

106TH CONGRESS  
1ST SESSION

# H. R. 3321

To prevent unfair and deceptive practices in the collection and use of personal information, and for other purposes.

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## IN THE HOUSE OF REPRESENTATIVES

NOVEMBER 10, 1999

Mr. MARKEY (for himself and Mr. LUTHER) introduced the following bill; which was referred to the Committee on Commerce, and in addition to the Committees on Banking and Financial Services, Transportation and Infrastructure, and Agriculture, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

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## A BILL

To prevent unfair and deceptive practices in the collection and use of personal information, and for other purposes.

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

3 **SECTION 1. SHORT TITLE.**

4       This Act may be cited as the “Electronic Privacy Bill  
5 of Rights Act of 1999”.

6 **SEC. 2. FINDINGS.**

7       The Congress finds the following:

1           (1) As our Nation's communications networks  
2 continue to grow and become ever more sophisti-  
3 cated, more individuals and industries will be using  
4 such networks to communicate and conduct commer-  
5 cial transactions.

6           (2) The ease of gathering and compiling per-  
7 sonal information during such communications, both  
8 overtly and surreptitiously, is becoming increasingly  
9 efficient and almost effortless due to advances in  
10 digital telecommunications technology.

11          (3) Consumers have an ownership interest in  
12 their personal information.

13          (4) Consumers must have knowledge that per-  
14 sonal information is being collected about them; con-  
15 sumers must be given conspicuous notice if the re-  
16 cipient of that information intends to reuse it for  
17 other purposes, or disclose, or sell it; and consumers  
18 must have the ability to control the extent to which  
19 personal information is collected about them and the  
20 right to prohibit or curtail any unauthorized use,  
21 reuse, disclosure or sale of their personal informa-  
22 tion.

23          (5) Internet protocols, which continue to evolve,  
24 may place decision-making power in the hands of  
25 consumers and enable them to effectively and effi-

1       ciently authorize or deny collection and use of their  
2       personal information.

3               (6) Fair information practices include providing  
4       consumers with knowledge of any data collection,  
5       conspicuous consumer notice of an entity's data  
6       practices, consumer choice to provide consent or  
7       deny authorization for such practices, access to data  
8       collected, safeguards to ensure data integrity, and  
9       contact information.

10              (7) A recent survey of websites conducted by  
11       Georgetown Business School found that only 9.5  
12       percent of Web sites surveyed contained a privacy  
13       policy embodying fair information practices such as  
14       knowledge, notice, choice, access, security, and con-  
15       tact information.

16              (8) It is important to establish personal privacy  
17       rights and industry obligations now so that con-  
18       sumers have confidence that their personal privacy is  
19       fully protected on our Nation's telecommunications  
20       networks.

21              (9) Industry efforts, with Government encour-  
22       agement and oversight, to assist consumers through  
23       the development of standards and protocols that em-  
24       body fair information practices for the collection and  
25       dissemination of personal information are critical to

1 permit consumers to better control dissemination of  
2 their personal information.

3 (10) Robust Internet commerce throughout the  
4 nation is threatened by consumer concern over pri-  
5 vacy and the lack of national rules governing per-  
6 sonal privacy rights.

7 (11) Adoption of fair information policies,  
8 standards, and practices, along with the widespread  
9 implementation and utilization of technological tools  
10 designed to empower consumers, may limit the scope  
11 of Government rules needed to protect consumers.

12 (12) A national privacy policy that relies in part  
13 upon industry self-regulatory initiatives, techno-  
14 logical tools for consumers, and Government-backed  
15 protections is needed to foster future development of  
16 electronic commerce and to safeguard the essential  
17 rights of individuals with respect to collection and  
18 use of their personal data.

19 **SEC. 3. TREATMENT OF UNFAIR AND DECEPTIVE ACTS AND**  
20 **PRACTICES IN CONNECTION WITH THE COL-**  
21 **LECTION AND USE OF PERSONAL INFORMA-**  
22 **TION.**

23 (a) ACTS PROHIBITED.—

24 (1) IN GENERAL.—It is unlawful for an oper-  
25 ator of a website or online service to collect personal

1 information from an individual in a manner that vio-  
2 lates the rules prescribed under subsection (b).

