

107TH CONGRESS  
1ST SESSION

# H. R. 2135

To protect consumer privacy.

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IN THE HOUSE OF REPRESENTATIVES

JUNE 12, 2001

Mr. SAWYER introduced the following bill; which was referred to the  
Committee on Energy and Commerce

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## A BILL

To protect consumer privacy.

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 “Consumer Privacy Pro-  
5 tection Act”.

6 **SEC. 2. FINDINGS AND PURPOSE.**

7 (a) FINDINGS.—The Congress finds the following:

8 (1) People in the United States lack important  
9 privacy protections.

10 (2) The opportunities for an individual to se-  
11 cure employment, insurance, and credit, to obtain  
12 medical care, and to participate in electronic com-

1 merce are endangered by the potential for misuse of  
2 certain personal information.

3 (3) Because markets work through trust, pre-  
4 dictability, and stability, privacy protections should  
5 help businesses gain the trust of consumers and  
6 compliment existing practices.

7 (4) 84 percent of Internet users are concerned  
8 about businesses and people they do not know ob-  
9 taining personal information about them.

10 (5) Nearly 80 percent of online consumers have  
11 at some time abandoned e-commerce transactions  
12 due to privacy concerns, resulting in an estimated  
13 loss to companies of \$12.4 billion in 2000.

14 (6) In order to protect the privacy of individ-  
15 uals in the Information Age, it is necessary and ap-  
16 propriate for public officials to take steps to safe-  
17 guard this essential freedom.

18 (b) PURPOSE.—The purpose of this Act is to assure  
19 that personal information about an individual consumer  
20 in the United States is properly protected and that any  
21 use of such information by others is consistent with the  
22 prior consent of the consumer.

23 **SEC. 3. PROTECTION OF PERSONAL INFORMATION.**

24 (a) LIMITATIONS ON DISCLOSURE OF PERSONAL IN-  
25 FORMATION.—An information recipient shall not disclose

1 to any other person personal information collected or ob-  
2 tained from or about a consumer, unless—

3 (1) such disclosure is made after the consumer  
4 has been provided with a clear and concise descrip-  
5 tion of the extent and circumstances under which  
6 such a disclosure may occur;

7 (2) such disclosure does not exceed the scope of  
8 the consumer's prior consent, which shall be—

9 (A) in the case of disclosure of personal in-  
10 formation, granted tacitly or affirmatively by  
11 the consumer after receiving the description re-  
12 quired by paragraph (1); or

13 (B) in the case of disclosure of sensitive  
14 personal information, granted affirmatively by  
15 the consumer after receiving the description re-  
16 quired by paragraph (1); and

17 (3) the consent granted under paragraph (2)  
18 has not subsequently been withdrawn by the con-  
19 sumer.

20 (b) LIMITATION ON COLLECTION OF OPTIONAL IN-  
21 FORMATION.—An information recipient may not require  
22 a consumer to provide, as a condition of entering into or  
23 completing a transaction with the information recipient,  
24 personal information that is not necessary to complete the  
25 transaction.

1           (c) **LIMITATION ON REFUSAL TO TRANSACT.**—An in-  
2 formation recipient may not terminate or refuse to enter  
3 into a transaction with a consumer because the consumer  
4 has not granted, or has withdrawn, the consent required  
5 by subsection (a), except when the sole purpose of the  
6 transaction is the acquisition of such information for dis-  
7 closure.

8           (d) **REASONABLE ACCESS TO PERSONAL INFORMA-**  
9 **TION.**—An information recipient shall provide to a con-  
10 sumer about whom personal information has been ob-  
11 tained reasonable access to the consumer’s personal infor-  
12 mation.

13 **SEC. 4. EXCEPTIONS.**

14           Section 3 does not apply to the disclosure of personal  
15 information—

16           (1) as necessary to effect, administer, or en-  
17 force a transaction requested or authorized by the  
18 consumer;

19           (2) to protect the confidentiality or security of  
20 personal information;

21           (3) to prevent or investigate fraud, an unau-  
22 thorized transaction, a claim, or other liability;

23           (4) to collect a debt or dishonored item;

24           (5) for the purpose of a securitization or sec-  
25 ondary market sale (including servicing rights);

- 1           (6) for the purposes of legal process;
- 2           (7) for law enforcement purposes;
- 3           (8) for governmental regulatory purposes;
- 4           (9) as otherwise authorized or required under a
- 5       Federal law; or
- 6           (10) if the Federal Trade Commission has
- 7       made a finding that such a disclosure is consistent
- 8       with the purposes of this Act and in the public inter-
- 9       est.

10 **SEC. 5. UNFAIR OR DECEPTIVE ACT OR PRACTICE.**

11       (a) VIOLATION OF ACT.—Disclosure of personal in-

12       formation about a consumer in a manner that violates this

13       Act constitutes an unfair or deceptive act or practice in

14       or affecting commerce (within the meaning of section

15       5(a)(1) of the Federal Trade Commission Act (15 U.S.C.

16       45)).

