 vidual;

19 (iv) a telephone number or mobile de-  
20 vice number dedicated to contacting such  
21 individual at any place other than the indi-  
22 vidual’s place of work;

23 (v) a social security number or other  
24 Federal or State government issued identi-

1                   fication number issued to such individual;  
2                   or

3                   (vi) the complete account number of a  
4                   credit or debit card issued to such indi-  
5                   vidual.

6                   (B) Such term also includes, when disclosed in  
7                   connection with one or more of the items of informa-  
8                   tion described in subparagraph (A)—

9                   (i) a birth date, the number of a certificate  
10                  of birth or adoption, or a place of birth; or

11                  (ii) an electronic address, including an IP  
12                  address.

13                  (C) Such term does not include—

14                  (i) anonymous or aggregate data, or any  
15                  other information that does not identify a  
16                  unique living individual;

17                  (ii) information about a consumer inferred  
18                  from data maintained about a consumer; or

19                  (iii) information about a consumer that is  
20                  publicly available or obtained from a public  
21                  record.

22                  (9) PROCESS.—The term “process”, with re-  
23                  spect to personally identifiable information, means  
24                  any value-added activity performed on data by auto-  
25                  mated means.

1           (10) PUBLICLY AVAILABLE.—The term “pub-  
2           licly available”, with respect to information, means  
3           information that is lawfully made available to the  
4           general public.

5           (11) PUBLIC RECORD.—The term “public  
6           record” means any item, collection, or grouping of  
7           information about an individual that is maintained  
8           by a Federal, State, or local government entity and  
9           that is made available to the public.

10          (12) PURCHASE.—The term “purchase” means  
11          providing, directly or indirectly, anything of value in  
12          exchange for a good or service.

13          (13) STATE.—The term “State” includes the  
14          several States, the District of Columbia, the Com-  
15          monwealth of Puerto Rico, the Commonwealth of the  
16          Northern Mariana Islands, American Samoa, Guam,  
17          the Virgin Islands, the Freely Associated States, and  
18          any other territory or possession of the United  
19          States.

20          (14) TRANSACTION.—The term “transaction”  
21          means an interaction between a consumer and a cov-  
22          ered entity resulting in—

23                 (A) any use of information that is nec-  
24                 essary to complete the interaction in the course  
25                 of which information is collected, or to maintain

1 the provisioning of a good or service requested  
2 by the consumer, including use—

3 (i) to approve, guarantee, process, ad-  
4 minister, complete, enforce, provide, or  
5 market a product, service, account, benefit,  
6 transaction, or payment method that is re-  
7 quested or approved by the consumer;

8 (ii) to deliver goods, services, funds,  
9 or other consideration to, or on behalf of,  
10 the consumer;

11 (iii) to protect the health and safety  
12 of the consumer; and

13 (iv) related to website analytics meth-  
14 ods or measurements for improving or en-  
15 hancing products or services.

16 (B) any disclosure of information that is  
17 necessary for the consumer to enforce any right  
18 of the consumer;

19 (C) any disclosure of information that is  
20 required by law or by a court order;

21 (D) any use of information to verify per-  
22 sonally identifiable information by the con-  
23 sumer, evaluate, detect, or reduce the risk of  
24 fraud or other criminal activity, or other risk-  
25 management activities; and

1 (E) the collection or use of personally iden-  
2 tifiable information for the marketing or adver-  
3 tising of a covered entity's products or services  
4 to its own customers or potential customers.

5 **SEC. 4. PRIVACY NOTICES TO CONSUMERS.**

6 (a) NOTICE REQUIRED.—A covered entity shall pro-  
7 vide to a consumer a notice containing the information  
8 required under subsection (b) as follows:

9 (1) The covered entity shall provide the notice  
10 before any personally identifiable information that is  
11 collected from a consumer is used by the covered en-  
12 tity for a purpose unrelated to a transaction.

13 (2) Upon a material change in the covered enti-  
14 ty's privacy policy under section 5(a), the covered  
15 entity shall provide the notice, not later than the  
16 first time after such change in policy that the cov-  
17 ered entity seeks to sell, disclose for consideration,  
18 or use personally identifiable information to the ex-  
19 tent practicable, to each consumer from whom the  
20 covered entity has collected such information.

