

117TH CONGRESS  
1ST SESSION

# S. 81

To protect the privacy of health information during a national health emergency.

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IN THE SENATE OF THE UNITED STATES

JANUARY 28, 2021

Mr. BLUMENTHAL (for himself, Mr. WARNER, Mr. MARKEY, Ms. BALDWIN, Ms. HIRONO, Mr. BOOKER, Mr. MENENDEZ, Mr. KING, Mr. BENNET, Ms. WARREN, Ms. KLOBUCHAR, and Mr. DURBIN) introduced the following bill; which was read twice and referred to the Committee on Health, Education, Labor, and Pensions

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## A BILL

To protect the privacy of health information during a national health emergency.

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 “Public Health Emer-  
5 gency Privacy Act”.

6 **SEC. 2. DEFINITIONS.**

7 In this Act:

1           (1) AFFIRMATIVE EXPRESS CONSENT.—The  
2 term “affirmative express consent” means an affirm-  
3 ative act by an individual that—

4           (A) clearly and conspicuously commu-  
5 nicates the individual’s authorization of an act  
6 or practice;

7           (B) is made in the absence of any mecha-  
8 nism in the user interface that has the purpose  
9 or substantial effect of obscuring, subverting, or  
10 impairing decision making or choice to obtain  
11 consent; and

12           (C) cannot be inferred from inaction.

13           (2) COLLECT.—The term “collect”, with re-  
14 spect to emergency health data, means obtaining in  
15 any manner by a covered organization.

16           (3) COMMISSION.—The term “Commission”  
17 means the Federal Trade Commission.

18           (4) COVERED ORGANIZATION.—

19           (A) IN GENERAL.—The term “covered or-  
20 ganization” means any person (including a gov-  
21 ernment entity)—

22           (i) that collects, uses, or discloses  
23 emergency health data electronically or  
24 through communication by wire or radio;  
25 or

1 (ii) that develops or operates a  
2 website, web application, mobile applica-  
3 tion, mobile operating system feature, or  
4 smart device application for the purpose of  
5 tracking, screening, monitoring, contact  
6 tracing, or mitigation, or otherwise re-  
7 sponding to the COVID-19 public health  
8 emergency.

9 (B) EXCLUSIONS.—The term “covered or-  
10 ganization” does not include—

11 (i) a health care provider;

12 (ii) a person engaged in a de minimis  
13 collection or processing of emergency  
14 health data;

15 (iii) a service provider;

16 (iv) a person acting in their individual  
17 or household capacity; or

18 (v) a public health authority.

19 (5) DEMOGRAPHIC DATA.—The term “demo-  
20 graphic data” means information relating to the ac-  
21 tual or perceived race, color, ethnicity, national ori-  
22 gin, religion, sex, gender, gender identity, sexual ori-  
23 entation, age, Tribal affiliation, disability, domicile,  
24 employment status, familial status, immigration sta-

1       tus, or veteran status of an individual or group of  
2       individuals.

3               (6) DEVICE.—The term “device” means any  
4       electronic equipment that is primarily designed for  
5       or marketed to consumers.

6               (7) DISCLOSURE.—The term “disclosure”, with  
7       respect to emergency health data, means the releas-  
8       ing, transferring, selling, providing access to, licens-  
9       ing, or divulging in any manner by a covered organi-  
10      zation to a third party.

11              (8) EMERGENCY HEALTH DATA.—The term  
12      “emergency health data” means data linked or rea-  
13      sonably linkable to an individual or device, including  
14      data inferred or derived about the individual or de-  
15      vice from other collected data provided such data is  
16      still linked or reasonably linkable to the individual or  
17      device, that concerns the public COVID–19 health  
18      emergency. Such data includes—

19                      (A) information that reveals the past,  
20                      present, or future physical or behavioral health  
21                      or condition of, or provision of healthcare to, an  
22                      individual, including—

23                                      (i) data derived from the testing or  
24                                      examination of a body part or bodily sub-  
25                                      stance, or a request for such testing;

1 (ii) whether or not an individual has  
2 contracted or been tested for, or an esti-  
3 mate of the likelihood that a particular in-  
4 dividual may contract, such disease or dis-  
5 order; and