17       (b) VIOLATION OF RULE.—Violation of a rule made

18       under this Act constitutes violation of a rule defining an

19       unfair or deceptive act or practice made under section

20       18(a)(1)(B) of the Federal Trade Commission Act (15

21       U.S.C. 57a(a)(1)(B)).

22 **SEC. 6. SAFE HARBOR.**

23       (a) PRACTICES AND PROCEDURES, GUIDELINES.—A

24       person does not commit a violation of this Act if such

25       person—

1           (1) establishes, implements, and follows reason-  
2           able practices and procedures to effectively prevent  
3           a violation of this Act;

4           (2) implements and follows a set of guidelines  
5           setting forth reasonable practices and procedures to  
6           effectively prevent a violation of this Act, if such  
7           guidelines are—

8                   (A) issued by a self-regulatory organization  
9                   to which such person is, or could be, subject;  
10                   and

11                   (B) approved under subsection (b), after  
12                   submission by such organization to the Federal  
13                   Trade Commission; or

14           (3) implements and follows a set of model  
15           guidelines issued by the Commission, after notice  
16           and opportunity for comment, setting forth reason-  
17           able practices and procedures to effectively prevent  
18           a violation of this Act.

19           (b) APPROVAL OF GUIDELINES.—Not later than 90  
20           days after receiving a request by a self-regulatory organi-  
21           zation for approval of guidelines under subsection (a)(2)  
22           and after notice and an opportunity for comment, the Fed-  
23           eral Trade Commission shall approve or disapprove such  
24           proposed guidelines (setting forth in writing the reasons  
25           for any disapproval).

1 **SEC. 7. PRIVATE RIGHT OF ACTION.**

2 A consumer may bring in an appropriate district  
3 court of the United States or, if otherwise permitted by  
4 the laws or rules of court of a State, in an appropriate  
5 court of that State—

6 (1) a civil action to enjoin a violation of this  
7 Act;

8 (2) a civil action to recover—

9 (A) the greater of actual monetary loss or  
10 \$1,000 in damages for each such violation; and

11 (B) up to \$10,000, to be determined in the  
12 discretion of the court, if the court finds that  
13 the defendant willfully or knowingly violated  
14 such rules; or

15 (3) both such actions.

16 **SEC. 8. ACTIONS BY STATES.**

17 (a) **AUTHORITY OF STATES.**—Whenever the attorney  
18 general of a State, or an official or agency designated by  
19 a State, has reason to believe that any person has engaged  
20 or is engaging in a pattern or practice of violations of this  
21 Act, the State, on behalf of its residents, may bring—

22 (1) a civil action to enjoin such violations; and

23 (2) a civil action to recover—

24 (A) the greater of actual monetary loss of  
25 such residents or \$1,000 in damages for each  
26 such violation; and

1           (B) up to \$10,000, to be determined in the  
2           discretion of the court, if the court finds that  
3           the defendant willfully or knowingly violated  
4           such rules; or

5           (3) both such actions.

6           (b) EXCLUSIVE JURISDICTION OF FEDERAL  
7 COURTS.—(1) The district courts of the United States  
8 shall have exclusive jurisdiction over all civil actions  
9 brought under this section.

10          (2) Upon a proper showing in a civil action brought  
11 under this section, a permanent or temporary injunction  
12 or restraining order shall be granted without bond.

13          (c) RIGHTS OF FEDERAL TRADE COMMISSION.—(1)  
14 The State shall serve prior written notice of any civil ac-  
15 tion brought under this section upon the Federal Trade  
16 Commission and provide the Commission with a copy of  
17 its complaint, except in any case where such prior notice  
18 is not feasible, in which case the State shall serve such  
19 notice immediately upon instituting such action.

20          (2) The Commission shall have the right—

21           (A) to intervene in the action;

22           (B) upon so intervening, to be heard on all  
23 matters arising therein; and

24           (C) to file petitions for appeal.

1 (d) LIMITATION.—Whenever the Federal Trade Com-  
2 mission has commenced a civil action for violation of this  
3 Act, no State may, during the pendency of such action  
4 commenced by the Commission, subsequently commence  
5 a civil action against any defendant named in the Commis-  
6 sion’s complaint for any violation as alleged in the Com-  
7 mission’s complaint.

8 **SEC. 9. PREEMPTION.**

9 This Act and the rules made under this Act preempt  
10 any inconsistent provision of State law.

11 **SEC. 10. DEFINITIONS.**

12 In this Act:

13 (1) The term “information recipient” means  
14 any person who obtains personal information from  
15 or about a consumer, through a transaction in or af-  
16 fecting interstate or foreign commerce. Such term  
17 does not include—

18 (A) an affiliate, parent entity, or sub-  
19 sidiary of such person; or

20 (B) the consumer about whom such infor-  
21 mation has been obtained.

22 (2) The term “consumer” means an individual  
23 who is or was in a consumer relationship with an in-  
24 formation recipient.

1           (3) The term “personal information” means  
2 personally identifiable information and sensitive per-  
3 sonal information.

4           (4) The term “personally identifiable informa-  
5 tion” includes, with respect to a consumer—

6                   (A) a name;

7                   (B) an address;

8                   (C) a phone number; and

9                   (D) an electronic mail address.

10          (5) The term “sensitive personal information”  
11 includes, with respect to a consumer—

12                   (A) a Social Security identification num-  
13 ber; and

14                   (B) financial information.

15          (6) The term “State” includes any common-  
16 wealth, territory, or possession of the United States.

17          (7) The term “violation of this Act” includes  
18 violation of a rule made under this Act.

19 **SEC. 11. RULEMAKING AUTHORITY.**

20          Not later than one year after the date of enactment  
21 of this Act, the Federal Trade Commission shall prescribe  
22 rules, in accordance with section 553 of title 5, United  
23 States Code, to carry out this Act, which shall take effect  
24 not later than 180 days after their publication in final  
25 form.

1 **SEC. 12. EFFECTIVE DATE.**

2       This Act (other than section 11) shall take effect on  
3 the same date that the rules prescribed under section 11  
4 take effect.

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