

108TH CONGRESS
2D SESSION

S. 2312

To regulate the transmission of personally identifiable information to foreign affiliates and subcontractors.

IN THE SENATE OF THE UNITED STATES

APRIL 8, 2004

Mrs. CLINTON (for herself and Mr. DAYTON) introduced the following bill; which was read twice and referred to the Committee on Commerce, Science, and Transportation

A BILL

To regulate the transmission of personally identifiable information to foreign affiliates and subcontractors.

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 “SAFE-ID Act” or the
5 “SAFE-ID Act”.

6 **SEC. 2. DEFINITIONS.**

7 As used in this Act, the following definitions shall
8 apply:

1 (1) BUSINESS ENTERPRISE.—The term “busi-
2 ness enterprise” means any organization, associa-
3 tion, or venture established to make a profit.

4 (2) COUNTRY WITH ADEQUATE PRIVACY PRO-
5 TECTION.—The term “country with adequate pri-
6 vacy protection” means a country that has been cer-
7 tified by the Federal Trade Commission as having a
8 legal system that provides adequate privacy protec-
9 tion for personally identifiable information.

10 (3) HEALTH CARE BUSINESS.—The term
11 “health care business” means any business enter-
12 prise or private, nonprofit organization that collects
13 or retains personally identifiable information about
14 consumers in relation to medical care, including—

15 (A) hospitals;

16 (B) health maintenance organizations;

17 (C) medical partnerships;

18 (D) emergency medical transportation
19 companies;

20 (E) medical transcription companies;

21 (F) banks that collect or process medical
22 billing information; and

23 (G) subcontractors, or potential sub-
24 contractors, of the entities described in sub-
25 paragraphs (A) through (F).

1 (4) PERSONALLY IDENTIFIABLE INFORMA-
2 TION.—The term “personally identifiable informa-
3 tion” includes, but is not limited to, information
4 such as—

5 (A) name;

6 (B) postal address;

7 (C) financial information;

8 (D) medical records;

9 (E) date of birth;

10 (F) phone number;

11 (G) e-mail address;

12 (H) social security number;

13 (I) mother’s maiden name;

14 (J) password;

15 (K) state identification information; and

16 (L) driver’s license number.

17 **SEC. 3. TRANSMISSION OF INFORMATION.**

18 (a) IN GENERAL.—A business enterprise may trans-
19 mit personally identifiable information regarding a citizen
20 of the United States to any foreign affiliate or subcon-
21 tractor located in a country that is a country with ade-
22 quate privacy protection.

23 (b) CONSENT REQUIRED.—A business enterprise
24 may not transmit personally identifiable information re-
25 garding a citizen of the United States to any foreign affil-

1 iate or subcontractor located in a country that is a country
2 without adequate privacy protection unless—

3 (1) the business enterprise discloses to the cit-
4 izen that the country to which the information will
5 be transmitted does not have adequate privacy pro-
6 tection;

7 (2) the business enterprise obtains consent from
8 the citizen, before a consumer relationship is estab-
9 lished or before the effective date of this Act, to
10 transmit such information to such foreign affiliate or
11 subcontractor; and

12 (3) the consent referred to in paragraph (2) is
13 renewed by the citizen within 1 year before such in-
14 formation is transmitted.

15 (c) LIABILITY.—A business enterprise shall be liable
16 for any damages arising from the improper storage, dupli-
17 cation, sharing, or other misuse of personally identifiable
18 information by the business enterprise or by any of its
19 foreign affiliates or subcontractors that received such in-
20 formation from the business enterprise.

21 (d) RULEMAKING.—The Chairman of the Federal
22 Trade Commission shall promulgate regulations through
23 which the Chairman may enforce the provisions of this
24 section and impose a fine for a violation of this section.

1 **SEC. 4. HEALTH CARE INFORMATION.**

2 (a) IN GENERAL.—A health care business shall be
3 liable for any damages arising from the improper storage,
4 duplication, sharing, or other misuse of personally identifi-
5 able information by the business enterprise or by any of
6 its foreign affiliates or subcontractors that received such
7 information from the business enterprise.

8 (b) NO OPT OUT PROVISION.—A health care busi-
9 ness may not terminate an existing relationship with a
10 consumer of health care services to avoid the consent re-
11 quirement under section 3(b).

12 (c) RULEMAKING.—The Secretary of Health and
13 Human Services shall promulgate regulations through
14 which the Secretary may enforce the provisions of this sec-
15 tion and impose a fine for the violation of this section.

16 **SEC. 5. CERTIFICATION.**

17 (a) IN GENERAL.—Not later than 6 months after the
18 date of enactment of this Act, the Federal Trade Commis-
19 sion shall—

20 (1) certify those countries that have legal sys-
21 tems that provide adequate privacy protection for
22 personally identifiable information; and

23 (2) make the list of countries certified under
24 paragraph (1) available to the general public.

25 (b) CERTIFICATION CRITERIA.—In determining
26 whether a country should be certified under this section,

1 the Federal Trade Commission shall consider the ade-
2 quacy of the country's infrastructure for detecting, evalu-
3 ating, and responding to privacy violations.

4 (c) EUROPEAN UNION DATA PROTECTION DIREC-
5 TIVE.—A country that has comprehensive privacy laws
6 that meet the requirements of the European Union Data
7 Protection Directive shall be certified under this section
8 unless the Federal Trade Commission determines that
9 such laws are not commonly enforced within such country.

10 **SEC. 6. EFFECTIVE DATE.**

11 This Act shall take effect on the expiration of the
12 date which is 90 days after the date of enactment of this
13 Act.

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