6 (iii) genetic data, biological samples,  
7 and biometrics; and

8 (B) other data collected in conjunction  
9 with other emergency health data or for the  
10 purpose of tracking, screening, monitoring, con-  
11 tact tracing, or mitigation, or otherwise re-  
12 sponding to the COVID–19 public health emer-  
13 gency, including—

14 (i) geolocation data, when such term  
15 means data capable of determining the  
16 past or present precise physical location of  
17 an individual at a specific point in time,  
18 taking account of population densities, in-  
19 cluding cell-site location information, tri-  
20 angulation data derived from nearby wire-  
21 less or radio frequency networks, and glob-  
22 al positioning system data;

23 (ii) proximity data, when such term  
24 means information that identifies or esti-  
25 mates the past or present physical prox-

1           imity of one individual or device to an-  
 2           other, including information derived from  
 3           Bluetooth, audio signatures, nearby wire-  
 4           less networks, and near-field communica-  
 5           tions;

6                   (iii) demographic data;

7                   (iv) contact information for identifi-  
 8           able individuals or a history of the individ-  
 9           ual’s contacts over a period of time, such  
 10          as an address book or call log; and

11                  (v) any other data collected from a  
 12          personal device.

13           (9) GOVERNMENT ENTITY.—The term “govern-  
 14          ment entity” includes a Federal agency, a State, a  
 15          local government, and other organizations, as such  
 16          terms are defined in section 3371 of title 5, United  
 17          States Code.

18           (10) HEALTH CARE PROVIDER.—The term  
 19          “health care provider” has the meaning given the  
 20          term “eligible health care provider” in title VIII of  
 21          division B of the CARES Act (Public Law 116–  
 22          136).

23           (11) HIPAA REGULATIONS.—The term  
 24          “HIPAA regulations” means parts 160 and 164 of  
 25          title 45, Code of Federal Regulations.

1           (12) PUBLIC HEALTH AUTHORITY.—The term  
2           “public health authority” means an entity that is  
3           authorized by law to collect or receive information  
4           for the purpose of preventing or controlling disease,  
5           injury, or disability including, but not limited to, the  
6           reporting of disease, injury, vital events such as  
7           birth or death, and the conduct of public health sur-  
8           veillance, public health investigations, and public  
9           health interventions, and a person, such as a des-  
10          ignated agency or associate, acting under a grant of  
11          authority from, or under a contract with, such public  
12          entity, including the employees or agents of such en-  
13          tity or its contractors or persons or entities to whom  
14          it has granted authority.

15          (13) COVID–19 PUBLIC HEALTH EMER-  
16          GENCY.—The term “COVID–19 public health emer-  
17          gency” means the outbreak and public health re-  
18          sponse pertaining to Coronavirus Disease 2019  
19          (COVID–19), associated with the emergency de-  
20          clared by the Secretary on January 31, 2020, under  
21          section 319 of the Public Health Service Act (42  
22          U.S.C. 247d), and any renewals thereof and any  
23          subsequent declarations by the Secretary related to  
24          the coronavirus.

1           (14) SECRETARY.—The term “Secretary”  
2 means the Secretary of Health and Human Services.

3           (15) SERVICE PROVIDER.—

4           (A) IN GENERAL.—The term “service pro-  
5 vider” means a person that collects, uses, or  
6 discloses emergency health data for the sole  
7 purpose of, and only to the extent that such en-  
8 tity is, conducting business activities on behalf  
9 of, for the benefit of, under instruction of, and  
10 under contractual agreement with a covered or-  
11 ganization.

12           (B) LIMITATION OF APPLICATION.—Such  
13 person shall only be considered a service pro-  
14 vider in the course of activities described in  
15 subparagraph (A).

16           (C) EXCLUSIONS.—The term “service pro-  
17 vider” excludes a person that develops or oper-  
18 ates a website, web application, mobile applica-  
19 tion, or smart device application for the purpose  
20 of tracking, screening, monitoring, contact trac-  
21 ing, or mitigation, or otherwise responding to  
22 the COVID–19 public health emergency.

