

§ 6824. Relation to State laws**(a) In general**

This subchapter shall not be construed as superseding, altering, or affecting the statutes, regulations, orders, or interpretations in effect in any State, except to the extent that such statutes, regulations, orders, or interpretations are inconsistent with the provisions of this subchapter, and then only to the extent of the inconsistency.

(b) Greater protection under State law

For purposes of this section, a State statute, regulation, order, or interpretation is not inconsistent with the provisions of this subchapter if the protection such statute, regulation, order, or interpretation affords any person is greater than the protection provided under this subchapter as determined by the Federal Trade Commission, after consultation with the agency or authority with jurisdiction under section 6822 of this title of either the person that initiated the complaint or that is the subject of the complaint, on its own motion or upon the petition of any interested party.

(Pub. L. 106-102, title V, §524, Nov. 12, 1999, 113 Stat. 1448.)

§ 6825. Agency guidance

In furtherance of the objectives of this subchapter, each Federal banking agency (as defined in section 1813(z) of title 12), the National Credit Union Administration, and the Securities and Exchange Commission or self-regulatory organizations, as appropriate, shall review regulations and guidelines applicable to financial institutions under their respective jurisdictions and shall prescribe such revisions to such regulations and guidelines as may be necessary to ensure that such financial institutions have policies, procedures, and controls in place to prevent the unauthorized disclosure of customer financial information and to deter and detect activities proscribed under section 6821 of this title.

(Pub. L. 106-102, title V, §525, Nov. 12, 1999, 113 Stat. 1448.)

§ 6826. Reports**(a) Report to the Congress**

Before the end of the 18-month period beginning on November 12, 1999, the Comptroller General, in consultation with the Federal Trade Commission, Federal banking agencies, the National Credit Union Administration, the Securities and Exchange Commission, appropriate Federal law enforcement agencies, and appropriate State insurance regulators, shall submit to the Congress a report on the following:

(1) The efficacy and adequacy of the remedies provided in this subchapter in addressing attempts to obtain financial information by fraudulent means or by false pretenses.

(2) Any recommendations for additional legislative or regulatory action to address threats to the privacy of financial information created by attempts to obtain information by fraudulent means or false pretenses.

(b) Annual report by administering agencies

The Federal Trade Commission and the Attorney General shall submit to Congress an annual report on number and disposition of all enforcement actions taken pursuant to this subchapter.

(Pub. L. 106-102, title V, §526, Nov. 12, 1999, 113 Stat. 1448.)

§ 6827. Definitions

For purposes of this subchapter, the following definitions shall apply:

(1) Customer

The term “customer” means, with respect to a financial institution, any person (or authorized representative of a person) to whom the financial institution provides a product or service, including that of acting as a fiduciary.

(2) Customer information of a financial institution

The term “customer information of a financial institution” means any information maintained by or for a financial institution which is derived from the relationship between the financial institution and a customer of the financial institution and is identified with the customer.

(3) Document

The term “document” means any information in any form.

(4) Financial institution**(A) In general**

The term “financial institution” means any institution engaged in the business of providing financial services to customers who maintain a credit, deposit, trust, or other financial account or relationship with the institution.

(B) Certain financial institutions specifically included

The term “financial institution” includes any depository institution (as defined in section 461(b)(1)(A) of title 12), any broker or dealer, any investment adviser or investment company, any insurance company, any loan or finance company, any credit card issuer or operator of a credit card system, and any consumer reporting agency that compiles and maintains files on consumers on a nationwide basis (as defined in section 1681a(p) of this title).

(C) Securities institutions

For purposes of subparagraph (B)—

(i) the terms “broker” and “dealer” have the same meanings as given in section 78c of this title;

(ii) the term “investment adviser” has the same meaning as given in section 80b-2(a)(11) of this title; and

(iii) the term “investment company” has the same meaning as given in section 80a-3 of this title.

(D) Certain persons and entities specifically excluded

The term “financial institution” does not include any person or entity with respect to

any financial activity that is subject to the jurisdiction of the Commodity Futures Trading Commission under the Commodity Exchange Act [7 U.S.C. 1 et seq.] and does not include the Federal Agricultural Mortgage Corporation or any entity chartered and operating under the Farm Credit Act of 1971 [12 U.S.C. 2001 et seq.].