21 (b) FORM AND CONTENTS OF NOTICE.—A notice re-  
22 quired under subsection (a) shall be provided in a clear  
23 and conspicuous manner, be prominently displayed or ex-  
24 plicitly stated to the consumer, and contain the following  
25 information:



1           (1) A statement that the personally identifiable  
2 information collected by the covered entity may be  
3 used or disclosed for purposes or transactions unre-  
4 lated to that for which it was collected, as described  
5 in the covered entity's privacy statement.

6           (2) A description, appropriate to the applicable  
7 medium, of the manner in which the consumer may  
8 obtain a privacy policy statement that meets the re-  
9 quirements of section 5, which may include pro-  
10 viding the consumer with an Internet website, a  
11 hyperlink to such a website, or a toll-free telephone  
12 number from which such a statement may be ob-  
13 tained. If the notice required under subsection (a) is  
14 provided to the consumer by means of an Internet  
15 website, one manner in which the consumer may ob-  
16 tain the privacy policy statement must be by means  
17 of an Internet website.

18           (3) If the notice is required under subsection  
19 (a)(2), a statement that there has been a material  
20 change in the covered entity's privacy policy.

21 **SEC. 5. PRIVACY POLICY STATEMENTS.**

22           (a) **PRIVACY POLICY.**—A covered entity shall estab-  
23 lish a privacy policy with respect to the collection, sale,  
24 disclosure for consideration, dissemination, use, and secu-  
25 rity of the personally identifiable information of con-

1 sumers, the principal elements of which shall be embodied  
2 in a privacy policy statement (or statements) that meets  
3 the requirements of subsection (b).

4 (b) STATEMENT.—The statement (or statements) re-  
5 quired under subsection (a) shall meet the following re-  
6 quirements:

7 (1) The statement must be brief, concise, clear,  
8 and conspicuous and written in plain language.

9 (2) The statement must be available to all con-  
10 sumers of the covered entity (regardless of the  
11 means by which a consumer conducts a transaction  
12 with the covered entity)—

13 (A) at no charge to the consumer; and

14 (B) at the time the covered entity first col-  
15 lects personally identifiable information about  
16 the consumer that may be used for a purpose  
17 unrelated to a transaction with the consumer  
18 and subsequently.

19 (3) The statement must disclose only the fol-  
20 lowing:

21 (A) The identity of each covered entity, or  
22 a description of each class or type of covered  
23 entity, that may collect or use the information.

24 (B) The types of information that may be  
25 collected or used.

1 (C) How the information may be used.

2 (D) Whether the consumer is required to  
3 provide the information in order to do business  
4 with the covered entity.

5 (E) The extent to which the information is  
6 subject to sale or disclosure for consideration to  
7 a covered entity that is not an information-  
8 sharing affiliate of the covered entity providing  
9 the statement, including—

10 (i) a clear and prominent statement of  
11 the fact that the information is subject to  
12 such sale or disclosure for consideration;

13 (ii) a description of each class or type  
14 of covered entity to which the information  
15 may be sold or disclosed for consideration;

16 (iii) to the extent practicable, the pur-  
17 pose for which the information may be  
18 used; and

19 (iv) the types of information that may  
20 be sold or disclosed for consideration.

21 (F) Whether the information security prac-  
22 tices of the covered entity meet the security re-  
23 quirements of section 8 in order to prevent un-  
24 authorized disclosure or release of personally  
25 identifiable information.

1 (c) COMMISSION FACILITATION.—The Commission  
2 may take actions (including conducting industry-wide  
3 workshops) to facilitate the development of harmonized,  
4 universal wording or logo-based graphics in order to con-  
5 vey the contents of privacy policy statements required  
6 under this section.

7 **SEC. 6. CONSUMER OPPORTUNITY TO LIMIT SALE OR DIS-**  
8 **CLOSURE OF INFORMATION.**

9 (a) PRECLUSION OF SALE OR DISCLOSURE.—

10 (1) REQUIREMENT.—A covered entity shall pro-  
11 vide to the consumer, without charge, the oppor-  
12 tunity to preclude any sale or disclosure for consid-  
13 eration of the consumer’s personally identifiable in-  
14 formation, provided in a particular data collection,  
15 that may be used for a purpose other than a trans-  
16 action with the consumer, to any covered entity that  
17 is not an information-sharing affiliate of the covered  
18 entity providing such opportunity.

