

116TH CONGRESS  
2D SESSION

# S. 3749

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

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IN THE SENATE OF THE UNITED STATES

MAY 14, 2020

Mr. BLUMENTHAL (for himself and Mr. WARNER) 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:

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

1 (A) clearly and conspicuously commu-  
2 nicates the individual’s authorization of an act  
3 or practice;

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

9 (C) cannot be inferred from inaction.

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

13 (3) COMMISSION.—The term “Commission”  
14 means the Federal Trade Commission.

15 (4) COVERED ORGANIZATION.—

16 (A) IN GENERAL.—The term “covered or-  
17 ganization” means any person (including a gov-  
18 ernment entity)—

19 (i) that collects, uses, or discloses  
20 emergency health data electronically or  
21 through communication by wire or radio;  
22 or

23 (ii) that develops or operates a  
24 website, web application, mobile applica-  
25 tion, mobile operating system feature, or

1 smart device application for the purpose of  
2 tracking, screening, monitoring, contact  
3 tracing, or mitigation, or otherwise re-  
4 sponding to the COVID–19 public health  
5 emergency.

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

8 (i) a health care provider;

9 (ii) a person engaged in a de minimis  
10 collection or processing of emergency  
11 health data;

12 (iii) a service provider;

13 (iv) a person acting in their individual  
14 or household capacity; or

15 (v) a public health authority.

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

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

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

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

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

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

24                       (ii) whether or not an individual has  
25                       contracted or been tested for, or an esti-

1           mate of the likelihood that a particular in-  
2           dividual may contract, such disease or dis-  
3           order; and

4           (iii) genetic data, biological samples,  
5           and biometrics; and

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

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

21           (ii) proximity data, when such term  
22           means information that identifies or esti-  
23           mates the past or present physical prox-  
24           imity of one individual or device to an-  
25           other, including information derived from

1 Bluetooth, audio signatures, nearby wire-  
2 less networks, and near-field communica-  
3 tions;

4 (iii) demographic data;

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

9 (v) any other data collected from a  
10 personal device.

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

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

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

24 (12) PUBLIC HEALTH AUTHORITY.—The term  
25 “public health authority” means an entity that is

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

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

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

25 (15) SERVICE PROVIDER.—

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

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

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

20 (16) STATE.—The term “State” means each  
21 State of the United States, the District of Columbia,  
22 each commonwealth, territory, or possession of the  
23 United States, and each federally recognized Indian  
24 Tribe.

25 (17) THIRD PARTY.—



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

3 (i) another person to whom such cov-  
 4 ered organization disclosed emergency  
 5 health data; and

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

11 (B) EXCLUSION.—The term “third party”  
 12 excludes, with respect to a covered organiza-  
 13 tion—

14 (i) a service provider of such covered  
 15 organization; or

16 (ii) a public health authority.

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

22 **SEC. 3. PROTECTING THE PRIVACY AND SECURITY OF**  
 23 **EMERGENCY HEALTH DATA.**

24 (a) RIGHT TO PRIVACY.—A covered organization that  
 25 collects emergency health data shall—

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

5           (2) take reasonable measures, where possible, to  
6           ensure the accuracy of emergency health data and  
7           provide an effective mechanism for an individual to  
8           correct inaccurate information;

9           (3) adopt reasonable safeguards to prevent un-  
10          lawful discrimination on the basis of emergency  
11          health data; and

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

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

15                 (B) is made in solely for good faith public  
16          health purposes and in direct response to exi-  
17          gent circumstances.

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

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

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

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

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

21 (d) CONSENT.—

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

1 (A) the individual to whom the data per-  
2 tains has given affirmative express consent to  
3 such collection, use, or disclosure;

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

6 (i) protecting against malicious, de-  
7 ceptive, fraudulent, or illegal activity; or

8 (ii) detecting, responding to, or pre-  
9 venting information security incidents or  
10 threats; or

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

13 (2) REVOCATION.—

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

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

23 (C) DESTRUCTION.—Not later than 30  
24 days after the receipt of an individual's revoca-  
25 tion of consent, a covered organization shall de-

1           stroy or render not linkable that individuals  
2           emergency health data under the same proce-  
3           dures in subsection (f).

