

**[STAFF DISCUSSION DRAFT]**

MAY 3, 2010

111TH CONGRESS  
1ST SESSION

**H. R.** \_\_\_\_\_

To require notice to and consent of an individual prior to the collection and disclosure of certain personal information relating to that individual.

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IN THE HOUSE OF REPRESENTATIVES

M\_\_\_\_. \_\_\_\_\_ introduced the following bill; which was referred to the Committee on \_\_\_\_\_

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**A BILL**

To require notice to and consent of an individual prior to the collection and disclosure of certain personal information relating to that individual.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as “[To be provided]”.

5 **SEC. 2. DEFINITIONS.**

6 In this Act the following definitions apply:

1           (1) ADVERTISEMENT NETWORK.—The term  
2           “advertisement network” means an entity that pro-  
3           vides advertisements to participating websites on the  
4           basis of individuals’ activity across some or all of  
5           those websites.

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

11          (3) COMMISSION.—The term “Commission”  
12          means the Federal Trade Commission.

13          (4) COVERED ENTITY.—The term “covered en-  
14          tity”—

15                (A) means a person engaged in interstate  
16                commerce that collects data containing covered  
17                information; and

18                (B) does not include—

19                   (i) a government agency; or

20                   (ii) any person that collects covered  
21                   information from fewer than 5,000 individ-  
22                   uals in any 12-month period and does not  
23                   collect sensitive information.

1 (5) COVERED INFORMATION.—The term “cov-  
2 ered information” means, with respect to an indi-  
3 vidual, any of the following:

4 (A) The first name or initial and last  
5 name.

6 (B) A postal address.

7 (C) A telephone or fax number.

8 (D) An email address.

9 (E) Unique biometric data, including a fin-  
10 gerprint or retina scan.

11 (F) A Social Security number, tax identi-  
12 fication number, passport number, driver’s li-  
13 cense number, or any other government-issued  
14 identification number.

15 (G) A Financial account number, or credit  
16 or debit card number, and any required security  
17 code, access code, or password that is necessary  
18 to permit access to an individual’s financial ac-  
19 count.

20 (H) Any unique persistent identifier, such  
21 as a customer number, unique pseudonym or  
22 user alias, Internet Protocol address, or other  
23 unique identifier, where such identifier is used  
24 to collect, store, or identify information about a  
25 specific individual or a computer, device, or

1 software application owned or used by a par-  
2 ticular user or that is otherwise associated with  
3 a particular user.

4 (I) A preference profile.

5 (J) Any other information that is collected,  
6 stored, used, or disclosed in connection with any  
7 covered information described in subparagraphs  
8 (A) through (I).

9 (6) FIRST PARTY TRANSACTION.—The term  
10 “first party transaction” means an interaction be-  
11 tween an entity that collects covered information  
12 when an individual visits that entity’s website or  
13 place of business and the individual from whom cov-  
14 ered information is collected.

15 (7) OPERATIONAL PURPOSE.—

16 (A) IN GENERAL.—The term “operational  
17 purpose” means a purpose reasonably necessary  
18 for the operation of the covered entity, includ-  
19 ing—

20 (i) providing, operating, or improving  
21 a product or service used, requested, or au-  
22 thorized by an individual;

23 (ii) detecting, preventing, or acting  
24 against actual or reasonably suspected  
25 threats to the covered entity’s product or

1 service, including security attacks, unau-  
2 thorized transactions, and fraud;

3 (iii) analyzing data related to use of  
4 the product or service for purposes of opti-  
5 mizing or improving the covered entity's  
6 products, services, or operations;

7 (iv) carrying out an employment rela-  
8 tionship with an individual;

9 (v) disclosing covered information  
10 based on a good faith belief that such dis-  
11 closure is necessary to comply with a Fed-  
12 eral, State, or local law, rule, or other ap-  
13 plicable legal requirement, including disclo-  
14 sures pursuant to a court order, subpoena,  
15 summons, or other properly executed com-  
16 pulsory process; and

17 (vi) disclosing covered information to  
18 a parent company of, controlled subsidiary  
19 of, or affiliate of the covered entity, or  
20 other covered entity under common control  
21 with the covered entity where the parent,  
22 subsidiary, affiliate, or other covered entity  
23 operates under a common or substantially  
24 similar set of internal policies and proce-  
25 dures as the covered entity, and the poli-

1           cies and procedures include adherence to  
2           the covered entity’s privacy policies as set  
3           forth in its privacy notice.