23           (16) STATE.—The term “State” means each  
24 State of the United States, the District of Columbia,  
25 each commonwealth, territory, or possession of the



1 United States, and each federally recognized Indian  
2 Tribe.

3 (17) THIRD PARTY.—

4 (A) IN GENERAL.—The term “third party”  
5 means, with respect to a covered organization—

6 (i) another person to whom such cov-  
7 ered organization disclosed emergency  
8 health data; and

9 (ii) a corporate affiliate or a related  
10 party of the covered organization that does  
11 not have a direct relationship with an indi-  
12 vidual with whom the emergency health  
13 data is linked or is reasonably linkable.

14 (B) EXCLUSION.—The term “third party”  
15 excludes, with respect to a covered organiza-  
16 tion—

17 (i) a service provider of such covered  
18 organization; or

19 (ii) a public health authority.

20 (18) USE.—The term “use”, with respect to  
21 emergency health data, means the processing, em-  
22 ployment, application, utilization, examination, or  
23 analysis of such data by a covered organization that  
24 maintains such data.

1 **SEC. 3. PROTECTING THE PRIVACY AND SECURITY OF**  
2 **EMERGENCY HEALTH DATA.**

3 (a) **RIGHT TO PRIVACY.**—A covered organization that  
4 collects emergency health data shall—

5 (1) only collect, use, or disclose such data that  
6 is necessary, proportionate, and limited for a good  
7 faith public health purpose, including a service or  
8 feature to support such a purpose;

9 (2) take reasonable measures, where possible, to  
10 ensure the accuracy of emergency health data and  
11 provide an effective mechanism for an individual to  
12 correct inaccurate information;

13 (3) adopt reasonable safeguards to prevent un-  
14 lawful discrimination on the basis of emergency  
15 health data; and

16 (4) only disclose such data to a government en-  
17 tity when the disclosure—

18 (A) is to a public health authority; and

19 (B) is made in solely for good faith public  
20 health purposes and in direct response to exi-  
21 gent circumstances.

22 (b) **RIGHT TO SECURITY.**—A covered organization or  
23 service provider that collects, uses, or discloses emergency  
24 health data shall establish and implement reasonable data  
25 security policies, practices, and procedures to protect the  
26 security and confidentiality of emergency health data.

1 (c) PROHIBITED USES.—A covered organization shall  
2 not collect, use, or disclose emergency health data for any  
3 purpose not authorized under this section, including—

4 (1) commercial advertising, recommendation for  
5 e-commerce, or the training of machine-learning al-  
6 gorithms related to, or subsequently for use in, com-  
7 mercial advertising and e-commerce;

8 (2) soliciting, offering, selling, leasing, licensing,  
9 renting, advertising, marketing, or otherwise com-  
10 mercially contracting for employment, finance, cred-  
11 it, insurance, housing, or education opportunities in  
12 a manner that discriminates or otherwise makes op-  
13 portunities unavailable on the basis of emergency  
14 health data; and

15 (3) segregating, discriminating in, or otherwise  
16 making unavailable the goods, services, facilities,  
17 privileges, advantages, or accommodations of any  
18 place of public accommodation (as such term is de-  
19 fined in section 301 of the Americans With Disabil-  
20 ities Act of 1990 (42 U.S.C. 12181)), except as au-  
21 thorized by a State or Federal Government entity  
22 for a public health purpose notwithstanding sub-  
23 section (g).

24 (d) CONSENT.—

1           (1) IN GENERAL.—It shall be unlawful for a  
2 covered organization to collect, use, or disclose emer-  
3 gency health data, unless—

4           (A) the individual to whom the data per-  
5 tains has given affirmative express consent to  
6 such collection, use, or disclosure;

7           (B) such collection, use, or disclosure is  
8 necessary and for the sole purpose of—

9           (i) protecting against malicious, de-  
10 ceptive, fraudulent, or illegal activity; or

11           (ii) detecting, responding to, or pre-  
12 venting information security incidents or  
13 threats; or

14           (C) the covered organization is compelled  
15 to do so by a legal obligation.

