

108TH CONGRESS  
2D SESSION

# S. 2471

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

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IN THE SENATE OF THE UNITED STATES

MAY 20, 2004

Mrs. CLINTON introduced the following bill; which was read twice and referred to the Committee on the Judiciary

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## 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 “Safeguarding Ameri-  
5       cans From Exporting Identification Data Act” or the  
6       “SAFE-ID Act”.

7       **SEC. 2. DEFINITIONS.**

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

1           (1) BUSINESS ENTERPRISE.—The term “busi-  
2       ness enterprise” means—

3                   (A) any organization, association, or ven-  
4       ture established to make a profit;

5                   (B) any health care business;

6                   (C) any private, nonprofit organization; or

7                   (D) any contractor, subcontractor, or po-  
8       tential subcontractor of an entity described in  
9       subparagraph (A), (B), or (C).

10          (2) 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           (3) PERSONALLY IDENTIFIABLE INFORMA-  
2           TION.—The term “personally identifiable informa-  
3           tion” includes information such as—

- 4                   (A) name;
- 5                   (B) postal address;
- 6                   (C) financial information;
- 7                   (D) medical records;
- 8                   (E) date of birth;
- 9                   (F) phone number;
- 10                  (G) e-mail address;
- 11                  (H) social security number;
- 12                  (I) mother’s maiden name;
- 13                  (J) password;
- 14                  (K) state identification information; and
- 15                  (L) driver’s license number.

16 **SEC. 3. TRANSMISSION OF INFORMATION.**

17       (a) PROHIBITION.—A business enterprise may not  
18       disclose personally identifiable information regarding a  
19       resident of the United States to any foreign branch, affil-  
20       iate, subcontractor, or unaffiliated third party located in  
21       a foreign country unless—

- 22           (1) the business enterprise provides the notice  
23           of privacy protections described in sections 502 and  
24           503 of the Gramm-Leach-Bliley Act (15 U.S.C.  
25           6802 and 6803) or required by the regulations pro-

1 mulgated pursuant to section 264(c) of the Health  
 2 Insurance Portability and Accountability Act of  
 3 1996 (42 U.S.C. 1320d–2 note), as appropriate;

4 (2) the business enterprise complies with the  
 5 safeguards described in section 501(b) of the  
 6 Gramm-Leach-Bliley Act (15 U.S.C. 6801(b)), as  
 7 appropriate;

8 (3) the consumer is given the opportunity, be-  
 9 fore the time that such information is initially dis-  
 10 closed, to object to the disclosure of such informa-  
 11 tion to such foreign branch, affiliate, subcontractor,  
 12 or unaffiliated third party; and

13 (4) the consumer is given an explanation of how  
 14 the consumer can exercise the nondisclosure option  
 15 described in paragraph (3).

16 (b) HEALTH CARE BUSINESSES.—A health care  
 17 business may not terminate an existing relationship with  
 18 a consumer of health care services to avoid the consumer  
 19 from objecting to the disclosure under subsection (a)(3).

20 (c) EFFECT ON BUSINESS RELATIONSHIP.—

21 (1) NONDISCRIMINATION.—A business enter-  
 22 prise may not discriminate against or deny an other-  
 23 wise qualified consumer a financial product or a  
 24 health care service because the consumer has ob-  
 25 jected to the disclosure under subsection (a)(3).

1           (2) PRODUCTS AND SERVICES.—A business en-  
 2       terprise shall not be required to offer or provide a  
 3       product or service through affiliated entities or joint-  
 4       ly with nonaffiliated business enterprises.

5           (3) INCENTIVES AND DISCOUNTS.—Nothing in  
 6       this subsection is intended to prohibit a business en-  
 7       terprise from offering incentives or discounts to elie-  
 8       it a specific response to the notice required under  
 9       subsection (a).

10       (d) LIABILITY.—

11           (1) IN GENERAL.—A business enterprise that  
 12       knowingly and directly transfers personally identifi-  
 13       able information to a foreign branch, affiliate, sub-  
 14       contractor, or unaffiliated third party shall be liable  
 15       to any person suffering damages resulting from the  
 16       improper storage, duplication, sharing, or other mis-  
 17       use of such information by the transferee.

