

109TH CONGRESS
1ST SESSION

S. 116

To require the consent of an individual prior to the sale and marketing of such individual's personally identifiable information, and for other purposes.

IN THE SENATE OF THE UNITED STATES

JANUARY 24, 2005

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

A BILL

To require the consent of an individual prior to the sale and marketing of such individual's personally identifiable 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 “Privacy Act of 2005”.

6 (b) TABLE OF CONTENTS.—The table of contents of
7 this Act is as follows:

Sec. 1. Short title; table of contents

TITLE I—COMMERCIAL SALE AND MARKETING OF PERSONALLY
IDENTIFIABLE INFORMATION

Sec. 101. Collection and distribution of personally identifiable information

- Sec. 102. Enforcement
- Sec. 103. Safe harbor
- Sec. 104. Definitions
- Sec. 105. Preemption
- Sec. 106. Effective Date

TITLE II—SOCIAL SECURITY NUMBER MISUSE PREVENTION

- Sec. 201. Findings
- Sec. 202. Prohibition of the display, sale, or purchase of social security numbers
- Sec. 203. Application of prohibition of the display, sale, or purchase of social security numbers to public records
- Sec. 204. Rulemaking authority of the Attorney General
- Sec. 205. Treatment of social security numbers on government documents
- Sec. 206. Limits on personal disclosure of a social security number for consumer transactions
- Sec. 207. Extension of civil monetary penalties for misuse of a social security number
- Sec. 208. Criminal penalties for the misuse of a social security number
- Sec. 209. Civil actions and civil penalties
- Sec. 210. Federal injunctive authority

TITLE III—LIMITATIONS ON SALE AND SHARING OF NONPUBLIC PERSONAL FINANCIAL INFORMATION

- Sec. 301. Definition of sale
- Sec. 302. Rules applicable to sale of nonpublic personal information
- Sec. 303. Exceptions to disclosure prohibition
- Sec. 304. Conforming amendments
- Sec. 305. Regulatory authority
- Sec. 306. Effective date

TITLE IV—LIMITATIONS ON THE PROVISION OF PROTECTED HEALTH INFORMATION

- Sec. 401. Definitions
- Sec. 402. Prohibition against selling protected health information
- Sec. 403. Authorization for sale or marketing of protected health information by noncovered entities
- Sec. 404. Prohibition against retaliation
- Sec. 405. Rule of construction
- Sec. 406. Regulations
- Sec. 407. Enforcement

TITLE V—DRIVER'S LICENSE PRIVACY

- Sec. 501. Driver's license privacy

TITLE VI—MISCELLANEOUS

- Sec. 601. Enforcement by State Attorneys General
- Sec. 602. Federal injunctive authority

1 **TITLE I—COMMERCIAL SALE**
2 **AND MARKETING OF PERSON-**
3 **ALLY IDENTIFIABLE INFOR-**
4 **MATION**

5 **SEC. 101. COLLECTION AND DISTRIBUTION OF PERSON-**
6 **ALLY IDENTIFIABLE INFORMATION.**

7 (a) PROHIBITION.—

8 (1) IN GENERAL.—It is unlawful for a commer-
9 cial entity to collect personally identifiable informa-
10 tion and disclose such information to any non-
11 affiliated third party for marketing purposes or sell
12 such information to any nonaffiliated third party,
13 unless the commercial entity provides—

14 (A) notice to the individual to whom the
15 information relates in accordance with the re-
16 quirements of subsection (b); and

17 (B) an opportunity for such individual to
18 restrict the disclosure or sale of such informa-
19 tion.

20 (2) EXCEPTION.—A commercial entity may col-
21 lect personally identifiable information and use such
22 information to market to potential customers such
23 entity's product.

24 (b) NOTICE.—

1 (1) IN GENERAL.—A notice under subsection
2 (a) shall contain statements describing the following:

3 (A) The identity of the commercial entity
4 collecting the personally identifiable informa-
5 tion.

6 (B) The types of personally identifiable in-
7 formation that are being collected on the indi-
8 vidual.

9 (C) How the commercial entity may use
10 such information.

11 (D) A description of the categories of po-
12 tential recipients of such personally identifiable
13 information.

14 (E) Whether the individual is required to
15 provide personally identifiable information in
16 order to do business with the commercial entity.

17 (F) How an individual may decline to have
18 such personally identifiable information used or
19 sold as described in subsection (a).

20 (2) TIME OF NOTICE.—Notice shall be conveyed
21 prior to the sale or use of the personally identifiable
22 information as described in subsection (a) in such a
23 manner as to allow the individual a reasonable pe-
24 riod of time to consider the notice and limit such
25 sale or use.

1 (3) MEDIUM OF NOTICE.—The medium for pro-
2 viding notice must be—

3 (A) the same medium in which the person-
4 ally identifiable information is or will be col-
5 lected, or a medium approved by the individual;
6 or

7 (B) in the case of oral communication, no-
8 tice may be conveyed orally or in writing.

9 (4) FORM OF NOTICE.—The notice shall be
10 clear and conspicuous.

11 (c) OPT-OUT.—

12 (1) OPPORTUNITY TO OPT-OUT OF SALE OR
13 MARKETING.—The opportunity provided to limit the
14 sale of personally identifiable information to non-
15 affiliated third parties or the disclosure of such in-
16 formation for marketing purposes, shall be easy to
17 use, accessible and available in the medium the in-
18 formation is collected, or in a medium approved by
19 the individual.

20 (2) DURATION OF LIMITATION.—An individ-
21 ual's limitation on the sale or marketing of person-
22 ally identifiable information shall be considered per-
23 manent, unless otherwise specified by the individual.

24 (3) REVOCATION OF CONSENT.—After an indi-
25 vidual grants consent to the use of that individual's

1 personally identifiable information, the individual
2 may revoke the consent at any time, except to the
3 extent that the commercial entity has taken action
4 in reliance thereon. The commercial entity shall pro-
5 vide the individual an opportunity to revoke consent
6 that is easy to use, accessible, and available in the
7 medium the information was or is collected.

8 (4) NOT APPLICABLE.—This section shall not
9 apply to disclosure of personally identifiable informa-
10 tion—

11 (A) that is necessary to facilitate a trans-
12 action specifically requested by the consumer;

13 (B) is used for the sole purpose of facili-
14 tating this transaction; and

15 (C) in which the entity receiving or obtain-
16 ing such information is limited, by contract, to
17 use such formation for the purpose of com-
18 pleting the transaction.

19 **SEC. 102. ENFORCEMENT.**

20 (a) IN GENERAL.—In accordance with the provisions
21 of this section, the Federal Trade Commission shall have
22 the authority to enforce any violation of section 101 of
23 this Act.

24 (b) VIOLATIONS.—The Federal Trade Commission
25 shall treat a violation of section 101 as a violation of a

1 rule under section 18a(a)(1)(B) of the Federal Trade
2 Commission Act (15 U.S.C. 57a(a)(1)(B)).

3 (c) TRANSFER OF ENFORCEMENT AUTHORITY.—The
4 Federal Trade Commission shall promulgate rules in ac-
5 cordance with section 553 of title 5, United States Code,
6 allowing for the transfer of enforcement authority from
7 the Federal Trade Commission to a Federal agency re-
8 garding section 101 of this Act. The Federal Trade Com-
9 mission may permit a Federal agency to enforce any viola-
10 tion of section 101 if such agency submits a written re-
11 quest to the Commission to enforce such violations and
12 includes in such request—

13 (1) a description of the entities regulated by
14 such agency that will be subject to the provisions of
15 section 101;

16 (2) an assurance that such agency has suffi-
17 cient authority over the entities to enforce violations
18 of section 101; and

19 (3) a list of proposed rules that such agency
20 shall use in regulating such entities and enforcing
21 section 101.

22 (d) ACTIONS BY THE COMMISSION.—Absent transfer
23 of enforcement authority to a Federal agency under sub-
24 section (c), the Federal Trade Commission shall prevent
25 any person from violating section 101 in the same manner,

1 by the same means, and with the same jurisdiction, pow-
2 ers, and duties as provided to such Commission under the
3 Federal Trade Commission Act (15 U.S.C. 41 et seq.).
4 Any entity that violates section 101 is subject to the pen-
5 alties and entitled to the privileges and immunities pro-
6 vided in such Act in the same manner, by the same means,
7 and with the same jurisdiction, power, and duties under
8 such Act.

9 (e) RELATIONSHIP TO OTHER LAWS.—

10 (1) COMMISSION AUTHORITY.—Nothing con-
11 tained in this title shall be construed to limit author-
12 ity provided to the Commission under any other law.

13 (2) COMMUNICATIONS ACT.—Nothing in section
14 101 requires an operator of a website to take any
15 action that is inconsistent with the requirements of
16 section 222 or 631 of the Communications Act of
17 1934 (47 U.S.C. 222 and 5551).

18 (3) OTHER ACTS.—Nothing in this title is in-
19 tended to affect the applicability or the enforce-
20 ability of any provision of, or any amendment made
21 by—

22 (A) the Children’s Online Privacy Protec-
23 tion Act of 1998 (15 U.S.C. 6501 et seq.);

24 (B) title V of the Gramm-Leach-Bliley Act;

1 (C) the Health Insurance Portability and
2 Accountability Act of 1996; or

3 (D) the Fair Credit Reporting Act.

4 (f) PUBLIC RECORDS.—Nothing in this title shall be
5 construed to restrict commercial entities from obtaining
6 or disclosing personally identifying information from pub-
7 lic records.

8 (g) CIVIL PENALTIES.—In addition to any other pen-
9 alty applicable to a violation of section 101(a), a penalty
10 of up to \$25,000 may be issued for each violation.

11 (h) ENFORCEMENT REGARDING PROGRAMS.—

12 (1) IN GENERAL.—A Federal agency or depart-
13 ment providing financial assistance to any entity re-
14 quired to comply with section 101 of this Act shall
15 issue regulations requiring that such entity comply
16 with such section or forfeit some or all of such as-
17 sistance. Such regulations shall prescribe sanctions
18 for noncompliance, require that such department or
19 agency provide notice of failure to comply with such
20 section prior to any action being taken against such
21 recipient, and require that a determination be made
22 prior to any action being taken against such recipi-
23 ent that compliance cannot be secured by voluntary
24 means.

1 (2) FEDERAL FINANCIAL ASSISTANCE.—The
2 term “Federal financial assistance” means assist-
3 ance through a grant, cooperative agreement, loan,
4 or contract other than a contract of insurance or
5 guaranty.

6 **SEC. 103. SAFE HARBOR.**

7 A commercial entity may not be held to have violated
8 any provision of this title if such entity complies with self-
9 regulatory guidelines that—

10 (1) are issued by seal programs or representa-
11 tives of the marketing or online industries or by any
12 other person; and

13 (2) are approved by the Federal Trade Commis-
14 sion, after public comment has been received on such
15 guidelines by the Commission, as meeting the re-
16 quirements of this title.

17 **SEC. 104. DEFINITIONS.**

18 In this title:

19 (1) COMMERCIAL ENTITY.—The term “commer-
20 cial entity”—

21 (A) means any person offering products or
22 services involving commerce—

23 (i) among the several States or with 1
24 or more foreign nations;

1 (ii) in any territory of the United
2 States or in the District of Columbia, or
3 between any such territory and—

4 (I) another such territory; or

5 (II) any State or foreign nation;

6 or

7 (iii) between the District of Columbia
8 and any State, territory, or foreign nation;

9 and

10 (B) does not include—

11 (i) any nonprofit entity that would
12 otherwise be exempt from coverage under
13 section 5 of the Federal Trade Commission
14 Act (15 U.S.C. 45);

15 (ii) any financial institution that is
16 subject to title V of the Gramm-Leach-Bliley
17 Act (15 U.S.C. 6801 et seq.); or

18 (iii) any group health plan, health in-
19 surance issuer, or other entity that is sub-
20 ject to the Health Insurance Portability
21 and Accountability Act of 1996 (42 U.S.C.
22 201 note).