16           (2) REVOCATION.—

17           (A) IN GENERAL.—A covered organization  
18 shall provide an effective mechanism for an in-  
19 dividual to revoke consent after it is given.

20           (B) EFFECT.—After an individual revokes  
21 consent, the covered organization shall cease  
22 collecting, using, or disclosing the individual's  
23 emergency health data as soon as practicable,  
24 but in no case later than 15 days after the re-  
25 ceipt of the individual's revocation of consent.

1           (C) DESTRUCTION.—Not later than 30  
2           days after the receipt of an individual’s revoca-  
3           tion of consent, a covered organization shall de-  
4           stroy or render not linkable that individuals  
5           emergency health data under the same proce-  
6           dures in subsection (f).

7           (e) NOTICE.—A covered organization that collects,  
8           uses, or discloses emergency health data shall provide to  
9           an individual a privacy policy that—

10           (1) is disclosed in a clear and conspicuous man-  
11           ner, in the language in which the individual typically  
12           interacts with the covered organization, prior to or  
13           at the point of the collection of emergency health  
14           data;

15           (2) describes how and for what purposes the  
16           covered organization collects, uses, and discloses  
17           emergency health data, including the categories of  
18           recipients to whom it discloses data and the purpose  
19           of disclosure for each category;

20           (3) describes the covered organization’s data re-  
21           tention and data security policies and practices for  
22           emergency health data; and

23           (4) describes how an individual may exercise  
24           the rights under this Act and how to contact the  
25           Commission to file a complaint.

1 (f) PUBLIC REPORTING.—

2 (1) IN GENERAL.—A covered organization that  
3 collects, uses, or discloses emergency health data of  
4 at least 100,000 individuals shall, at least once every  
5 90 days, issue a public report—

6 (A) stating in aggregate terms the number  
7 of individuals whose emergency health data the  
8 covered organization collected, used, or dis-  
9 closed to the extent practicable; and

10 (B) describing the categories of emergency  
11 health data collected, used, or disclosed, the  
12 purposes for which each such category of emer-  
13 gency health data was collected, used, or dis-  
14 closed, and the categories of third parties to  
15 whom it was disclosed.

16 (2) RULES OF CONSTRUCTION.—Nothing in  
17 this subsection shall be construed to require a cov-  
18 ered organization to—

19 (A) take an action that would convert data  
20 that is not emergency health data into emer-  
21 gency health data;

22 (B) collect or maintain emergency health  
23 data that the covered organization would other-  
24 wise not maintain; or

1 (C) maintain emergency health data longer  
2 than the covered organization would otherwise  
3 maintain such data.

4 (g) REQUIRED DATA DESTRUCTION.—

5 (1) IN GENERAL.—A covered organization may  
6 not use or maintain emergency health data of an in-  
7 dividual after the later of—

8 (A) the date that is 60 days after the ter-  
9 mination of the public health emergency de-  
10 clared by the Secretary on January 31, 2020,  
11 pertaining to Coronavirus Disease 2019  
12 (COVID–19) under section 319 of the Public  
13 Health Service Act (42 U.S.C. 247d) and any  
14 renewals thereof;

15 (B) the date that is 60 days after the ter-  
16 mination of a public health emergency declared  
17 by a governor or chief executive of a State per-  
18 taining to Coronavirus Disease 2019 (COVID–  
19 19) in which the individual resides; or

20 (C) 60 days after collection.

21 (2) REQUIREMENT.—For the requirements  
22 under paragraph (1), data shall be destroyed or ren-  
23 dered not linkable in such a manner that it is impos-  
24 sible or demonstrably impracticable to identify any  
25 individual from the data.

1 (3) RELATION TO CERTAIN REQUIREMENTS.—

2 The provisions of this subsection shall not supersede  
3 any requirements or authorizations under—

4 (A) the Privacy Act of 1974 (Public Law  
5 93–79);

6 (B) the HIPPA regulations; or

7 (C) Federal or State medical records reten-  
8 tion and health privacy laws or regulations, or  
9 other applicable Federal or State laws.