4           (B) EXCLUSION.—Such term shall not in-  
5           clude the use of covered information for mar-  
6           keting, advertising, or sales purposes, or any  
7           use of or disclosure of covered information to  
8           an unaffiliated party for such purposes.

9           (8) PREFERENCE PROFILE.—The term “pref-  
10          erence profile” means a list of information, cat-  
11          egories of information, or preferences associated  
12          with a specific individual or a computer or device  
13          owned or used by a particular user that is main-  
14          tained by or relied upon by a covered entity.

15          (9) RENDER ANONYMOUS.—The term “render  
16          anonymous” means to remove or obscure covered in-  
17          formation such that the remaining information does  
18          not identify, and there is no reasonable basis to be-  
19          lieve that the information can be used to identify—

20                (A) the specific individual to whom such  
21                covered information relates; or

22                (B) a computer or device owned or used by  
23                a particular user.

24          (10) SENSITIVE INFORMATION.—The term  
25          “sensitive information” means any information that

1 is associated with covered information of an indi-  
2 vidual and relates to that individual’s—

3 (A) medical records, including medical his-  
4 tory, mental or physical condition, or medical  
5 treatment or diagnosis by a health care profes-  
6 sional;

7 (B) race or ethnicity;

8 (C) religious beliefs;

9 (D) sexual orientation;

10 (E) financial records and other financial  
11 information associated with a financial account,  
12 including balances and other financial informa-  
13 tion; or

14 (F) precise geolocation information.

15 (11) SERVICE PROVIDER.—The term “service  
16 provider” means an entity that collects, maintains,  
17 processes, stores, or otherwise handles covered infor-  
18 mation on behalf of a covered entity, including, for  
19 the purposes of serving as a data processing center,  
20 providing customer support, serving advertisements  
21 to the website of the covered entity, maintaining the  
22 covered entity’s records, or performing other admin-  
23 istrative support functions for the covered entity.

24 (12) TRANSACTIONAL PURPOSE.—The term  
25 “transactional purpose” means a purpose necessary

1 for effecting, administering, or enforcing a trans-  
2 action between a covered entity and an individual.

3 (13) UNAFFILIATED PARTY.—The term “unaf-  
4 filiated party” means any entity that is not related  
5 by common ownership or affiliated by corporate con-  
6 trol with a covered entity.

7 **SEC. 3. NOTICE AND CONSENT REQUIREMENTS FOR THE**  
8 **COLLECTION, USE, AND DISCLOSURE OF COV-**  
9 **ERED INFORMATION.**

10 (a) NOTICE AND CONSENT PRIOR TO COLLECTION  
11 AND USE OF COVERED INFORMATION.—

12 (1) IN GENERAL.—A covered entity shall not  
13 collect, use, or disclose covered information from or  
14 about an individual for any purpose unless such cov-  
15 ered entity—

16 (A) makes available to such individual the  
17 privacy notice described in paragraph (2) prior  
18 to the collection of any covered information;  
19 and

20 (B) obtains the consent of the individual to  
21 such collection as set forth in paragraph (3).

22 (2) NOTICE REQUIREMENTS.—

23 (A) NATURE OF NOTICE.—

24 (i) COLLECTION OF INFORMATION  
25 THROUGH THE INTERNET.—If the covered



1 entity collects covered information through  
2 the Internet, the privacy notice required by  
3 this section shall be—

4 (I) posted clearly and conspicu-  
5 ously on the website of such covered  
6 entity through which the covered in-  
7 formation is collected; and

8 (II) accessible through a direct  
9 link from the Internet homepage of  
10 the covered entity.

11 (ii) MANUAL COLLECTION OF INFOR-  
12 MATION BY MEANS OTHER THAN THROUGH  
13 THE INTERNET.—If the covered entity col-  
14 lects covered information by any means  
15 that does not utilize the Internet, the pri-  
16 vacy notice required by this section shall  
17 be made available to an individual in writ-  
18 ing before the covered entity collects any  
19 covered information from that individual.

20 (B) REQUIRED INFORMATION.—The pri-  
21 vacy notice required under paragraph (1) shall  
22 include the following information:

23 (i) The identity of the covered entity  
24 collecting the covered information.

1 (ii) A description of any covered infor-  
2 mation collected by the covered entity.

3 (iii) How the covered entity collects  
4 covered information.

5 (iv) The specific purposes for which  
6 the covered entity collects and uses covered  
7 information.

8 (v) How the covered entity stores cov-  
9 ered information.