23 (2) COMMISSION.—The term “Commission”
24 means the Federal Trade Commission.

1 (3) INDIVIDUAL.—The term “individual” means
2 a person whose personally identifying information
3 has been, is, or will be collected by a commercial en-
4 tity.

5 (4) MARKETING.—The term “marketing”
6 means to make a communication about a product or
7 service a purpose of which is to encourage recipients
8 of the communication to purchase or use the product
9 or service.

10 (5) MEDIUM.—The term “medium” means any
11 channel or system of communication including oral,
12 written, and online communication.

13 (6) NONAFFILIATED THIRD PARTY.—The term
14 “nonaffiliated third party” means any entity that is
15 not related by common ownership or affiliated by
16 corporate control with, the commercial entity, but
17 does not include a joint employee of such institution.

18 (7) PERSONALLY IDENTIFIABLE INFORMA-
19 TION.—The term “personally identifiable informa-
20 tion” means individually identifiable information
21 about the individual that is collected including—

22 (A) a first, middle, or last name, whether
23 given at birth or adoption, assumed, or legally
24 changed;

1 (B) a home or other physical address, in-
2 cluding the street name, zip code, and name of
3 a city or town;

4 (C) an e-mail address;

5 (D) a telephone number;

6 (E) a photograph or other form of visual
7 identification;

8 (F) a birth date, birth certificate number,
9 or place of birth for that person; or

10 (G) information concerning the individual
11 that is combined with any other identifier in
12 this paragraph.

13 (8) SALE; SELL; SOLD.—The terms “sale”,
14 “sell”, and “sold”, with respect to personally identi-
15 fiable information, mean the exchanging of such in-
16 formation for any thing of value, directly or indi-
17 rectly, including the licensing, bartering, or renting
18 of such information.

19 (9) WRITING.—The term “writing” means writ-
20 ing in either a paper-based or computer-based form,
21 including electronic and digital signatures.

22 **SEC. 105. PREEMPTION.**

23 The provisions of this title shall supersede any statu-
24 tory and common law of States and their political subdivi-

1 sions insofar as that law may now or hereafter relate to
2 the—

3 (1) collection and disclosure of personally iden-
4 tifiable information for marketing purposes; and

5 (2) collection and sale of personally identifiable
6 information.

7 **SEC. 106. EFFECTIVE DATE.**

8 This title and the amendments made by this title
9 shall take effect 1 year after the date of enactment of this
10 Act.

11 **TITLE II—SOCIAL SECURITY**
12 **NUMBER MISUSE PREVENTION**

13 **SEC. 201. FINDINGS.**

14 Congress makes the following findings:

15 (1) The inappropriate display, sale, or purchase
16 of social security numbers has contributed to a
17 growing range of illegal activities, including fraud,
18 identity theft, and, in some cases, stalking and other
19 violent crimes.

20 (2) While financial institutions, health care pro-
21 viders, and other entities have often used social se-
22 curity numbers to confirm the identity of an indi-
23 vidual, the general display to the public, sale, or pur-
24 chase of these numbers has been used to commit

1 crimes, and also can result in serious invasions of in-
2 dividual privacy.

3 (3) The Federal Government requires virtually
4 every individual in the United States to obtain and
5 maintain a social security number in order to pay
6 taxes, to qualify for social security benefits, or to
7 seek employment. An unintended consequence of
8 these requirements is that social security numbers
9 have become one of the tools that can be used to fa-
10 cilitate crime, fraud, and invasions of the privacy of
11 the individuals to whom the numbers are assigned.
12 Because the Federal Government created and main-
13 tains this system, and because the Federal Govern-
14 ment does not permit individuals to exempt them-
15 selves from those requirements, it is appropriate for
16 the Federal Government to take steps to stem the
17 abuse of social security numbers.

18 (4) The display, sale, or purchase of social secu-
19 rity numbers in no way facilitates uninhibited, ro-
20 bust, and wide-open public debate, and restrictions
21 on such display, sale, or purchase would not affect
22 public debate.

23 (5) No one should seek to profit from the dis-
24 play, sale, or purchase of social security numbers in
25 circumstances that create a substantial risk of phys-

1 ical, emotional, or financial harm to the individuals
2 to whom those numbers are assigned.

3 (6) Consequently, this title provides each indi-
4 vidual that has been assigned a social security num-
5 ber some degree of protection from the display, sale,
6 and purchase of that number in any circumstance
7 that might facilitate unlawful conduct.

8 **SEC. 202. PROHIBITION OF THE DISPLAY, SALE, OR PUR-**
9 **CHASE OF SOCIAL SECURITY NUMBERS.**

10 (a) PROHIBITION.—

11 (1) IN GENERAL.—Chapter 47 of title 18,
12 United States Code, is amended by inserting after
13 section 1028 the following:

14 **“§ 1028A. Prohibition of the display, sale, or purchase**
15 **of social security numbers**

16 “(a) DEFINITIONS.—In this section:

17 “(1) DISPLAY.—The term ‘display’ means to in-
18 tentiously communicate or otherwise make available
19 (on the Internet or in any other manner) to the gen-
20 eral public an individual’s social security number.

21 “(2) PERSON.—The term ‘person’ means any
22 individual, partnership, corporation, trust, estate, co-
23 operative, association, or any other entity.

1 “(3) PURCHASE.—The term ‘purchase’ means
2 providing directly or indirectly, anything of value in
3 exchange for a social security number.

4 “(4) SALE.—The term ‘sale’ means obtaining,
5 directly or indirectly, anything of value in exchange
6 for a social security number.

7 “(5) STATE.—The term ‘State’ means any
8 State of the United States, the District of Columbia,
9 Puerto Rico, the Northern Mariana Islands, the
10 United States Virgin Islands, Guam, American
11 Samoa, and any territory or possession of the
12 United States.

13 “(b) LIMITATION ON DISPLAY.—Except as provided
14 in section 1028B, no person may display any individual’s
15 social security number to the general public without the
16 affirmatively expressed consent of the individual.

17 “(c) LIMITATION ON SALE OR PURCHASE.—Except
18 as otherwise provided in this section, no person may sell
19 or purchase any individual’s social security number with-
20 out the affirmatively expressed consent of the individual.

21 “(d) PREREQUISITES FOR CONSENT.—In order for
22 consent to exist under subsection (b) or (c), the person
23 displaying or seeking to display, selling or attempting to
24 sell, or purchasing or attempting to purchase, an individ-
25 ual’s social security number shall—

1 “(1) inform the individual of the general pur-
2 pose for which the number will be used, the types of
3 persons to whom the number may be available, and
4 the scope of transactions permitted by the consent;
5 and

6 “(2) obtain the affirmatively expressed consent
7 (electronically or in writing) of the individual.

8 “(e) EXCEPTIONS.—Nothing in this section shall be
9 construed to prohibit or limit the display, sale, or purchase
10 of a social security number—

11 “(1) required, authorized, or excepted under
12 any Federal law;

13 “(2) for a public health purpose, including the
14 protection of the health or safety of an individual in
15 an emergency situation;

16 “(3) for a national security purpose;

17 “(4) for a law enforcement purpose, including
18 the investigation of fraud and the enforcement of a
19 child support obligation;

20 “(5) if the display, sale, or purchase of the
21 number is for a use occurring as a result of an inter-
22 action between businesses, governments, or business
23 and government (regardless of which entity initiates
24 the interaction), including, but not limited to—

1 “(A) the prevention of fraud (including
2 fraud in protecting an employee’s right to em-
3 ployment benefits);

4 “(B) the facilitation of credit checks or the
5 facilitation of background checks of employees,
6 prospective employees, or volunteers;

7 “(C) the retrieval of other information
8 from other businesses, commercial enterprises,
9 government entities, or private nonprofit orga-
10 nizations; or

11 “(D) when the transmission of the number
12 is incidental to, and in the course of, the sale,
13 lease, franchising, or merger of all, or a portion
14 of, a business;

15 “(6) if the transfer of such a number is part of
16 a data matching program involving a Federal, State,
17 or local agency; or

18 “(7) if such number is required to be submitted
19 as part of the process for applying for any type of
20 Federal, State, or local government benefit or pro-
21 gram;

22 except that, nothing in this subsection shall be construed
23 as permitting a professional or commercial user to display
24 or sell a social security number to the general public.

1 “(f) LIMITATION.—Nothing in this section shall pro-
 2 hibit or limit the display, sale, or purchase of social secu-
 3 rity numbers as permitted under title V of the Gramm-
 4 Leach-Bliley Act, or for the purpose of affiliate sharing
 5 as permitted under the Fair Credit Reporting Act, except
 6 that no entity regulated under such Acts may make social
 7 security numbers available to the general public, as may
 8 be determined by the appropriate regulators under such
 9 Acts. For purposes of this subsection, the general public
 10 shall not include affiliates or unaffiliated third-party busi-
 11 ness entities as may be defined by the appropriate regu-
 12 lators.”.

13 (2) CONFORMING AMENDMENT.—The chapter
 14 analysis for chapter 47 of title 18, United States
 15 Code, is amended by inserting after the item relating
 16 to section 1028 the following:

“1028A. Prohibition of the display, sale, or purchase of social security num-
 bers.”.

17 (b) STUDY; REPORT.—

18 (1) IN GENERAL.—The Attorney General shall
 19 conduct a study and prepare a report on all of the
 20 uses of social security numbers permitted, required,
 21 authorized, or excepted under any Federal law. The
 22 report shall include a detailed description of the uses
 23 allowed as of the date of enactment of this Act and

1 shall evaluate whether such uses should be continued
2 or discontinued by appropriate legislative action.

3 (2) REPORT.—Not later than 1 year after the
4 date of enactment of this Act, the Attorney General
5 shall report to Congress findings under this sub-
6 section. The report shall include such recommenda-
7 tions for legislation based on criteria the Attorney
8 General determines to be appropriate.

9 (c) EFFECTIVE DATE.—The amendments made by
10 this section shall take effect on the date that is 30 days
11 after the date on which the final regulations promulgated
12 under section 5 are published in the Federal Register.

13 **SEC. 203. APPLICATION OF PROHIBITION OF THE DISPLAY,**
14 **SALE, OR PURCHASE OF SOCIAL SECURITY**
15 **NUMBERS TO PUBLIC RECORDS.**

16 (a) PUBLIC RECORDS EXCEPTION.—

17 (1) IN GENERAL.—Chapter 47 of title 18,
18 United States Code (as amended by section 3(a)(1)),
19 is amended by inserting after section 1028A the fol-
20 lowing:

21 **“§ 1028B. Display, sale, or purchase of public records**
22 **containing social security numbers**

23 “(a) DEFINITION.—In this section, the term ‘public
24 record’ means any governmental record that is made avail-
25 able to the general public.

1 “(b) IN GENERAL.—Except as provided in sub-
2 sections (c), (d), and (e), section 1028A shall not apply
3 to a public record.

4 “(c) PUBLIC RECORDS ON THE INTERNET OR IN AN
5 ELECTRONIC MEDIUM.—

6 “(1) IN GENERAL.—Section 1028A shall apply
7 to any public record first posted onto the Internet
8 or provided in an electronic medium by, or on behalf
9 of a government entity after the date of enactment
10 of this section, except as limited by the Attorney
11 General in accordance with paragraph (2).

12 “(2) EXCEPTION FOR GOVERNMENT ENTITIES
13 ALREADY PLACING PUBLIC RECORDS ON THE INTER-
14 NET OR IN ELECTRONIC FORM.—Not later than 60
15 days after the date of enactment of this section, the
16 Attorney General shall issue regulations regarding
17 the applicability of section 1028A to any record of
18 a category of public records first posted onto the
19 Internet or provided in an electronic medium by, or
20 on behalf of a government entity prior to the date
21 of enactment of this section. The regulations will de-
22 termine which individual records within categories of
23 records of these government entities, if any, may
24 continue to be posted on the Internet or in electronic
25 form after the effective date of this section. In pro-

1 mulgating these regulations, the Attorney General
2 may include in the regulations a set of procedures
3 for implementing the regulations and shall consider
4 the following:

5 “(A) The cost and availability of tech-
6 nology available to a governmental entity to re-
7 duct social security numbers from public
8 records first provided in electronic form after
9 the effective date of this section.