18           (2) CIVIL ACTION.—An injured party under  
 19       paragraph (1) may sue in law or in equity in any  
 20       court of competent jurisdiction to recover the dam-  
 21       ages sustained as a result of a violation of this sec-  
 22       tion.

23       (e) RULEMAKING.—The Chairman of the Federal  
 24       Trade Commission shall promulgate regulations through  
 25       which the Chairman may enforce the provisions of this

1 section and impose a civil penalty for a violation of this  
 2 section.

3 **SEC. 4. PRIVACY FOR CONSUMERS OF HEALTH SERVICES.**

4       The Secretary of Health and Human Services shall  
 5 revise the regulations promulgated pursuant to section  
 6 264(c) of the Health Insurance Portability and Account-  
 7 ability Act of 1996 (42 U.S.C. 1320d–2 note) to require  
 8 a covered entity (as defined under such regulations) that  
 9 outsources protected health information (as defined under  
 10 such regulations) outside the United States to include in  
 11 such entity’s notice of privacy protections—

12           (1) notification that the covered entity  
 13 outsources protected health information to business  
 14 associates (as defined under such regulations) for  
 15 processing outside the United States;

16           (2) a description of the privacy laws of the  
 17 country to which the protected health information  
 18 will be sent;

19           (3) any additional risks and consequences to  
 20 the privacy and security of protected health informa-  
 21 tion that arise as a result of the processing of such  
 22 information in a foreign country;

23           (4) additional measures the covered entity is  
 24 taking to protect the protected health information  
 25 outsourced for processing outside the United States;

1           (5) notification that the protected health infor-  
 2           mation will not be outsourced outside the United  
 3           States if the consumer objects; and

4           (6) a certification that—

5                 (A) the covered entity has taken reason-  
 6                 able steps to identify the locations where pro-  
 7                 tected health information is outsourced by such  
 8                 business associates;

9                 (B) attests to the privacy and security of  
 10                the protected health information outsourced for  
 11                processing outside the United States; and

12                (C) states the reasons for the determina-  
 13                tion by the covered entity that the privacy and  
 14                security of such information is maintained.

15 **SEC. 5. PRIVACY FOR CONSUMERS OF FINANCIAL SERV-**  
 16 **ICES.**

17           Section 503(b) of the Gramm-Leach-Bliley Act (15  
 18 U.S.C. 6803(b)) is amended—

19                (1) in paragraph (3), by striking “and” after  
 20                the semicolon;

21                (2) in paragraph (4), by striking the period at  
 22                the end and inserting “; and”; and

23                (3) by adding at the end the following:

1           “(5) if the financial institution outsources non-  
2       public personal information outside the United  
3       States—

4           “(A) information informing the consumer  
5       in simple language—

6           “(i) that the financial institution  
7       outsources nonpublic personal information  
8       to entities for processing outside the  
9       United States;

10          “(ii) of the privacy laws of the coun-  
11       try to which nonpublic personal informa-  
12       tion will be sent;

13          “(iii) of any additional risks and con-  
14       sequences to the privacy and security of an  
15       individual’s nonpublic personal information  
16       that arise as a result of the processing of  
17       such information in a foreign country; and

18          “(iv) of the additional measures the  
19       financial institution is taking to protect the  
20       nonpublic personal information outsourced  
21       for processing outside the United States;  
22       and

23          “(B) a certification that—

24               “(i) the financial institution has taken  
25       reasonable steps to identify the locations



1           where nonpublic personal information is  
2           outsourced by such entities;

3           “(ii) attests to the privacy and secu-  
4           rity of the nonpublic personal information  
5           outsourced for processing outside the  
6           United States; and

7           “(iii) states the reasons for the deter-  
8           mination by the institution that the privacy  
9           and security of such information is main-  
10          tained.”

11 **SEC. 6. EFFECTIVE DATE.**

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

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