10 (h) EMERGENCY DATA COLLECTED, USED, OR DIS-  
11 CLOSED BEFORE ENACTMENT.—

12 (1) INITIATING A RULEMAKING.—Not later  
13 than 7 days after the date of enactment of this Act,  
14 the Commission shall initiate a public rulemaking to  
15 promulgate regulations to ensure a covered organiza-  
16 tion that has collected, used, or disclosed emergency  
17 health data before the date of enactment of this Act  
18 is in compliance with this Act, to the degree prac-  
19 ticable.

20 (2) COMPLETING A RULEMAKING.—The Com-  
21 mission shall complete the rulemaking within 45  
22 days after the date of enactment of this Act.

23 (i) NON-APPLICATION TO MANUAL CONTACT TRAC-  
24 ING AND CASE INVESTIGATION.—Nothing in this Act shall  
25 be construed to limit or prohibit a public health authority



1 from administering programs or activities to identify indi-  
2 viduals who have contracted, or may have been exposed  
3 to, COVID–19 through interviews, outreach, case inves-  
4 tigation, and other recognized investigatory measures by  
5 a public health authority or their designated agent by a  
6 public health authority or their designated agent intended  
7 to monitor and mitigate the transmission of a disease or  
8 disorder.

9 (j) RESEARCH AND DEVELOPMENT.—This section  
10 shall not be construed to prohibit—

11 (1) public health or scientific research associ-  
12 ated with the COVID–19 public health emergency  
13 by—

14 (A) a public health authority;

15 (B) a nonprofit organization, as described  
16 in section 501(c)(3) of the Internal Revenue  
17 Code of 1986; or

18 (C) an institution of higher education, as  
19 such term is defined in section 101 of the High-  
20 er Education Act of 1965 (20 U.S.C. 1001); or

21 (2) research, development, manufacture, or dis-  
22 tribution of a drug, biological product, or vaccine  
23 that relates to a disease or disorder that is associ-  
24 ated or potentially associated with a public health  
25 emergency.

1 (k) **LEGAL REQUIREMENTS.**—Notwithstanding sub-  
2 section (a)(5), nothing in this Act shall be construed to  
3 prohibit a good faith response to, or compliance with, oth-  
4 erwise valid subpoenas, court orders, or other legal proc-  
5 esses, or to prohibit storage or providing information as  
6 otherwise required by law.

7 (l) **APPLICATION TO HIPAA COVERED ENTITIES.**—

8 (1) **IN GENERAL.**—This Act does not apply to  
9 a “covered entity” or a person acting as a “business  
10 associate” under the HIPAA regulations (to the ex-  
11 tent that such entities or associates are acting in  
12 such capacity) or any health care provider.

13 (2) **GUIDANCE FOR CONSISTENCY.**—Not later  
14 than 30 days after the date of enactment of this  
15 Act, the Secretary shall promulgate guidance on the  
16 applicability of requirements, similar to those in this  
17 section to “covered entities” and persons acting as  
18 “business associates” under the HIPAA regulations.  
19 In promulgating such guidance, the Secretary shall  
20 reduce duplication of requirements and may exclude  
21 a requirement of this section if such requirement is  
22 already a requirement of the HIPAA regulations.

23 **SEC. 4. PROTECTING THE RIGHT TO VOTE.**

24 (a) **IN GENERAL.**—A government entity may not, and  
25 a covered organization may not knowingly facilitate, on

1 the basis of an individual’s emergency health data, medical  
2 condition, or participation or non-participation in a pro-  
3 gram to collect emergency health data—

4 (1) deny, restrict, or interfere with the right to  
5 vote in a Federal, State, or local election;

6 (2) attempt to deny, restrict, or interfere with  
7 the right to vote in a Federal, State, or local elec-  
8 tion; or

9 (3) retaliate against an individual for voting in  
10 a Federal, State, or local election.

11 (b) CIVIL ACTION.—In the case of any violation of  
12 subsection (a), an individual may bring a civil action to  
13 obtain appropriate relief against a government entity in  
14 a Federal district court.