19 (2) DURATION.—A preclusion on sale or disclo-  
20 sure for consideration of information established by  
21 a consumer under this subsection shall remain in ef-  
22 fect for 5 years or until the consumer indicates oth-  
23 erwise, whichever occurs sooner. A covered entity  
24 may not seek reconsideration of a consumer’s pre-  
25 clusion of such sale or disclosure until at least 1

1 year after such preclusion has been imposed by the  
2 consumer.

3 (b) PERMISSION FOR SALE OR DISCLOSURE.—A cov-  
4 ered entity may provide the consumer an opportunity to  
5 permit the sale or disclosure described in subsection (a)(1)  
6 in exchange for a benefit to the consumer.

7 (c) ACCESSIBILITY.—The opportunity to preclude (or  
8 if offered, to permit) the sale or disclosure for consider-  
9 ation of information under this section must be both easy  
10 to access and use, and the notice of the opportunity to  
11 preclude must be clear and conspicuous.

12 **SEC. 7. CONSUMER OPPORTUNITY TO LIMIT OTHER INFOR-**  
13 **MATION PRACTICES.**

14 If a covered entity provides to a consumer the oppor-  
15 tunity to limit other practices of the covered entity with  
16 respect to a particular collection or use of personally iden-  
17 tifiable information regarding the consumer, other than  
18 that required by section 6—

19 (1) a notice and description of such opportunity  
20 must appear in the privacy statement;

21 (2) such opportunity must be easy to access  
22 and to use; and

23 (3) any limitation exercised by the consumer  
24 pursuant to such opportunity shall remain in effect,  
25 unless—

1 (A) the limitation is withdrawn by the con-  
2 sumer; or

3 (B) the covered entity provides the con-  
4 sumer at least 30 days notice before materially  
5 changing the limitation or terminating its com-  
6 pliance with the limitation.

7 **SEC. 8. INFORMATION SECURITY OBLIGATIONS.**

8 (a) IMPLEMENTATION.—A covered entity shall pre-  
9 pare, revise as necessary, and implement an information  
10 security policy that is applicable to the information secu-  
11 rity practices and treatment of personally identifiable in-  
12 formation maintained by the covered entity, that is de-  
13 signed to prevent the unauthorized disclosure or release  
14 of such information.

15 (b) MANAGEMENT APPROVAL.—An information secu-  
16 rity policy created pursuant to paragraph (1) shall be con-  
17 sidered and approved by the senior management officials  
18 of the covered entity.

19 (c) CONTENTS.—An information security policy re-  
20 quired under paragraph (1) shall include—

21 (1) a process for taking corrective action to pre-  
22 vent or mitigate unauthorized disclosure of informa-  
23 tion; and

1           (2) identifying an officer of the covered entity  
2           as the point of contact with responsibility for infor-  
3           mation security issues for the covered entity.

4 **SEC. 9. SELF-REGULATORY PROGRAMS.**

5           (a) SELF-REGULATORY PROGRAM.—

6           (1) PRESUMPTION OF COMPLIANCE.—The Com-  
7           mission shall presume that a covered entity is in  
8           compliance with the provisions of sections 4 through  
9           8 if that covered entity—

10                   (A) participates in a self-regulatory pro-  
11                   gram approved under subsection (b); and

12                   (B) is subject to enforcement under a self-  
13                   regulatory program’s guidelines, procedures, re-  
14                   quirements, and restrictions (including a reme-  
15                   dial process under subsection (c)(7)).

16           (2) EFFECT OF WILLFUL NONCOMPLIANCE.—A  
17           covered entity that participates in a self-regulatory  
18           program under this section shall not be liable for a  
19           civil penalty arising out of a violation of any provi-  
20           sion of sections 4 through 8 unless such violation re-  
21           sults from willful noncompliance with the guidelines,  
22           procedures, requirements, or restrictions of the pro-  
23           gram.

24           (b) APPROVAL BY COMMISSION.—

1           (1) APPROVAL.—The Commission shall, within  
2           90 days after submission of an application for ap-  
3           proval of a self-regulatory program under this sec-  
4           tion (or of a material change in a program pre-  
5           viously approved by the Commission), approve such  
6           program (or change) if the Commission finds that  
7           the program (or change) complies with the require-  
8           ments of subsection (c).

9           (2) FORM OF APPLICATION.—The Commission  
10          shall accept an application for approval under para-  
11          graph (1) in any reasonable form the applicant may  
12          submit.

