

112TH CONGRESS
1ST SESSION

H. R. 611

To foster transparency about the commercial use of personal information, provide consumers with meaningful choice about the collection, use, and disclosure of such information, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 10, 2011

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

A BILL

To foster transparency about the commercial use of personal information, provide consumers with meaningful choice about the collection, use, and disclosure of such information, 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; TABLE OF CONTENTS.**

4 (a) SHORT TITLE.—This Act may be cited as the
5 “Building Effective Strategies To Promote Responsibility
6 Accountability Choice Transparency Innovation Consumer
7 Expectations and Safeguards Act” or the “BEST PRAC-
8 TICES Act”.

1 (b) TABLE OF CONTENTS.—The table of contents for
2 this Act is as follows:

- Sec. 1. Short title; table of contents.
- Sec. 2. Definitions.

TITLE I—TRANSPARENCY, NOTICE, AND INDIVIDUAL CHOICE

- Sec. 101. Information to be made available.
- Sec. 102. Provision of notice or notices.
- Sec. 103. Opt-out consent required for collection and use of covered information by a covered entity.
- Sec. 104. Express affirmative consent.
- Sec. 105. Material changes to privacy practices.
- Sec. 106. Exceptions.

TITLE II—ACCURACY, ACCESS, AND DISPUTE RESOLUTION

- Sec. 201. Accuracy.
- Sec. 202. Access and dispute resolution.

TITLE III—DATA SECURITY, DATA MINIMIZATION, AND ACCOUNTABILITY

- Sec. 301. Data security.
- Sec. 302. Accountability.
- Sec. 303. Data minimization obligations.

TITLE IV—SAFE HARBOR AND SELF-REGULATORY CHOICE PROGRAM

- Sec. 401. Safe harbor.
- Sec. 402. Approval by the Federal Trade Commission.
- Sec. 403. Requirements of self-regulatory program.
- Sec. 404. Rulemaking.

TITLE V—EXEMPTIONS

- Sec. 501. Use of aggregate or deidentified information.
- Sec. 502. Activities covered by other Federal privacy laws.

TITLE VI—APPLICATION AND ENFORCEMENT

- Sec. 601. General application.
- Sec. 602. Enforcement by the Federal Trade Commission.
- Sec. 603. Enforcement by State attorneys general.
- Sec. 604. Private right of action.
- Sec. 605. Effect on other laws.

TITLE VII—MISCELLANEOUS PROVISIONS

- Sec. 701. Review.
- Sec. 702. Consumer and business education campaign.
- Sec. 703. Effective date.
- Sec. 704. Severability.

1 **SEC. 2. DEFINITIONS.**

2 As used in this Act, the following definitions apply:

3 (1) AGGREGATE INFORMATION.—The term “ag-
4 gregate information” means data that relates to a
5 group or category of services or individuals, from
6 which all information identifying an individual has
7 been removed.

8 (2) COMMISSION.—The term “Commission”
9 means the Federal Trade Commission.

10 (3) COVERED ENTITY.—The term “covered en-
11 tity” means a person engaged in interstate com-
12 merce that collects or stores data containing covered
13 information or sensitive information. Such term does
14 not include—

15 (A) the Federal Government or any instru-
16 mentality of the Federal Government, nor the
17 government of any State or political subdivision
18 of a State; or

19 (B) any person that can demonstrate that
20 such person—

21 (i) stores covered information from or
22 about fewer than 15,000 individuals;

23 (ii) collects covered information from
24 or about fewer than 10,000 individuals
25 during any 12-month period;

1 (iii) does not collect or store sensitive
2 information; and

3 (iv) does not use covered information
4 to study, monitor, or analyze the behavior
5 of individuals as the person's primary busi-
6 ness.

7 (4) COVERED INFORMATION.—

8 (A) IN GENERAL.—The term “covered in-
9 formation” means, with respect to an indi-
10 vidual, any of the following:

11 (i) the first name or initial and last
12 name;

13 (ii) a postal address;

14 (iii) an email address;

15 (iv) a telephone or fax number;

16 (v) a tax identification number, pass-
17 port number, driver's license number, or
18 any other unique government-issued identi-
19 fication number;

20 (vi) a financial account number, or
21 credit card or debit card number, or any
22 required security code, access code, or
23 password that is necessary to permit ac-
24 cess to an individual's financial account;

1 (vii) any unique persistent identifier,
2 such as a customer number, unique pseu-
3 donym or user alias, IP address, or other
4 unique identifier, where such identifier is
5 used to collect, store or identify informa-
6 tion about a specific individual or to create
7 or maintain a preference profile; or

8 (viii) any other information that is
9 collected, stored, used, or disclosed in con-
10 nection with any covered information de-
11 scribed in clauses (i) through (vii).

12 (B) EXCLUSION.—Such term shall not in-
13 clude—

14 (i) the title, business address, business
15 email address, business telephone number,
16 or business fax number associated with an
17 individual’s status as an employee of an or-
18 ganization, or an individual’s name when
19 collected, stored, used, or disclosed in con-
20 nection with such employment status; or

21 (ii) any information collected from or
22 about an employee by an employer, pro-
23 spective employer, or former employer that
24 directly relates to the employee-employer
25 relationship.

1 (5) OPERATIONAL PURPOSE.—

2 (A) IN GENERAL.—The term “operational
3 purpose” means a purpose reasonably necessary
4 to facilitate, improve, or safeguard the logistical
5 or technical ability of a covered entity to pro-
6 vide goods or services, manage its operations,
7 comply with legal obligations, or protect against
8 risks and threats, including—

9 (i) providing, operating, or improving
10 a product or service used, requested, or au-
11 thorized by an individual, including the on-
12 going provision of customer service and
13 support;

14 (ii) analyzing data related to use of
15 the product or service for purposes of im-
16 proving the covered entity’s products, serv-
17 ices, or operations;

18 (iii) basic business functions such as
19 accounting, inventory and supply chain
20 management, quality assurance, and inter-
21 nal auditing;

22 (iv) protecting or defending the rights
23 or property, including intellectual property,
24 of the covered entity against actual or po-
25 tential security threats, fraud, theft, unau-

1 thorized transactions, or other illegal ac-
2 tivities;

3 (v) preventing imminent danger to the
4 personal safety of an individual or group of
5 individuals;

6 (vi) complying with a Federal, State,
7 or local law, rule, or other applicable legal
8 requirement, including disclosures pursu-
9 ant to a court order, subpoena, summons,
10 or other properly executed compulsory
11 process; and

12 (vii) any other category of operational
13 use specified by the Commission by regula-
14 tion that is consistent with the purposes of
15 this Act.

16 (B) EXCLUSION.—Such term shall not in-
17 clude—

18 (i) the use of covered information for
19 marketing or advertising purposes, or any
20 use of or disclosure of covered information
21 to a third party for such purposes; or

22 (ii) the use of covered information for
23 a purpose that an individual acting reason-
24 ably under the circumstances would not ex-

1 pect based on the product or service used,
2 requested, or authorized by the individual.

