

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

# S. 1735

To establish a Privacy Protection Commission, and for other purposes.

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## IN THE SENATE OF THE UNITED STATES

NOVEMBER 20 (legislative day, NOVEMBER 2), 1993

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

NOVEMBER 24 (legislative day, NOVEMBER 23), 1993

Committee discharged; ordered referred to the Committee on Governmental Affairs

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## A BILL

To establish a Privacy Protection Commission, 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 “Privacy Protection Act  
5 of 1993”.

6 **SEC. 2. FINDINGS AND PURPOSE.**

7 The Congress finds that—

1           (1) we live in an age of ever-increasing depend-  
2           ence on electronic data storage, communications,  
3           and usage;

4           (2) vast quantities of data are stored electroni-  
5           cally and may be instantly transferred electronically  
6           from one party to another for business or for other  
7           purposes;

8           (3) the nature of such data allows for the in-  
9           creasing possibility that an individual's privacy  
10          rights may be violated;

11          (4) the technology is growing so rapidly that  
12          broader societal consequences may not have been re-  
13          viewed or studied nor is it clear how the use of such  
14          technology will affect existing data systems and their  
15          use; and

16          (5) a United States Privacy Protection Com-  
17          mission should be established to—

18                 (A) ensure that privacy rights of United  
19                 States citizens in regard to electronic data and  
20                 fair information practices and principles are not  
21                 abused or violated;

22                 (B) provide advisory guidance to the public  
23                 and private sector on matters related to elec-  
24                 tronic data storage, communication, and usage;

1 (C) provide the public with a central agen-  
2 cy for information and guidance on privacy pro-  
3 tections and fair information practices and  
4 principles;

5 (D) oversee Federal agencies' implementa-  
6 tion of section 552a of title 5, United States  
7 Code; and

8 (E) promote and encourage the adoption of  
9 fair information practices and principles in the  
10 public and private sector, which should in-  
11 clude—

12 (i) the principle of openness, which  
13 provides that the existence of record-  
14 keeping systems and databanks containing  
15 information about individuals be publicly  
16 known, along with a description of main  
17 purpose and uses of the data;

18 (ii) the principle of individual partici-  
19 pation, which provides that each individual  
20 should have the right to see any data  
21 about him or herself and to correct any  
22 data that is not timely, accurate, or com-  
23 plete;

24 (iii) the principle of data quality,  
25 which provides that personal data should

1 be relevant to the purposes for which they  
2 are to be used, and data should be timely,  
3 accurate, and complete;

4 (iv) the principle of collection limita-  
5 tion, which provides that there should be  
6 limits to the collection of personal data,  
7 that data should be collected by lawful and  
8 fair means, and that data should be col-  
9 lected, where appropriate, with the knowl-  
10 edge and consent of the subject;

11 (v) the principle of use limitation,  
12 which provides that there are limits to the  
13 use of personal data and that data should  
14 be used only for purposes specified at the  
15 time of collection;

16 (vi) the principle of disclosure limita-  
17 tion, which provides that personal data  
18 should not be communicated externally  
19 without the consent of the data subject or  
20 other legal authority;

21 (vii) the principle of security, which  
22 provides that personal data should be pro-  
23 tected by reasonable security safeguards  
24 against such risks as loss, unauthorized ac-

1           cess, destruction, use, modification or dis-  
2           closure; and

3                   (viii) the principle of accountability,  
4           which provides that recordkeepers should  
5           be accountable for complying with fair in-  
6           formation practices and principles.

7   **SEC. 3. ESTABLISHMENT OF A PRIVACY PROTECTION COM-**  
8                   **MISSION.**

9           There is established the Privacy Protection Commis-  
10   sion (hereinafter referred to as the “Commission”).

11   **SEC. 4. PRIVACY PROTECTION COMMISSION.**

12           (a) MEMBERSHIP.—(1) The Commission shall be  
13   composed of 5 members who shall be appointed by the  
14   President, by and with the consent of the Senate, from  
15   among members of the public at large who are well quali-  
16   fied for service on the Commission by their knowledge and  
17   expertise in—

18                   (A) civil rights and liberties;

19                   (B) law;

20                   (C) social sciences;

21                   (D) computer technology;

22                   (E) business; or

23                   (F) State and local government.

24           (2) No more than 3 members of the Commission shall  
25   be members of the same political party.

1           (3) One of the members shall be designated Chair-  
2 person of the Commission by the President.

