

109TH CONGRESS  
1ST SESSION

# S. 810

To regulate the transmission of personally identifiable information to foreign affiliates and subcontractors

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IN THE SENATE OF THE UNITED STATES

APRIL 14, 2005

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

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## A BILL

To regulate the transmission of personally identifiable information to foreign affiliates and subcontractors

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 “Safeguarding Ameri-  
5 cans From Exporting Identification Data Act” or the  
6 “SAFE-ID Act”.

7 **SEC. 2. DEFINITIONS.**

8 As used in this Act:

9 (1) BUSINESS ENTERPRISE.—The term “busi-  
10 ness enterprise” means—

1 (A) any organization, association, or ven-  
2 ture established to make a profit;

3 (B) any health care business;

4 (C) any private, nonprofit organization; or

5 (D) any contractor, subcontractor, or po-  
6 tential subcontractor of an entity described in  
7 subparagraph (A), (B), or (C).

8 (2) HEALTH CARE BUSINESS.—The term  
9 “health care business” means any business enter-  
10 prise or private, nonprofit organization that collects  
11 or retains personally identifiable information about  
12 consumers in relation to medical care, including—

13 (A) hospitals;

14 (B) health maintenance organizations;

15 (C) medical partnerships;

16 (D) emergency medical transportation  
17 companies;

18 (E) medical transcription companies;

19 (F) banks that collect or process medical  
20 billing information; and

21 (G) subcontractors, or potential sub-  
22 contractors, of the entities described in sub-  
23 paragraphs (A) through (F).

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

4                   (A) name;

5                   (B) postal address;

6                   (C) financial information;

7                   (D) medical records;

8                   (E) date of birth;

9                   (F) phone number;

10                  (G) e-mail address;

11                  (H) social security number;

12                  (I) mother’s maiden name;

13                  (J) password;

14                  (K) state identification information; and

15                  (L) driver’s license number.

16 **SEC. 3. TRANSMISSION OF INFORMATION.**

17           (a) PROHIBITION.—A business enterprise may not  
18           disclose personally identifiable information regarding a  
19           resident of the United States to any foreign branch, affil-  
20           iate, subcontractor, or unaffiliated third party located in  
21           a foreign country unless—

22                   (1) the business enterprise provides the notice  
23                   of privacy protections described in sections 502 and  
24                   503 of the Gramm-Leach-Bliley Act (15 U.S.C.  
25                   6802 and 6803) or required by the regulations pro-

1 mulgated pursuant to section 264(c) of the Health  
2 Insurance Portability and Accountability Act of  
3 1996 (42 U.S.C. 1320d–2 note), as appropriate;

4 (2) the business enterprise complies with the  
5 safeguards described in section 501(b) of the  
6 Gramm–Leach–Bliley Act (15 U.S.C. 6801(b)), as  
7 appropriate;

8 (3) the consumer is given the opportunity, be-  
9 fore the time that such information is initially dis-  
10 closed, to object to the disclosure of such informa-  
11 tion to such foreign branch, affiliate, subcontractor,  
12 or unaffiliated third party; and

13 (4) the consumer is given an explanation of how  
14 the consumer can exercise the nondisclosure option  
15 described in paragraph (3).

16 (b) HEALTH CARE BUSINESSES.—A health care  
17 business may not terminate an existing relationship with  
18 a consumer of health care services to avoid the consumer  
19 from objecting to the disclosure under subsection (a)(3).

20 (c) EFFECT ON BUSINESS RELATIONSHIP.—

21 (1) NONDISCRIMINATION.—A business enter-  
22 prise may not discriminate against or deny an other-  
23 wise qualified consumer a financial product or a  
24 health care service because the consumer has ob-  
25 jected to the disclosure under subsection (a)(3).

1           (2) PRODUCTS AND SERVICES.—A business en-  
2           terprise shall not be required to offer or provide a  
3           product or service through affiliated entities or joint-  
4           ly with nonaffiliated business enterprises.

5           (3) INCENTIVES AND DISCOUNTS.—Nothing in  
6           this subsection is intended to prohibit a business en-  
7           terprise from offering incentives or discounts to elie-  
8           it a specific response to the notice required under  
9           subsection (a).

