

Union Calendar No. 93

113TH CONGRESS
1ST SESSION

H. R. 1234

[Report No. 113–128]

To amend title 44, United States Code, to require preservation of certain electronic records by Federal agencies, to require a certification and reports relating to Presidential records, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

MARCH 18, 2013

Mr. CUMMINGS introduced the following bill; which was referred to the
Committee on Oversight and Government Reform

JUNE 25, 2013

Reported with amendments, committed to the Committee of the Whole House
on the State of the Union, and ordered to be printed

[Omit the part struck through and insert the part printed in *italic*]

A BILL

To amend title 44, United States Code, to require preservation of certain electronic records by Federal agencies, to require a certification and reports relating to Presidential records, 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 Message
5 Preservation Act”.

6 **SEC. 2. RECORDS MANAGEMENT.**

7 (a) REQUIREMENT FOR PRESERVATION OF ELEC-
8 TRONIC MESSAGES.—

9 (1) IN GENERAL.—Chapter 29 of title 44,
10 United States Code, is amended by adding at the
11 end the following new section:

12 **“§ 2911. Preservation of electronic messages and**
13 **other records**

14 “(a) REGULATIONS REQUIRED.—Not later than 18
15 months after the date of the enactment of this section,
16 the Archivist shall promulgate regulations governing Fed-
17 eral agency preservation of electronic messages that are
18 determined to be records (as such term is defined under
19 section 3301 of this title). Such regulations shall, at a
20 minimum—

21 “(1) require the electronic capture, manage-
22 ment, and preservation of such electronic records in
23 accordance with the records disposition requirements
24 of chapter 33 of this title;

1 “(2) require that such electronic records are
2 readily accessible for retrieval through electronic
3 searches;

4 “(3) establish mandatory minimum functional
5 requirements for electronic records management sys-
6 tems to ensure compliance with the requirements in
7 paragraphs (1) and (2);

8 “(4) establish a process to certify that Federal
9 agencies’ electronic records management systems
10 meet the functional requirements established under
11 paragraph (3); and

12 “(5) include timelines for Federal agency com-
13 pliance with the regulations that ensure compliance
14 as expeditiously as practicable but not later than
15 four years after the date of the enactment of this
16 section.

17 “(b) COVERAGE OF OTHER ELECTRONIC
18 RECORDS.—To the extent practicable, the regulations pro-
19 mulgated under subsection (a) shall also include require-
20 ments for the capture, management, and preservation of
21 other electronic records.

22 “(c) COMPLIANCE BY FEDERAL AGENCIES.—Each
23 Federal agency shall comply with the regulations promul-
24 gated under subsection (a).

1 “(d) REVIEW OF REGULATIONS REQUIRED.—The
2 Archivist shall periodically review and, as necessary,
3 amend the regulations promulgated under subsection (a).

4 “(e) REPORTS ON IMPLEMENTATION OF REGULA-
5 TIONS.—

6 “(1) AGENCY REPORT TO ARCHIVIST.—Not
7 later than four years after the date of the enactment
8 of this section, the head of each Federal agency shall
9 submit to the Archivist a report on the agency’s
10 compliance with the regulations promulgated under
11 this section.

12 “(2) ARCHIVIST REPORT TO CONGRESS.—Not
13 later than 90 days after receipt of all reports re-
14 quired by paragraph (1), the Archivist shall submit
15 to the Committee on Homeland Security and Gov-
16 ernmental Affairs of the Senate and the Committee
17 on Oversight and Government Reform of the House
18 of Representatives a report on Federal agency com-
19 pliance with the regulations promulgated under sub-
20 section (a).”.

21 (2) CLERICAL AMENDMENT.—The table of sec-
22 tions at the beginning of chapter 29 of title 44,
23 United States Code, is amended by adding after the
24 item relating to section 2910 the following new item:

“2911. Preservation of electronic messages and other records.”.