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

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

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

17          (3) describes the covered organization’s data re-  
18          tention and data security policies and practices for  
19          emergency health data; and

20          (4) describes how an individual may exercise  
21          the rights under this Act and how to contact the  
22          Commission to file a complaint.

23          (f) PUBLIC REPORTING.—

24          (1) IN GENERAL.—A covered organization that  
25          collects, uses, or discloses emergency health data of

1 at least 100,000 individuals shall, at least once every  
2 90 days, issue a public report—

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

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

13 (2) RULES OF CONSTRUCTION.—Nothing in  
14 this subsection shall be construed to require a cov-  
15 ered organization to—

16 (A) take an action that would convert data  
17 that is not emergency health data into emer-  
18 gency health data;

19 (B) collect or maintain emergency health  
20 data that the covered organization would other-  
21 wise not maintain; or

22 (C) maintain emergency health data longer  
23 than the covered organization would otherwise  
24 maintain such data.

25 (g) REQUIRED DATA DESTRUCTION.—

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

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

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

16           (C) 60 days after collection.

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

22           (3) RELATION TO CERTAIN REQUIREMENTS.—  
23 The provisions of this subsection shall not supersede  
24 any requirements or authorizations under—

1 (A) the Privacy Act of 1974 (Public Law  
2 93–79);

3 (B) the HIPPA regulations; or

4 (C) Federal or State medical records reten-  
5 tion and health privacy laws or regulations, or  
6 other applicable Federal or State laws.

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

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

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

20 (i) NON-APPLICATION TO MANUAL CONTACT TRAC-  
21 ING AND CASE INVESTIGATION.—Nothing in this Act shall  
22 be construed to limit or prohibit a public health authority  
23 from administering programs or activities to identify indi-  
24 viduals who have contracted, or may have been exposed  
25 to, COVID–19 through interviews, outreach, case inves-



1 tigation, and other recognized investigatory measures by  
2 a public health authority or their designated agent by a  
3 public health authority or their designated agent intended  
4 to monitor and mitigate the transmission of a disease or  
5 disorder.

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

8 (1) public health or scientific research associ-  
9 ated with the COVID–19 public health emergency  
10 by—

11 (A) a public health authority;

12 (B) a nonprofit organization, as described  
13 in section 501(c)(3) of the Internal Revenue  
14 Code of 1986; or

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

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

23 (k) LEGAL REQUIREMENTS.—Notwithstanding sub-  
24 section (a)(5), nothing in this Act shall be construed to  
25 prohibit a good faith response to, or compliance with, oth-

1 erwise valid subpoenas, court orders, or other legal pro-  
2 cesses, or to prohibit storage or providing information as  
3 otherwise required by law.

4 (l) APPLICATION TO HIPAA COVERED ENTITIES.—

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

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

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

21 (a) IN GENERAL.—A government entity may not, and  
22 a covered organization may not knowingly facilitate, on  
23 the basis of an individual’s emergency health data, medical  
24 condition, or participation or non-participation in a pro-  
25 gram to collect emergency health data—

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

3 (2) attempt to deny, restrict, or interfere with  
4 the right to vote in a Federal, State, or local elec-  
5 tion; or

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

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

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

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

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

21 (1) evaluate the impact of such practices on  
22 civil rights and protections for individuals based on  
23 race, color, ethnicity, national origin, religion, sex,  
24 gender, gender identity, sexual orientation, age,  
25 Tribal affiliation, disability, domicile, employment

1 status, familial status, immigration status, or vet-  
2 eran status;

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

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

14 (c) TIMING.—

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

19 (2) SUBSEQUENT REPORTS.—The Secretary  
20 shall submit reports annually after the initial report  
21 required under paragraph (1) until 1 year after the  
22 termination of any public health emergency per-  
23 taining to Coronavirus Disease 2019 (COVID–19)  
24 under section 319 of the Public Health Service Act  
25 (42 U.S.C. 247d).