3 (6) PREFERENCE PROFILE.—The term “pref-
4 erence profile” means a list of preferences, cat-
5 egories of information, or interests—

6 (A) associated with an individual or with
7 an individual’s computer or other device;

8 (B) inferred from the actual behavior of
9 the individual, the actual use of the individual’s
10 computer or other device, or information sup-
11 plied directly by the individual or other user of
12 a computer or other device; and

13 (C) compiled and maintained for the pur-
14 pose of marketing or purposes related to mar-
15 keting, advertising, or sales.

16 (7) PUBLICLY AVAILABLE INFORMATION.—

17 (A) IN GENERAL.—The term “publicly
18 available information” means any covered infor-
19 mation or sensitive information that a covered
20 entity has a reasonable basis to believe is law-
21 fully made available to the general public
22 from—

23 (i) Federal, State, or local government
24 records;

25 (ii) widely distributed media; or

1 (iii) disclosures to the general public
2 that are required to be made by Federal,
3 State, or local law.

4 (B) CONSTRUCTION.—A covered entity has
5 a reasonable basis to believe that information is
6 lawfully made available to the general public if
7 the covered entity has taken steps to deter-
8 mine—

9 (i) that the information is of a type
10 that is available to the general public; and

11 (ii) whether an individual can direct
12 that the information not be made available
13 to the general public and, if so, that the
14 individual has not done so.

15 (8) SENSITIVE INFORMATION.—

16 (A) DEFINITION.—The term “sensitive in-
17 formation” means—

18 (i) any information that is associated
19 with covered information of an individual
20 and relates directly to that individual’s—

21 (I) medical history, physical or
22 mental health, or the provision of
23 health care to the individual;

24 (II) race or ethnicity;

1 (III) religious beliefs and affili-
2 ation;

3 (IV) sexual orientation or sexual
4 behavior;

5 (V) income, assets, liabilities, or
6 financial records, and other financial
7 information associated with a finan-
8 cial account, including balances and
9 other financial information, except
10 when financial account information is
11 provided by the individual and is used
12 only to process an authorized credit or
13 debit to the account; or

14 (VI) precise geolocation informa-
15 tion and any information about the
16 individual's activities and relationships
17 associated with such geolocation; or

18 (ii) an individual's—

19 (I) unique biometric data, includ-
20 ing a fingerprint or retina scan; or

21 (II) Social Security number.

22 (B) MODIFIED DEFINITION BY RULE-
23 MAKING.—The Commission may, by regulations
24 promulgated under section 553 of title 5,
25 United States Code, modify the scope or appli-

1 cation of the definition of “sensitive informa-
2 tion” for purposes of this Act. In promulgating
3 such regulations, the Commission shall con-
4 sider—

5 (i) the purposes of the collection of
6 the information and the context of the use
7 of the information;

8 (ii) how easily the information can be
9 used to identify a specific individual;

10 (iii) the nature and extent of author-
11 ized access to the information;

12 (iv) an individual’s reasonable expect-
13 tations under the circumstances; and

14 (v) adverse effects that may be experi-
15 enced by an individual if the information is
16 disclosed to an unauthorized person.

17 (C) PRECISE GEOLOCATION INFORMATION
18 DEFINED BY RULEMAKING.—The Commission
19 shall, by regulations promulgated under section
20 553 of title 5, United States Code, define the
21 term “precise geolocation information” for pur-
22 poses of subparagraph (A)(i)(VI).

23 (9) SERVICE PROVIDER.—The term “service
24 provider” means an entity that collects, maintains,
25 processes, stores, or otherwise handles covered infor-

1 mation or sensitive information on behalf of a cov-
2 ered entity, including, for the purposes of serving as
3 a data processing center, distributing the informa-
4 tion, providing customer support, maintaining the
5 covered entity’s records, information technology
6 management, Web site or other hosting service,
7 fraud detection, authentication, and other
8 verification services, or performing other administra-
9 tive support functions for the covered entity.

10 (10) THIRD PARTY.—

11 (A) IN GENERAL.—The term “third party”
12 means, with respect to any covered entity, a
13 person that—

14 (i) is not related to the covered entity
15 by common ownership or corporate control;
16 or

17 (ii) is a business unit or corporate en-
18 tity that holds itself out to the public as
19 separate from the covered entity, such that
20 an individual acting reasonably under the
21 circumstances would not expect it to be re-
22 lated to the covered entity or to have ac-
23 cess to covered information the individual
24 provides to that covered entity.

1 (B) COLLECTION OF INFORMATION BY
2 MULTIPLE SOURCES.—For the purpose of this
3 definition, where multiple persons collect cov-
4 ered information or sensitive information from
5 or about visitors to an online or mobile service,
6 including a Web site, all such persons other
7 than the operator or publisher of the online or
8 mobile service or Web site shall be considered
9 third parties unless—

10 (i) the person meets the requirements
11 of the service provider exception in section
12 106(1); or

13 (ii) the person otherwise does not sat-
14 isfy the requirements for a third party pur-
15 suant to the regulations implemented pur-
16 suant to subparagraph (C).

17 (C) RULEMAKING.—Not later than 18
18 months after the date of the enactment of this
19 Act, the Commission shall promulgate regula-
20 tions under section 553 of title 5, United States
21 Code, to clarify or modify the definition of third
22 party for purposes of this Act. In promulgating
23 such regulations, the Commission shall con-
24 sider—

1 (i) the brand or brands associated
2 with a covered entity;

3 (ii) the scope and nature of the busi-
4 nesses engaged in by a covered entity and
5 a third party, including the nature of the
6 products or services offered by the covered
7 entity and third party; and

8 (iii) the relationship between a cov-
9 ered entity and a third party, taking into
10 account such factors as ownership and con-
11 trol.

12 **TITLE I—TRANSPARENCY, NO-**
13 **TICE, AND INDIVIDUAL**
14 **CHOICE**

15 **SEC. 101. INFORMATION TO BE MADE AVAILABLE.**

16 A covered entity shall, in accordance with the regula-
17 tions issued under section 102, make available to individ-
18 uals whose covered information or sensitive information it
19 collects or maintains the following information about its
20 information privacy practices and an individual's options
21 with regard to such practices:

22 (1) The identity of the covered entity.

23 (2) A description of any covered information or
24 sensitive information collected or stored by the cov-
25 ered entity.

1 (3) The specific purposes for which the covered
2 entity collects and uses the covered information or
3 sensitive information, including disclosure as to
4 whether and how the covered entity customizes prod-
5 ucts or services or changes the prices of products or
6 services based, in whole or in part, on covered infor-
7 mation or sensitive information about individual cus-
8 tomers or users.

9 (4) The specific purposes for which covered in-
10 formation or sensitive information may be disclosed
11 to a third party and the categories of third parties
12 who may receive such information for each such pur-
13 pose.

14 (5) The choice and means the covered entity of-
15 fers individuals for limiting the collection, use, and
16 disclosure of covered information or sensitive infor-
17 mation, in accordance with sections 103 and 104.