1 (b) *DISCLOSURE REQUIREMENT FOR OFFICIAL BUSI-*
 2 *NESS CONDUCTED USING NON-OFFICIAL ELECTRONIC MES-*
 3 *SAGING ACCOUNT.*—

4 (1) *AMENDMENT.*—Chapter 29 of title 44, *United*
 5 *States Code*, as amended by subsection (a)(1), is fur-
 6 *ther amended by adding at the end the following new*
 7 *section:*

8 **“§ 2912. Disclosure requirement for official business**
 9 **conducted using non-official electronic**
 10 **messaging accounts**

11 “(a) *IN GENERAL.*—An officer or employee of an exec-
 12 *utive agency may not create or send a record using a non-*
 13 *official electronic messaging account unless such officer or*
 14 *employee—*

15 “(1) *copies an official electronic messaging ac-*
 16 *count of the officer or employee in the original cre-*
 17 *ation or transmission of the record; or*

18 “(2) *forwards a complete copy of the record to an*
 19 *official electronic messaging account of the officer or*
 20 *employee within five days after the original creation*
 21 *or transmission of the record.*

22 “(b) *ADVERSE ACTIONS.*—The intentional violation of
 23 *subsection (a) (including any rules, regulations, or other*
 24 *implementing guidelines), as determined by the appropriate*
 25 *supervisor, shall be a basis for disciplinary action in ac-*

1 cordance with subchapter I, II, or V of chapter 75 of title
 2 5, as the case may be.

3 “(c) *DEFINITIONS.*—*In this section:*

4 “(1) *ELECTRONIC MESSAGES.*—*The term ‘elec-*
 5 *tronic messages’ has the meaning given that term in*
 6 *section 2901.*

7 “(2) *ELECTRONIC MESSAGING ACCOUNT.*—*The*
 8 *term ‘electronic messaging account’ means any ac-*
 9 *count that sends electronic messages.*

10 “(3) *EXECUTIVE AGENCY.*—*The term ‘executive*
 11 *agency’ has the meaning given that term in section*
 12 *105 of title 5.”.*

13 (2) *CLERICAL AMENDMENT.*—*The table of sec-*
 14 *tions at the beginning of chapter 29 of title 44,*
 15 *United States Code, as amended by subsection (a)(2),*
 16 *is further amended by adding at the end the following*
 17 *new item:*

“2912. *Disclosure requirement for official business conducted using non-official
 electronic messaging accounts.”.*

18 ~~(b)~~ (c) *DEFINITIONS.*—Section 2901 of title 44,
 19 United States Code, is amended—

20 (1) by striking “and” at the end of paragraph
 21 (14); and

22 (2) by striking paragraph (15) and inserting
 23 the following new paragraphs:

1 “(15) the term ‘electronic messages’ means
2 electronic mail and other electronic messaging sys-
3 tems that are used for purposes of communicating
4 between individuals; and

5 “(16) the term ‘electronic records management
6 system’ means software designed to manage elec-
7 tronic records, including by—

8 “(A) categorizing and locating records;

9 “(B) ensuring that records are retained as
10 long as necessary;

11 “(C) identifying records that are due for
12 disposition; and

13 “(D) ensuring the storage, retrieval, and
14 disposition of records.”.

15 **SEC. 3. PRESIDENTIAL RECORDS.**

16 (a) ADDITIONAL REGULATIONS RELATING TO PRESI-
17 DENTIAL RECORDS.—

18 (1) IN GENERAL.—Section 2206 of title 44,
19 United States Code, is amended—

20 (A) by striking “and” at the end of para-
21 graph (3);

22 (B) by striking the period at the end of
23 paragraph (4) and inserting “; and”; and

24 (C) by adding at the end the following:

1 “(5) provisions for establishing standards nec-
2 essary for the economical and efficient management
3 of electronic Presidential records during the Presi-
4 dent’s term of office, including—

5 “(A) records management controls nec-
6 essary for the capture, management, and pres-
7 ervation of electronic messages;

8 “(B) records management controls nec-
9 essary to ensure that electronic messages are
10 readily accessible for retrieval through elec-
11 tronic searches; and

12 “(C) a process to certify the electronic
13 records management system to be used by the
14 President for the purposes of complying with
15 the requirements in subparagraphs (A) and
16 (B).”.

17 (2) DEFINITIONS.—Section 2201 of title 44,
18 United States Code, is amended by adding at the
19 end the following new paragraphs:

20 “(6) The term ‘electronic messages’ has the
21 meaning given that term under section 2901(15) of
22 this title.

23 “(7) The term ‘electronic records management
24 system’ has the meaning given that term under sec-
25 tion 2901(16) of this title.”.