10 (vi) How the covered entity may  
11 merge, link, or combine covered informa-  
12 tion collected about the individual with  
13 other information about the individual that  
14 the covered entity may acquire from unaf-  
15 filiated parties.

16 (vii) How long the covered entity re-  
17 tains covered information in identifiable  
18 form.

19 (viii) How the covered entity disposes  
20 of or renders anonymous covered informa-  
21 tion after the expiration of the retention  
22 period.

23 (ix) The purposes for which covered  
24 information may be disclosed, and the cat-  
25 egories of unaffiliated parties who may re-

1           ceive such information for each such pur-  
2           pose.

3           (x) The choice and means the covered  
4           entity offers individuals to limit or prohibit  
5           the collection and disclosure of covered in-  
6           formation, in accordance with this section.

7           (xi) The means by and the extent to  
8           which individuals may obtain access to cov-  
9           ered information that has been collected by  
10          the covered entity in accordance with this  
11          section.

12          (xii) A means by which an individual  
13          may contact the covered entity with any in-  
14          quiries or complaints regarding the covered  
15          entity's handling of covered information.

16          (xiii) The process by which the cov-  
17          ered entity notifies individuals of material  
18          changes to its privacy notice in accordance  
19          with paragraph (4).

20          (xiv) A hyperlink to or a listing of the  
21          Commission's online consumer complaint  
22          form or the toll-free telephone number for  
23          the Commission's Consumer Response  
24          Center.

1 (xv) The effective date of the privacy  
2 notice.

3 (3) OPT-OUT CONSENT REQUIREMENTS.—

4 (A) OPT-OUT NATURE OF CONSENT.—A  
5 covered entity shall be considered to have the  
6 consent of an individual for the collection and  
7 use of covered information relating to that indi-  
8 vidual if—

9 (i) the covered entity has provided to  
10 the individual a clear statement containing  
11 the information required under paragraph  
12 (2)(B) and informing the individual that  
13 he or she has the right to decline consent  
14 to such collection and use; and

15 (ii) the individual either affirmatively  
16 grants consent for such collection and use  
17 or does not decline consent at the time  
18 such statement is presented to the indi-  
19 vidual.

20 If an individual declines consent at any time  
21 subsequent to the initial collection of covered  
22 information, the covered entity may not collect  
23 covered information from the individual or use  
24 covered information previously collected.

1 (B) ADDITIONAL OPTIONS AVAILABLE.—A  
2 covered entity may comply with this subsection  
3 by enabling an individual to decline consent for  
4 the collection and use only of particular covered  
5 information, provided the individual has been  
6 given the opportunity to decline consent for the  
7 collection and use of all covered information.

8 (4) NOTICE AND CONSENT TO MATERIAL  
9 CHANGE IN PRIVACY POLICIES.—A covered entity  
10 shall provide the privacy notice required by para-  
11 graph (2) and obtain the express affirmative consent  
12 of the individual prior to—

13 (A) making a material change in privacy  
14 practices governing previously collected covered  
15 information from that individual; or

16 (B) disclosing covered information for a  
17 purpose not previously disclosed to the indi-  
18 vidual and which the individual, acting reason-  
19 ably under the circumstances, would not expect  
20 based on the covered entity's prior privacy no-  
21 tice.

22 (5) EXEMPTION FOR A TRANSACTIONAL PUR-  
23 POSE OR AN OPERATIONAL PURPOSE.—

24 (A) EXEMPTION FROM NOTICE REQUIRE-  
25 MENTS.—The notice requirements in this sub-

1 section shall not apply to covered information  
2 that—

3 (i) is collected by any means that does  
4 not utilize the Internet, as described in  
5 paragraph (2)(A)(ii); and

6 (ii)(I) is collected for a transactional  
7 purpose or an operational purpose; or

8 (II) consists solely of information de-  
9 scribed in subparagraphs (A) through (D)  
10 of section 2(5) and is part of a first party  
11 transaction.

12 (B) EXEMPTION FROM CONSENT REQUIRE-  
13 MENTS.—The consent requirements of this sub-  
14 section shall not apply to the collection, use, or  
15 disclosure of covered information for a trans-  
16 actional purpose or an operational purpose, but  
17 shall apply to the collection by a covered entity  
18 of covered information for marketing, adver-  
19 tising, or selling, or any use of or disclosure of  
20 covered information to an unaffiliated party for  
21 such purposes.