15 **SEC. 5. REPORTS ON CIVIL RIGHTS IMPACTS.**

16 (a) REPORT REQUIRED.—The Secretary, in consulta-  
17 tion with the United States Commission on Civil Rights  
18 and the Commission, shall prepare and submit to Con-  
19 gress reports that examines the civil rights impact of the  
20 collection, use, and disclosure of health information in re-  
21 sponse to the COVID–19 public health emergency.

22 (b) SCOPE OF REPORT.—Each report required under  
23 subsection (a) shall, at a minimum—

24 (1) evaluate the impact of such practices on  
25 civil rights and protections for individuals based on

1 race, color, ethnicity, national origin, religion, sex,  
2 gender, gender identity, sexual orientation, age,  
3 Tribal affiliation, disability, domicile, employment  
4 status, familial status, immigration status, or vet-  
5 eran status;

6 (2) analyze the impact, risks, costs, legal con-  
7 siderations, disparate impacts, and other implica-  
8 tions to civil rights of policies to incentivize or re-  
9 quire the adoption of digital tools or apps used for  
10 contact tracing, exposure notification, or health  
11 monitoring; and

12 (3) include recommendations on preventing and  
13 addressing undue or disparate impact, segregation,  
14 discrimination, or infringements of civil rights in the  
15 collection and use of health information, including  
16 during a national health emergency.

17 (c) TIMING.—

18 (1) INITIAL REPORT.—The Secretary shall sub-  
19 mit an initial report under subsection (a) not sooner  
20 than 9 months, and not later than 12 months after  
21 the date of enactment of this Act.

22 (2) SUBSEQUENT REPORTS.—The Secretary  
23 shall submit reports annually after the initial report  
24 required under paragraph (1) until 1 year after the  
25 termination of any public health emergency per-

1 taining to Coronavirus Disease 2019 (COVID–19)  
2 under section 319 of the Public Health Service Act  
3 (42 U.S.C. 247d).

4 **SEC. 6. ENFORCEMENT.**

5 (a) FEDERAL TRADE COMMISSION.—

6 (1) UNFAIR OR DECEPTIVE ACTS OR PRAC-  
7 TICES.—A violation of this Act or a regulation pro-  
8 mulgated under this Act shall be treated as a viola-  
9 tion of a rule defining an unfair or deceptive act or  
10 practice under section 18(a)(1)(B) of the Federal  
11 Trade Commission Act (15 U.S.C. 57a(a)(1)(B)) re-  
12 garding unfair or deceptive acts or practices.

13 (2) POWERS OF COMMISSION.—The Commis-  
14 sion shall enforce this Act and the regulations pro-  
15 mulgated under this Act in the same manner, by the  
16 same means, and with the same jurisdiction, powers,  
17 and duties as though all applicable terms and provi-  
18 sions of the Federal Trade Commission Act (15  
19 U.S.C. 41 et seq.) were incorporated into and made  
20 a part of this Act. Any person who violates this Act  
21 or a regulation promulgated under this Act shall be  
22 subject to the penalties and entitled to the privileges  
23 and immunities provided in the Federal Trade Com-  
24 mission Act. Provided, however, that, notwith-  
25 standing the requirements of section 16(a) of the

1 Federal Trade Commission Act (15 U.S.C. 56(a)),  
2 the Commission shall have the exclusive authority to  
3 commence or defend, and supervise the litigation of,  
4 any action for a violation of this Act or a regulation  
5 promulgated under this Act and any appeal of such  
6 action in its own name by any of its attorneys des-  
7 ignated by it for such purpose, without first refer-  
8 ring the matter to the Attorney General.

9 (3) RULEMAKING AUTHORITY.—

10 (A) IN GENERAL.—The Commission shall  
11 have authority under section 553 of title 5,  
12 United States Code, to promulgate any regula-  
13 tions necessary to implement this Act.

14 (B) CONSULTATION.—In promulgating any  
15 regulations under this Act, the Commission  
16 shall consult with the Secretary.