3           (b) MEETINGS.—The Chairperson shall preside at all  
4 meetings of the Commission, but the Chairperson may  
5 designate another member as an acting Chairperson who  
6 may preside in the absence of the Chairperson. A quorum  
7 for the transaction of business shall consist of at least 3  
8 members present, except that 1 member may conduct  
9 hearings and take testimony if authorized by the Commis-  
10 sion. Each member of the Commission, including the  
11 Chairperson, shall have equal responsibility and authority  
12 in all decisions and actions of the Commission, shall have  
13 full access to all information relating to performance of  
14 the duties or responsibilities of the Commission, and shall  
15 have 1 vote. Action of the Commission shall be determined  
16 by a majority vote of the members. The Chairperson or  
17 acting Chairperson shall see to the faithful execution of  
18 the policies and decisions of the Commission and shall re-  
19 port thereon to the Commission from time to time or as  
20 the Commission may direct.

21           (c) TERMS.—(1) A member of the Commission shall  
22 serve for a term of 7 years, except of members first ap-  
23 pointed to the Commission—

1 (A) the member designated as Chairperson by  
2 the President shall be appointed for a term of 7  
3 years;

4 (B) 2 members shall be appointed for a term of  
5 5 years;

6 (C) 2 members shall be appointed for a term of  
7 3 years; and

8 (D) all such terms shall begin on—

9 (i) January 1 next following the date of  
10 the enactment of this Act; or

11 (ii) such date as designated by the Presi-  
12 dent.

13 (2) A member may continue to serve until a successor  
14 is confirmed.

15 (3) Members shall be eligible for reappointment for  
16 a single additional term.

17 (d) VACANCIES.—(1) Vacancies in the membership of  
18 the Commission shall be filled in the same manner in  
19 which the original appointment was made.

20 (2) If there are 2 or more Commission members in  
21 office, vacancies in the membership of the Commission  
22 shall not impair the power of the Commission to execute  
23 functions and powers of the Commission.

24 (e) COMPENSATION AND RESTRICTION ON OTHER  
25 EMPLOYMENT.—(1) The members of the Commission may

1 not engage in any other employment during their tenure  
2 as members of the Commission.

3 (2) Section 5315 of title 5, United States Code, is  
4 amended by adding at the end thereof the following new  
5 item:

6 “Members of Privacy Protection Commission  
7 (5).”.

8 (f) REQUESTS AND RECOMMENDATIONS.—(1) When-  
9 ever the Commission submits any budget estimate or re-  
10 quest to the President or the Office of Management and  
11 Budget, it shall concurrently transmit a copy of that re-  
12 quest to Congress.

13 (2) Whenever the Commission submits any legislative  
14 recommendations, or testimony, or comments on legisla-  
15 tion to the President or Office of Management and Budg-  
16 et, it shall concurrently transmit a copy thereof to the  
17 Congress. No officer or agency of the United States shall  
18 have any authority to require the Commission to submit  
19 its legislative recommendations, or testimony, or com-  
20 ments on legislation, to any officer or agency of the United  
21 States for approval, comments, or review, prior to the sub-  
22 mission of such recommendations, testimony, or comments  
23 to the Congress.

24 (g) SEAL.—The Commission shall have an official  
25 seal which shall be judicially noted.

1 **SEC. 5. PERSONNEL OF THE COMMISSION.**

2 (a) EXECUTIVE DIRECTOR AND GENERAL COUN-  
3 SEL.—The Commission shall appoint an Executive Direc-  
4 tor and a General Counsel who shall perform such duties  
5 as the Commission may determine. Such appointment may  
6 be made without regard to the provisions of title 5, United  
7 States Code. The Executive Director and the General  
8 Counsel shall be compensated at a rate not in excess of  
9 the rate payable for a position under level V of the Execu-  
10 tive Schedule under section 5316 of title 5, United States  
11 Code.

12 (b) LIMITATION ON EMPLOYEES.—The Commission  
13 is authorized to appoint and fix the compensation of not  
14 more than 50 officers and employees (or the full-time  
15 equivalent thereof), and to prescribe their functions and  
16 duties.

17 (c) CONSULTANTS.—The Commission may obtain the  
18 services of experts and consultants in accordance with the  
19 provisions of section 3109 of title 5, United States Code.

20 (d) DETAIL OF GOVERNMENT EMPLOYEES.—Any  
21 Federal Government employee may be detailed to the  
22 Commission without reimbursement, and such detail shall  
23 be without interruption or loss of civil service status or  
24 privilege.