10 “(B) The cost or burden to the general
11 public, businesses, commercial enterprises, non-
12 profit organizations, and to Federal, State, and
13 local governments of complying with section
14 1028A with respect to such records.

15 “(C) The benefit to the general public,
16 businesses, commercial enterprises, non-profit
17 organizations, and to Federal, State, and local
18 governments if the Attorney General were to
19 determine that section 1028A should apply to
20 such records.

21 Nothing in the regulation shall permit a public enti-
22 ty to post a category of public records on the Inter-
23 net or in electronic form after the effective date of
24 this section if such category had not been placed on

1 the Internet or in electronic form prior to such effective date.

2
3 “(d) HARVESTED SOCIAL SECURITY NUMBERS.—
4 Section 1028A shall apply to any public record of a government entity which contains social security numbers extracted from other public records for the purpose of displaying or selling such numbers to the general public.

5
6
7
8 “(e) ATTORNEY GENERAL RULEMAKING ON PAPER
9 RECORDS.—

10 “(1) IN GENERAL.—Not later than 60 days
11 after the date of enactment of this section, the Attorney General shall determine the feasibility and
12 advisability of applying section 1028A to the records
13 listed in paragraph (2) when they appear on paper
14 or on another nonelectronic medium. If the Attorney
15 General deems it appropriate, the Attorney General
16 may issue regulations applying section 1028A to
17 such records.
18

19 “(2) LIST OF PAPER AND OTHER NONELECTRONIC RECORDS.—The records listed in this paragraph are as follows:

22 “(A) Professional or occupational licenses.

23 “(B) Marriage licenses.

24 “(C) Birth certificates.

25 “(D) Death certificates.

1 “(E) Other short public documents that
2 display a social security number in a routine
3 and consistent manner on the face of the docu-
4 ment.

5 “(3) CRITERIA FOR ATTORNEY GENERAL RE-
6 VIEW.—In determining whether section 1028A
7 should apply to the records listed in paragraph (2),
8 the Attorney General shall consider the following:

9 “(A) The cost or burden to the general
10 public, businesses, commercial enterprises, non-
11 profit organizations, and to Federal, State, and
12 local governments of complying with section
13 1028A.

14 “(B) The benefit to the general public,
15 businesses, commercial enterprises, non-profit
16 organizations, and to Federal, State, and local
17 governments if the Attorney General were to
18 determine that section 1028A should apply to
19 such records.”.

20 (2) CONFORMING AMENDMENT.—The chapter
21 analysis for chapter 47 of title 18, United States
22 Code (as amended by section 202(a)(2)), is amended
23 by inserting after the item relating to section 1028A
24 the following:

“1028B. Display, sale, or purchase of public records containing social security
numbers.”.

1 (b) STUDY AND REPORT ON SOCIAL SECURITY NUM-
2 BERS IN PUBLIC RECORDS.—

3 (1) STUDY.—The Comptroller General of the
4 United States shall conduct a study and prepare a
5 report on social security numbers in public records.
6 In developing the report, the Comptroller General
7 shall consult with the Administrative Office of the
8 United States Courts, State and local governments
9 that store, maintain, or disseminate public records,
10 and other stakeholders, including members of the
11 private sector who routinely use public records that
12 contain social security numbers.

13 (2) REPORT.—Not later than 1 year after the
14 date of enactment of this Act, the Comptroller Gen-
15 eral of the United States shall submit to Congress
16 a report on the study conducted under paragraph
17 (1). The report shall include a detailed description
18 of the activities and results of the study and rec-
19 ommendations for such legislative action as the
20 Comptroller General considers appropriate. The re-
21 port, at a minimum, shall include—

22 (A) a review of the uses of social security
23 numbers in non-federal public records;

1 (B) a review of the manner in which public
2 records are stored (with separate reviews for
3 both paper records and electronic records);

4 (C) a review of the advantages or utility of
5 public records that contain social security num-
6 bers, including the utility for law enforcement,
7 and for the promotion of homeland security;

8 (D) a review of the disadvantages or draw-
9 backs of public records that contain social secu-
10 rity numbers, including criminal activity, com-
11 promised personal privacy, or threats to home-
12 land security;

13 (E) the costs and benefits for State and
14 local governments of removing social security
15 numbers from public records, including a review
16 of current technologies and procedures for re-
17 moving social security numbers from public
18 records; and

19 (F) an assessment of the benefits and
20 costs to businesses, their customers, and the
21 general public of prohibiting the display of so-
22 cial security numbers on public records (with
23 separate assessments for both paper records
24 and electronic records).

1 States Code, as are necessary to promulgate regula-
2 tions to implement and clarify the uses occurring as
3 a result of an interaction between businesses, gov-
4 ernments, or business and government (regardless of
5 which entity initiates the interaction) permitted
6 under section 1028A(e)(5) of title 18, United States
7 Code (as added by section 202(a)(1)).

8 (2) FACTORS TO BE CONSIDERED.—In promul-
9 gating the regulations required under paragraph (1),
10 the Attorney General shall, at a minimum, consider
11 the following:

12 (A) The benefit to a particular business, to
13 customers of the business, and to the general
14 public of the display, sale, or purchase of an in-
15 dividual's social security number.

16 (B) The costs that businesses, customers
17 of businesses, and the general public may incur
18 as a result of prohibitions on the display, sale,
19 or purchase of social security numbers.

20 (C) The risk that a particular business
21 practice will promote the use of a social security
22 number to commit fraud, deception, or crime.

23 (D) The presence of adequate safeguards
24 and procedures to prevent—

1 (i) misuse of social security numbers
2 by employees within a business; and

3 (ii) misappropriation of social security
4 numbers by the general public, while per-
5 mitting internal business uses of such
6 numbers.

7 (E) The presence of procedures to prevent
8 identity thieves, stalkers, and other individuals
9 with ill intent from posing as legitimate busi-
10 nesses to obtain social security numbers.

11 **SEC. 205. TREATMENT OF SOCIAL SECURITY NUMBERS ON**
12 **GOVERNMENT DOCUMENTS.**

13 (a) PROHIBITION OF USE OF SOCIAL SECURITY AC-
14 COUNT NUMBERS ON CHECKS ISSUED FOR PAYMENT BY
15 GOVERNMENTAL AGENCIES.—

16 (1) IN GENERAL.—Section 205(c)(2)(C) of the
17 Social Security Act (42 U.S.C. 405(c)(2)(C)) is
18 amended by adding at the end the following:

19 “(x) No Federal, State, or local agency may display
20 the social security account number of any individual, or
21 any derivative of such number, on any check issued for
22 any payment by the Federal, State, or local agency.”.

23 (2) EFFECTIVE DATE.—The amendment made
24 by this subsection shall apply with respect to viola-
25 tions of section 205(c)(2)(C)(x) of the Social Secu-

1 rity Act (42 U.S.C. 405(c)(2)(C)(x)), as added by
2 paragraph (1), occurring after the date that is 3
3 years after the date of enactment of this Act.

4 (b) PROHIBITION OF APPEARANCE OF SOCIAL SECUR-
5 RITY ACCOUNT NUMBERS ON DRIVER'S LICENSES OR
6 MOTOR VEHICLE REGISTRATION.—

7 (1) IN GENERAL.—Section 205(c)(2)(C)(vi) of
8 the Social Security Act (42 U.S.C. 405(c)(2)(C)(vi))
9 is amended—

10 (A) by inserting “(I)” after “(vi)”; and

11 (B) by adding at the end the following:

12 “(II)(aa) An agency of a State (or political subdivi-
13 sion thereof), in the administration of any driver’s license
14 or motor vehicle registration law within its jurisdiction,
15 may not display the social security account numbers
16 issued by the Commissioner of Social Security, or any de-
17 rivative of such numbers, on the face of any driver’s li-
18 cense or motor vehicle registration or any other document
19 issued by such State (or political subdivision thereof) to
20 an individual for purposes of identification of such indi-
21 vidual.

22 “(bb) Nothing in this subclause shall be construed
23 as precluding an agency of a State (or political subdivision
24 thereof), in the administration of any driver’s license or
25 motor vehicle registration law within its jurisdiction, from

1 using a social security account number for an internal use
2 or to link with the database of an agency of another State
3 that is responsible for the administration of any driver’s
4 license or motor vehicle registration law.”.

5 (2) EFFECTIVE DATE.—The amendments made
6 by this subsection shall apply with respect to li-
7 censes, registrations, and other documents issued or
8 reissued after the date that is 1 year after the date
9 of enactment of this Act.

10 (c) PROHIBITION OF INMATE ACCESS TO SOCIAL SE-
11 CURITY ACCOUNT NUMBERS.—

12 (1) IN GENERAL.—Section 205(c)(2)(C) of the
13 Social Security Act (42 U.S.C. 405(c)(2)(C)) (as
14 amended by subsection (b)) is amended by adding at
15 the end the following:

16 “(xi) No Federal, State, or local agency may employ,
17 or enter into a contract for the use or employment of, pris-
18 oners in any capacity that would allow such prisoners ac-
19 cess to the social security account numbers of other indi-
20 viduals. For purposes of this clause, the term ‘prisoner’
21 means an individual confined in a jail, prison, or other
22 penal institution or correctional facility pursuant to such
23 individual’s conviction of a criminal offense.”.

24 (2) EFFECTIVE DATE.—The amendment made
25 by this subsection shall apply with respect to em-

1 ployment of prisoners, or entry into contract with
 2 prisoners, after the date that is 1 year after the date
 3 of enactment of this Act.

4 **SEC. 206. LIMITS ON PERSONAL DISCLOSURE OF A SOCIAL**
 5 **SECURITY NUMBER FOR CONSUMER TRANS-**
 6 **ACTIONS.**

7 (a) IN GENERAL.—Part A of title XI of the Social
 8 Security Act (42 U.S.C. 1301 et seq.) is amended by add-
 9 ing at the end the following:

10 **“SEC. 1150A. LIMITS ON PERSONAL DISCLOSURE OF A SO-**
 11 **CIAL SECURITY NUMBER FOR CONSUMER**
 12 **TRANSACTIONS.**

13 “(a) IN GENERAL.—A commercial entity may not re-
 14 quire an individual to provide the individual’s social secu-
 15 rity number when purchasing a commercial good or service
 16 or deny an individual the good or service for refusing to
 17 provide that number except—

18 “(1) for any purpose relating to—

19 “(A) obtaining a consumer report for any
 20 purpose permitted under the Fair Credit Re-
 21 porting Act;

22 “(B) a background check of the individual
 23 conducted by a landlord, lessor, employer, vol-
 24 untary service agency, or other entity as deter-
 25 mined by the Attorney General;

1 “(C) law enforcement; or

2 “(D) a Federal, State, or local law require-
3 ment; or

4 “(2) if the social security number is necessary
5 to verify the identity of the consumer to effect, ad-
6 minister, or enforce the specific transaction re-
7 quested or authorized by the consumer, or to prevent
8 fraud.

9 “(b) APPLICATION OF CIVIL MONEY PENALTIES.—
10 A violation of this section shall be deemed to be a violation
11 of section 1129(a)(3)(F).

12 “(c) APPLICATION OF CRIMINAL PENALTIES.—A vio-
13 lation of this section shall be deemed to be a violation of
14 section 208(a)(8).

15 “(d) LIMITATION ON CLASS ACTIONS.—No class ac-
16 tion alleging a violation of this section shall be maintained
17 under this section by an individual or any private party
18 in Federal or State court.