13          (3) DURATION UNTIL RENEWAL.—A self-regu-  
14          latory program approved by the Commission under  
15          paragraph (1) shall be approved for a period of 5  
16          years.

17          (4) REVOCATION OF APPROVAL.—The Commis-  
18          sion may, after notice and opportunity for a hearing,  
19          revoke approval granted under paragraph (1), if the  
20          Commission finds that a self-regulatory program  
21          fails to meet the requirements of subsection (c).

22          (5) JUDICIAL REVIEW.—Any order by the Com-  
23          mission denying approval of a self-regulatory pro-  
24          gram shall be subject to judicial review, as provided  
25          in section 706 of title 5, United States Code.



1           (c) REQUIREMENTS OF SELF-REGULATORY PRO-  
2 GRAM.—A self-regulatory program complies with the re-  
3 quirements of this subsection if the program provides each  
4 of the following:

5           (1) Guidelines and procedures requiring a pro-  
6 gram participant to provide substantially equivalent  
7 or greater protections for consumers and their per-  
8 sonally identifiable information as are provided  
9 under sections 4 through 8.

10          (2) Procedures and requirements to provide  
11 for—

12           (A) an initial review of a participant’s pri-  
13 vacy statement and privacy policy, and subse-  
14 quent review whenever such statement or policy  
15 is substantively changed;

16           (B) a participant’s self-review and self-cer-  
17 tification of its privacy policy and practices to  
18 ensure compliance with the guidelines, proce-  
19 dures, requirements, and restrictions of the pro-  
20 gram established under this subsection;

21           (C) a participant’s subsequent periodic  
22 self-reviews and self-certifications, which shall  
23 occur at least annually, of the its privacy policy  
24 and practices to ensure continued compliance

1 with such guidelines, procedures, requirements,  
2 and restrictions;

3 (D) submission of self-reviews and self-cer-  
4 tifications under this paragraph to any adminis-  
5 trator of the program; and

6 (E) random review of participants, which  
7 may concentrate on selected compliance issues,  
8 if the self-regulatory program conducts—

9 (i) random compliance tests with re-  
10 spect to each participant not less fre-  
11 quently than every 3 years;

12 (ii) a full compliance test of a par-  
13 ticular participant in any case where non-  
14 compliance with any of the selected compli-  
15 ance issues has been identified; and

16 (iii) full compliance tests of partici-  
17 pants with a high number of complaints  
18 against them.

19 (3) Procedures and requirements that ensure  
20 that a program participant provides a process for re-  
21 solving disputes with consumers relating to the pri-  
22 vacy policy and practices of the participant. Such  
23 dispute resolution process—

24 (A) must be available without charge to a  
25 consumer;

1 (B) must be available at a cost to the par-  
2 ticipant that is reasonable and does not discour-  
3 age participation by the participant in such  
4 process;

5 (C) must ensure that consumers are in-  
6 formed of how to utilize the process;

7 (D) may include, as one choice among oth-  
8 ers, binding arbitration; and

9 (E)(i) must be completed within 60 days  
10 after submission of the dispute by the con-  
11 sumer; or

12 (ii) must be completed within 90 days after  
13 submission of the dispute by the consumer, if  
14 the participant—

15 (I) determines that additional time is  
16 required to obtain information to make an  
17 informed decision with respect to the dis-  
18 pute; and

19 (II) notifies the consumer and the  
20 self-regulatory program that such addi-  
21 tional time is required.

22 (4) Provisions for the use by participants in the  
23 program of a means (including the use of a seal) to  
24 represent the participant's participation in the pro-  
25 gram.

1           (5) With respect to any nonvoluntary suspen-  
2           sion or termination of participation in the program  
3           because of the participant's failure to comply with  
4           the program, procedures or requirements to provide  
5           for the following:

6                   (A) Publication of notice and the reasons  
7                   for any such suspension or termination, except  
8                   that no personally identifiable information re-  
9                   lated to such suspension or termination may be  
10                  published.

11                  (B) Notice to the Commission of any such  
12                  termination.

13           (6) Requirements and restrictions that assure  
14           independence with respect to program eligibility,  
15           compliance, and dispute resolution mechanisms and  
16           decisions from improper interference by management  
17           or ownership of the self-regulatory program partici-  
18           pant.

