

103<sup>D</sup> CONGRESS  
1<sup>ST</sup> SESSION

# H. R. 1497

To amend title 18, United States Code, to preserve personal privacy with respect to information contained in prescription drug records.

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IN THE HOUSE OF REPRESENTATIVES

MARCH 25, 1993

Mr. STARK introduced the following bill; which was referred to the Committee on the Judiciary

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## A BILL

To amend title 18, United States Code, to preserve personal privacy with respect to information contained in prescription drug records.

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 “Prescription Drug  
5 Records Privacy Protection Act of 1993”.

6 **SEC. 2. WRONGFUL DISCLOSURE OF INFORMATION CON-**  
7 **TAINED IN PRESCRIPTION DRUG RECORDS.**

8 (a) IN GENERAL.—Chapter 121 of title 18, United  
9 States Code, is amended—

1 (1) by redesignating section 2711 as section  
2 2712; and

3 (2) by inserting after section 2710 the following  
4 new section:

5 **“§ 2711. Wrongful disclosure of information contained**  
6 **in prescription drug records**

7 “(a) IN GENERAL.—Subject to subsection (b), a re-  
8 tailer, physician, or administrator of a health benefit plan  
9 who knowingly discloses, to any person, personally identifi-  
10 able information contained in a prescription drug record  
11 of an individual shall be liable to such individual for the  
12 relief provided in subsection (c).

13 “(b) EXCEPTIONS.—

14 “(1) IN GENERAL.—A retailer, physician, or ad-  
15 ministrator of a health benefit plan may disclose  
16 personally identifiable information contained in a  
17 prescription drug record of an individual—

18 “(A) to the individual;

19 “(B) to any person, with the informed,  
20 written consent of the individual given at the  
21 time the disclosure is sought;

22 “(C) to a law enforcement agency pursuant  
23 to a warrant issued under the Federal Rules of  
24 Criminal Procedure, an equivalent State war-  
25 rant, a grand jury subpoena, or a court order;

1           “(D) to a law enforcement agency or a  
2 health care agency for the purpose of address-  
3 ing illegal drug diversion or improving prescrib-  
4 ing practices;

5           “(E) pursuant to a court order, in a civil  
6 proceeding upon a showing of compelling need  
7 for the information that cannot be accommo-  
8 dated by any other means, if—

9           “(i) the individual is given reasonable  
10 notice, by the person seeking the disclo-  
11 sure, of the court proceeding relevant to  
12 the issuance of the court order; and

13           “(ii) the individual is afforded the op-  
14 portunity to appear and contest the claim  
15 of the person seeking the disclosure; or

16           “(F) to any person involved in the admin-  
17 istration and review of health care services pro-  
18 vided to the individual.

19           “(2) ADDITIONAL SAFEGUARDS.—

20           “(A) ORDER ISSUED UNDER PARAGRAPH  
21 (1)(C) OR (1)(E).—If an order is granted pursu-  
22 ant to paragraph (1)(C) or (1)(E), the court  
23 shall impose appropriate safeguards against un-  
24 authorized disclosure.

1           “(B) COURT ORDER ISSUED UNDER PARA-  
2           GRAPH (1)(C).—Court orders authorizing disclo-  
3           sure under paragraph (1)(C) shall issue only  
4           with prior notice to the individual and only if  
5           the law enforcement agency shows that there is  
6           probable cause to believe that the records or  
7           other information sought are relevant to a le-  
8           gitimate law enforcement inquiry. In the case of  
9           a State government authority, such a court  
10          order shall not issue if prohibited by the law of  
11          such State. A court issuing an order pursuant  
12          to this section, on a motion made promptly by  
13          a retailer, physician, or administrator of a  
14          health benefit plan, may quash or modify such  
15          order if the information or records requested  
16          are unreasonably voluminous in nature or if  
17          compliance with such order otherwise would  
18          cause an unreasonable burden on such retailer,  
19          physician, or administrator of a health benefit  
20          plan.

21          “(c) CIVIL ACTION.—

22                 “(1) IN GENERAL.—Any individual aggrieved  
23                 by any act of an individual in violation of subsection  
24                 (a) may bring a civil action in a district court of the  
25                 United States.

1           “(2) DAMAGES.—The court may award—

2                   “(A) actual damages;

3                   “(B) punitive damages;

4                   “(C) reasonable attorneys’ fees and other  
5 litigation costs reasonably incurred; and

6                   “(D) such other preliminary and equitable  
7 relief as the court determines to be appropriate.

8           “(3) LIMITATION.—No action may be brought  
9 under paragraph (1) unless such action is begun  
10 within 2 years from the date of the act complained  
11 of or the date of discovery of such act.

12          “(d) DEFINITIONS.—For purposes of this section, the  
13 following definitions apply:

14           “(1) HEALTH BENEFIT PLAN.—The term  
15 ‘health benefit plan’ means an employee welfare ben-  
16 efit plan providing medical care to participants or  
17 beneficiaries directly or through insurance, reim-  
18 bursement, or any other hospital or medical expense  
19 incurred policy or certificate, hospital or medical  
20 service plan contract, or health maintenance sub-  
21 scriber contract.

22           “(2) PERSONALLY IDENTIFIABLE INFORMA-  
23 TION.—The term ‘personally identifiable informa-  
24 tion’ means information relating to the diagnosis or  
25 treatment of any illness, disability, injury, or condi-

1       tion of an individual which discloses the identity of  
2       such individual.

3           “(3) RETAILER.—The term ‘retailer’ means an  
4       individual licensed by a State as a pharmacist to  
5       compound, dispense, or sell any drug, chemical, poi-  
6       son, or pharmaceutical preparation upon the pre-  
7       scription of a physician, and or one who is engaged  
8       in the business, in or affecting interstate or foreign  
9       commerce, of providing pharmaceutical products and  
10      services. Such term includes an individual providing  
11      such services at a hospital.

12          “(4) PHYSICIAN.—The term ‘physician’ means  
13      an individual licensed by a State as a doctor of med-  
14      icine, osteopathy, podiatry, dental surgery, or medi-  
15      cal dentistry to practice medicine and surgery or  
16      dentistry, and who is engaged in the business, in or  
17      affecting interstate or foreign commerce, of provid-  
18      ing health care services.

19          “(5) PRESCRIPTION DRUG.—The term ‘pre-  
20      scription drug’ means a drug (as defined in section  
21      201(g)(1) of the Federal Food, Drug, and Cosmetic  
22      Act) (21 U.S.C. 321(g)(1)) which is subject to regu-  
23      lation under section 503(b) of such Act.”.

1 (b) CLERICAL AMENDMENT.—The table of sections  
2 at the beginning of chapter 121 of title 18, United States  
3 Code, is amended—

4 (1) in the item relating to section 2711, by  
5 striking “2711” and inserting “2712”; and

6 (2) by inserting after the item relating to 2710  
7 the following new item:

“2711. Wrongful disclosure of information contained in prescription drug  
records.”.

8 (c) EFFECTIVE DATE.—The amendments made by  
9 this Act shall take effect on the 180th day following the  
10 date of the enactment of this Act.

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