1 (b) CERTIFICATION OF PRESIDENT’S MANAGEMENT
2 OF PRESIDENTIAL RECORDS.—

3 (1) CERTIFICATION REQUIRED.—Chapter 22 of
4 title 44, United States Code, is amended by adding
5 at the end the following new section:

6 “§ 2208. **Certification of the President’s management**
7 **of Presidential records**

8 “(a) ANNUAL CERTIFICATION.—The Archivist shall
9 annually certify whether the electronic records manage-
10 ment controls established by the President meet require-
11 ments under sections 2203(a) and 2206(5) of this title.

12 “(b) REPORT TO CONGRESS.—The Archivist shall re-
13 port annually to the Committee on Homeland Security and
14 Governmental Affairs of the Senate and the Committee
15 on Oversight and Government Reform of the House of
16 Representatives on the status of the certification.”.

17 (2) CLERICAL AMENDMENT.—The table of sec-
18 tions at the beginning of chapter 22 of title 44,
19 United States Code, ~~as amended by subsection~~
20 ~~(a)(4), is further amended~~ *is amended* by adding at
21 the end the following new item:

“2208. Certification of the President’s management of Presidential records.”.

22 (c) REPORT TO CONGRESS.—Section 2203(f) of title
23 44, United States Code, is amended by adding at the end
24 the following:

1 “(4) One year following the conclusion of a Presi-
 2 dent’s term of office, or if a President serves consecutive
 3 terms one year following the conclusion of the last term,
 4 the Archivist shall submit to the Committee on Homeland
 5 Security and Governmental Affairs of the Senate and the
 6 Committee on Oversight and Government Reform of the
 7 House of Representatives a report on—

8 “(A) the volume and format of electronic Presi-
 9 dential records deposited into that President’s Presi-
 10 dential archival depository; and

11 “(B) whether the electronic records manage-
 12 ment controls of that President met the require-
 13 ments under sections 2203(a) and 2206(5) of this
 14 title.”.

15 (d) EFFECTIVE DATE.—The amendments made by
 16 ~~this section~~ *subsections (a), (b), and (c)* shall take effect
 17 one year after the date of the enactment of this Act.

18 (e) *DISCLOSURE REQUIREMENT FOR OFFICIAL BUSI-*
 19 *NESS CONDUCTED USING NON-OFFICIAL ELECTRONIC MES-*
 20 *SAGING ACCOUNT.*—

21 (1) *AMENDMENT.*—*Chapter 22 of title 44, United*
 22 *States Code, as amended by subsection (b)(1), is fur-*
 23 *ther amended by adding at the end the following new*
 24 *section:*

1 **“§ 2209. Disclosure requirement for official business**
2 **conducted using non-official electronic**
3 **messaging accounts**

4 “(a) *IN GENERAL.*—An officer or employee of an execu-
5 tive agency may not create or send a Presidential record
6 using a non-official electronic messaging account unless
7 such officer or employee—

8 “(1) copies an official electronic messaging ac-
9 count of the officer or employee in the original cre-
10 ation or transmission of the Presidential record; or

11 “(2) forwards a complete copy of the Presidential
12 record to an official electronic messaging account of
13 the officer or employee within five days after the
14 original creation or transmission of the Presidential
15 record.

16 “(b) *ADVERSE ACTIONS.*—The intentional violation of
17 subsection (a) (including any rules, regulations, or other
18 implementing guidelines), as determined by the appropriate
19 supervisor, shall be a basis for disciplinary action in ac-
20 cordance with subchapter I, II, or V of chapter 75 of title
21 5, as the case may be.

22 “(c) *DEFINITIONS.*—In this section:

23 “(1) *ELECTRONIC MESSAGES.*—The term ‘elec-
24 tronic messages’ has the meaning given that term in
25 section 2901.

1 “(2) *ELECTRONIC MESSAGING ACCOUNT.*—*The*
2 *term ‘electronic messaging account’ means any ac-*
3 *count that sends electronic messages.*

4 “(3) *EXECUTIVE AGENCY.*—*The term ‘executive*
5 *agency’ has the meaning given that term in section*
6 *105 of title 5.”.*

7 (2) *CLERICAL AMENDMENT.*—*The table of sec-*
8 *tions at the beginning of chapter 22 of title 44,*
9 *United States Code, as amended by subsection (b)(2),*
10 *is further amended by adding at the end the following*
11 *new item:*

 “2209. *Disclosure requirement for official business conducted using non-official*
 electronic messaging accounts.”.

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