19 “(e) STATE ATTORNEY GENERAL ENFORCEMENT.—

20 “(1) IN GENERAL.—

21 “(A) CIVIL ACTIONS.—In any case in
22 which the attorney general of a State has rea-
23 son to believe that an interest of the residents
24 of that State has been or is threatened or ad-
25 versely affected by the engagement of any per-

1 son in a practice that is prohibited under this
2 section, the State, as *parens patriae*, may bring
3 a civil action on behalf of the residents of the
4 State in a district court of the United States of
5 appropriate jurisdiction to—

6 “(i) enjoin that practice;

7 “(ii) enforce compliance with such
8 section;

9 “(iii) obtain damages, restitution, or
10 other compensation on behalf of residents
11 of the State; or

12 “(iv) obtain such other relief as the
13 court may consider appropriate.

14 “(B) NOTICE.—

15 “(i) IN GENERAL.—Before filing an
16 action under subparagraph (A), the attor-
17 ney general of the State involved shall pro-
18 vide to the Attorney General—

19 “(I) written notice of the action;

20 and

21 “(II) a copy of the complaint for
22 the action.

23 “(ii) EXEMPTION.—

24 “(I) IN GENERAL.—Clause (i)
25 shall not apply with respect to the fil-

1 ing of an action by an attorney gen-
2 eral of a State under this subsection,
3 if the State attorney general deter-
4 mines that it is not feasible to provide
5 the notice described in such subpara-
6 graph before the filing of the action.

7 “(II) NOTIFICATION.—With re-
8 spect to an action described in sub-
9 clause (I), the attorney general of a
10 State shall provide notice and a copy
11 of the complaint to the Attorney Gen-
12 eral at the same time as the State at-
13 torney general files the action.

14 “(2) INTERVENTION.—

15 “(A) IN GENERAL.—On receiving notice
16 under paragraph (1)(B), the Attorney General
17 shall have the right to intervene in the action
18 that is the subject of the notice.

19 “(B) EFFECT OF INTERVENTION.—If the
20 Attorney General intervenes in the action under
21 paragraph (1), the Attorney General shall have
22 the right to be heard with respect to any matter
23 that arises in that action.

24 “(3) CONSTRUCTION.—For purposes of bring-
25 ing any civil action under paragraph (1), nothing in

1 this section shall be construed to prevent an attor-
2 ney general of a State from exercising the powers
3 conferred on such attorney general by the laws of
4 that State to—

5 “(A) conduct investigations;

6 “(B) administer oaths or affirmations; or

7 “(C) compel the attendance of witnesses or
8 the production of documentary and other evi-
9 dence.

10 “(4) ACTIONS BY THE ATTORNEY GENERAL OF
11 THE UNITED STATES.—In any case in which an ac-
12 tion is instituted by or on behalf of the Attorney
13 General for violation of a practice that is prohibited
14 under this section, no State may, during the pend-
15 ency of that action, institute an action under para-
16 graph (1) against any defendant named in the com-
17 plaint in that action for violation of that practice.

18 “(5) VENUE; SERVICE OF PROCESS.—

19 “(A) VENUE.—Any action brought under
20 paragraph (1) may be brought in the district
21 court of the United States that meets applicable
22 requirements relating to venue under section
23 1391 of title 28, United States Code.

1 “(B) SERVICE OF PROCESS.—In an action
2 brought under paragraph (1), process may be
3 served in any district in which the defendant—

4 “(i) is an inhabitant; or

5 “(ii) may be found.

6 “(f) SUNSET.—This section shall not apply on or
7 after the date that is 6 years after the effective date of
8 this section.”.

9 (b) EVALUATION AND REPORT.—Not later than the
10 date that is 6 years and 6 months after the date of enact-
11 ment of this Act, the Attorney General, in consultation
12 with the chairman of the Federal Trade Commission, shall
13 issue a report evaluating the effectiveness and efficiency
14 of section 1150A of the Social Security Act (as added by
15 subsection (a)) and shall make recommendations to Con-
16 gress as to any legislative action determined to be nec-
17 essary or advisable with respect to such section, including
18 a recommendation regarding whether to reauthorize such
19 section.

20 (c) EFFECTIVE DATE.—The amendment made by
21 subsection (a) shall apply to requests to provide a social
22 security number occurring after the date that is 1 year
23 after the date of enactment of this Act.

1 **SEC. 207. EXTENSION OF CIVIL MONETARY PENALTIES FOR**
2 **MISUSE OF A SOCIAL SECURITY NUMBER.**

3 (a) TREATMENT OF WITHHOLDING OF MATERIAL
4 FACTS.—

5 (1) CIVIL PENALTIES.—The first sentence of
6 section 1129(a)(1) of the Social Security Act (42
7 U.S.C. 1320a–8(a)(1)) is amended—

8 (A) by striking “who” and inserting
9 “who—”;

10 (B) by striking “makes” and all that fol-
11 lows through “shall be subject to” and inserting
12 the following:

13 “(A) makes, or causes to be made, a statement
14 or representation of a material fact, for use in deter-
15 mining any initial or continuing right to or the
16 amount of monthly insurance benefits under title II
17 or benefits or payments under title VIII or XVI,
18 that the person knows or should know is false or
19 misleading;

20 “(B) makes such a statement or representation
21 for such use with knowing disregard for the truth;
22 or

23 “(C) omits from a statement or representation
24 for such use, or otherwise withholds disclosure of, a
25 fact which the individual knows or should know is
26 material to the determination of any initial or con-

1 tinuing right to or the amount of monthly insurance
2 benefits under title II or benefits or payments under
3 title VIII or XVI and the individual knows, or
4 should know, that the statement or representation
5 with such omission is false or misleading or that the
6 withholding of such disclosure is misleading, shall be
7 subject to”;

8 (C) by inserting “or each receipt of such
9 benefits while withholding disclosure of such
10 fact” after “each such statement or representa-
11 tion”;

12 (D) by inserting “or because of such with-
13 holding of disclosure of a material fact” after
14 “because of such statement or representation”;
15 and

16 (E) by inserting “or such a withholding of
17 disclosure” after “such a statement or rep-
18 resentation”.

19 (2) ADMINISTRATIVE PROCEDURE FOR IMPOS-
20 ING PENALTIES.—The first sentence of section
21 1129A(a) of the Social Security Act (42 U.S.C.
22 1320a–8a(a)) is amended—

23 (A) by striking “who” and inserting
24 “who—”; and

1 (B) by striking “makes” and all that fol-
2 lows through “shall be subject to” and inserting
3 the following:

4 “(1) makes, or causes to be made, a statement
5 or representation of a material fact, for use in deter-
6 mining any initial or continuing right to or the
7 amount of monthly insurance benefits under title II
8 or benefits or payments under title VIII or XVI,
9 that the person knows or should know is false or
10 misleading;

11 “(2) makes such a statement or representation
12 for such use with knowing disregard for the truth;
13 or

14 “(3) omits from a statement or representation
15 for such use, or otherwise withholds disclosure of, a
16 fact which the individual knows or should know is
17 material to the determination of any initial or con-
18 tinuing right to or the amount of monthly insurance
19 benefits under title II or benefits or payments under
20 title VIII or XVI and the individual knows, or
21 should know, that the statement or representation
22 with such omission is false or misleading or that the
23 withholding of such disclosure is misleading, shall be
24 subject to”.

1 (b) APPLICATION OF CIVIL MONEY PENALTIES TO
2 ELEMENTS OF CRIMINAL VIOLATIONS.—Section 1129(a)
3 of the Social Security Act (42 U.S.C. 1320a–8(a)), as
4 amended by subsection (a)(1), is amended—

5 (1) by redesignating paragraph (2) as para-
6 graph (4);

7 (2) by redesignating the last sentence of para-
8 graph (1) as paragraph (2) and inserting such para-
9 graph after paragraph (1); and

10 (3) by inserting after paragraph (2) (as so re-
11 designated) the following:

12 “(3) Any person (including an organization, agency,
13 or other entity) who—

14 “(A) uses a social security account number that
15 such person knows or should know has been as-
16 signed by the Commissioner of Social Security (in an
17 exercise of authority under section 205(c)(2) to es-
18 tablish and maintain records) on the basis of false
19 information furnished to the Commissioner by any
20 person;

21 “(B) falsely represents a number to be the so-
22 cial security account number assigned by the Com-
23 missioner of Social Security to any individual, when
24 such person knows or should know that such number

1 is not the social security account number assigned
2 by the Commissioner to such individual;

3 “(C) knowingly alters a social security card
4 issued by the Commissioner of Social Security, or
5 possesses such a card with intent to alter it;

6 “(D) knowingly displays, sells, or purchases a
7 card that is, or purports to be, a card issued by the
8 Commissioner of Social Security, or possesses such
9 a card with intent to display, purchase, or sell it;

10 “(E) counterfeits a social security card, or pos-
11 sesses a counterfeit social security card with intent
12 to display, sell, or purchase it;

13 “(F) discloses, uses, compels the disclosure of,
14 or knowingly displays, sells, or purchases the social
15 security account number of any person in violation
16 of the laws of the United States;

17 “(G) with intent to deceive the Commissioner of
18 Social Security as to such person’s true identity (or
19 the true identity of any other person) furnishes or
20 causes to be furnished false information to the Com-
21 missioner with respect to any information required
22 by the Commissioner in connection with the estab-
23 lishment and maintenance of the records provided
24 for in section 205(c)(2);

1 “(H) offers, for a fee, to acquire for any indi-
2 vidual, or to assist in acquiring for any individual,
3 an additional social security account number or a
4 number which purports to be a social security ac-
5 count number; or

6 “(I) being an officer or employee of a Federal,
7 State, or local agency in possession of any individ-
8 ual’s social security account number, willfully acts or
9 fails to act so as to cause a violation by such agency
10 of clause (vi)(II) or (x) of section 205(e)(2)(C), shall
11 be subject to, in addition to any other penalties that
12 may be prescribed by law, a civil money penalty of
13 not more than \$5,000 for each violation. Such per-
14 son shall also be subject to an assessment, in lieu of
15 damages sustained by the United States resulting
16 from such violation, of not more than twice the
17 amount of any benefits or payments paid as a result
18 of such violation.”.

19 (c) CLARIFICATION OF TREATMENT OF RECOVERED
20 AMOUNTS.—Section 1129(e)(2)(B) of the Social Security
21 Act (42 U.S.C. 1320a–8(e)(2)(B)) is amended by striking
22 “In the case of amounts recovered arising out of a deter-
23 mination relating to title VIII or XVI,” and inserting “In
24 the case of any other amounts recovered under this sec-
25 tion,”.

1 (d) CONFORMING AMENDMENTS.—

2 (1) Section 1129(b)(3)(A) of the Social Secu-
3 rity Act (42 U.S.C. 1320a–8(b)(3)(A)) is amended
4 by striking “charging fraud or false statements”.

5 (2) Section 1129(c)(1) of the Social Security
6 Act (42 U.S.C. 1320a–8(c)(1)) is amended by strik-
7 ing “and representations” and inserting “, represen-
8 tations, or actions”.

9 (3) Section 1129(e)(1)(A) of the Social Security
10 Act (42 U.S.C. 1320a–8(e)(1)(A)) is amended by
11 striking “statement or representation referred to in
12 subsection (a) was made” and inserting “violation
13 occurred”.

14 (e) EFFECTIVE DATES.—

15 (1) IN GENERAL.—Except as provided in para-
16 graph (2), the amendments made by this section
17 shall apply with respect to violations of sections
18 1129 and 1129A of the Social Security Act (42
19 U.S.C. 1320–8 and 1320a–8a), as amended by this
20 section, committed after the date of enactment of
21 this Act.

22 (2) VIOLATIONS BY GOVERNMENT AGENTS IN
23 POSSESSION OF SOCIAL SECURITY NUMBERS.—Sec-
24 tion 1129(a)(3)(I) of the Social Security Act (42
25 U.S.C. 1320a–8(a)(3)(I)), as added by subsection

1 (b), shall apply with respect to violations of that sec-
2 tion occurring on or after the effective date de-
3 scribed in section 202(e).