22 (b) EXPRESS CONSENT REQUIRED FOR DISCLOSURE  
23 OF COVERED INFORMATION TO UNAFFILIATED PAR-  
24 TIES.—

1           (1) IN GENERAL.—A covered entity may not  
2           sell, share, or otherwise disclose covered information  
3           to an unaffiliated party without first obtaining the  
4           express affirmative consent of the individual to  
5           whom the covered information relates.

6           (2) WITHDRAWAL OF CONSENT.—A covered en-  
7           tity that has obtained express affirmative consent  
8           from an individual must provide the individual with  
9           the opportunity, without charge, to withdraw such  
10          consent at any time thereafter.

11          (3) EXEMPTION FOR CERTAIN INFORMATION  
12          SHARING WITH SERVICE PROVIDERS.—The consent  
13          requirements of this subsection shall not apply to  
14          the disclosure of covered information by a covered  
15          entity to a service provider for purposes of executing  
16          a first party transaction if—

17                (A) the covered entity has obtained consent  
18                for the collection of covered information pursu-  
19                ant to subsection (a); and

20                (B) the service provider agrees to use such  
21                covered information solely for the purpose of  
22                providing an agreed-upon service to a covered  
23                entity and not to disclose the covered informa-  
24                tion to any other person.

1 (c) EXPRESS CONSENT FOR COLLECTION OR DIS-  
2 CLOSURE OF SENSITIVE INFORMATION.—A covered entity  
3 shall not collect or disclose sensitive information from or  
4 about an individual for any purpose unless such covered  
5 entity—

6 (1) makes available to such individual the pri-  
7 vacy notice described in subsection (a)(2) prior to  
8 the collection of any sensitive information; and

9 (2) obtains the express affirmative consent of  
10 the individual to whom the sensitive information re-  
11 lates prior to collecting or disclosing such sensitive  
12 information.

13 (d) EXPRESS CONSENT FOR COLLECTION OR DIS-  
14 CLOSURE OF ALL OR SUBSTANTIALLY ALL OF AN INDI-  
15 VIDUAL'S ONLINE ACTIVITY.—A covered entity shall not  
16 collect or disclose covered information about all or sub-  
17 stantially all of an individual's online activity, including  
18 across websites, for any purpose unless such covered enti-  
19 ty—

20 (1) makes available to such individual the pri-  
21 vacy notice described in subsection (a)(2) prior to  
22 the collection of the covered information about all or  
23 substantially all of the individual's online activity;  
24 and



1           (2) obtains the express affirmative consent of  
2           the individual to whom the covered information re-  
3           lates prior to collecting or disclosing such covered in-  
4           formation.

5           (e) EXCEPTION FOR INDIVIDUAL MANAGED PREF-  
6           ERENCE PROFILES.—Notwithstanding subsection (b), a  
7           covered entity may collect, use, and disclose covered infor-  
8           mation if—

9           (1) the covered entity provides individuals with  
10          the ability to opt out of the collection, use, and dis-  
11          closure of covered information by the covered entity  
12          using a readily accessible opt-out mechanism where-  
13          by, the opt-out choice of the individual is preserved  
14          and protected from incidental or accidental deletion,  
15          including by—

16                 (A) website interactions on the covered en-  
17                 tity's website or a website where the preference  
18                 profile is being used;

19                 (B) a toll-free phone number; or

20                 (C) letter to an address provided by the  
21                 covered entity;

22          (2) the covered entity deletes or renders anony-  
23          mous any covered information not later than 18  
24          months after the date the covered information is  
25          first collected;

1           (3) the covered entity includes the placement of  
2           a symbol or seal in a prominent location on the  
3           website of the covered entity and on or near any ad-  
4           vertisements delivered by the covered entity based on  
5           the preference profile of an individual that enables  
6           an individual to connect to additional information  
7           that—

8                   (A) describes the practices used by the cov-  
9                   ered entity or by an advertisement network in  
10                  which the covered entity participates to create  
11                  a preference profile and that led to the delivery  
12                  of the advertisement using an individual’s pref-  
13                  erence profile, including the information, cat-  
14                  egories of information, or list of preferences as-  
15                  sociated with the individual that may have led  
16                  to the delivery of the advertisement to that indi-  
17                  vidual; and

18                   (B) allows individuals to review and mod-  
19                   ify, or completely opt out of having, a pref-  
20                   erence profile created and maintained by a cov-  
21                   ered entity or by an advertisement network in  
22                   which the covered entity participates; and

23           (4) an advertisement network to which a cov-  
24           ered entity discloses covered information under this  
25           subsection does not disclose such covered informa-

1           tion to any other entity without the express affirma-  
2           tive consent of the individual to whom the covered  
3           information relates.

