

109TH CONGRESS
1ST SESSION

S. 810

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

IN THE SENATE OF THE UNITED STATES

APRIL 14, 2005

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

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:

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

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

3 (B) any health care business;

4 (C) any private, nonprofit organization; or

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

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

13 (A) hospitals;

14 (B) health maintenance organizations;

15 (C) medical partnerships;

16 (D) emergency medical transportation
17 companies;

18 (E) medical transcription companies;

19 (F) banks that collect or process medical
20 billing information; and

21 (G) subcontractors, or potential sub-
22 contractors, of the entities described in sub-
23 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(e) 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 by such regulations) that
9 outsources protected health information (as defined by
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 by such regulations) for proc-
15 essing 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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