25 **SEC. 6. FUNCTIONS OF THE COMMISSION.**

26 (a) IN GENERAL.—The Commission shall—

1           (1) provide leadership and coordination to the  
2 efforts of all Federal departments and agencies to  
3 enforce all Federal statutes, Executive orders, regu-  
4 lations and policies which involve privacy or data  
5 protection;

6           (2) maximize effort, promote efficiency, and  
7 eliminate conflict, competition, duplication, and in-  
8 consistency among the operations, functions, and ju-  
9 risdictions of Federal departments and agencies re-  
10 sponsible for privacy or data protection, data protec-  
11 tion rights and standards, and fair information prac-  
12 tices and principles;

13           (3) develop model standards, guidelines, regula-  
14 tions, policies, and routine uses for and by Federal,  
15 State, and local agencies in implementing the provi-  
16 sions of section 552a of title 5, United States Code;

17           (4) publish on a regular basis a guide to sec-  
18 tions 552 and 552a of title 5, United States Code,  
19 and other laws relating to data protection, for use  
20 by record subjects;

21           (5) publish a compilation of agency system of  
22 records notices, including an index and other finding  
23 aids;

24           (6) no later than December 1, 1996, make rec-  
25 ommendations to Congress to amend section 552a of

1 title 5, United States Code, and for improving the  
2 coordination between such section and section 552 of  
3 such title;

4 (7) provide active leadership, guidance, edu-  
5 cation, and appropriate assistance to private sector  
6 businesses, and organizations, groups, institutions,  
7 and individuals regarding privacy, data protection  
8 rights and standards, and fair information practices  
9 and principles;

10 (8) develop model privacy, data protection, and  
11 fair information practices, principles, standards,  
12 guidelines, policies, and routine uses for use by the  
13 private sector; and

14 (9) upon written request, provide appropriate  
15 assistance to the private sector in implementing pri-  
16 vacy, data protection, and fair information practices,  
17 principles, standards, guidelines, policies, or routine  
18 uses of privacy and data protection, and fair infor-  
19 mation.

20 (b) DISCRETIONARY FUNCTIONS.—The Commission  
21 may—

22 (1) issue advisory opinions relating to section  
23 552a of title 5, United States Code, or privacy and  
24 data protection practices, principles, standards,  
25 guidelines, policies, or routine uses of data at the re-

1       quest of a Federal agency, a data integrity Commis-  
2       sion of an agency or business, a court, the Congress,  
3       a business or any person;

4           (2) investigate compliance with section 552a of  
5       title 5, United States Code, and report on any viola-  
6       tion of any provision thereof or any regulation pro-  
7       mulgated under such section to an agency, the  
8       President, the Attorney General, and the Congress;

9           (3) file comments with the Office of Manage-  
10       ment and Budget and with any agency on any pro-  
11       posal to—

12           (A) amend section 552a of title 5, United  
13       States Code, or any regulation promulgated  
14       under such section;

15           (B) create or modify a system of records;

16       or

17           (C) establish or alter routine uses of such  
18       a system;

19       (4) request an agency to stay—

20           (A) the establishment or revision of a sys-  
21       tem of records;

22           (B) a routine use;

23           (C) an exemption; or

1 (D) any other regulation promulgated  
2 under section 552a of title 5, United States  
3 Code;

4 (5) review Federal, State, and local laws, Exec-  
5 utive orders, regulations, directives, and judicial de-  
6 cisions and report on the extent to which they are  
7 consistent with privacy and data protection rights,  
8 and fair information practices and principles;

9 (6) at the request of a Federal, State, or local  
10 government agency, a private business, or any per-  
11 son, provide assistance on matters relating to pri-  
12 vacy or data protection;

13 (7) comment on the implications for privacy or  
14 data protection of proposed Federal, State, or local  
15 statutes, regulations, or procedures;

16 (8) propose legislation on privacy or data pro-  
17 tection;

18 (9) accept and investigate complaints about vio-  
19 lation of privacy or data protection rights, and fair  
20 information practices and principles;

21 (10) participate in any formal or informal Fed-  
22 eral administrative proceeding or process where, in  
23 the judgment of the Commission, the action being  
24 considered would have a material effect on privacy  
25 or data protection, either as a result of direct Gov-

1       ernment action or as the result of direct Government  
2       regulation of others;

3           (11) petition a Federal agency to take action on  
4       a matter affecting privacy or data protection;

5           (12) conduct, assist, or support research, stud-  
6       ies, and investigations on the collection, mainte-  
7       nance, use or dissemination of personal information;  
8       the implications for privacy or data protection of  
9       computer, communications, and other technologies,  
10      and any other matter relating to privacy or data  
11      protection;