10          (d) LIABILITY.—

11           (1) IN GENERAL.—A business enterprise that  
12           knowingly and directly transfers personally identifi-  
13           able information to a foreign branch, affiliate, sub-  
14           contractor, or unaffiliated third party shall be liable  
15           to any person suffering damages resulting from the  
16           improper storage, duplication, sharing, or other mis-  
17           use of such information by the transferee.

18           (2) CIVIL ACTION.—An injured party under  
19           paragraph (1) may sue in law or in equity in any  
20           court of competent jurisdiction to recover the dam-  
21           ages sustained as a result of a violation of this sec-  
22           tion.

23           (e) RULEMAKING.—The Chairman of the Federal  
24           Trade Commission shall promulgate regulations through  
25           which the Chairman may enforce the provisions of this

1 section and impose a civil penalty for a violation of this  
2 section.

3 **SEC. 4. PRIVACY FOR CONSUMERS OF HEALTH SERVICES.**

4 The Secretary of Health and Human Services shall  
5 revise the regulations promulgated pursuant to section  
6 264(e) of the Health Insurance Portability and Account-  
7 ability Act of 1996 (42 U.S.C. 1320d–2 note) to require  
8 a covered entity (as defined by such regulations) that  
9 outsources protected health information (as defined by  
10 such regulations) outside the United States to include in  
11 such entity’s notice of privacy protections—

12 (1) notification that the covered entity  
13 outsources protected health information to business  
14 associates (as defined by such regulations) for proc-  
15 essing outside the United States;

16 (2) a description of the privacy laws of the  
17 country to which the protected health information  
18 will be sent;

19 (3) any additional risks and consequences to  
20 the privacy and security of protected health informa-  
21 tion that arise as a result of the processing of such  
22 information in a foreign country;

23 (4) additional measures the covered entity is  
24 taking to protect the protected health information  
25 outsourced for processing outside the United States;

1           (5) notification that the protected health infor-  
2           mation will not be outsourced outside the United  
3           States if the consumer objects; and

4           (6) a certification that—

5                 (A) the covered entity has taken reason-  
6                 able steps to identify the locations where pro-  
7                 tected health information is outsourced by such  
8                 business associates;

9                 (B) attests to the privacy and security of  
10                the protected health information outsourced for  
11                processing outside the United States; and

12                (C) states the reasons for the determina-  
13                tion by the covered entity that the privacy and  
14                security of such information is maintained.

15 **SEC. 5. PRIVACY FOR CONSUMERS OF FINANCIAL SERV-**  
16 **ICES.**

17           Section 503(b) of the Gramm-Leach-Bliley Act (15  
18 U.S.C. 6803(b)) is amended—

19                (1) in paragraph (3), by striking “and” after  
20                the semicolon;

21                (2) in paragraph (4), by striking the period at  
22                the end and inserting “; and”; and

23                (3) by adding at the end the following:

1           “(5) if the financial institution outsources non-  
2 public personal information outside the United  
3 States—

4           “(A) information informing the consumer  
5 in simple language—

6           “(i) that the financial institution  
7 outsources nonpublic personal information  
8 to entities for processing outside the  
9 United States;

10           “(ii) of the privacy laws of the coun-  
11 try to which nonpublic personal informa-  
12 tion will be sent;

13           “(iii) of any additional risks and con-  
14 sequences to the privacy and security of an  
15 individual’s nonpublic personal information  
16 that arise as a result of the processing of  
17 such information in a foreign country; and

18           “(iv) of the additional measures the  
19 financial institution is taking to protect the  
20 nonpublic personal information outsourced  
21 for processing outside the United States;  
22 and

23           “(B) a certification that—

24           “(i) the financial institution has taken  
25 reasonable steps to identify the locations



1 where nonpublic personal information is  
2 outsourced by such entities;

3 “(ii) attests to the privacy and secu-  
4 rity of the nonpublic personal information  
5 outsourced for processing outside the  
6 United States; and

7 “(iii) states the reasons for the deter-  
8 mination by the institution that the privacy  
9 and security of such information is main-  
10 tained.”.

11 **SEC. 6. EFFECTIVE DATE.**

12 This Act shall take effect on the expiration of the  
13 date which is 90 days after the date of enactment of this  
14 Act.

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