4 **SEC. 208. CRIMINAL PENALTIES FOR THE MISUSE OF A SO-**
5 **CIAL SECURITY NUMBER.**

6 (a) PROHIBITION OF WRONGFUL USE AS PERSONAL
7 IDENTIFICATION NUMBER.—No person may obtain any
8 individual’s social security number for purposes of locating
9 or identifying an individual with the intent to physically
10 injure, harm, or use the identity of the individual for any
11 illegal purpose.

12 (b) CRIMINAL SANCTIONS.—Section 208(a) of the
13 Social Security Act (42 U.S.C. 408(a)) is amended—

14 (1) in paragraph (8), by inserting “or” after
15 the semicolon; and

16 (2) by inserting after paragraph (8) the fol-
17 lowing:

18 “(9) except as provided in subsections (e) and
19 (f) of section 1028A of title 18, United States Code,
20 knowingly and willfully displays, sells, or purchases
21 (as those terms are defined in section 1028A(a) of
22 title 18, United States Code) any individual’s social
23 security account number without having met the
24 prerequisites for consent under section 1028A(d) of
25 title 18, United States Code; or

1 “(10) obtains any individual’s social security
2 number for the purpose of locating or identifying the
3 individual with the intent to injure or to harm that
4 individual, or to use the identity of that individual
5 for an illegal purpose;”.

6 **SEC. 209. CIVIL ACTIONS AND CIVIL PENALTIES.**

7 (a) CIVIL ACTION IN STATE COURTS.—

8 (1) IN GENERAL.—Any individual aggrieved by
9 an act of any person in violation of this title or any
10 amendments made by this title may, if otherwise
11 permitted by the laws or rules of the court of a
12 State, bring in an appropriate court of that State—

13 (A) an action to enjoin such violation;

14 (B) an action to recover for actual mone-
15 etary loss from such a violation, or to receive up
16 to \$500 in damages for each such violation,
17 whichever is greater; or

18 (C) both such actions.

19 It shall be an affirmative defense in any action
20 brought under this paragraph that the defendant
21 has established and implemented, with due care, rea-
22 sonable practices and procedures to effectively pre-
23 vent violations of the regulations prescribed under
24 this title. If the court finds that the defendant will-
25 fully or knowingly violated the regulations prescribed

1 under this subsection, the court may, in its discre-
2 tion, increase the amount of the award to an amount
3 equal to not more than 3 times the amount available
4 under subparagraph (B).

5 (2) STATUTE OF LIMITATIONS.—An action may
6 be commenced under this subsection not later than
7 the earlier of—

8 (A) 5 years after the date on which the al-
9 leged violation occurred; or

10 (B) 3 years after the date on which the al-
11 leged violation was or should have been reason-
12 ably discovered by the aggrieved individual.

13 (3) NONEXCLUSIVE REMEDY.—The remedy pro-
14 vided under this subsection shall be in addition to
15 any other remedies available to the individual.

16 (b) CIVIL PENALTIES.—

17 (1) IN GENERAL.—Any person who the Attor-
18 ney General determines has violated any section of
19 this title or of any amendments made by this title
20 shall be subject, in addition to any other penalties
21 that may be prescribed by law—

22 (A) to a civil penalty of not more than
23 \$5,000 for each such violation; and

24 (B) to a civil penalty of not more than
25 \$50,000, if the violations have occurred with

1 such frequency as to constitute a general busi-
2 ness practice.

3 (2) DETERMINATION OF VIOLATIONS.—Any
4 willful violation committed contemporaneously with
5 respect to the social security numbers of 2 or more
6 individuals by means of mail, telecommunication, or
7 otherwise, shall be treated as a separate violation
8 with respect to each such individual.

9 (3) ENFORCEMENT PROCEDURES.—The provi-
10 sions of section 1128A of the Social Security Act
11 (42 U.S.C. 1320a–7a), other than subsections (a),
12 (b), (f), (h), (i), (j), (m), and (n) and the first sen-
13 tence of subsection (c) of such section, and the pro-
14 visions of subsections (d) and (e) of section 205 of
15 such Act (42 U.S.C. 405) shall apply to a civil pen-
16 alty action under this subsection in the same man-
17 ner as such provisions apply to a penalty or pro-
18 ceeding under section 1128A(a) of such Act (42
19 U.S.C. 1320a–7a(a)), except that, for purposes of
20 this paragraph, any reference in section 1128A of
21 such Act (42 U.S.C. 1320a–7a) to the Secretary
22 shall be deemed to be a reference to the Attorney
23 General.

1 **SEC. 210. FEDERAL INJUNCTIVE AUTHORITY.**

2 In addition to any other enforcement authority con-
 3 ferred under this title or the amendments made by this
 4 title, the Federal Government shall have injunctive author-
 5 ity with respect to any violation by a public entity of any
 6 provision of this title or of any amendments made by this
 7 title.

8 **TITLE III—LIMITATIONS ON**
 9 **SALE AND SHARING OF NON-**
 10 **PUBLIC PERSONAL FINAN-**
 11 **CIAL INFORMATION**

12 **SEC. 301. DEFINITION OF SALE.**

13 Section 509 of the Gramm-Leach-Bliley Act (15
 14 U.S.C. 6809) is amended by adding at the end the fol-
 15 lowing:

16 “(12) SALE.—The terms ‘sale’, ‘sell’, and ‘sold’,
 17 with respect to nonpublic personal information,
 18 mean the exchange of such information for any
 19 thing of value, directly or indirectly, including the li-
 20 censing, bartering, or renting of such information.”.

21 **SEC. 302. RULES APPLICABLE TO SALE OF NONPUBLIC**
 22 **PERSONAL INFORMATION.**

23 Section 502 of the Gramm-Leach-Bliley Act (15
 24 U.S.C. 6802) is amended—

25 (1) in the section heading, by inserting “SALES,
 26 AND OTHER SHARING” after “DISCLOSURES”;

1 (2) in subsection (a), by striking “disclose to”
2 and inserting “sell or otherwise disclose to an affil-
3 iate or”;

4 (3) in subsection (b)—

5 (A) in the subsection heading, by inserting
6 “FOR DISCLOSURES TO AFFILIATES” before the
7 period;

8 (B) by striking “a nonaffiliated third
9 party” each place that term appears and insert-
10 ing “an affiliate”;

11 (C) by striking “such third party” each
12 place that term appears and inserting “such af-
13 filiate”;

14 (D) by striking “may not disclose” and in-
15 serting “may not sell or otherwise disclose”;
16 and

17 (E) by striking paragraph (2) and insert-
18 ing the following:

19 “(2) EXCEPTION.—This subsection shall not
20 prevent a financial institution from providing non-
21 public personal information to an affiliated third
22 party to perform services for or functions on behalf
23 of the financial institution, including marketing of
24 the financial institution’s own products or services,
25 if the financial institution fully discloses the provi-

1 sion of such information and requires the affiliate to
 2 maintain the confidentiality of such information.”;

3 (4) in subsection (d), by striking “disclose” and
 4 inserting “sell or otherwise disclose”;

5 (5) by striking subsection (e);

6 (6) by redesignating subsections (c) and (d) as
 7 subsections (e) and (f), respectively; and

8 (7) by inserting after subsection (b) the fol-
 9 lowing:

10 “(c) OPT IN FOR DISCLOSURES TO NONAFFILIATED
 11 THIRD PARTIES.—

12 “(1) AFFIRMATIVE CONSENT REQUIRED.—A fi-
 13 nancial institution may not sell or otherwise disclose
 14 nonpublic personal information to any nonaffiliated
 15 third party, unless the consumer to whom the infor-
 16 mation pertains—

17 “(A) has affirmatively consented to the
 18 sale or disclosure of such information; and

19 “(B) has not withdrawn the consent.

20 “(2) EXCEPTION.—This subsection shall not
 21 prevent a financial institution from providing non-
 22 public personal information to a nonaffiliated third
 23 party to perform services for or functions on behalf
 24 of the financial institution, including marketing of
 25 the financial institution’s own products or services

1 (subject to subsection (d) with respect to joint agree-
2 ments between 2 or more financial institutions), if
3 the financial institution fully discloses the provision
4 of such information and enters into a contractual
5 agreement with the nonaffiliated third party that re-
6 quires that third party to maintain the confiden-
7 tiality of such information.

8 “(d) OPT OUT FOR JOINT AGREEMENTS.—A finan-
9 cial institution may not sell or otherwise disclose nonpublic
10 personal information to a nonaffiliated third party for the
11 purpose of offering financial products or services pursuant
12 to a joint agreement between 2 or more financial institu-
13 tions, unless—

14 “(1) the financial institution clearly and con-
15 spicuously discloses to the consumer to whom the in-
16 formation pertains, in writing or in electronic form
17 or other form permitted by the regulations pre-
18 scribed under section 504, that such information
19 may be disclosed to such nonaffiliated third party;

20 “(2) the consumer is given the opportunity, be-
21 fore the time that such information is initially dis-
22 closed, to direct that such information not be dis-
23 closed to such nonaffiliated third party;

1 “(3) the consumer is given an explanation of
2 how the consumer can exercise that nondisclosure
3 option; and

4 “(4) the financial institution receiving the non-
5 public personal information signs a written agree-
6 ment obliging it—

7 “(A) to maintain the confidentiality of the
8 information; and

9 “(B) to refrain from using, selling, or oth-
10 erwise disclosing the information other than to
11 carry out the joint offering or servicing of the
12 financial product or financial service that is the
13 subject of the written agreement.”.

14 **SEC. 303. EXCEPTIONS TO DISCLOSURE PROHIBITION.**

15 (a) IN GENERAL.—Section 502 of the Gramm-Leach-
16 Bliley Act (15 U.S.C. 6802), as amended by this title, is
17 amended by adding at the end the following:

18 “(g) GENERAL EXCEPTIONS.—Notwithstanding any
19 other provision of this section, this section does not pro-
20 hibit—

21 “(1) the sale or other disclosure of nonpublic
22 personal information to an affiliate or a nonaffiliated
23 third party—

24 “(A) as necessary to effect, administer, or
25 enforce a transaction requested or authorized

1 by the consumer to whom the information per-
2 tains, or in connection with—

3 “(i) servicing or processing a financial
4 product or service requested or authorized
5 by the consumer;

6 “(ii) maintaining or servicing the ac-
7 count of the consumer with the financial
8 institution, or with another entity as part
9 of a private label credit card program or
10 other extension of credit on behalf of such
11 entity; or

12 “(iii) a proposed or actual
13 securitization, secondary market sale (in-
14 cluding sales of servicing rights), or similar
15 transaction related to a transaction of the
16 consumer;

17 “(B) with the consent or at the direction
18 of the consumer, in accordance with applicable
19 rules prescribed under this subtitle;

20 “(C) to the extent specifically permitted or
21 required under other provisions of law and in
22 accordance with the Right to Financial Privacy
23 Act of 1978; or

24 “(D) to law enforcement agencies (includ-
25 ing a Federal functional regulator, the Sec-

1 retary of the Treasury, with respect to sub-
2 chapter II of chapter 53 of title 31, United
3 States Code, and chapter 2 of title I of Public
4 Law 91–508 (12 U.S.C. 1951–1959), a State
5 insurance authority, or the Federal Trade Com-
6 mission), self-regulatory organizations, or for
7 an investigation on a matter related to public
8 safety;

9 “(2) the disclosure, other than the sale, of non-
10 public personal information to identify or locate
11 missing and abducted children, witnesses, criminals,
12 and fugitives, parties to lawsuits, parents,
13 delinquents in child support payments, organ and
14 bone marrow donors, pension fund beneficiaries, and
15 missing heirs; or

16 “(3) the disclosure, other than the sale, of non-
17 public personal information—

18 “(A) to protect the confidentiality or secu-
19 rity of the records of the financial institution
20 pertaining to the consumer, the service or prod-
21 uct, or the transaction therein;

22 “(B) to protect against or prevent actual
23 or potential fraud, unauthorized transactions,
24 claims, or other liability;

1 “(C) for required institutional risk control,
2 or for resolving customer disputes or inquiries;

3 “(D) to persons holding a legal or bene-
4 ficial interest relating to the consumer;

5 “(E) to persons acting in a fiduciary or
6 representative capacity on behalf of the con-
7 sumer;

8 “(F) to provide information to insurance
9 rate advisory organizations, guaranty funds or
10 agencies, applicable rating agencies of the fi-
11 nancial institution, persons assessing the com-
12 pliance of the institution with industry stand-
13 ards, or the attorneys, accountants, or auditors
14 of the institution;

15 “(G) to a consumer reporting agency, in
16 accordance with the Fair Credit Reporting Act
17 or from a consumer report reported by a con-
18 sumer reporting agency, as those terms are de-
19 fined in that Act;

20 “(H) in connection with a proposed or ac-
21 tual sale, merger, transfer, or exchange of all or
22 a portion of a business or operating unit if the
23 disclosure of nonpublic personal information
24 concerns solely consumers of such business or
25 unit;

1 “(I) to comply with Federal, State, or local
2 laws, rules, or other applicable legal require-
3 ments, or with a properly authorized civil,
4 criminal, or regulatory investigation or sub-
5 poena or summons by Federal, State, or local
6 authorities; or

7 “(J) to respond to judicial process or gov-
8 ernment regulatory authorities having jurisdic-
9 tion over the financial institution for examina-
10 tion, compliance, or other purposes, as author-
11 ized by law.