(E) Further definition by regulation

The Federal Trade Commission, after consultation with Federal banking agencies and the Securities and Exchange Commission, may prescribe regulations clarifying or describing the types of institutions which shall be treated as financial institutions for purposes of this subchapter.

(Pub. L. 106-102, title V, §527, Nov. 12, 1999, 113 Stat. 1449.)

Editorial Notes

REFERENCES IN TEXT

The Commodity Exchange Act, referred to in par. (4)(D), is act Sept. 21, 1922, ch. 369, 42 Stat. 998, which is classified generally to chapter 1 (§1 et seq.) of Title 7, Agriculture. For complete classification of this Act to the Code, see section 1 of Title 7 and Tables.

The Farm Credit Act of 1971, referred to in par. (4)(D), is Pub. L. 92-181, Dec. 10, 1971, 85 Stat. 583, which is classified generally to chapter 23 (§2001 et seq.) of Title 12, Banks and Banking. For complete classification of this Act to the Code, see Short Title note set out under section 2001 of Title 12 and Tables.

CHAPTER 94A—VISUAL DEPICTION PRIVACY

Sec.

6851. Civil action relating to disclosure of intimate images.

§ 6851. Civil action relating to disclosure of intimate images

(a) Definitions

In this section:

(1) Commercial pornographic content

The term “commercial pornographic content” means any material that is subject to the record keeping requirements under section 2257 of title 18.

(2) Consent

The term “consent” means an affirmative, conscious, and voluntary authorization made by the individual free from force, fraud, misrepresentation, or coercion.

(3) Depicted individual

The term “depicted individual” means an individual whose body appears in whole or in part in an intimate visual depiction and who is identifiable by virtue of the person’s face, likeness, or other distinguishing characteristic, such as a unique birthmark or other recognizable feature, or from information displayed in connection with the visual depiction.

(4) Disclose

The term “disclose” means to transfer, publish, distribute, or make accessible.

(5) Intimate visual depiction

The term “intimate visual depiction”—

(A) means a visual depiction, as that term is defined in section 2256(5) of title 18, that depicts—

(i) the uncovered genitals, pubic area, anus, or post-pubescent female nipple of an identifiable individual; or

(ii) the display or transfer of bodily sexual fluids—

(I) on to any part of the body of an identifiable individual;

(II) from the body of an identifiable individual; or

(III) an identifiable individual engaging in sexually explicit conduct and¹

(B) includes any visual depictions described in subparagraph (A) produced while the identifiable individual was in a public place only if the individual did not—

(i) voluntarily display the content depicted; or

(ii) consent to the sexual conduct depicted.

(6) Sexually explicit conduct

The term “sexually explicit conduct” has the meaning given the term in subparagraphs (A) and (B) of section 2256(2) of title 18.

(b) Civil action

(1) Right of action

(A) In general

Except as provided in paragraph (4), an individual whose intimate visual depiction is disclosed, in or affecting interstate or foreign commerce or using any means or facility of interstate or foreign commerce, without the consent of the individual, where such disclosure was made by a person who knows that, or recklessly disregards whether, the individual has not consented to such disclosure, may bring a civil action against that person in an appropriate district court of the United States for relief as set forth in paragraph (3).

(B) Rights on behalf of certain individuals

In the case of an individual who is under 18 years of age, incompetent, incapacitated, or deceased, the legal guardian of the individual or representative of the identifiable individual’s estate, another family member, or any other person appointed as suitable by the court, may assume the identifiable individual’s¹ rights under this section, but in no event shall the defendant be named as such representative or guardian.

(2) Consent

For purposes of an action under paragraph

(1)—

(A) the fact that the individual consented to the creation of the depiction shall not establish that the person consented to its distribution; and

(B) the fact that the individual disclosed the intimate visual depiction to someone else shall not establish that the person consented to the further disclosure of the intimate visual depiction by the person alleged to have violated paragraph (1).

¹ So in original.