4   **SEC. 4. ACCURACY AND SECURITY OF COVERED INFORMA-**  
5                   **TION AND CONSUMER EDUCATION CAM-**  
6                   **PAIGN.**

7           (a) **ACCURACY.**—Each covered entity shall establish  
8           reasonable procedures to assure the accuracy of the cov-  
9           ered information it collects.

10          (b) **SECURITY OF COVERED INFORMATION.**—

11               (1) **IN GENERAL.**—A covered entity or service  
12           provider that collects covered information about an  
13           individual for any purpose must establish, imple-  
14           ment, and maintain appropriate administrative,  
15           technical, and physical safeguards that the Commis-  
16           sion determines are necessary to—

17                   (A) ensure the security, integrity, and con-  
18                   fidentiality of such information;

19                   (B) protect against anticipated threats or  
20                   hazards to the security or integrity of such in-  
21                   formation;

22                   (C) protect against unauthorized access to  
23                   and loss, misuse, alteration, or destruction of,  
24                   such information; and

1 (D) in the event of a security breach, de-  
2 termine the scope of the breach, make every  
3 reasonable attempt to prevent further unauthor-  
4 ized access to the affected covered information,  
5 and restore reasonable integrity to the affected  
6 covered information.

7 (2) FACTORS FOR APPROPRIATE SAFE-  
8 GUARDS.—In developing standards to carry out this  
9 section, the Commission shall consider the size and  
10 complexity of a covered entity, the nature and scope  
11 of the activities of a covered entity, the sensitivity of  
12 the covered information, the current state of the art  
13 in administrative, technical, and physical safeguards  
14 for protecting information, and the cost of imple-  
15 menting such safeguards.

16 (c) CONSUMER EDUCATION.—The Commission shall  
17 conduct a consumer education campaign to educate the  
18 public regarding opt-out and opt-in consent rights af-  
19 forded by this Act.

20 **SEC. 5. USE OF AGGREGATE OR ANONYMOUS INFORMA-**  
21 **TION.**

22 Nothing in this Act shall prohibit a covered entity  
23 from collecting or disclosing aggregate information or cov-  
24 ered information that has been rendered anonymous.

1 **SEC. 6. USE OF LOCATION-BASED INFORMATION.**

2 (a) IN GENERAL.—Except as provided in section  
3 222(d) of the Communications Act of 1934 (47 U.S.C.  
4 222(d)), any provider of a product or service that uses  
5 location-based information shall not disclose such location-  
6 based information concerning the user of such product or  
7 service without that user’s express opt-in consent. A user’s  
8 express opt-in consent to an application provider that re-  
9 lies on a platform offered by a commercial mobile service  
10 provider shall satisfy the requirements of this subsection.

11 (b) AMENDMENT.—Section 222(h) of the Commu-  
12 nications Act of 1934 (47 U.S.C. 222(h)) is amended by  
13 adding at the end the following:

14 “(8) CALL LOCATION INFORMATION.—The term  
15 ‘call location information’ means any location-based  
16 information.”

17 **SEC. 7. FEDERAL COMMUNICATIONS COMMISSION REPORT.**

18 Not later than 1 year after the date of enactment  
19 of this Act, the Federal Communications Commission shall  
20 transmit a report to the Committee on Energy and Com-  
21 merce of the House of Representatives and the Committee  
22 on Commerce, Science, and Transportation of the Senate  
23 describing—

24 (1) all provisions of United States communica-  
25 tions law, including provisions in the Communica-

1 tions Act of 1934, that address subscriber privacy;  
2 and

3 (2) how those provisions may be harmonized  
4 with the provisions of this Act to create a consistent  
5 regulatory regime for covered entities and individ-  
6 uals.

7 **SEC. 8. ENFORCEMENT.**

8 (a) ENFORCEMENT BY THE FEDERAL TRADE COM-  
9 MISSION.—

10 (1) UNFAIR OR DECEPTIVE ACTS OR PRAC-  
11 TICES.—A violation of this Act shall be treated as  
12 an unfair and deceptive act or practice in violation  
13 of a regulation under section 18(a)(1)(B) of the  
14 Federal Trade Commission Act (15 U.S.C.  
15 57a(a)(1)(B)) regarding unfair or deceptive acts or  
16 practices.