12 “(h) DENIAL OF SERVICE PROHIBITED.—A financial
13 institution may not deny any consumer a financial product
14 or a financial service as a result of the refusal by the con-
15 sumer to grant consent to disclosure under this section
16 or the exercise by the consumer of a nondisclosure option
17 under this section, except that nothing in this subsection
18 may be construed to prohibit a financial institution from
19 offering incentives to elicit consumer consent to the use
20 of his or her nonpublic personal information.”.

21 (b) REPEAL OF REGULATORY EXEMPTION AUTHOR-
22 ITY.—Section 504 of the Gramm-Leach-Bliley Act (15
23 U.S.C. 6804) is amended—

24 (1) by striking subsection (b);

1 (2) by striking “(a) REGULATORY AUTHOR-
2 ITY.—”;

3 (3) by redesignating paragraphs (1), (2), and
4 (3) as subsections (a), (b), and (c), respectively, and
5 moving the margins 2 ems to the left; and

6 (4) by striking “paragraph (1)” and inserting
7 “subsection (a)”.

8 **SEC. 304. CONFORMING AMENDMENTS.**

9 Title V of the Gramm-Leach-Bliley Act (15 U.S.C.
10 6801 et seq.) is amended—

11 (1) in section 503(b)(1) (15 U.S.C.
12 6803(b)(1))—

13 (A) by inserting “affiliates and” before
14 “nonaffiliated”; and

15 (B) in subparagraph (A), by striking
16 “502(e)” and inserting “502(g)”; and

17 (2) in section 509(3)(D) (15 U.S.C.
18 6809(3)(D)), by striking “502(e)(1)(C)” and insert-
19 ing “502(g)(1)(A)(iii)”.

20 **SEC. 305. REGULATORY AUTHORITY.**

21 Not later than 6 months after the date of enactment
22 of this Act, the agencies referred to in section 504(a)(1)
23 of the Gramm-Leach-Bliley Act (15 U.S.C. 6804(a)(1))
24 shall promulgate final regulations in accordance with that

1 section 504 to carry out the amendments made by this
2 Act.

3 **SEC. 306. EFFECTIVE DATE.**

4 This title and the amendments made by this title
5 shall take effect 6 months after the date of enactment of
6 this Act.

7 **TITLE IV—LIMITATIONS ON THE**
8 **PROVISION OF PROTECTED**
9 **HEALTH INFORMATION**

10 **SEC. 401. DEFINITIONS.**

11 In this title:

12 (1) BUSINESS ASSOCIATE.—

13 (A) IN GENERAL.—Except as provided in
14 subparagraph (B), the term “business asso-
15 ciate” means, with respect to a covered entity,
16 a person who—

17 (i) on behalf of such covered entity or
18 of an organized health care arrangement in
19 which the covered entity participates, but
20 other than in the capacity of a member of
21 the workforce of such covered entity or ar-
22 rangement, performs, or assists in the per-
23 formance of—

24 (I) a function or activity involv-
25 ing the use or disclosure of individ-

1 ually identifiable health information,
2 including claims processing or admin-
3 istration, data analysis, processing or
4 administration, utilization review,
5 quality assurance, billing, benefit
6 management, practice management,
7 and repricing; or

8 (II) any other function or activity
9 regulated under subchapter C of title
10 45, Code of Federal Regulations; or

11 (ii) provides, other than in the capac-
12 ity of a member of the workforce of such
13 covered entity, legal, actuarial, accounting,
14 consulting, data aggregation (as defined in
15 section 164.501 of title 45, Code of Fed-
16 eral Regulations), management, adminis-
17 trative, accreditation, or financial services
18 to or for such covered entity, or to or for
19 an organized health care arrangement in
20 which the covered entity participates,
21 where the provision of the service involves
22 the disclosure of individually identifiable
23 health information from such covered enti-
24 ty or arrangement, or from another busi-

1 ness associate of such covered entity or ar-
2 rangement, to the person.

3 (B) LIMITATIONS.—

4 (i) IN GENERAL.—A covered entity
5 participating in an organized health care
6 arrangement that performs a function or
7 activity as described by subparagraph
8 (A)(i) for or on behalf of such organized
9 health care arrangement, or that provides
10 a service as described in subparagraph
11 (A)(ii) to or for such organized health care
12 arrangement, does not, simply through the
13 performance of such function or activity or
14 the provision of such service, become a
15 business associate of other covered entities
16 participating in such organized health care
17 arrangement.

18 (ii) LIMITATION.—A covered entity
19 may be a business associate of another cov-
20 ered entity.

21 (2) COVERED ENTITY.—The term “covered en-
22 tity” means—

23 (A) a health plan;

24 (B) a health care clearinghouse; and

1 (C) a health care provider who transmits
2 any health information in electronic form in
3 connection with a transaction covered by parts
4 160 through 164 of title 45, Code of Federal
5 Regulations.

6 (3) DISCLOSURE.—The term “disclosure”
7 means the release, transfer, provision of access to, or
8 divulging in any other manner of information out-
9 side the entity holding the information.

10 (4) EMPLOYER.—The term “employer” has the
11 meaning given that term in section 3401(d) of the
12 Internal Revenue Code of 1986.

13 (5) GROUP HEALTH PLAN.—The term “group
14 health plan” means an employee welfare benefit plan
15 (as defined in section 3(1) of the Employee Retirement
16 Income and Security Act of 1974 (29 U.S.C.
17 1002(1)), including insured and self-insured plans,
18 to the extent that the plan provides medical care (as
19 defined in section 2791(a)(2) of the Public Health
20 Service Act, 42 U.S.C. 300gg–91(a)(2)), including
21 items and services paid for as medical care, to em-
22 ployees or their dependents directly or through in-
23 surance, reimbursement, or otherwise, that—

24 (A) has 50 or more participants (as de-
25 fined in section 3(7) of Employee Retirement

1 Income and Security Act of 1974, 29 U.S.C.
2 1002(7)); or

3 (B) is administered by an entity other than
4 the employer that established and maintains the
5 plan.

6 (6) HEALTH CARE.—The term “health care”
7 includes, but is not limited to, the following:

8 (A) Preventive, diagnostic, therapeutic, re-
9 habilitative, maintenance, or palliative care and
10 counseling, service, assessment, or procedure
11 with respect to the physical or mental condition,
12 or functional status, of an individual or that af-
13 fects the structure or function of the body.

14 (B) The sale or dispensing of a drug, de-
15 vice, equipment, or other item in accordance
16 with a prescription.

17 (7) HEALTH CARE CLEARINGHOUSE.—The term
18 “health care clearinghouse” means a public or pri-
19 vate entity, including a billing service, repricing com-
20 pany, community health management information
21 system or community health information system,
22 and value-added networks and switches, that—

23 (A) processes or facilitates the processing
24 of health information received from another en-
25 tity in a nonstandard format or containing non-

1 standard data content into standard data ele-
2 ments or a standard transaction; or

3 (B) receives a standard transaction from
4 another entity and processes or facilitates the
5 processing of health information into non-
6 standard format or nonstandard data content
7 for the receiving entity.

8 (8) HEALTH CARE PROVIDER.—The term
9 “health care provider” has the meaning given the
10 terms “provider of services” and “provider of med-
11 ical or health services” in subsections (u) and (s) of
12 section 1861 of the Social Security Act (42 U.S.C.
13 1395x), respectively, and includes any other person
14 or organization who furnishes, bills, or is paid for
15 health care in the normal course of business.

16 (9) HEALTH INFORMATION.—The term “health
17 information” means any information, whether oral
18 or recorded in any form or medium, that—

19 (A) is created or received by a health care
20 provider, health plan, public health authority,
21 employer, life insurer, school or university, or
22 health care clearinghouse; and

23 (B) relates to the past, present, or future
24 physical or mental health or condition of an in-
25 dividual; the provision of health care to an indi-

1 vidual; or the past, present, or future payment
2 for the provision of health care to an individual.

3 (10) HEALTH INSURANCE ISSUER.—The term
4 “health insurance issuer” means a health insurance
5 issuer (as defined in section 2791(b)(2) of the Pub-
6 lic Health Service Act, 42 U.S.C. 300gg–91(b)(2))
7 and used in the definition of health plan in this sec-
8 tion and includes an insurance company, insurance
9 service, or insurance organization (including an
10 HMO) that is licensed to engage in the business of
11 insurance in a State and is subject to State law that
12 regulates insurance. Such term does not include a
13 group health plan.

14 (11) HEALTH MAINTENANCE ORGANIZATION.—
15 The term “health maintenance organization”
16 (HMO) (as defined in section 2791(b)(3) of the
17 Public Health Service Act, 42 U.S.C. 300gg–91
18 (b)(3)) and used in the definition of health plan in
19 this section, means a federally qualified HMO, an
20 organization recognized as an HMO under State
21 law, or a similar organization regulated for solvency
22 under State law in the same manner and to the
23 same extent as such an HMO.

24 (12) HEALTH OVERSIGHT AGENCY.—The term
25 “health oversight agency” means an agency or au-

1 thority of the United States, a State, a territory, a
2 political subdivision of a State or territory, or an In-
3 dian tribe, or a person or entity acting under a
4 grant of authority from or contract with such public
5 agency, including the employees or agents of such
6 public agency or its contractors or persons or enti-
7 ties to whom it has granted authority, that is au-
8 thorized by law to oversee the health care system
9 (whether public or private) or government programs
10 in which health information is necessary to deter-
11 mine eligibility or compliance, or to enforce civil
12 rights laws for which health information is relevant.