12          (13) assist in the development or implementa-  
13      tion of policies designed to provide for the protection  
14      of personal information maintained by private sector  
15      recordkeepers;

16          (14) assist United States companies doing busi-  
17      ness abroad to respond to foreign privacy or data  
18      protection laws and agencies;

19          (15) assist in the coordination of the United  
20      States privacy and data protection policies with the  
21      privacy and data protection policies of foreign coun-  
22      tries; and

23          (16) cooperate and consult with privacy or data  
24      protection commissions, boards, or agencies of for-  
25      eign governments.

1 **SEC. 7. CONFIDENTIALITY OF INFORMATION.**

2 (a) IN GENERAL.—Each department, agency, and in-  
3 strumentality of the executive branch of the Government,  
4 including each independent agency, shall furnish to the  
5 Commission upon request made by the Chairperson, such  
6 data, reports, and other information as the Commission  
7 determines necessary to carry out its functions under this  
8 Act.

9 (b) CONFIDENTIALITY.—In carrying out its functions  
10 and exercising its powers under this Act, the Commission  
11 may accept from any Federal agency or other person, any  
12 identifiable personal data if such data is necessary to carry  
13 out such powers and functions. In any case in which the  
14 Commission accepts any such information, it shall provide  
15 all appropriate safeguards to ensure that the confidential-  
16 ity of such information is maintained and that under com-  
17 pletion of the specific purpose for which such information  
18 is required, the information is destroyed or returned to  
19 the agency or person from which it was obtained.

20 **SEC. 8. POWERS OF THE COMMISSION.**

21 (a) IN GENERAL.—The Commission may, in carrying  
22 out its functions under this Act—

- 23 (1) conduct inspections;  
24 (2) sit and act at such times and places;  
25 (3) hold hearings;  
26 (4) take testimony;

1           (5) require by subpoena the attendance of such  
2 witnesses and the production of books, records, pa-  
3 pers, correspondence, documents, film, and elec-  
4 tronic information;

5           (6) administer such oaths; and

6           (7) make appropriate and necessary expendi-  
7 tures.

8           (b) SUBPOENAS.—(1) Subpoenas shall be issued only  
9 upon an affirmative vote of a majority of all members of  
10 the Commission. Subpoenas shall be issued under the sig-  
11 nature of the Chairperson or any member of the Commis-  
12 sion designated by the Chairperson. Any member of the  
13 Commission may administer oaths or affirmations to wit-  
14 nesses appearing before the Commission.

15           (2) In the case of a disobedience to a subpoena issued  
16 under this Act, the Commission may invoke the aid of any  
17 district court of the United States in requiring compliance  
18 with such subpoena. Any district court of the United  
19 States within the jurisdiction where such person is found  
20 or transacts business may, in the case of contumacy or  
21 refusal to obey a subpoena issued by the Commission,  
22 issue an order requiring such person to appear and testify,  
23 to produce such books, records, papers, correspondence,  
24 documents, films, and electronic information any failure

1 to obey the order of the court shall be punished by the  
2 court as a contempt thereof.

3 (c) APPEARANCES.—Appearances by the Commission  
4 in judicial and administrative proceedings shall be in its  
5 own name.

6 (d) DELEGATION.—The Commission may delegate  
7 any of its functions to such officers and employees of the  
8 Commission as the Commission may designate and may  
9 authorize such successive redelegations of such functions  
10 as it may determine desirable.

11 (e) ADMINISTRATIVE POWERS.—In order to carry out  
12 provisions of this Act, the Commission may—

13 (1) enter into contracts or other arrangements  
14 with any State or local government, any agency or  
15 department of the United States, or with any per-  
16 son, firm, association, or corporation; and

17 (2) establish advisory committees in accordance  
18 with the Federal Advisory Committee Act (5 U.S.C.  
19 App.).

20 **SEC. 9. REPORTS AND INFORMATION.**

21 In an annual report to the President and Congress,  
22 the Commission shall report on its activities in carrying  
23 out the provisions of this Act. The Commission shall un-  
24 dertake whatever efforts it may determine to be necessary  
25 or appropriate to inform and educate the public of data

1 protection, privacy, and fair information rights and re-  
2 sponsibilities.

3 **SEC. 10. AUTHORIZATION OF APPROPRIATIONS.**

4       There are authorized to be appropriated such sums  
5 as may be necessary to carry out this Act.

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