18 (6) A description of the information for which
19 an individual may request access and the means to
20 request such access, in accordance with section 202.

21 (7) How the covered entity may merge, link, or
22 combine covered information or sensitive information
23 collected from the individual with other information
24 about the individual that the covered entity may ac-
25 quire from third parties.

1 (8) The retention schedule for covered informa-
2 tion and sensitive information in days, months, or
3 years, or a statement that the covered entity will re-
4 tain such information indefinitely or permanently.

5 (9) Whether or not an individual has the right
6 to direct the covered entity to delete information col-
7 lected from or about the individual.

8 (10) A reasonable means by which an individual
9 may contact the covered entity with any inquiries or
10 complaints regarding the covered entity’s practices—

11 (A) concerning the collection, use, disclo-
12 sure, or handling of the individual’s covered in-
13 formation or sensitive information in accord-
14 ance with section 302(a); or

15 (B) to assure the accuracy of the individ-
16 ual’s covered information or sensitive informa-
17 tion in accordance with section 201(a).

18 (11) The process by which the covered entity
19 notifies individuals of material changes to its policies
20 and practices.

21 (12) A hyperlink to or a listing of the Commis-
22 sion’s online consumer complaint form or the toll-
23 free number for the Commission’s Consumer Re-
24 sponse Center.

25 (13) The effective date of the privacy notice.

1 **SEC. 102. PROVISION OF NOTICE OR NOTICES.**

2 (a) IN GENERAL.—It shall be unlawful for a covered
3 entity to collect, use, or disclose covered information or
4 sensitive information unless it provides the information set
5 forth in section 101 in concise, meaningful, timely, promi-
6 nent, and easy-to-understand notice or notices, in accord-
7 ance with the regulations issued by the Commission under
8 subsection (b).

9 (b) RULEMAKING.—Not later than 18 months after
10 the date of the enactment of this Act, the Commission
11 shall promulgate regulations under section 553 of title 5,
12 United States Code, to implement this section. In promul-
13 gating such regulations, the Commission—

14 (1) shall determine the means and timing of the
15 notices required under this section, taking into ac-
16 count the different media, devices, or methods
17 through which the covered entity collects covered in-
18 formation or sensitive information;

19 (2) shall have the authority to allow for, or re-
20 quire, the provision of short notices or limited disclo-
21 sures that do not include all of the information set
22 forth in section 101, if the Commission by regula-
23 tion—

24 (A) requires the information to be other-
25 wise clearly and conspicuously disclosed or
26 available to individuals; and

1 (B) determines that the provision of such
2 short notices or limited disclosures will accom-
3 plish the purposes of this Act to enhance trans-
4 parency and provide individuals with meaning-
5 ful choice regarding the collection, use, and dis-
6 closure of their covered information or sensitive
7 information;

8 (3) shall consider—

9 (A) whether the notice or notices provide
10 individuals with timely, effective, and meaning-
11 ful notice that will enable an individual to un-
12 derstand relevant information and make in-
13 formed choices;

14 (B) whether providing notice to individuals
15 prior to or contemporaneously with the collec-
16 tion of covered information is practical or rea-
17 sonable under the circumstances;

18 (C) the costs of implementing the pre-
19 scribed notice or notices;

20 (D) the different media and context
21 through which covered information is collected;

22 (E) whether it is reasonable and appro-
23 priate under the circumstances for a third party
24 or a service provider to be responsible for pro-

1 viding notice and obtaining consent as required
2 by this title in lieu of a covered entity; and

3 (F) the risk to consumers and commerce of
4 over-notification; and

5 (4) may issue model notices.

6 (c) EXCLUSION FROM NOTICE REQUIREMENTS.—

7 (1) TRADE SECRET INFORMATION.—Nothing in
8 this section shall require a covered entity to reveal
9 confidential, trade secret, or proprietary information.

10 (2) IN-PERSON TRANSACTIONS.—Notice under
11 this section shall not be required for in-person collec-
12 tion of covered information if—

13 (A) the covered information is collected for
14 an operational purpose; or

15 (B) the covered entity only is collecting the
16 name, address, email address, telephone or fax
17 number of an individual and does not—

18 (i) share the covered information with
19 third parties; or

20 (ii) use the covered information to ac-
21 quire additional information about the in-
22 dividual from third parties.

23 (d) RETENTION.—A covered entity shall retain copies
24 of the notice or notices issued pursuant to this section for
25 a period of 6 years after the date on which such notice

1 was issued or the date when it was last in effect, whichever
2 is later, unless the Commission determines pursuant to the
3 rulemaking required under subsection (b) that such reten-
4 tion is not practical under the circumstances.

5 **SEC. 103. OPT-OUT CONSENT REQUIRED FOR COLLECTION**
6 **AND USE OF COVERED INFORMATION BY A**
7 **COVERED ENTITY.**

8 (a) IN GENERAL.—Except as provided in subsections
9 (e) and (f) and section 106, it shall be unlawful for a cov-
10 ered entity to collect or use covered information about an
11 individual without the consent of that individual, as set
12 forth in this section. A covered entity shall be considered
13 to have the consent of an individual for the collection and
14 use of covered information about the individual if—

15 (1) the covered entity has provided to the indi-
16 vidual notice required under section 102 and its im-
17 plementing regulations;

18 (2) the covered entity provides the individual
19 with a reasonable means to exercise an opt-out right
20 and decline consent for such collection and use; and

21 (3) the individual either affirmatively grants
22 consent for such collection and use or does not de-
23 cline consent at the time notice is presented or made
24 available to the individual.

1 (b) DURATION OF INDIVIDUAL’S OPT-OUT.—An indi-
2 vidual’s direction to opt out under this section is effective
3 permanently, unless otherwise directed by the individual.

4 (c) SUBSEQUENT OPT-OUT.—A covered entity shall
5 provide an individual with a reasonable means to decline
6 consent or revoke previously granted consent at any time.

7 (d) MORE DETAILED OPTIONS.—A covered entity
8 may comply with this section by enabling an individual
9 to decline consent for specific uses of his or her covered
10 information, provided the individual has been given the op-
11 portunity to decline consent for the collection and use of
12 covered information for all purposes, other than for an
13 operational purpose excepted by subsection (e), for which
14 covered information may be collected and used by the cov-
15 ered entity.

16 (e) EXCEPTION FOR OPERATIONAL PURPOSES.—
17 This section shall not apply to the collection or use of cov-
18 ered information for an operational purpose.

19 (f) COLLECTION AND USE AS A CONDITION OF SERV-
20 ICE.—Nothing in this section shall prohibit a covered enti-
21 ty from requiring, as a condition of an individual’s receipt
22 of a service or other benefit, including the receipt of an
23 enhanced or premium version of a product or service oth-
24 erwise available, the reasonable collection and use of cov-
25 ered information about the individual, provided that—

1 (1) the covered entity has a direct relationship
2 with the individual;

3 (2) the covered information is not shared with
4 any third party except with the express affirmative
5 consent as set forth in section 104;

6 (3) the covered entity provides a clear, promi-
7 nent, and specific statement describing the specific
8 purpose or purposes for which covered information
9 may be used pursuant to section 101;

10 (4) the individual provides consent by acknowl-
11 edging the specific uses set forth in the clear and
12 prominent statement required under paragraph (3)
13 as part of receiving the service or other benefit from
14 the covered entity; and

15 (5) the individual is able to later withdraw con-
16 sent for the use by canceling the service or otherwise
17 indicating that he or she no longer wishes to receive
18 the service or other benefit.