17 (4) COMMON CARRIERS AND NONPROFIT ORGA-  
18 NIZATIONS.—Notwithstanding section 4, 5(a)(2), or  
19 6 of the Federal Trade Commission Act (15 U.S.C.  
20 44; 45(a)(2); 46) or any jurisdictional limitation of  
21 the Commission, the Commission shall also enforce  
22 this Act, in the same manner provided in paragraphs  
23 (1) and (2) of this paragraph, with respect to—

24 (A) common carriers subject to the Acts to  
25 regulate commerce, air carriers, and foreign air

1 carriers subject to part A of subtitle VII of title  
2 49, and persons, partnerships, or corporations  
3 insofar as they are subject to the Packers and  
4 Stockyards Act, 1921 (7 U.S.C. 181 et seq.),  
5 except as provided in section 406(b) of such Act  
6 (7 U.S.C. 227(b)); and

7 (B) organizations not organized to carry  
8 on business for their own profit or that of their  
9 members.

10 (b) ENFORCEMENT BY STATES.—

11 (1) IN GENERAL.—In any case in which the at-  
12 torney general of a State has reason to believe that  
13 an interest of the residents of the State has been or  
14 is threatened or adversely affected by the engage-  
15 ment of any person subject to this Act in a practice  
16 that violates such subsection, the attorney general of  
17 the State may, as *parens patriae*, bring a civil action  
18 on behalf of the residents of the State in an appro-  
19 priate district court of the United States to obtain  
20 appropriate relief.

21 (2) RIGHTS OF THE FEDERAL TRADE COMMIS-  
22 SION.—

23 (A) NOTICE TO FEDERAL TRADE COMMIS-  
24 SION.—

1 (i) IN GENERAL.—Except as provided  
2 in clause (iii), the attorney general of a  
3 State shall notify the Commission in writ-  
4 ing that the attorney general intends to  
5 bring a civil action under paragraph (1)  
6 before initiating the civil action against a  
7 person subject to this Act.

8 (ii) CONTENTS.—The notification re-  
9 quired by clause (i) with respect to a civil  
10 action shall include a copy of the complaint  
11 to be filed to initiate the civil action.

12 (iii) EXCEPTION.—If it is not feasible  
13 for the attorney general of a State to pro-  
14 vide the notification required by clause (i)  
15 before initiating a civil action under para-  
16 graph (1), the attorney general shall notify  
17 the Commission immediately upon insti-  
18 tuting the civil action.

19 (B) INTERVENTION BY THE FEDERAL  
20 TRADE COMMISSION.—The Commission may—

21 (i) intervene in any civil action  
22 brought by the attorney general of a State  
23 under paragraph (1); and

24 (ii) upon intervening—



1 (I) be heard on all matters arising in the civil action; and

2  
3 (II) file petitions for appeal of a decision in the civil action.

4  
5 (C) INVESTIGATORY POWERS.—Nothing in  
6 this subsection may be construed to prevent the  
7 attorney general of a State from exercising the  
8 powers conferred on the attorney general by the  
9 laws of the State to conduct investigations, to  
10 administer oaths or affirmations, or to compel  
11 the attendance of witnesses or the production of  
12 documentary or other evidence.

13 (3) ACTION BY THE FEDERAL TRADE COMMISSION.—If the Commission institutes a civil action  
14 with respect to a violation of this Act, the attorney  
15 general of a State may not, during the pendency of  
16 such action, bring a civil action under paragraph (1)  
17 of this subsection against any defendant named in  
18 the complaint of the Commission for the violation  
19 with respect to which the Commission instituted  
20 such action.

21  
22 (4) VENUE; SERVICE OF PROCESS.—

23 (A) VENUE.—Any action brought under  
24 paragraph (1) may be brought in—

1 (i) the district court of the United  
2 States that meets applicable requirements  
3 relating to venue under section 1391 of  
4 title 28, United States Code; or

5 (ii) another court of competent juris-  
6 diction.

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

10 (i) is an inhabitant; or

11 (ii) may be found.

12 (C) ACTIONS BY OTHER STATE OFFI-  
13 CIALS.—

14 (i) IN GENERAL.—In addition to civil  
15 actions brought by attorneys general under  
16 paragraph (1), any other officer of a State  
17 who is authorized by the State to do so  
18 may bring a civil action under paragraph  
19 (1), subject to the same requirements and  
20 limitations that apply under this sub-  
21 section to civil actions brought by attor-  
22 neys general.