3 (2) DISCLOSURE TO PARENT PROTECTED.—

4 Notwithstanding paragraph (1), neither an operator  
5 of such a website or online service nor the operator's  
6 agent shall be held to be liable under any Federal  
7 or State law for any disclosure made in good faith  
8 and following reasonable procedures in responding to  
9 a request for disclosure of personal information  
10 under section 1302(b)(1)(B)(iii) of the Children's  
11 Online Privacy Protection Act of 1998 to the parent  
12 of a child.

13 (b) PRIVACY PROTECTIONS.—

14 (1) IN GENERAL.—Not later than 18 months  
15 after the date of the enactment of this Act, the  
16 Commission shall promulgate under section 553 of  
17 title 5, United States Code, rules that—

18 (A) require the operator of any website or  
19 online service that collects personal information  
20 to provide clear and conspicuous notice on the  
21 website of the specific types of personal infor-  
22 mation collected by the operator, how the oper-  
23 ator uses such information, and the operator's  
24 disclosure practices for such information;

1           (B)(i) require the operator of such a  
2 website or online service to provide, whenever  
3 such operator collects personal information, a  
4 clear and explicit online method by which an in-  
5 dividual grants or denies consent to the collec-  
6 tion and uses disclosed pursuant to the rules  
7 prescribed under subparagraph (A); and

8           (ii) permit the operator of such a website  
9 or online service to establish, in accordance with  
10 self-regulatory guidelines approved under sec-  
11 tion 5, a method or methods by which an indi-  
12 vidual can preset protocols for granting or de-  
13 nying such consent in accordance with the indi-  
14 vidual's choices concerning such collection and  
15 use;

16          (C) prohibit the operator of such a website  
17 or online service to collect and use personal in-  
18 formation unless—

19           (i) such collection or use has been dis-  
20 closed in accordance with the rules pre-  
21 scribed under subparagraph (A); and

22           (ii) such collection or use has been  
23 consented to by the individual by a method  
24 that complies with the rules prescribed

1 under clause (i) or (ii) of subparagraph  
2 (B);

3 (D) require the operator of such a website  
4 or online service to provide individuals, upon  
5 request—

6 (i) access to personal information per-  
7 taining to them collected by such operator  
8 for correction; and

9 (ii) notice of whether any personal in-  
10 formation pertaining to such individual has  
11 been reused, disclosed, or sold and to  
12 whom; and

13 (E) require the operator of such a website  
14 or online service to establish and maintain rea-  
15 sonable procedures to protect the confiden-  
16 tiality, security, and integrity of personal infor-  
17 mation collected.

18 (2) EXCEPTION.—The rules prescribed under  
19 paragraph (1) shall not prohibit the collection, use,  
20 or dissemination of such information by the operator  
21 of such a website or online service necessary—

22 (A) to protect the security or integrity of  
23 its website;

24 (B) to take precautions against liability;

25 (C) to respond to judicial process; or

1 (D) to the extent permitted under other  
2 provisions of law, to provide information to law  
3 enforcement agencies.

4 (3) TERMINATION OF SERVICE.—The rules  
5 shall permit the operator of a website or an online  
6 service to terminate service provided to an individual  
7 who has refused to consent to the collection and use  
8 of information pursuant to the rules prescribed  
9 under paragraph (1)(B).

10 (c) ENFORCEMENT.—Subject to sections 4 through  
11 7, a violation of a rule prescribed under subsection (a)  
12 shall be treated as a violation of a rule defining an unfair  
13 or deceptive act or practice prescribed under section  
14 18(a)(1)(B) of the Federal Trade Commission Act (15  
15 U.S.C. 57a(a)(1)(B)).

16 (d) INCONSISTENT STATE LAW.—No State or local  
17 government may impose any liability for commercial ac-  
18 tivities or actions by operators in interstate or foreign  
19 commerce in connection with an activity or action de-  
20 scribed in this Act that is inconsistent with the treatment  
21 of those activities or actions under this section.