19 **SEC. 104. EXPRESS AFFIRMATIVE CONSENT.**

20 (a) DISCLOSURE OF COVERED INFORMATION TO
21 THIRD PARTIES.—

22 (1) DISCLOSURE PROHIBITED.—Except as pro-
23 vided in section 106 and subject to title IV of this
24 Act, it shall be unlawful for a covered entity to dis-
25 close covered information about an individual to a

1 third party unless the covered entity has received ex-
2 press affirmative consent from the individual prior
3 to the disclosure.

4 (2) EXCEPTION FOR JOINT MARKETING.—Ex-
5 press affirmative consent shall not be required for
6 any disclosure related to the performance of joint
7 marketing, if the covered entity and the third party
8 enter into a contractual agreement prohibiting the
9 third party from disclosing or using the covered in-
10 formation except as necessary to carry out the joint
11 marketing relationship.

12 (b) COLLECTION, USE, OR DISCLOSURE OF SEN-
13 SITIVE INFORMATION.—Except as provided in section
14 106, a covered entity may not collect, use, or disclose sen-
15 sitive information from or about an individual for any pur-
16 pose unless the covered entity obtains the express affirma-
17 tive consent of the individual.

18 (c) COMPREHENSIVE ONLINE DATA COLLECTION.—
19 A covered entity may not use hardware or software to
20 monitor all or substantially all of the individual's Internet
21 browsing or other significant class of Internet or computer
22 activity and collect, use, or disclose information concerning
23 such activity, except—

24 (1) with the express affirmative consent of the
25 individual;

1 (2) for the purpose of making such information
2 accessible to the individual or for use by the indi-
3 vidual; or

4 (3) as provided in section 106.

5 (d) LIMITATION.—A third party that receives covered
6 information or sensitive information from a covered entity
7 pursuant to this section shall only use such information
8 for the specific purposes authorized by the individual when
9 the individual granted express affirmative consent for the
10 disclosure of the information to a third party.

11 (e) REVOCATION OF CONSENT.—A covered entity
12 that has obtained the express affirmative consent of an
13 individual pursuant to this section and section 105 shall
14 provide the individual with a reasonable means, without
15 charge, to withdraw consent at any time thereafter.

16 **SEC. 105. MATERIAL CHANGES TO PRIVACY PRACTICES.**

17 (a) RETROACTIVE APPLICATION.—A covered entity
18 shall provide the notice required by section 102 and obtain
19 the express affirmative consent of the individual prior to
20 making a material change in privacy practices governing
21 previously collected covered information or sensitive infor-
22 mation from that individual.

23 (b) PROSPECTIVE APPLICATION.—A covered entity
24 shall not make material changes to its privacy practices
25 governing the collection, use, or disclosure of covered in-

1 formation or sensitive information that has not been pre-
2 viously collected unless, 30 days before the effective date
3 of the material change—

4 (1) the covered entity provides individuals with
5 notice of the material change in accordance with sec-
6 tion 102; and

7 (2) if required by sections 103 and 104, obtains
8 the individual's consent to the material change or al-
9 lows the individual to terminate the individual's rela-
10 tionship with the covered entity.

11 **SEC. 106. EXCEPTIONS.**

12 The consent requirements of sections 103 and 104
13 shall not apply to the following:

14 (1) SERVICE PROVIDERS.—

15 (A) When a covered entity discloses cov-
16 ered information or sensitive information to a
17 service provider performing services or func-
18 tions on behalf of and under the instruction of
19 the covered entity, provided—

20 (i) the covered entity obtained the re-
21 quired consent for the initial collection of
22 such information and provided notice as
23 required by section 102;

24 (ii) the covered entity enters into a
25 contractual agreement that prohibits the

1 service provider from using or disclosing
2 the information other than to carry out the
3 purposes for which the information was
4 disclosed; and

5 (iii) in such cases, the covered entity
6 remains responsible and liable for the pro-
7 tection of covered information and sensitive
8 information that has been transferred to a
9 service provider for processing.

10 (B) When a service provider subsequently
11 discloses the information to another service pro-
12 vider in order to perform the same services or
13 functions described in paragraph (1) on behalf
14 of the covered entity.

15 (2) FRAUD DETECTION.—Collection, use, or
16 disclosure necessary to protect or defend the rights
17 or property, including intellectual property, of the
18 covered entity against actual or potential security
19 threats, fraud, theft, unauthorized transactions, or
20 other illegal activities.

21 (3) IMMINENT DANGER.—Collection, use, or
22 disclosure necessary to prevent imminent danger to
23 the personal safety of an individual or group of indi-
24 viduals.

1 (4) COMPLIANCE WITH LAW.—Collection, use,
2 or disclosure required in order to comply with a Fed-
3 eral, State, or local law, rule, or other applicable
4 legal requirement, including disclosures pursuant to
5 subpoena, summons, or other properly executed com-
6 pulsory process.

7 (5) PUBLICLY AVAILABLE INFORMATION.—Col-
8 lection, use, or disclosure of publicly available infor-
9 mation, except that a covered entity may not use
10 publicly available information about an individual for
11 marketing purposes if the individual has opted out
12 of the use by such covered entity of covered informa-
13 tion or sensitive information for marketing purposes.

14 **TITLE II—ACCURACY, ACCESS,**
15 **AND DISPUTE RESOLUTION**

16 **SEC. 201. ACCURACY.**

17 (a) REASONABLE PROCEDURES.—Each covered enti-
18 ty shall establish reasonable procedures to assure the ac-
19 curacy of the covered information or sensitive information
20 it collects, assembles, or maintains. Not later than 18
21 months after the date of the enactment of this Act, the
22 Commission shall promulgate regulations under section
23 553 of title 5, United States Code, to implement this sec-
24 tion. In promulgating such regulations, the Commission
25 shall consider—

1 (1) the costs and benefits of ensuring the accu-
2 racy of the information;

3 (2) the sensitivity of the information;

4 (3) the purposes for which the information will
5 be used; and

6 (4) the harms from misuse of the information.

7 (b) LIMITED EXCEPTION FOR FRAUD DATABASES.—

8 The requirement in subsection (a) shall not prevent the
9 collection or maintenance of information that may be inac-
10 curate with respect to a particular individual when that
11 information is being collected or maintained solely—

12 (1) for the purpose of indicating whether there
13 may be a discrepancy or irregularity in the covered
14 information or sensitive information that is associ-
15 ated with an individual; and

16 (2) to help identify, or authenticate the identity
17 of, an individual, or to protect against or investigate
18 fraud or other unlawful conduct.