23 (ii) SAVINGS PROVISION.—Nothing in  
24 this subsection may be construed to pro-  
25 hibit an authorized official of a State from

1           initiating or continuing any proceeding in  
2           a court of the State for a violation of any  
3           civil or criminal law of the State.

4           (c) PRIVATE RIGHT OF ACTION.—

5           (1) ENFORCEMENT BY INDIVIDUALS.—

6           (A) IN GENERAL.—Any individual alleging  
7           a violation of this Act may bring a civil action  
8           in any court of competent jurisdiction, State or  
9           Federal.

10          (B) RELIEF.—In a civil action brought  
11          under paragraph (1) in which the plaintiff pre-  
12          vails, the court may award—

13               (i) an amount not less than \$100 and  
14               not greater than \$1,000 per violation  
15               against any person who negligently violates  
16               a provision of this Act;

17               (ii) an amount not less than \$500 and  
18               not greater than \$5,000 per violation  
19               against any person who recklessly, will-  
20               fully, or intentionally violates a provision of  
21               this Act;

22               (iii) reasonable attorney's fees and  
23               litigation costs; and

1                   (iv) any other relief, including equi-  
2                   table or declaratory relief, that the court  
3                   determines appropriate.

4                   (C) INJURY IN FACT.—A violation of this  
5                   Act with respect to the emergency health data  
6                   of an individual constitutes a concrete and par-  
7                   ticularized injury in fact to that individual.

8                   (2) INVALIDITY OF PRE-DISPUTE ARBITRATION  
9                   AGREEMENTS AND PRE-DISPUTE JOINT ACTION  
10                  WAIVERS.—

11                  (A) IN GENERAL.—Notwithstanding any  
12                  other provision of law, no pre-dispute arbitra-  
13                  tion agreement or pre-dispute joint action waiv-  
14                  er shall be valid or enforceable with respect to  
15                  a dispute arising under this Act.

16                  (B) APPLICABILITY.—Any determination  
17                  as to whether or how this subsection applies to  
18                  any dispute shall be made by a court, rather  
19                  than an arbitrator, without regard to whether  
20                  such agreement purports to delegate such deter-  
21                  mination to an arbitrator.

22                  (C) DEFINITIONS.—In this subsection:

23                   (i) The term “pre-dispute arbitration  
24                   agreement” means any agreement to arbi-

1           trate a dispute that has not arisen at the  
2           time of making the agreement.

3           (ii) The term “pre-dispute joint-action  
4           waiver” means an agreement, whether or  
5           not part of a pre-dispute arbitration agree-  
6           ment, that would prohibit, or waive the  
7           right of, one of the parties to the agree-  
8           ment to participate in a joint, class, or col-  
9           lective action in a judicial, arbitral, admin-  
10          istration, or other forum, concerning a dis-  
11          pute that has not yet arisen at the time of  
12          making the agreement.

13          (iii) The term “dispute” means any  
14          claim related to an alleged violation of this  
15          Act and between an individual and a cov-  
16          ered organization.

17 **SEC. 7. NONPREEMPTION.**

18          Nothing in this Act shall preempt or supersede, or  
19          be interpreted to preempt or supersede, any Federal or  
20          State law or regulation, or limit the authority of the Com-  
21          mission or the Secretary under any other provision of law.

22 **SEC. 8. EFFECTIVE DATE.**

23          (a) IN GENERAL.—This Act shall apply beginning on  
24          the date that is 30 days after the date of enactment of  
25          this Act.

1 (b) AUTHORITY TO PROMULGATE REGULATIONS AND  
2 TAKE CERTAIN OTHER ACTIONS.—Nothing in subsection

3 (a) affects—

4 (1) the authority of any person to take an ac-  
5 tion expressly required by a provision of this Act be-  
6 fore the effective date described in such subsection;

7 or

8 (2) the authority of the Commission to promul-  
9 gate regulations to implement this Act or begin a  
10 rulemaking to promulgate such regulations.

○