22 **SEC. 4. SAFE HARBORS.**

23 (a) GUIDELINES.—An operator may satisfy the re-  
24 quirements of rules issued under section 3(b) by following  
25 a set of self-regulatory guidelines, issued by representa-

1 tives of the marketing or online industries, or by other  
2 persons, approved under subsection (b).

3 (b) INCENTIVES.—

4 (1) SELF-REGULATORY INCENTIVES.—In pre-  
5 scribing rules under section 3, the Commission shall  
6 provide incentives for self-regulation by operators to  
7 implement the protections afforded individuals under  
8 the regulatory requirements described in subsection  
9 (b) of that section.

10 (2) DEEMED COMPLIANCE.—Such incentives  
11 shall include provisions for ensuring that a person  
12 will be deemed to be in compliance with the require-  
13 ments of the rules under section 3 if that person  
14 complies with guidelines that, after notice and com-  
15 ment, are approved by the Commission upon making  
16 a determination that the guidelines meet the require-  
17 ments of the rules issued under section 3.

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

23 (c) APPEALS.—Final action by the Commission on a  
24 request for approval of guidelines, or the failure to act  
25 within 180 days on a request for approval of guidelines,

1 submitted under subsection (b) may be appealed to a dis-  
2 trict court of the United States of appropriate jurisdiction  
3 as provided for in section 706 of title 5, United States  
4 Code.

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

6 (a) IN GENERAL.—

7 (1) CIVIL ACTIONS.—In any case in which the  
8 attorney general of a State has reason to believe  
9 that an interest of the residents of that State has  
10 been or is threatened or adversely affected by the  
11 engagement of any person in a practice that violates  
12 any rule of the Commission prescribed under section  
13 3(b), the State, as *parens patriae*, may bring a civil  
14 action on behalf of the residents of the State in a  
15 district court of the United States of appropriate ju-  
16 risdiction to—

17 (A) enjoin that practice;

18 (B) enforce compliance with the rule;

19 (C) obtain damage, restitution, or other  
20 compensation on behalf of residents of the  
21 State; or

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

24 (2) NOTICE.—

1 (A) IN GENERAL.—Before filing an action  
2 under paragraph (1), the attorney general of  
3 the State involved shall provide to the  
4 Commission—

5 (i) written notice of that action; and

6 (ii) a copy of the complaint for that  
7 action.

8 (B) EXEMPTION.—

9 (i) IN GENERAL.—Subparagraph (A)  
10 shall not apply with respect to the filing of  
11 an action by an attorney general of a State  
12 under this subsection, if the attorney gen-  
13 eral determines that it is not feasible to  
14 provide the notice described in that sub-  
15 paragraph before the filing of the action.

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

22 (b) INTERVENTION.—

23 (1) IN GENERAL.—On receiving notice under  
24 subsection (a)(2), the Commission shall have the

1 right to intervene in the action that is the subject  
2 of the notice.

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

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

8 (B) to file a petition for appeal.

9 (3) AMICUS CURIAE.—Upon application to the  
10 court, a person whose self-regulatory guidelines have  
11 been approved by the Commission and are relied  
12 upon as a defense by any defendant to a proceeding  
13 under this section may file amicus curiae in that  
14 proceeding.

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

20 (1) conduct investigations;

21 (2) administer oaths or affirmations; or

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

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

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

6 (e) VENUE; SERVICE OF PROCESS.—

7 (1) VENUE.—Any action brought under sub-  
8 section (a) may be brought in the district court of  
9 the United States that meets applicable require-  
10 ments relating to venue under section 1391 of title  
11 28, United States Code.

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

15 (A) is an inhabitant; or

16 (B) may be found.

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

18 (a) IN GENERAL.—Except as otherwise provided,  
19 this Act shall be enforced by the Commission under the  
20 Federal Trade Commission Act (15 U.S.C. 41 et seq.).