19 (c) LIMITED EXCEPTION FOR PUBLICLY AVAILABLE

20 INFORMATION.—Subject to section 202, a covered entity
21 shall not be required to verify the accuracy of publicly
22 available information if the covered entity has reasonable
23 procedures to ensure that the publicly available informa-
24 tion assembled or maintained by the covered entity accu-

1 rately reflects the information available to the general
2 public.

3 **SEC. 202. ACCESS AND DISPUTE RESOLUTION.**

4 (a) ACCESS AND CORRECTION.—A covered entity
5 shall, upon request, provide an individual with reasonable
6 access to, and the ability to dispute the accuracy or com-
7 pleteness of, covered information or sensitive information
8 about that individual if such information may be used for
9 purposes that could result in an adverse decision against
10 the individual, including the denial of a right, benefit, or
11 privilege.

12 (b) ACCESS TO PERSONAL PROFILES.—

13 (1) IN GENERAL.—Subject to title IV, a covered
14 entity shall, upon request, provide an individual with
15 reasonable access to any personal profile about that
16 individual that the entity stores in a manner that
17 makes it accessible in the normal course of business.

18 (2) SPECIAL RULE FOR PREFERENCE PRO-
19 FILES.—With respect to a preference profile, the ob-
20 ligation to provide access and correction under this
21 section is met if the covered entity provides the abil-
22 ity to review and change the preference information
23 associated with a unique persistent identifier.

1 (3) PARTICIPATION IN CHOICE PROGRAM.—This
2 subsection shall not apply to a covered entity that
3 participates in a Choice Program under title IV.

4 (c) NOTICE IN LIEU OF ACCESS.—Subject to sub-
5 section (b), in those instances in which covered informa-
6 tion or sensitive information is used only for purposes that
7 could not reasonably result in an adverse decision against
8 an individual, including the denial of a right, benefit, or
9 privilege, a covered entity shall, upon request by an indi-
10 vidual, provide the individual with a general notice or rep-
11 resentative sample of the type or types of information the
12 covered entity typically collects or stores for such pur-
13 poses.

14 (d) EXCEPTIONS.—

15 (1) A covered entity may decline to provide an
16 individual with access to covered information or sen-
17 sitive information if the covered entity reasonably
18 believes—

19 (A) the individual requesting access cannot
20 reasonably verify his or her identity as the per-
21 son to which the information relates;

22 (B) access by the individual to the infor-
23 mation is limited by law or legally recognized
24 privilege;

1 (C) the information is used for a legitimate
2 governmental or fraud prevention purpose that
3 would be compromised by such access;

4 (D) such request for access is frivolous or
5 vexatious;

6 (E) the privacy or other rights of persons
7 other than the individual would be violated; or

8 (F) proprietary or confidential information,
9 technology, or business processes would be re-
10 vealed as a result.

11 (2) Where an exception described in paragraph
12 (1) applies only to a portion of the covered informa-
13 tion or sensitive information maintained by the cov-
14 ered entity, the covered entity shall provide access
15 required under subsections (a) and (b) to the infor-
16 mation to which the exception does not apply.

17 (3) A covered entity may decline an individual's
18 request to correct or amend covered information or
19 sensitive information pertaining to that individual
20 where—

21 (A) a reason for denying access to the in-
22 formation under paragraph (1) would also apply
23 to the request to correct or amend the informa-
24 tion; or

1 (B) doing so would be incompatible with a
2 legal obligation, such as a requirement to retain
3 certain information.

4 (e) FEES.—A covered entity may charge a reasonable
5 fee, as determined by the Commission, for providing ac-
6 cess in accordance with subsection (a) or (b).

7 (f) TIME LIMIT.—A covered entity shall respond to
8 any access, correction, or amendment request within 30
9 days after the receipt of the request. Such response shall
10 consist of one or more of the following:

11 (1) The requested information in accordance
12 with subsection (a) or (b).

13 (2) The general notice in accordance with sub-
14 section (c).

15 (3) Instructions for accessing, correcting, or
16 amending the requested information through an
17 automated mechanism.

18 (4) A confirmation that the requested correc-
19 tions or amendments have been made.

20 (5) A notification that the covered entity is de-
21 clining to correct or amend information pursuant to
22 one of the exceptions described in subsection (d).
23 Such notification shall include the reason or reasons
24 for not making the suggested correction or amend-

1 ment, unless one or more of such exceptions would
2 also apply to the disclosure of the reason or reasons.

3 (6) A request to resubmit the access request
4 and an explanation of why the original access re-
5 quest was deficient in cases where—

6 (A) the scope or nature of the request is
7 unclear or the entity needs more information in
8 order to respond to the request;

9 (B) the entity charges a fee as permitted
10 under subsection (e), and the fee has not been
11 paid; or

12 (C) the entity provides interested members
13 of the public other reasonable and accessible in-
14 structions for submitting an access request and
15 such instructions were not followed.

16 (7) A notification that additional time is needed
17 where—

18 (A) the entity cannot reasonably provide a
19 full response within 30 days after the receipt of
20 the access; and

21 (B) the time extension needed for a full re-
22 sponse is no greater than an additional 30 days.

23 (g) RULE OF CONSTRUCTION.—Nothing in this Act
24 creates an obligation on a covered entity to provide an in-
25 dividual with the right to delete information.

1 (h) ADDITIONAL REQUIREMENTS WHERE CORREC-
2 TION OR AMENDMENT IS DECLINED.—If the covered enti-
3 ty declines to correct or amend the information described
4 in subsection (a), the covered entity shall—

5 (1) note that the information is disputed, in-
6 cluding the individual’s statement disputing such in-
7 formation, and take reasonable steps to verify such
8 information under the procedures outlined in section
9 201 if such information can be independently
10 verified; and

11 (2) where the information was obtained from a
12 third party or is publicly available information, in-
13 form the individual of the source of the information,
14 and if reasonably available, where a request for cor-
15 rection may be directed, and, if the individual pro-
16 vides proof that the information is incorrect, correct
17 the inaccuracy in the covered entity’s records.

18 (i) OTHER LIMITATIONS.—The obligations under this
19 section do not, by themselves, create any obligation on the
20 covered entity to retain, maintain, reorganize, or restruc-
21 ture covered information or sensitive information.

22 (j) DATA RETENTION EXCEPTION.—Covered infor-
23 mation or sensitive information retained by the covered
24 entity for under 30 days, or such other period of time as

1 the Commission may determine, shall not be subject to
2 this section.

3 (k) RULEMAKING.—Not later than 18 months after
4 the date of the enactment of this Act, the Commission
5 shall promulgate regulations under section 553 of title 5,
6 United States Code, to implement this section. In addi-
7 tion, the Commission shall promulgate regulations, as nec-
8 essary, on the application of the exceptions and limitations
9 in subsection (d), including any additional circumstances
10 in which a covered entity may limit access to information
11 under such subsection that the Commission determines to
12 be appropriate.