19           (7) A process for a noncompliant participant to  
20           take timely remedial action in order to come back  
21           into compliance with the program before suspension  
22           or termination of participation in the program.

23           (d) CONSUMER DISPUTE RESOLUTION.—

24                   (1) SELF-REGULATORY DISPUTE PROCESS.—If  
25           a consumer has a dispute with a participant in a

1 self-regulatory program under this section or under  
2 section 5 of the Federal Trade Commission Act (15  
3 U.S.C. 45) to the extent that such dispute pertains  
4 to the entity's privacy policy or practices required  
5 for participation in the self-regulatory program, the  
6 consumer shall initially seek resolution through the  
7 participant's dispute resolution process (established  
8 in accordance with subsection (c)(3)). The Commis-  
9 sion shall promptly refer to the participant involved  
10 any dispute submitted to the Commission for which  
11 resolution has not been initially sought through such  
12 process.

13 (2) RESOLUTION BY COMMISSION.—A consumer  
14 may submit to the Commission for resolution a dis-  
15 pute with a participant in a self-regulatory program  
16 under this section, if the following requirements are  
17 met:

18 (A) The dispute was initially submitted  
19 under paragraph (1) for resolution through the  
20 participant's dispute resolution process.

21 (B) The dispute submitted under para-  
22 graph (1) is not resolved—

23 (i) within 60 days after submission of  
24 the dispute by the consumer; or

1                   (ii) to the satisfaction of the con-  
2                   sumer.

3                   (C) Notice of the facts of the dispute is  
4                   submitted to the Commission not later than 30  
5                   days after the date on which the consumer is  
6                   notified of the resolution through the partici-  
7                   pant's dispute resolution process.

8                   (D) The consumer has not voluntarily ac-  
9                   cepted a resolution of the dispute under para-  
10                  graph (1).

11                  (E) The dispute was not resolved through  
12                  binding arbitration.

13                  (3) LIMITATION.—Nothing in this Act shall  
14                  prevent the Commission from investigating compli-  
15                  ance with this Act by a participant in a self-regu-  
16                  latory covered entity based upon a complaint from  
17                  an individual or covered entity other than a con-  
18                  sumer with a dispute with such participant, or on its  
19                  own initiative, except that prior to instituting any  
20                  such investigation the Commission shall afford the  
21                  self-regulatory covered entity a reasonable oppor-  
22                  tunity to invoke its own remedial procedures and as-  
23                  sure compliance by the participant.

24                  (4) CLEAR AND CONVINCING EVIDENCE.—The  
25                  presumption established by paragraph (1) of sub-

1 section (a) may be overcome by clear and convincing  
2 evidence of non-compliance.

3 (e) NONRELEASE OF CERTAIN INFORMATION.—The  
4 Commission may not compel a participant in a self-regu-  
5 latory program approved under subsection (b) (or an ad-  
6 ministrator of such a program) to provide proprietary in-  
7 formation or personally identifiable information of con-  
8 sumers to the Commission unless the Commission provides  
9 assurances that such information will not be released to  
10 the public.

11 (f) MISREPRESENTATION OF SELF-REGULATORY  
12 PROGRAM PARTICIPATION.—It is unlawful for a covered  
13 entity to misrepresent that it is a participant in a self-  
14 regulatory program (including through any mechanism  
15 provided under subsection (c)(4)) when such covered enti-  
16 ty is not, in fact, such a participant.

17 (g) EXEMPTED ENTITY PARTICIPATION.—An entity  
18 that is not a covered entity and that voluntarily partici-  
19 pates in a self-regulatory program under this section shall  
20 enjoy the rights and benefits provided under this section  
21 in any action or investigation under section 5 of the Fed-  
22 eral Trade Commission Act (15 U.S.C. 45) to the extent  
23 that such action or investigation pertains to the entity's  
24 privacy policy or practices required for participation in the  
25 self-regulatory program.

1 **SEC. 10. ENFORCEMENT.**

2 (a) UNFAIR OR DECEPTIVE ACT OR PRACTICE.—A  
3 violation of any provision of this Act by a covered entity  
4 is an unfair or deceptive act or practice unlawful under  
5 section 5(a)(1) of the Federal Trade Commission Act (15  
6 U.S.C. 45(a)(1)), except that the amount of any civil pen-  
7 alty under such Act shall be doubled for a violation of this  
8 Act, but may not exceed \$500,000 for all related violations  
9 by a single violator (without respect to the number of con-  
10 sumers affected or the duration of the related violations).