21 (b) PROVISIONS.—Compliance with the require-  
22 ments imposed under this Act shall be enforced under—

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

1 (A) national banks, and Federal branches  
2 and Federal agencies of foreign banks, by the  
3 Office of the Comptroller of the Currency;

4 (B) member banks of the Federal Reserve  
5 System (other than national banks), branches  
6 and agencies of foreign banks (other than Fed-  
7 eral branches, Federal agencies, and insured  
8 State branches of foreign banks), commercial  
9 lending companies owned or controlled by for-  
10 eign banks, and organizations operating under  
11 section 25 or 25(a) of the Federal Reserve Act  
12 (12 U.S.C. 601 et seq. and 611 et seq.), by the  
13 Board; and

14 (C) banks insured by the Federal Deposit  
15 Insurance Corporation (other than members of  
16 the Federal Reserve System) and insured State  
17 branches of foreign banks, by the Board of Di-  
18 rectors of the Federal Deposit Insurance Cor-  
19 poration;

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

1           (3) the Federal Credit Union Act (12 U.S.C.  
2           1751 et seq.) by the National Credit Union Adminis-  
3           tration Board with respect to any Federal credit  
4           union;

5           (4) part A of subtitle VII of title 49, United  
6           States Code, by the Secretary of Transportation  
7           with respect to any air carrier or foreign air carrier  
8           subject to that part;

9           (5) the Packers and Stockyards Act, 1921 (7  
10          U.S.C. 181 et seq.) (except as provided in section  
11          406 of that Act (7 U.S.C. 226, 227)), by the Sec-  
12          retary of Agriculture with respect to any activities  
13          subject to that Act; and

14          (6) the Farm Credit Act of 1971 (12 U.S.C.  
15          2001 et seq.) by the Farm Credit Administration  
16          with respect to any Federal land bank, Federal land  
17          bank association, Federal intermediate credit bank,  
18          or production credit association.

19          (c) EXERCISE OF CERTAIN POWERS.—For the pur-  
20          pose of the exercise by any agency referred to in sub-  
21          section (a) of its powers under any Act referred to in that  
22          subsection, a violation of any requirement imposed under  
23          this Act shall be deemed to be a violation of a requirement  
24          imposed under that Act. In addition to its powers under  
25          any provision of law specifically referred to in subsection

1 (a), each of the agencies referred to in that subsection may  
2 exercise, for the purpose of enforcing compliance with any  
3 requirement imposed under this Act, any other authority  
4 conferred on it by law.

5 (d) ACTIONS BY THE COMMISSION.—The Commis-  
6 sion shall prevent any person from violating a rule of the  
7 Commission under section 3 in the same manner, by the  
8 same means, and with the same jurisdiction, powers, and  
9 duties as though all applicable terms and provisions of the  
10 Federal Trade Commission Act (15 U.S.C. 41 et seq.)  
11 were incorporated into and made a part of this Act. Any  
12 entity that violates such rule shall be subject to the pen-  
13 alties and entitled to the privileges and immunities pro-  
14 vided in the Federal Trade Commission Act in the same  
15 manner, by the same means, and with the same jurisdic-  
16 tion, power, and duties as though all applicable terms and  
17 provisions of the Federal Trade Commission Act were in-  
18 corporated into and made a part of this Act.

19 (e) EFFECT ON OTHER LAWS.—

20 (1) PRESERVATION OF COMMISSION AUTHOR-  
21 ITY.—Nothing contained in the Act shall be con-  
22 strued to limit the authority of the Commission  
23 under any other provisions of law.

24 (2) RELATION TO COMMUNICATIONS ACT.—  
25 Nothing in this Act or the rules prescribed there-

1 under shall require an operator of a website or on-  
2 line service to take any action that is inconsistent  
3 with the requirements of section 222 or 631 of the  
4 Communications Act of 1934 (47 U.S.C. 222, 551).