13 **TITLE III—DATA SECURITY,**
14 **DATA MINIMIZATION, AND AC-**
15 **COUNTABILITY**

16 **SEC. 301. DATA SECURITY.**

17 (a) IN GENERAL.—Each covered entity and service
18 provider shall establish, implement, and maintain reason-
19 able and appropriate administrative, technical, and phys-
20 ical safeguards to—

21 (1) ensure the security, integrity, and confiden-
22 tiality of the covered information or sensitive infor-
23 mation it collects, assembles, or maintains;

1 (2) protect against any anticipated threats, rea-
2 sonably foreseeable vulnerabilities, or hazards to the
3 security or integrity of such information; and

4 (3) protect against unauthorized access to or
5 use of such information and loss, misuse, alteration,
6 or destruction of such information.

7 (b) **FACTORS FOR APPROPRIATE SAFEGUARDS.**—Not
8 later than 18 months after the date of the enactment of
9 this Act, the Commission shall promulgate regulations
10 under section 553 of title 5, United States Code, to imple-
11 ment this section. In promulgating such regulations, the
12 Commission shall consider—

13 (1) the size and complexity of an entity;

14 (2) the nature and scope of the activities of an
15 entity;

16 (3) the sensitivity of the information;

17 (4) the current state of the art in administra-
18 tive, technical, and physical safeguards for pro-
19 tecting information; and

20 (5) the cost of implementing such safeguards.

21 **SEC. 302. ACCOUNTABILITY.**

22 (a) **COMPLAINTS TO THE COVERED ENTITY.**—A cov-
23 ered entity shall provide a process for individuals to make
24 complaints concerning the covered entity’s policies and
25 procedures required by this Act.

1 (b) **PRIVACY RISK ASSESSMENT.**—A covered entity
2 shall conduct an assessment of the risks to individuals
3 raised by the collection, use, and disclosure of covered in-
4 formation or sensitive information prior to the implemen-
5 tation of commercial projects, marketing initiatives, busi-
6 ness models, applications, and other products or services
7 in which the covered entity intends to collect, or believes
8 there is a reasonable likelihood it will collect, covered in-
9 formation or sensitive information from or about more
10 than 1,000,000 individuals.

11 (c) **PERIODIC EVALUATION OF PRACTICES.**—A cov-
12 ered entity shall conduct periodic assessments to evalu-
13 ate—

14 (1) whether the covered information or sensitive
15 information the covered entity has collected is and
16 remains necessary for the purposes disclosed at the
17 time of collection pursuant to subsections (e) and (d)
18 of section 101; and

19 (2) whether the covered entity’s ongoing collec-
20 tion practices are and remain necessary for a legiti-
21 mate business purpose.

22 **SEC. 303. DATA MINIMIZATION OBLIGATIONS.**

23 A covered entity that uses covered information or
24 sensitive information for any purpose shall retain such

1 data only as long as necessary to fulfill a legitimate busi-
2 ness purpose or comply with a legal requirement.

3 **TITLE IV—SAFE HARBOR AND**
4 **SELF-REGULATORY CHOICE**
5 **PROGRAM**

6 **SEC. 401. SAFE HARBOR.**

7 A covered entity that participates in, and is in compli-
8 ance with, 1 or more self-regulatory programs approved
9 by the Commission under section 402 (in this title referred
10 to as a “Choice Program”¹) shall not be subject to—

11 (1) the requirements for express affirmative
12 consent required under subsection 104(a) for the
13 specified uses of covered information addressed by
14 the Choice Program as described in section
15 403(1)(A);

16 (2) the requirement of access to information
17 under section 202(b); or

18 (3) liability in a private right of action brought
19 under section 604.

20 **SEC. 402. APPROVAL BY THE FEDERAL TRADE COMMIS-**
21 **SION.**

22 (a) INITIAL APPROVAL.—Not later than 270 days
23 after the submission of an application for approval of a
24 Choice Program under this section, the Commission shall
25 approve or decline to approve such program. The Commis-

1 sion shall only approve such program if the Commission
2 finds, after notice and comment, that the program com-
3 plies with the requirements of section 403.

4 (b) APPROVAL OF MODIFICATIONS.—The Commis-
5 sion shall approve or decline to approve any material
6 change in a Choice Program previously approved by the
7 Commission within 120 days after submission of an appli-
8 cation for approval by such program. The Commission
9 shall only approve such material change if the Commission
10 finds, after notice and comment, that the proposed change
11 complies with the requirements of section 403.

12 (c) DURATION.—A Choice Program approved by the
13 Commission under this section shall be approved for a pe-
14 riod of 5 years.

15 (d) APPEALS.—Final action by the Commission on
16 a request for approval, or the failure to act within 270
17 days on a request for approval, submitted under this sec-
18 tion may be appealed to a district court of the United
19 States of appropriate jurisdiction as provided for in sec-
20 tion 706 of title 5, United States Code.

21 **SEC. 403. REQUIREMENTS OF SELF-REGULATORY PRO-**
22 **GRAM.**

23 To be approved as a Choice Program under this sec-
24 tion, a program shall—

25 (1) provide individuals with—

1 (A) a clear and conspicuous opt-out mech-
2 anism that, when selected by the individual,
3 prohibits all covered entities participating in the
4 Choice Program from disclosing covered infor-
5 mation to a third party for 1 or more specified
6 uses, and may offer individuals a preference
7 management tool that will enable an individual
8 to make more detailed choices about the trans-
9 fer of covered information to a third party; and

10 (B) a clear and conspicuous mechanism to
11 set communication preferences, online behav-
12 ioral advertising preferences, and such other
13 preferences as the Choice Program may deter-
14 mine, subject to the approval of the Commis-
15 sion, that when selected by the individual, ap-
16 plies the individual's selected preferences to all
17 covered entities participating in the Choice Pro-
18 gram; and

19 (2) establish—

20 (A) procedures for reviewing applications
21 by covered entities to participate in the Choice
22 Program;

23 (B) procedures for periodic assessment of
24 its procedures and for conducting periodic ran-

1 dom compliance testing of covered entities par-
2 ticipating in such Choice Program;

3 (C) consequences for failure to comply with
4 program requirements, such as public notice of
5 the covered entity's noncompliance, suspension,
6 or expulsion from the program, or referral to
7 the Commission for enforcement; and

8 (D) guidelines and procedures requiring a
9 participating covered entity to provide equiva-
10 lent or greater protections for individuals and
11 their covered information and sensitive informa-
12 tion as are provided under titles I and II.