1 **SEC. 6. ENFORCEMENT.**

2 (a) FEDERAL TRADE COMMISSION.—

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

10 (2) POWERS OF COMMISSION.—The Commis-  
11 sion shall enforce this Act and the regulations pro-  
12 mulgated under this Act in the same manner, by the  
13 same means, and with the same jurisdiction, powers,  
14 and duties as though all applicable terms and provi-  
15 sions of the Federal Trade Commission Act (15  
16 U.S.C. 41 et seq.) were incorporated into and made  
17 a part of this Act. Any person who violates this Act  
18 or a regulation promulgated under this Act shall be  
19 subject to the penalties and entitled to the privileges  
20 and immunities provided in the Federal Trade Com-  
21 mission Act. Provided, however, that, notwith-  
22 standing the requirements of section 16(a) of the  
23 Federal Trade Commission Act (15 U.S.C. 56(a)),  
24 the Commission shall have the exclusive authority to  
25 commence or defend, and supervise the litigation of,  
26 any action for a violation of this Act or a regulation

1 promulgated under this Act and any appeal of such  
2 action in its own name by any of its attorneys des-  
3 ignated by it for such purpose, without first refer-  
4 ring the matter to the Attorney General.

5 (3) RULEMAKING AUTHORITY.—

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

10 (B) CONSULTATION.—In promulgating any  
11 regulations under this Act, the Commission  
12 shall consult with the Secretary.

13 (4) COMMON CARRIERS AND NONPROFIT ORGA-  
14 NIZATIONS.—Notwithstanding section 4, 5(a)(2), or  
15 6 of the Federal Trade Commission Act (15 U.S.C.  
16 44; 45(a)(2); 46) or any jurisdictional limitation of  
17 the Commission, the Commission shall also enforce  
18 this Act, in the same manner provided in paragraphs  
19 (1) and (2) of this paragraph, with respect to—

20 (A) common carriers subject to the Acts to  
21 regulate commerce, air carriers, and foreign air  
22 carriers subject to part A of subtitle VII of title  
23 49, and persons, partnerships, or corporations  
24 insofar as they are subject to the Packers and  
25 Stockyards Act, 1921 (7 U.S.C. 181 et seq.),

1           except as provided in section 406(b) of such Act  
2           (7 U.S.C. 227(b)); and

3           (B) organizations not organized to carry  
4           on business for their own profit or that of their  
5           members.

6           (b) ENFORCEMENT BY STATES.—

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

17          (2) RIGHTS OF THE FEDERAL TRADE COMMIS-  
18          SION.—

19                 (A) NOTICE TO FEDERAL TRADE COMMIS-  
20                 SION.—

21                 (i) IN GENERAL.—Except as provided  
22                 in clause (iii), the attorney general of a  
23                 State shall notify the Commission in writ-  
24                 ing that the attorney general intends to  
25                 bring a civil action under paragraph (1)

1 before initiating the civil action against a  
2 person subject to this Act.

3 (ii) CONTENTS.—The notification re-  
4 quired by clause (i) with respect to a civil  
5 action shall include a copy of the complaint  
6 to be filed to initiate the civil action.

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

14 (B) INTERVENTION BY THE FEDERAL  
15 TRADE COMMISSION.—The Commission may—

16 (i) intervene in any civil action  
17 brought by the attorney general of a State  
18 under paragraph (1); and

19 (ii) upon intervening—

20 (I) be heard on all matters aris-  
21 ing in the civil action; and

22 (II) file petitions for appeal of a  
23 decision in the civil action.

24 (C) INVESTIGATORY POWERS.—Nothing in  
25 this subsection may be construed to prevent the



1 attorney general of a State from exercising the  
2 powers conferred on the attorney general by the  
3 laws of the State to conduct investigations, to  
4 administer oaths or affirmations, or to compel  
5 the attendance of witnesses or the production of  
6 documentary or other evidence.