11 (b) GUIDELINES AND OPINIONS.—In order to assist  
12 in compliance with this Act, the Federal Trade Commis-  
13 sion may promulgate regulations and interpretive rules  
14 under section 18 of the Federal Trade Commission Act  
15 (15 U.S.C. 57a), with respect to specific types of acts or  
16 practices that would, or would not, comply with this Act.

17 **SEC. 11. NO PRIVATE RIGHT OF ACTION.**

18 This Act may not be considered or construed to pro-  
19 vide any private right of action. No private civil action  
20 relating to any act or practice governed under this Act  
21 may be commenced or maintained in any State court or  
22 under State law (including a pendent State claim to an  
23 action under Federal law).

24 **SEC. 12. EFFECT ON OTHER LAWS.**

25 (a) QUALIFIED EXEMPTION FOR COMPLIANCE WITH  
26 OTHER FEDERAL PRIVACY LAWS.—To the extent that



1 personally identifiable information protected under this  
2 Act is also protected under a provision of Federal privacy  
3 law described in subsection (c), a covered entity that com-  
4 plies with the relevant provision of such other Federal pri-  
5 vacy law shall be deemed to have complied with the cor-  
6 responding provision of this Act.

7 (b) PROTECTION OF OTHER FEDERAL PRIVACY  
8 LAWS.—Nothing in this Act may be construed to modify,  
9 limit, supersede, or interfere with the operation of the  
10 Federal privacy laws described in subsection (c) or the  
11 provision of information permitted or required, expressly  
12 or by implication, by such laws, with respect to Federal  
13 rights and practices.

14 (c) OTHER FEDERAL PRIVACY LAWS DESCRIBED.—  
15 The provisions of law to which subsections (a) and (b)  
16 apply are the following:

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

19 (2) The Right to Financial Privacy Act of 1978  
20 (12 U.S.C. 3401 et seq.).

21 (3) The Fair Credit Reporting Act (15 U.S.C.  
22 1681 et seq.).

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

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

3           (6) Title V of the Gramm-Leach-Bliley Act of  
4 1999 (15 U.S.C. 6801 et seq.).

5           (7) The Electronic Communications Privacy Act  
6 of 1986 (Public Law 99–508).

7           (8) The Driver’s Privacy Protection Act of  
8 1994 (18 U.S.C. 2721 et seq.).

9           (9) The Family Educational Rights and Privacy  
10 Act of 1974 (20 U.S.C. 1221 note, 1232g).

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

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

15           (12) Section 222 of the Communications Act of  
16 1934 (47 U.S.C. 222) relating to the Customer Pro-  
17 prietary Network Information.

18           (13) The Cable Communications Policy Act of  
19 1984 (47 U.S.C. 521 et seq.).

20           (14) The Communications Assistance for Law  
21 Enforcement Act (47 U.S.C. 1001 et seq.).

22           (15) The Video Privacy Protection Act of 1988  
23 (Public Law 100–618).

24           (16) The Telephone Consumer Protection Act  
25 of 1991 (Public Law 102–243).

1           (17) The Health Insurance Portability and Ac-  
2           countability Act of 1996 (Public Law 104–191), as  
3           it relates to an entity described in section 1172(a)  
4           of the Social Security Act (42 U.S.C. 1320d–1(a))  
5           or to activities regulated under section 1173 of such  
6           Act (42 U.S.C. 1320d–2).

7           (18) The CAN–SPAM Act of 2003 (15 U.S.C.  
8           7701 et seq.).

9           (d) **PREEMPTION OF STATE PRIVACY LAWS.**—This  
10          Act preempts any statutory law, common law, rule, or reg-  
11          ulation of a State, or a political subdivision of a State,  
12          to the extent such law, rule, or regulation relates to or  
13          affects the collection, use, sale, disclosure, retention, or  
14          dissemination of personally identifiable information in  
15          commerce. No State, or political subdivision of a State,  
16          may take any action to enforce this Act.

17          **SEC. 13. EFFECTIVE DATE.**

18          This Act shall apply with respect to personally identi-  
19          fiable information collected on or after the date that is  
20          1 year after the date of enactment of this Act.

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