13 **SEC. 404. RULEMAKING.**

14 Not later than 18 months after the date of enactment
15 of this Act, the Commission shall promulgate regulations
16 under section 553 of title 5, United States Code, to imple-
17 ment this section and to provide compliance guidance for
18 entities seeking to be approved under this title, including
19 regulations—

20 (1) establishing criteria for the submission of
21 the application, including evidence of how the Choice
22 Program will comply with the requirements of sec-
23 tion 403;

24 (2) establishing criteria for opt-out mechanisms
25 and communication preferences, online behavioral

1 advertising preferences, or other preferences meeting
2 the requirements of this title;

3 (3) establishing consequences for failure to
4 comply with the requirements of section 403, such
5 as public notice of the Choice Program's noncompli-
6 ance and suspension or revocation of the Commis-
7 sion's approval of such Program as described in sec-
8 tion 402;

9 (4) allowing for and promoting continued evo-
10 lution and innovation in privacy protection, mean-
11 ingful consumer control, simplified approaches to
12 disclosure, and transparency;

13 (5) providing additional incentives for self-regu-
14 lation by covered entities to implement the protec-
15 tions afforded individuals under titles I and II of
16 this Act; and

17 (6) providing that a covered entity will be con-
18 sidered to be in compliance with the requirements of
19 titles I and II of this Act and the regulations issued
20 under such titles if that covered entity complies with
21 guidelines or requirements of a Choice Program ap-
22 proved under section 402.

1 **TITLE V—EXEMPTIONS**

2 **SEC. 501. USE OF AGGREGATE OR DEIDENTIFIED INFORMA-**
3 **TION.**

4 (a) **GENERAL EXCLUSION.**—Subject to subsections
5 (b) and (c), nothing in this Act shall preclude a covered
6 entity from collecting, using, or disclosing—

7 (1) aggregate information; or

8 (2) covered information or sensitive information
9 from which identifying information has been ob-
10 scured or removed using reasonable and appropriate
11 methods such that the remaining information does
12 not identify, and there is no reasonable basis to be-
13 lieve that the information can be used to identify—

14 (A) the specific individual to whom such
15 covered information relates; or

16 (B) a computer or device owned or used by
17 a specific individual.

18 (b) **REASONABLE PROCEDURES FOR DISCLOSURE.**—
19 If a covered entity discloses the information described in
20 paragraphs (1) and (2) of subsection (a) to a third party,
21 the covered entity shall take reasonable steps to protect
22 such information, including, in the case of the information
23 described in such paragraph (2), not disclosing the algo-
24 rithm or other mechanism used to obscure or remove the
25 identifying information, and obtaining satisfactory written

1 assurance that the third party will not attempt to recon-
2 struct the identifying information.

3 (c) PROHIBITION ON RECONSTRUCTING OR REVEAL-
4 ING IDENTIFYING INFORMATION.—

5 (1) IN GENERAL.—It shall be unlawful for any
6 person to reconstruct or reveal the identifying infor-
7 mation that has been removed or obscured (as de-
8 scribed in subsection (a)(2)).

9 (2) RULEMAKING.—Not later than 18 months
10 after the date of the enactment of this Act, the
11 Commission shall promulgate regulations under sec-
12 tion 553 of title 5, United States Code, to establish
13 exemptions to this subsection. In promulgating such
14 regulations, the Commission shall consider—

15 (A) the purposes for which such identifying
16 information may need to be reconstructed or re-
17 vealed;

18 (B) the size and sensitivity of the data set;
19 and

20 (C) public policy issues such as health,
21 safety, and national security.

1 **SEC. 502. ACTIVITIES COVERED BY OTHER FEDERAL PRI-**
2 **VACY LAWS.**

3 Except as provided expressly in this Act, this Act
4 shall have no effect on activities covered by any of the
5 following:

6 (1) Title V of the Gramm-Leach-Bliley Act (15
7 U.S.C. 6801 et seq.).

8 (2) The Fair Credit Reporting Act (15 U.S.C.
9 1681 et seq.).

10 (3) The Health Insurance Portability and Ac-
11 countability Act of 1996 (Public Law 104–191).

12 (4) Part C of title XI of the Social Security Act
13 (42 U.S.C. 1320d et seq.).

14 (5) Section 222 or 631 of the Communications
15 Act of 1934 (47 U.S.C. 222; 551).

16 (6) The Children’s Online Privacy Protection
17 Act of 1998 (15 U.S.C. 6501 et seq.).

18 (7) The CAN–SPAM Act of 2003 (15 U.S.C.
19 7701 et seq.).

20 (8) Chapter 119, 121, or 206 of title 18,
21 United States Code.

22 **TITLE VI—APPLICATION AND**
23 **ENFORCEMENT**

24 **SEC. 601. GENERAL APPLICATION.**

25 The requirements of this Act shall only apply to those
26 persons over which the Commission has authority pursu-

1 ant to section 5(a)(2) of the Federal Trade Commission
2 Act (15 U.S.C. 45(a)(2)). Notwithstanding any provision
3 of such Act or any other provision of law, common carriers
4 subject to the Communications Act of 1934 (47 U.S.C.
5 151 et seq.) and any amendment thereto shall be subject
6 to the jurisdiction of the Commission for purposes of this
7 Act.

8 **SEC. 602. ENFORCEMENT BY THE FEDERAL TRADE COM-**
9 **MISSION.**

10 (a) UNFAIR OR DECEPTIVE ACTS OR PRACTICES.—
11 A violation of titles I, II, or III shall be treated as an
12 unfair and deceptive act or practice in violation of a regu-
13 lation under section 18(a)(1)(B) of the Federal Trade
14 Commission Act (15 U.S.C. 57a(a)(1)(B)) regarding un-
15 fair or deceptive acts or practices.

16 (b) POWERS OF COMMISSION.—The Commission
17 shall enforce this Act in the same manner, by the same
18 means, and with the same jurisdiction, powers, and duties
19 as though all applicable terms and provisions of the Fed-
20 eral Trade Commission Act (15 U.S.C. 41 et seq.) were
21 incorporated into and made a part of this Act. Any person
22 who violates this Act or the regulations issued under this
23 Act shall be subject to the penalties and entitled to the
24 privileges and immunities provided in that Act.

25 (c) RULEMAKING AUTHORITY.—

1 (1) RULEMAKING.—The Commission may, in
2 accordance with section 553 of title 5, United States
3 Code, issue such regulations it determines to be nec-
4 essary to carry out this Act.

5 (2) AUTHORITY TO GRANT EXCEPTIONS.—The
6 regulations prescribed under paragraph (1) may in-
7 clude such additional exceptions to titles I, II, III,
8 IV, and V of this Act as the Commission considers
9 consistent with the purposes of this Act.

10 (3) LIMITATION.—In promulgating rules under
11 this Act, the Commission shall not require the de-
12 ployment or use of any specific products or tech-
13 nologies, including any specific computer software or
14 hardware.

15 **SEC. 603. ENFORCEMENT BY STATE ATTORNEYS GENERAL.**

16 (a) CIVIL ACTION.—In any case in which the attor-
17 ney general of a State, or an official or agency of a State,
18 has reason to believe that an interest of the residents of
19 that State has been or is threatened or adversely affected
20 by any person who violates this Act, the attorney general,
21 official, or agency of the State, as *parens patriae*, may
22 bring a civil action on behalf of the residents of the State
23 in an appropriate district court of the United States—

24 (1) to enjoin further violation of this Act by the
25 defendant;

1 (2) to compel compliance with this Act; or

2 (3) for violations of titles I, II, or III of this
3 Act, to obtain civil penalties in the amount deter-
4 mined under subsection (b).

