

108TH CONGRESS
2D SESSION

H. R. 4366

To prohibit the transfer of personal information to any person outside the United States, without notice and consent, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

MAY 13, 2004

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

A BILL

To prohibit the transfer of personal information to any person outside the United States, without notice and consent, 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.**

4 This Act may be cited as the “Personal Data
5 Offshoring Protection Act of 2004”.

6 **SEC. 2. DEFINITIONS.**

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

8 (1) BUSINESS ENTERPRISE.—The term “busi-
9 ness enterprise” means any organization, associa-
10 tion, or venture established to make a profit, or any

1 private, nonprofit organization that collects or re-
2 tains personally identifiable information.

3 (2) COUNTRY WITH ADEQUATE PRIVACY PRO-
4 TECTION.—The term “country with adequate pri-
5 vacy protection” means a country that has been cer-
6 tified by the Federal Trade Commission as having a
7 legal system that provides adequate privacy protec-
8 tion for personally identifiable information.

9 (3) PERSONALLY IDENTIFIABLE INFORMA-
10 TION.—The term “personally identifiable informa-
11 tion” includes information such as—

- 12 (A) name;
- 13 (B) postal address;
- 14 (C) financial information;
- 15 (D) medical records;
- 16 (E) date of birth;
- 17 (F) phone number;
- 18 (G) e-mail address;
- 19 (H) social security number;
- 20 (I) mother’s maiden name;
- 21 (J) password;
- 22 (K) state identification information;
- 23 (L) driver’s license number;
- 24 (M) personal tax information; and

1 (N) any consumer transactional or experi-
2 ential information relating to the person.

3 (4) TRANSMIT.—The term “transmit” or
4 “transmission” means the use of any instrumentality
5 of interstate commerce, including the mails or any
6 electronic means, to transfer information or to pro-
7 vide access to such information via the Internet or
8 any comparable telecommunications system.

9 **SEC. 3. PROTECTION OF PERSONALLY IDENTIFIABLE IN-**
10 **FORMATION FROM UNAUTHORIZED TRANS-**
11 **MISSION.**

12 (a) IN GENERAL.—A business enterprise may trans-
13 mit personally identifiable information regarding a citizen
14 of the United States to any foreign affiliate or subcon-
15 tractor located in a country that is a country with ade-
16 quate privacy protection, provided that the citizen has
17 been provided prior notice that such information may be
18 transmitted to such a foreign affiliate or subcontractor
19 and has not objected to such transmission.

20 (b) “OPT-IN” CONSENT REQUIRED FOR COUNTRIES
21 WITHOUT ADEQUATE PRIVACY PROTECTION.—A business
22 enterprise may not transmit personally identifiable infor-
23 mation regarding a citizen of the United States to any
24 foreign affiliate or subcontractor located in a country that
25 is a country without adequate privacy protection unless—

1 (b) ENFORCEMENT AUTHORITY.—The Federal
2 Trade Commission shall enforce this Act in the same man-
3 ner, by the same means, and with the same jurisdiction,
4 powers, and duties as though all applicable terms and pro-
5 visions of the Federal Trade Commission Act (15 U.S.C.
6 41 et seq.) were incorporated into and made a part of this
7 Act.

8 **SEC. 5. CIVIL REMEDIES.**

9 (a) PRIVATE RIGHT OF ACTION.—A person or entity
10 may, if otherwise permitted by the laws or rules of court
11 of a State, bring in an appropriate court of that State—

12 (1) an action based on a violation of this Act
13 or the regulations prescribed pursuant to this Act to
14 enjoin such violation;

15 (2) an action to recover for actual monetary
16 loss from such a violation, or to receive \$10,000 in
17 damages for each such violation, whichever is great-
18 er, or

19 (3) both such actions.

20 If the court finds that the defendant willfully or knowingly
21 violated this subsection or the regulations prescribed
22 under this subsection, the court may, in its discretion, in-
23 crease the amount of the award to an amount equal to
24 not more than 3 times the amount available under para-
25 graph (2).

1 (b) ACTIONS BY STATES.—

2 (1) AUTHORITY OF STATES.—Whenever the at-
3 torney general of a State, or an official or agency
4 designated by a State, has reason to believe that any
5 person has engaged or is engaging in a violation of
6 this Act or the regulations prescribed pursuant to
7 this Act, the State may bring a civil action on behalf
8 of its residents to enjoin such violation, an action to
9 recover for actual monetary loss or receive \$10,000
10 in damages for each violation, or both such actions.
11 If the court finds the defendant willfully or know-
12 ingly violated this Act or regulations prescribed pur-
13 suant to this Act, the court may, in its discretion,
14 increase the amount of the award to an amount
15 equal to not more than 3 times the amount available
16 under the preceding sentence.