5 **SEC. 7. PRIVATE RIGHT OF ACTION.**

6 (a) PRIVATE RIGHT OF ACTION.—A person or entity  
7 may, if otherwise permitted by the laws or rules of court  
8 of a State, bring in an appropriate court of that State—

9 (1) an action based on a violation of any rule  
10 prescribed under section 3 to enjoin such violation;

11 (2) an action to recover for actual monetary  
12 loss from such a violation, or to receive \$1,000 in  
13 damages for each such violation, whichever is great-  
14 er; or

15 (3) both such actions.

16 (b) WILLFUL AND KNOWING VIOLATIONS.—If the  
17 court finds that the defendant willfully or knowingly vio-  
18 lated any rule prescribed under section 3, the court may,  
19 in its discretion, increase the amount of the award avail-  
20 able under subsection (a)(2) to \$10,000.

21 **SEC. 8. REVIEW.**

22 Not later than 5 years after the effective date of the  
23 rules initially issued under section 3, the Commission  
24 shall—

1           (1) review the implementation of this Act, in-  
2           cluding the effect of the implementation of this Act  
3           on practices relating to the collection and disclosure  
4           of information relating to children, children’s ability  
5           to obtain access to information of their choice online,  
6           and on the availability of websites directed to chil-  
7           dren; and

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

10 **SEC. 9. DEFINITIONS.**

11       In this Act:

12           (1) OPERATOR.—The term “operator”—

13               (A) means any person who operates a  
14               website located on the Internet or an online  
15               service and who collects or maintains personal  
16               information from or about the users of or visi-  
17               tors to such website or online service, or on  
18               whose behalf such information is collected or  
19               maintained, where such website or online serv-  
20               ice is operated for commercial purposes, includ-  
21               ing any person offering products or services for  
22               sale through that website or online service, in-  
23               volving commerce—

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

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

4 (I) another such territory; or

5 (II) any State or foreign nation;

6 or

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

9 but

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

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

16 (3) DISCLOSURE.—The term “disclosure”  
17 means, with respect to personal information—

18 (A) the release of personal information col-  
19 lected from an individual in identifiable form by  
20 an operator for any purpose, except where such  
21 information is provided to a person other than  
22 the operator who provides support for the inter-  
23 nal operations of the website and does not dis-  
24 close or use that information for any other pur-  
25 pose; and

1 (B) making personal information collected  
2 from an individual by a website or online serv-  
3 ice publicly available in identifiable form, by  
4 any means including by a public posting,  
5 through the Internet, or through—

6 (i) a home page of a website;

7 (ii) a pen pal service;

8 (iii) an electronic mail service;

9 (iv) a message board; or

10 (v) a chat room.

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

14 (5) INTERNET.—The term “Internet” means  
15 collectively the myriad of computer and tele-  
16 communications facilities, including equipment and  
17 operating software, which comprise the inter-  
18 connected world-wide network of networks that em-  
19 ploy the Transmission Control Protocol/Internet  
20 Protocol, or any predecessor or successor protocols  
21 to such protocol, to communicate information of all  
22 kinds by wire or radio.

23 (6) PERSONAL INFORMATION.—The term “per-  
24 sonal information” means individually identifiable

1 information about an individual collected online,  
2 including—

3 (A) a first and last name;

4 (B) a home or other physical address in-  
5 cluding street name and name of a city or town;

6 (C) an e-mail address;

7 (D) a telephone number;

8 (E) a Social Security number;

9 (F) any other identifier that the Commis-  
10 sion determines permits the physical or online  
11 contacting of a specific individual; or

12 (G) unique identifying information that the  
13 website collects online and combines with an  
14 identifier described in this paragraph.

15 (7) PERSON.—The term “person” means any  
16 individual, partnership, corporation, trust, estate, co-  
17 operative, association, or other entity.

18 (8) WEBSITE; ONLINE SERVICE.—The Commis-  
19 sion shall by rule define the terms “website” and  
20 “online service” in a manner consistent with the  
21 purposes of this Act, and shall revise or amend such  
22 rule to take into account changes in technology,  
23 practice, or procedure with respect to the collection  
24 of personal information over the Internet.

1 **SEC. 10. EFFECTIVE DATE.**

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

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

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

○