5 (b) CIVIL PENALTIES.—

6 (1) CALCULATION.—For purposes of calculating
7 the civil penalties that may be obtained under sub-
8 section (a)(3)—

9 (A) with regard to a violation of title I, the
10 amount determined under this paragraph is the
11 amount calculated by multiplying the number of
12 days that a covered entity is not in compliance
13 with such title, or the number of individuals for
14 whom the covered entity failed to obtain con-
15 sent as required by such title, whichever is
16 greater, by an amount not to exceed \$11,000;
17 and

18 (B) with regard to a violation of title II or
19 III, the amount determined under this para-
20 graph is the amount calculated by multiplying
21 the number of days that a covered entity is not
22 in compliance with such title or titles by an
23 amount not to exceed \$11,000.

24 (2) ADJUSTMENT FOR INFLATION.—Beginning
25 on the date that the Consumer Price Index for All

1 Urban Consumers is first published by the Bureau
2 of Labor Statistics that is after 1 year after the date
3 of enactment of this Act, and each year thereafter,
4 the amounts specified in subparagraphs (A) and (B)
5 of paragraph (1) shall be increased by the percent-
6 age increase in the Consumer Price Index published
7 on that date from the Consumer Price Index pub-
8 lished the previous year.

9 (3) MAXIMUM TOTAL LIABILITY.—Notwith-
10 standing the number of actions which may be
11 brought against a person under this section the
12 maximum civil penalty for which any person may be
13 liable under this section shall not exceed—

14 (A) \$5,000,000 for any related series of
15 violations of title I; and

16 (B) \$5,000,000 for any related series of
17 violations of title II and title III.

18 (4) EFFECT OF PARTICIPATION IN CHOICE PRO-
19 GRAM.—If a covered entity participates in a Choice
20 Program established under title IV and cures the al-
21 leged violation of title I or II in a reasonable period
22 of time after receiving notice of the alleged violation,
23 such conduct shall be taken into consideration by a
24 State or a court in determining the amount of civil
25 penalties under this subsection.

1 (c) INTERVENTION BY THE FTC.—

2 (1) NOTICE AND INTERVENTION.—The State
3 shall provide prior written notice of any action under
4 subsection (a) to the Commission and provide the
5 Commission with a copy of its complaint, except in
6 any case in which such prior notice is not feasible,
7 in which case the State shall serve such notice im-
8 mediately upon instituting such action. The Commis-
9 sion shall have the right—

10 (A) to intervene in the action;

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

13 (C) to file petitions for appeal.

14 (2) LIMITATION ON STATE ACTION WHILE FED-
15 ERAL ACTION IS PENDING.—If the Commission has
16 instituted a civil action for violation of this Act, no
17 attorney general of a State, or official, or agency of
18 a State, may bring an action under this section dur-
19 ing the pendency of that action against any defend-
20 ant named in the complaint of the Commission for
21 any violation of this Act alleged in the complaint.

22 (d) CONSTRUCTION.—For purposes of bringing any
23 civil action under subsection (a), nothing in this Act shall
24 be construed to prevent an attorney general of a State

1 from exercising the powers conferred on the attorney gen-
2 eral by the laws of that State to—

- 3 (1) conduct investigations;
- 4 (2) administer oaths or affirmations; or
- 5 (3) compel the attendance of witnesses or the
6 production of documentary and other evidence.

7 **SEC. 604. PRIVATE RIGHT OF ACTION.**

8 (a) **IN GENERAL.**—A covered entity, other than a
9 covered entity that participates in and is in compliance
10 with a Choice Program established under title IV, who
11 willfully fails to comply with sections 103 or 104 of this
12 Act with respect to any individual is liable to that indi-
13 vidual in a civil action brought in a district court of the
14 United States of appropriate jurisdiction in an amount
15 equal to the sum of—

- 16 (1) the greater of any actual damages of not
17 less than \$100 and not more than \$1,000;
- 18 (2) such amount of punitive damages as the
19 court may allow; and
- 20 (3) in the case of any successful action under
21 this section, the costs of the action together with
22 reasonable attorney’s fees as determined by the
23 court.

24 (b) **LIMITATION.**—A civil action under this section
25 may not be commenced later than 2 years after the date

1 upon which the claimant first discovered or had a reason-
2 able opportunity to discover the violation.

3 **SEC. 605. EFFECT ON OTHER LAWS.**

4 (a) **PREEMPTION OF STATE LAWS.**—This Act super-
5 sedes any provision of a statute, regulation, or rule of a
6 State or political subdivision of a State, with respect to
7 those entities covered by the regulations issued pursuant
8 to this Act, that expressly requires covered entities to im-
9 plement requirements with respect to the collection, use,
10 or disclosure of covered information addressed in this Act.

11 (b) **ADDITIONAL PREEMPTION.**—

12 (1) **IN GENERAL.**—No person other than a per-
13 son specified in section 603 or 604 may bring a civil
14 action under the laws of any State if such action is
15 premised in whole or in part upon the defendant vio-
16 lating any provision of this Act.

17 (2) **PROTECTION OF STATE CONSUMER PROTEC-**
18 **TION LAWS.**—This subsection shall not be construed
19 to limit the enforcement of any State consumer pro-
20 tection law by an attorney general or other official
21 of a State.

22 (c) **PROTECTION OF CERTAIN STATE LAWS.**—This
23 Act shall not be construed to preempt the applicability
24 of—

1 (1) State laws that address the collection, use,
2 or disclosure of health information or financial infor-
3 mation;

4 (2) State laws that address notification require-
5 ments in the event of a data breach;

6 (3) State trespass, contract, or tort law; or

7 (4) other State laws to the extent that those
8 laws relate to acts of fraud.

9 (d) PRESERVATION OF FTC AUTHORITY.—Nothing
10 in this Act may be construed in any way to limit or affect
11 the Commission’s authority under any provision of law.

12 (e) RULE OF CONSTRUCTION RELATING TO RE-
13 QUIRED DISCLOSURES TO GOVERNMENT ENTITIES.—
14 This Act shall not be construed to expand or limit the
15 duty or authority of a covered entity, service provider, or
16 third party to disclose covered information or sensitive in-
17 formation to a government entity under any provision of
18 law.

19 **TITLE VII—MISCELLANEOUS** 20 **PROVISIONS**

21 **SEC. 701. REVIEW.**

22 Not later than 5 years after the effective date of the
23 regulations initially issued under this Act, the Commission
24 shall—

1 enforcement of this Act for such period of time as the Com-
2 mission determines necessary to allow for the establish-
3 ment and Commission approval of a Choice Program
4 under title IV and for covered entities to commence par-
5 ticipation in such a program.

6 **SEC. 704. SEVERABILITY.**

7 If any provision of this Act, or the application thereof
8 to any person or circumstance, is held unconstitutional or
9 otherwise invalid, the validity of the remainder of the Act
10 and the application of such provision to other persons and
11 circumstances shall not be affected thereby.

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