17 (2) EXCLUSIVE JURISDICTION OF FEDERAL
18 COURTS.—The district courts of the United States,
19 the United States courts of any territory, and the
20 District Court of the United States for the District
21 of Columbia shall have exclusive jurisdiction over all
22 civil actions brought under this subsection. Upon
23 proper application, such courts shall also have juris-
24 diction to issue writs of mandamus, or orders afford-
25 ing like relief, commanding the defendant to comply

1 with the provisions of this Act or regulations pre-
2 scribed pursuant to this Act, including the require-
3 ment that the defendant take such action as is nec-
4 essary to remove the danger of such violation. Upon
5 a proper showing, a permanent or temporary injunc-
6 tion or restraining order shall be granted without
7 bond.

8 (3) NOTICE TO AN INTERVENTION OF FEDERAL
9 TRADE COMMISSION.—The State bringing a civil ac-
10 tion under this section shall serve prior written no-
11 tice of any such civil action upon the Federal Trade
12 Commission and provide the Commission with a
13 copy of its complaint, except in any case where such
14 prior notice is not feasible, in which case the State
15 shall serve such notice immediately upon instituting
16 such action. The Commission shall have the right—

17 (A) to intervene in the action;

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

20 (C) to file petitions for appeal.

21 (4) VENUE; SERVICE OF PROCESS.—Any civil
22 action brought under this subsection in a district
23 court of the United States may be brought in the
24 district wherein the defendant is found or is an in-
25 habitant or transacts business or wherein the viola-

1 tion occurred or is occurring, and process in such
2 cases may be served in any district in which the de-
3 fendant is an inhabitant or where the defendant may
4 be found.

5 (5) INVESTIGATORY POWERS.—For purposes of
6 bringing any civil action under this subsection, noth-
7 ing in this Act shall prevent the attorney general of
8 a State, or an official or agency designated by a
9 State, from exercising the powers conferred on the
10 attorney general or such official by the laws of such
11 State to conduct investigations or to administer
12 oaths or affirmations or to compel the attendance of
13 witnesses or the production of documentary and
14 other evidence.

15 (6) EFFECT ON STATE COURT PROCEEDINGS.—
16 Nothing contained in this section shall be construed
17 to prohibit an authorized State official from pro-
18 ceeding in State court on the basis of an alleged vio-
19 lation of any general civil or criminal statute of such
20 State.

21 (7) LIMITATION.—Whenever the Federal Trade
22 Commission has instituted a civil action for violation
23 of this Act or the regulations prescribed pursuant to
24 this Act, no State may, during the pendency of such
25 action instituted by the Commission, subsequently

1 institute a civil action against any defendant named
2 in the Commission's complaint for any violation as
3 alleged in the Commission's complaint.

4 **SEC. 6. CERTIFICATION OF COUNTRIES WITH ADEQUATE**
5 **PRIVACY PROTECTION.**

6 (a) IN GENERAL.—Not later than 6 months after the
7 date of enactment of this Act, the Federal Trade Commis-
8 sion, after providing notice and opportunity for public
9 comment, shall—

10 (1) certify those countries that have legal sys-
11 tems that provide adequate privacy protection for
12 personally identifiable information; and

13 (2) make the list of countries certified under
14 paragraph (1) available to the general public.

15 (b) CERTIFICATION CRITERIA.—

16 (1) IN GENERAL.—In determining whether a
17 country should be certified under this section, the
18 Federal Trade Commission shall consider the ade-
19 quacy of the country's infrastructure for detecting,
20 evaluating, and responding to privacy violations.

21 (2) PRESUMPTION.—The Commission shall pre-
22 sume that a country's privacy protections are inad-
23 equate if they are any less protective of personally
24 identifiable information than those afforded under
25 Federal law or under the laws of any State, or if the

1 Commission determines that such country's laws are
2 not adequately enforced.

3 (c) EUROPEAN UNION DATA PROTECTION DIREC-
4 TIVE.—A country that has comprehensive privacy laws
5 that meet the requirements of the European Union Data
6 Protection Directive shall be certified under this section
7 unless the Federal Trade Commission determines that
8 such laws are not commonly enforced within such country.

9 **SEC. 7. EFFECTIVE DATE.**

10 Section 6 of this Act shall take effect on the date
11 of enactment of this Act. Sections 2 through 5 of this Act
12 shall take effect 60 days after the the completion of the
13 certification required by section 6.

○