7 (3) ACTION BY THE FEDERAL TRADE COMMIS-  
8 SION.—If the Commission institutes a civil action  
9 with respect to a violation of this Act, the attorney  
10 general of a State may not, during the pendency of  
11 such action, bring a civil action under paragraph (1)  
12 of this subsection against any defendant named in  
13 the complaint of the Commission for the violation  
14 with respect to which the Commission instituted  
15 such action.

16 (4) VENUE; SERVICE OF PROCESS.—

17 (A) VENUE.—Any action brought under  
18 paragraph (1) may be brought in—

19 (i) the district court of the United  
20 States that meets applicable requirements  
21 relating to venue under section 1391 of  
22 title 28, United States Code; or

23 (ii) another court of competent juris-  
24 diction.

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

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

17 (ii) SAVINGS PROVISION.—Nothing in  
18 this subsection may be construed to pro-  
19 hibit an authorized official of a State from  
20 initiating or continuing any proceeding in  
21 a court of the State for a violation of any  
22 civil or criminal law of the State.

23 (c) PRIVATE RIGHT OF ACTION.—

24 (1) ENFORCEMENT BY INDIVIDUALS.—

1 (A) IN GENERAL.—Any individual alleging  
2 a violation of this Act may bring a civil action  
3 in any court of competent jurisdiction, State or  
4 Federal.

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

8 (i) an amount not less than \$100 and  
9 not greater than \$1,000 per violation  
10 against any person who negligently violates  
11 a provision of this Act;

12 (ii) an amount not less than \$500 and  
13 not greater than \$5,000 per violation  
14 against any person who recklessly, will-  
15 fully, or intentionally violates a provision of  
16 this Act;

17 (iii) reasonable attorney’s fees and  
18 litigation costs; and

19 (iv) any other relief, including equi-  
20 table or declaratory relief, that the court  
21 determines appropriate.

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

1           (2) INVALIDITY OF PRE-DISPUTE ARBITRATION  
2 AGREEMENTS AND PRE-DISPUTE JOINT ACTION  
3 WAIVERS.—

4           (A) IN GENERAL.—Notwithstanding any  
5 other provision of law, no pre-dispute arbitra-  
6 tion agreement or pre-dispute joint action waiv-  
7 er shall be valid or enforceable with respect to  
8 a dispute arising under this Act.

9           (B) APPLICABILITY.—Any determination  
10 as to whether or how this subsection applies to  
11 any dispute shall be made by a court, rather  
12 than an arbitrator, without regard to whether  
13 such agreement purports to delegate such deter-  
14 mination to an arbitrator.

15           (C) DEFINITIONS.—In this subsection:

16           (i) The term “pre-dispute arbitration  
17 agreement” means any agreement to arbitrate a dispute that has not arisen at the  
18 time of making the agreement.

19           (ii) The term “pre-dispute joint-action  
20 waiver” means an agreement, whether or  
21 not part of a pre-dispute arbitration agree-  
22 ment, that would prohibit, or waive the  
23 right of, one of the parties to the agree-  
24 ment to participate in a joint, class, or col-  
25

1           lective action in a judicial, arbitral, admin-  
2           istration, or other forum, concerning a dis-  
3           pute that has not yet arisen at the time of  
4           making the agreement.

5                   (iii) The term “dispute” means any  
6           claim related to an alleged violation of this  
7           Act and between an individual and a cov-  
8           ered organization.

9   **SEC. 7. NONPREEMPTION.**

10       Nothing in this Act shall preempt or supersede, or  
11       be interpreted to preempt or supersede, any Federal or  
12       State law or regulation, or limit the authority of the Com-  
13       mission or the Secretary under any other provision of law.

14   **SEC. 8. EFFECTIVE DATE.**

15       (a) IN GENERAL.—This Act shall apply beginning on  
16       the date that is 30 days after the date of enactment of  
17       this Act.

18       (b) AUTHORITY TO PROMULGATE REGULATIONS AND  
19       TAKE CERTAIN OTHER ACTIONS.—Nothing in subsection  
20       (a) affects—

21               (1) the authority of any person to take an ac-  
22       tion expressly required by a provision of this Act be-  
23       fore the effective date described in such subsection;  
24       or

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

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