13 (13) HEALTH PLAN.—The term “health plan”
14 means an individual or group plan that provides, or
15 pays the cost of, medical care, as defined in section
16 2791(a)(2) of the Public Health Service Act (42
17 U.S.C. 300gg–91(a)(2))—

18 (A) including, singly or in combination—
19 (i) a group health plan;
20 (ii) a health insurance issuer;
21 (iii) an HMO;
22 (iv) part A or B of the medicare pro-
23 gram under title XVIII of the Social Secu-
24 rity Act (42 U.S.C. 1395 et seq.);

1 (v) the medicaid program under title
2 XIX of the Social Security Act (42 U.S.C.
3 1396 et seq.);

4 (vi) an issuer of a medicare supple-
5 mental policy (as defined in section
6 1882(g)(1) of the Social Security Act, 42
7 U.S.C. 1395ss(g)(1));

8 (vii) an issuer of a long-term care pol-
9 icy, excluding a nursing home fixed-indem-
10 nity policy;

11 (viii) an employee welfare benefit plan
12 or any other arrangement that is estab-
13 lished or maintained for the purpose of of-
14 fering or providing health benefits to the
15 employees of 2 or more employers;

16 (ix) the health care program for active
17 military personnel under title 10, United
18 States Code;

19 (x) the veterans health care program
20 under chapter 17 of title 38, United States
21 Code;

22 (xi) the Civilian Health and Medical
23 Program of the Uniformed Services
24 (CHAMPUS) (as defined in section
25 1072(4) of title 10, United States Code);

1 (xii) the Indian Health Service pro-
2 gram under the Indian Health Care Im-
3 provement Act (25 U.S.C. 1601 et seq.);

4 (xiii) the Federal Employees Health
5 Benefits Program under chapter 89 of title
6 5, United States Code;

7 (xiv) an approved State child health
8 plan under title XXI of the Social Security
9 Act (42 U.S.C. 1397aa et seq.), providing
10 benefits for child health assistance that
11 meet the requirements of section 2103 of
12 such Act (42 U.S.C. 1397cc);

13 (xv) the Medicare+Choice program
14 under part C of title XVIII of the Social
15 Security Act (42 U.S.C. 1395w-21 et
16 seq.);

17 (xvi) a high risk pool that is a mecha-
18 nism established under State law to pro-
19 vide health insurance coverage or com-
20 parable coverage to eligible individuals; and

21 (xvii) any other individual or group
22 plan, or combination of individual or group
23 plans, that provides or pays for the cost of
24 medical care (as defined in section

1 2791(a)(2) of the Public Health Service
2 Act (42 U.S.C. 300gg–91(a)(2)); and

3 (B) excluding—

4 (i) any policy, plan, or program to the
5 extent that it provides, or pays for the cost
6 of, excepted benefits that are listed in sec-
7 tion 2791(e)(1) of the Public Health Serv-
8 ice Act (42 U.S.C. 300gg–91(c)(1)); and

9 (ii) a government-funded program
10 (other than 1 listed in clause (i) through
11 (xvi) of subparagraph (A)), whose principal
12 purpose is other than providing, or paying
13 the cost of, health care, or whose principal
14 activity is the direct provision of health
15 care to persons, or the making of grants to
16 fund the direct provision of health care to
17 persons.

18 (14) INDIVIDUALLY IDENTIFIABLE HEALTH IN-
19 FORMATION.—The term “individually identifiable
20 health information” means information that is a
21 subset of health information, including demographic
22 information collected from an individual, that—

23 (A) is created or received by a covered en-
24 tity or employer; and

1 (B)(i) relates to the past, present, or fu-
2 ture physical or mental health or condition of
3 an individual, the provision of health care to an
4 individual, or the past, present, or future pay-
5 ment for the provision of health care to an indi-
6 vidual; and

7 (ii)(I) identifies an individual; or

8 (II) with respect to which there is a rea-
9 sonable basis to believe that the information
10 can be used to identify an individual.

11 (15) LAW ENFORCEMENT OFFICIAL.—The term
12 “law enforcement official” means an officer or em-
13 ployee of any agency or authority of the United
14 States, a State, a territory, a political subdivision of
15 a State or territory, or an Indian tribe, who is em-
16 powered by law to—

17 (A) investigate or conduct an official in-
18 quiry into a potential violation of law; or

19 (B) prosecute or otherwise conduct a
20 criminal, civil, or administrative proceeding
21 arising from an alleged violation of law.

22 (16) LIFE INSURER.—The term “life insurer”
23 means a life insurance company (as defined in sec-
24 tion 816 of the Internal Revenue Code of 1986), in-
25 cluding the employees and agents of such company.

1 (17) **MARKETING.**—The term “marketing”
2 means to make a communication about a product or
3 service that encourages recipients of the communica-
4 tion to purchase or use the product or service.

5 (18) **NONCOVERED ENTITY.**—The term “non-
6 covered entity” means any person or public or pri-
7 vate entity that is not a covered entity, including but
8 not limited to a business associate of a covered enti-
9 ty, a covered entity if such covered entity is acting
10 as a business associate, a health researcher, school
11 or university, life insurer, employer, public health
12 authority, health oversight agency, or law enforce-
13 ment official, or any person acting as an agent of
14 such entities or persons.

15 (19) **ORGANIZED HEALTH CARE ARRANGE-**
16 **MENT.**—The term “organized health care arrange-
17 ment” means—

18 (A) a clinically integrated care setting in
19 which individuals typically receive health care
20 from more than 1 health care provider;

21 (B) an organized system of health care in
22 which more than 1 covered entity participates,
23 and in which the participating covered enti-
24 ties—

- 1 (i) hold themselves out to the public
2 as participating in a joint arrangement;
3 and
- 4 (ii) participate in joint activities in-
5 cluding at least—
- 6 (I) utilization review, in which
7 health care decisions by participating
8 covered entities are reviewed by other
9 participating covered entities or by a
10 third party on their behalf;
- 11 (II) quality assessment and im-
12 provement activities, in which treat-
13 ment provided by participating cov-
14 ered entities is assessed by other par-
15 ticipating covered entities or by a
16 third party on their behalf; or
- 17 (III) payment activities, if the fi-
18 nancial risk for delivering health care
19 is shared, in part or in whole, by par-
20 ticipating covered entities through the
21 joint arrangement and if protected
22 health information created or received
23 by a covered entity is reviewed by
24 other participating covered entities or
25 by a third party on their behalf for

1 the purpose of administering the shar-
2 ing of financial risk;

3 (C) a group health plan and a health in-
4 surance issuer or HMO with respect to such
5 group health plan, but only with respect to pro-
6 tected health information created or received by
7 such health insurance issuer or HMO that re-
8 lates to individuals who are or who have been
9 participants or beneficiaries in such group
10 health plan;

11 (D) a group health plan and 1 or more
12 other group health plans each of which are
13 maintained by the same plan sponsor; or

14 (E) the group health plans described in
15 subparagraph (D) and health insurance issuers
16 or HMOs with respect to such group health
17 plans, but only with respect to protected health
18 information created or received by such health
19 insurance issuers or HMOs that relates to indi-
20 viduals who are or have been participants or
21 beneficiaries in any of such group health plans.

22 (20) PROTECTED HEALTH INFORMATION.—

23 (A) IN GENERAL.—The term “protected
24 health information” means individually identifi-

1 able health information that, except as provided
2 in subparagraph (B), is—

3 (i) transmitted by electronic media;

4 (ii) maintained in any medium de-
5 scribed in the definition of electronic media
6 in section 162.103 of title 45, Code of
7 Federal Regulations; or

8 (iii) transmitted or maintained in any
9 other form or medium.

10 (B) EXCLUSIONS.—Such term does not in-
11 clude individually identifiable health informa-
12 tion in—

13 (i) education records covered by the
14 Family Educational Rights and Privacy
15 Act of 1974 (section 444 of the General
16 Education Provisions Act (20 U.S.C.
17 1232g));

18 (ii) records described in subsection
19 (a)(4)(B)(iv) of that Act; or

20 (iii) employment records held by a
21 covered entity in its role as an employer.

22 (21) PUBLIC HEALTH AUTHORITY.—The term
23 “public health authority” means an agency or au-
24 thority of the United States, a State, a territory, a
25 political subdivision of a State or territory, or an In-

1 dian tribe, or a person or entity acting under a
2 grant of authority from or contract with such public
3 agency, including employees or agents of such public
4 agency or its contractors or persons or entities to
5 whom it has granted authority, that is responsible
6 for public health matters as part of its official man-
7 date.

8 (22) SCHOOL OR UNIVERSITY.—The term
9 “school or university” means an institution or place
10 for instruction or education, including an elementary
11 school, secondary school, or institution of higher
12 learning, a college, or an assemblage of colleges
13 united under 1 corporate organization or govern-
14 ment.

15 (23) SECRETARY.—The term “Secretary”
16 means the Secretary of Health and Human Services.

17 (24) SALE; SELL; SOLD.—The terms “sale”,
18 “sell”, and “sold”, with respect to protected health
19 information, mean the exchange of such information
20 for anything of value, directly or indirectly, including
21 the licensing, bartering, or renting of such informa-
22 tion.

23 (25) USE.—The term “use” means, with re-
24 spect to individually identifiable health information,
25 the sharing, employment, application, utilization, ex-

1 amination, or analysis of such information within an
2 entity that maintains such information.

3 (26) WRITING.—The term “writing” means
4 writing in either a paper-based or computer-based
5 form, including electronic and digital signatures.

6 **SEC. 402. PROHIBITION AGAINST SELLING PROTECTED**
7 **HEALTH INFORMATION.**

8 (a) VALID AUTHORIZATION REQUIRED.—

9 (1) IN GENERAL.—A noncovered entity shall
10 not sell the protected health information of an indi-
11 vidual or use such information for marketing pur-
12 poses without an authorization that is valid under
13 section 403. When a noncovered entity obtains or re-
14 ceives authorization to sell such information, such
15 sale must be consistent with such authorization.

16 (2) NO DUPLICATE AUTHORIZATION RE-
17 QUIRED.—Nothing in paragraph (1) shall be con-
18 strued as requiring a noncovered entity that receives
19 from a covered entity an authorization that is valid
20 under section 403 to obtain a separate authorization
21 from an individual before the sale or use of the indi-
22 vidual’s protected health information so long as the
23 sale or use of the information is consistent with the
24 terms of the authorization.

1 (b) SCOPE.—A sale of protected health information
2 as described under subsection (a) shall be limited to the
3 minimum amount of information necessary to accomplish
4 the purpose for which the sale is made.

5 (c) PURPOSE.—A recipient of information sold pursu-
6 ant to this title may use or disclose such information solely
7 to carry out the purpose for which the information was
8 sold.

9 (d) NOT REQUIRED.—Nothing in this title permitting
10 the sale of protected health information shall be construed
11 to require such sale.

12 (e) IDENTIFICATION OF INFORMATION AS PRO-
13 TECTED HEALTH INFORMATION.—Information sold pur-
14 suant to this title shall be clearly identified as protected
15 health information.

16 (f) NO WAIVER.—Except as provided in this title, an
17 individual's authorization to sell protected health informa-
18 tion shall not be construed as a waiver of any rights that
19 the individual has under other Federal or State laws, the
20 rules of evidence, or common law.

21 **SEC. 403. AUTHORIZATION FOR SALE OR MARKETING OF**
22 **PROTECTED HEALTH INFORMATION BY NON-**
23 **COVERED ENTITIES.**

24 (a) VALID AUTHORIZATION.—A valid authorization is
25 a document that complies with all requirements of this

1 section. Such authorization may include additional infor-
2 mation not required under this section, provided that such
3 information is not inconsistent with the requirements of
4 this section.

5 (b) DEFECTIVE AUTHORIZATION.—An authorization
6 is not valid, if the document submitted has any of the fol-
7 lowing defects:

8 (1) The expiration date has passed or the expi-
9 ration event is known by the noncovered entity to
10 have occurred.

11 (2) The authorization has not been filled out
12 completely, with respect to an element described in
13 subsections (e) and (f).

14 (3) The authorization is known by the non-
15 covered entity to have been revoked.

16 (4) The authorization lacks an element required
17 by subsections (e) and (f).

18 (5) Any material information in the authoriza-
19 tion is known by the noncovered entity to be false.

20 (c) REVOCATION OF AUTHORIZATION.—An individual
21 may revoke an authorization provided under this section
22 at any time provided that the revocation is in writing, ex-
23 cept to the extent that the noncovered entity has taken
24 action in reliance thereon.

25 (d) DOCUMENTATION.—

1 (1) IN GENERAL.—A noncovered entity must
2 document and retain any signed authorization under
3 this section as required under paragraph (2).

4 (2) STANDARD.—A noncovered entity shall, if a
5 communication is required by this title to be in writ-
6 ing, maintain such writing, or an electronic copy, as
7 documentation.