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

1 that Act. Notwithstanding any provision of the Fed-  
2 eral Trade Commission Act or any other provision of  
3 law and solely for purposes of this Act, common car-  
4 riers subject to the Communications Act of 1934 (47  
5 U.S.C. 151 et seq.) and any amendment thereto  
6 shall be subject to the jurisdiction of the Commis-  
7 sion.

8 (3) RULEMAKING AUTHORITY AND LIMITA-  
9 TION.—The Commission may, in accordance with  
10 section 553 of title 5, United States Code, issue  
11 such regulations it determines to be necessary to  
12 carry out this Act. In promulgating rules under this  
13 Act, the Commission shall not require the deploy-  
14 ment or use of any specific products or technologies,  
15 including any specific computer software or hard-  
16 ware.

17 (b) ENFORCEMENT BY STATE ATTORNEYS GEN-  
18 ERAL.—

19 (1) CIVIL ACTION.—In any case in which the  
20 attorney general of a State, or agency of a State  
21 having consumer protection responsibilities, has rea-  
22 son to believe that an interest of the residents of  
23 that State has been or is threatened or adversely af-  
24 fected by any person who violates this Act, the attor-  
25 ney general or such agency of the State, as parens

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

4               (A) enjoin further violation of such section  
5       by the defendant;

6               (B) compel compliance with such section;

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 appropriate.

12       (2) INTERVENTION BY THE FTC.—

13              (A) NOTICE AND INTERVENTION.—The  
14       State shall provide prior written notice of any  
15       action under paragraph (1) to the Commission  
16       and provide the Commission with a copy of its  
17       complaint, except in any case in which such  
18       prior notice is not feasible, in which case the  
19       State shall serve such notice immediately upon  
20       instituting such action. The Commission shall  
21       have the right—

22                      (i) to intervene in the action;

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

25                      (iii) to file petitions for appeal.



1 (B) LIMITATION ON STATE ACTION WHILE  
2 FEDERAL ACTION IS PENDING.—If the Commis-  
3 sion has instituted a civil action for violation of  
4 this Act, no State attorney general or agency of  
5 a State may bring an action under this sub-  
6 section during the pendency of that action  
7 against any defendant named in the complaint  
8 of the Commission for any violation of this Act  
9 alleged in the complaint.

10 (3) CONSTRUCTION.—For purposes of bringing  
11 any civil action under paragraph (1), nothing in this  
12 Act shall be construed to prevent an attorney gen-  
13 eral of a State from exercising the powers conferred  
14 on the attorney general by the laws of that State  
15 to—

16 (A) conduct investigations;

17 (B) administer oaths or affirmations; or

18 (C) compel the attendance of witnesses or  
19 the production of documentary and other evi-  
20 dence.

21 **SEC. 9. NO PRIVATE RIGHT OF ACTION.**

22 This Act may not be considered or construed to pro-  
23 vide any private right of action. No private civil action  
24 relating to any act or practice governed under this Act  
25 may be commenced or maintained in any State court or

1 under State law (including a pendent State claim to an  
2 action under Federal law).

3 **SEC. 10. PREEMPTION.**

4 This Act supersedes any provision of a statute, regu-  
5 lation, or rule of a State or political subdivision of a State,  
6 that includes requirements for the collection, use, or dis-  
7 closure of covered information.

8 **SEC. 11. EFFECT ON OTHER LAWS.**

9 (a) APPLICATION OF OTHER FEDERAL PRIVACY  
10 LAWS.—Except as provided expressly in this Act, this Act  
11 shall have no effect on activities covered by the following:

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

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

16 (3) The Health Insurance Portability and Ac-  
17 countability Act of 1996 (Public Law 104-191).

18 (4) Part C of title XI of the Social Security Act  
19 (42 U.S.C. 1320d et seq.).

20 (5) The Communications Act of 1934 (47  
21 U.S.C. 151 et seq.).

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

24 (7) The CAN-SPAM Act of 2003 (15 U.S.C.  
25 7701 et seq.).

1 (b) COMMISSION AUTHORITY.—Nothing contained in  
2 this Act shall be construed to limit authority provided to  
3 the Commission under any other law.

4 **SEC. 12. EFFECTIVE DATE.**

5 Unless otherwise specified, this Act shall apply to the  
6 collection, use, or disclosure of, and other actions with re-  
7 spect to, covered information that occurs on or after the  
8 date that is one year after the date of enactment of this  
9 Act.