8 (3) RETENTION PERIOD.—A noncovered entity
9 shall retain the documentation required by this sec-
10 tion for 6 years from the date of its creation or the
11 date when it last was in effect, whichever is later.

12 (e) CONTENT OF AUTHORIZATION.—

13 (1) CONTENT.—An authorization described in
14 subsection (a) shall—

15 (A) contain a description of the informa-
16 tion to be sold that identifies such information
17 in a specific and meaningful manner;

18 (B) contain the name or other specific
19 identification of the person, or class of persons,
20 authorized to sell the information;

21 (C) contain the name or other specific
22 identification of the person, or class of persons,
23 to whom the information is to be sold;

24 (D) include an expiration date or an expi-
25 ration event relating to the selling of such infor-

1 mation that signifies that the authorization is
2 valid until such date or event;

3 (E) include a statement that the individual
4 has a right to revoke the authorization in writ-
5 ing and the exceptions to the right to revoke,
6 and a description of the procedure involved in
7 such revocation;

8 (F) be in writing and include the signature
9 of the individual and the date, or if the author-
10 ization is signed by a personal representative of
11 the individual, a description of such representa-
12 tive's authority to act for the individual; and

13 (G) include a statement explaining the
14 purpose for which such information is sold.

15 (2) PLAIN LANGUAGE.—The authorization shall
16 be written in plain language.

17 (f) NOTICE.—

18 (1) IN GENERAL.—The authorization shall in-
19 clude a statement that the individual may—

20 (A) inspect or copy the protected health in-
21 formation to be sold; and

22 (B) refuse to sign the authorization.

23 (2) COPY TO THE INDIVIDUAL.—A noncovered
24 entity shall provide the individual with a copy of the
25 signed authorization.

1 (g) MODEL AUTHORIZATIONS.—The Secretary, after
2 notice and opportunity for public comment, shall develop
3 and disseminate model written authorizations of the type
4 described in this section and model statements of the limi-
5 tations on such authorizations. Any authorization obtained
6 on a model authorization form developed by the Secretary
7 pursuant to the preceding sentence shall be deemed to sat-
8 isfy the requirements of this section.

9 (h) NONCOERCION.—A covered entity or noncovered
10 entity shall not condition the purchase of a product or the
11 provision of a service to an individual based on whether
12 such individual provides an authorization to such entity
13 as described in this section.

14 **SEC. 404. PROHIBITION AGAINST RETALIATION.**

15 A noncovered entity that collects protected health in-
16 formation, may not adversely affect another person, di-
17 rectly or indirectly, because such person has exercised a
18 right under this title, disclosed information relating to a
19 possible violation of this title, or associated with, or as-
20 sisted, a person in the exercise of a right under this title.

21 **SEC. 405. RULE OF CONSTRUCTION.**

22 The requirements of this title shall not be construed
23 to impose any additional requirements or in any way alter
24 the requirements imposed upon covered entities under

1 parts 160 through 164 of title 45, Code of Federal Regu-
2 lations.

3 **SEC. 406. REGULATIONS.**

4 (a) IN GENERAL.—The Secretary shall promulgate
5 regulations implementing the provisions of this title.

6 (b) TIMEFRAME.—Not later than 1 year after the
7 date of enactment of this Act, the Secretary shall publish
8 proposed regulations in the Federal Register. With regard
9 to such proposed regulations, the Secretary shall provide
10 an opportunity for submission of comments by interested
11 persons during a period of not less than 90 days. Not later
12 than 2 years after the date of enactment of this Act, the
13 Secretary shall publish final regulations in the Federal
14 Register.

15 **SEC. 407. ENFORCEMENT.**

16 (a) IN GENERAL.—A covered entity or noncovered
17 entity that knowingly violates section 402 shall be subject
18 to a civil money penalty under this section.

19 (b) AMOUNT.—The civil money penalty described in
20 subsection (a) shall not exceed \$100,000. In determining
21 the amount of any penalty to be assessed, the Secretary
22 shall take into account the previous record of compliance
23 of the entity being assessed with the applicable provisions
24 of this title and the gravity of the violation.

25 (c) ADMINISTRATIVE REVIEW.—

1 (1) OPPORTUNITY FOR HEARING.—The entity
2 assessed shall be afforded an opportunity for a hear-
3 ing by the Secretary upon request made within 30
4 days after the date of the issuance of a notice of as-
5 sessment. In such hearing the decision shall be made
6 on the record pursuant to section 554 of title 5,
7 United States Code. If no hearing is requested, the
8 assessment shall constitute a final and unappealable
9 order.

10 (2) HEARING PROCEDURE.—If a hearing is re-
11 quested, the initial agency decision shall be made by
12 an administrative law judge, and such decision shall
13 become the final order unless the Secretary modifies
14 or vacates the decision. Notice of intent to modify or
15 vacate the decision of the administrative law judge
16 shall be issued to the parties within 30 days after
17 the date of the decision of the judge. A final order
18 which takes effect under this paragraph shall be
19 subject to review only as provided under subsection
20 (d).

21 (d) JUDICIAL REVIEW.—

22 (1) FILING OF ACTION FOR REVIEW.—Any enti-
23 ty against whom an order imposing a civil money
24 penalty has been entered after an agency hearing
25 under this section may obtain review by the United

1 States district court for any district in which such
2 entity is located or the United States District Court
3 for the District of Columbia by filing a notice of ap-
4 peal in such court within 30 days from the date of
5 such order, and simultaneously sending a copy of
6 such notice by registered mail to the Secretary.

7 (2) CERTIFICATION OF ADMINISTRATIVE
8 RECORD.—The Secretary shall promptly certify and
9 file in such court the record upon which the penalty
10 was imposed.

11 (3) STANDARD FOR REVIEW.—The findings of
12 the Secretary shall be set aside only if found to be
13 unsupported by substantial evidence as provided by
14 section 706(2)(E) of title 5, United States Code.

15 (4) APPEAL.—Any final decision, order, or
16 judgment of the district court concerning such re-
17 view shall be subject to appeal as provided in chap-
18 ter 83 of title 28 of such Code.

19 (e) FAILURE TO PAY ASSESSMENT; MAINTENANCE
20 OF ACTION.—

21 (1) FAILURE TO PAY ASSESSMENT.—If any en-
22 tity fails to pay an assessment after it has become
23 a final and unappealable order, or after the court
24 has entered final judgment in favor of the Secretary,
25 the Secretary shall refer the matter to the Attorney

1 General who shall recover the amount assessed by
2 action in the appropriate United States district
3 court.

4 (2) NONREVIEWABILITY.—In such action the
5 validity and appropriateness of the final order im-
6 posing the penalty shall not be subject to review.

7 (f) PAYMENT OF PENALTIES.—Except as otherwise
8 provided, penalties collected under this section shall be
9 paid to the Secretary (or other officer) imposing the pen-
10 alty and shall be available without appropriation and until
11 expended for the purpose of enforcing the provisions with
12 respect to which the penalty was imposed.

13 **TITLE V—DRIVER’S LICENSE** 14 **PRIVACY**

15 **SEC. 501. DRIVER’S LICENSE PRIVACY.**

16 Section 2725 of title 18, United States Code, is
17 amended by striking paragraphs (2) through (4) and add-
18 ing the following:

19 “(2) ‘person’ means an individual, organization,
20 or entity, but does not include a State or agency
21 thereof;

22 “(3) ‘personal information’ means information
23 that identifies an individual, including an individ-
24 ual’s photograph, social security number, driver
25 identification number, name, address (but not the 5-

1 digit zip code), telephone number, medical or dis-
 2 ability information, any physical copy of a driver's li-
 3 cense, birth date, information on physical character-
 4 istics, including height, weight, sex or eye color, or
 5 any biometric identifiers on a license, including a
 6 finger print, but not information on vehicular acci-
 7 dents, driving violations, and driver's status;

8 “(4) ‘highly restricted personal information’
 9 means an individual's photograph or image, social
 10 security number, medical or disability information,
 11 any physical copy of a driver's license, driver identi-
 12 fication number, birth date, information on physical
 13 characteristics, including height, weight, sex, or eye
 14 color, or any biometric identifiers on a license, in-
 15 cluding a finger print; and”.

16 **TITLE VI—MISCELLANEOUS**

17 **SEC. 601. ENFORCEMENT BY STATE ATTORNEYS GENERAL.**

18 (a) IN GENERAL.—

19 (1) CIVIL ACTIONS.—In any case in which the
 20 attorney general of a State has reason to believe
 21 that an interest of the residents of that State has
 22 been or is threatened or adversely affected by the
 23 engagement of any person in a practice that is pro-
 24 hibited under title I, II, or IV of this Act or under
 25 any amendment made by such a title, the State, as

1 parens patriae, may bring a civil action on behalf of
2 the residents of the State in a district court of the
3 United States of appropriate jurisdiction to—

4 (A) enjoin that practice;

5 (B) enforce compliance with such titles or
6 such amendments;

7 (C) obtain damage, restitution, or other
8 compensation on behalf of residents of the
9 State; or

10 (D) obtain such other relief as the court
11 may consider to be appropriate.

12 (2) NOTICE.—

13 (A) IN GENERAL.—Before filing an action
14 under paragraph (1), the attorney general of
15 the State involved shall provide to the Attorney
16 General—

17 (i) written notice of the action; and

18 (ii) a copy of the complaint for the ac-
19 tion.

20 (B) EXEMPTION.—

21 (i) IN GENERAL.—Subparagraph (A)
22 shall not apply with respect to the filing of
23 an action by an attorney general of a State
24 under this subsection, if the State attorney
25 general determines that it is not feasible to

1 provide the notice described in such sub-
2 paragraph before the filing of the action.

3 (ii) NOTIFICATION.—In an action de-
4 scribed in clause (i), the attorney general
5 of a State shall provide notice and a copy
6 of the complaint to the Attorney General
7 at the same time as the State attorney
8 general files the action.

9 (b) INTERVENTION.—

10 (1) IN GENERAL.—On receiving notice under
11 subsection (a)(2), the Attorney General shall have
12 the right to intervene in the action that is the sub-
13 ject of the notice.

14 (2) EFFECT OF INTERVENTION.—If the Attor-
15 ney General intervenes in an action under subsection
16 (a), the Attorney General shall have the right to be
17 heard with respect to any matter that arises in that
18 action.

19 (c) CONSTRUCTION.—For purposes of bringing any
20 civil action under subsection (a), nothing in this Act shall
21 be construed to prevent an attorney general of a State
22 from exercising the powers conferred on such attorney
23 general by the laws of that State to—

24 (1) conduct investigations;

25 (2) administer oaths or affirmations; or

1 (3) compel the attendance of witnesses or the
2 production of documentary and other evidence.

3 (d) ACTIONS BY THE ATTORNEY GENERAL OF THE
4 UNITED STATES.—In any case in which an action is insti-
5 tuted by or on behalf of the Attorney General for violation
6 of a practice that is prohibited under title I, II, IV, or
7 V of this Act or under any amendment made by such a
8 title, no State may, during the pendency of that action,
9 institute an action under subsection (a) against any de-
10 fendant named in the complaint in that action for violation
11 of that practice.

12 (e) VENUE; SERVICE OF PROCESS.—

13 (1) VENUE.—Any action brought under sub-
14 section (a) may be brought in the district court of
15 the United States that meets applicable require-
16 ments relating to venue under section 1391 of title
17 28, United States Code.

18 (2) SERVICE OF PROCESS.—In an action
19 brought under subsection (a), process may be served
20 in any district in which the defendant—

21 (A) is an inhabitant; or

22 (B) may be found.

23 **SEC. 602. FEDERAL INJUNCTIVE AUTHORITY.**

24 In addition to any other enforcement authority con-
25 ferred under this Act or under an amendment made by

1 this Act, the Federal Government shall have injunctive au-
2 thority with respect to any violation of any provision of
3 title I, II, or IV of this Act or of any amendment made
4 by such a title, without regard to whether a public or pri-
5 vate entity violates such provision.

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