

104TH CONGRESS
1ST SESSION

H. R. 184

To amend the privacy provisions of title 5, United States Code, to improve the protection of individual information and to reestablish a permanent Privacy Protection Commission as an independent entity in the Federal Government, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

JANUARY 4, 1995

Mrs. COLLINS of Illinois introduced the following bill; which was referred to the Committee on Government Reform and Oversight

A BILL

To amend the privacy provisions of title 5, United States Code, to improve the protection of individual information and to reestablish a permanent Privacy Protection Commission as an independent entity in the Federal Government, 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 referred to as the “Individual Pri-
5 vacy Protection Act of 1995”.

6 **SEC. 2. FINDINGS AND PURPOSES.**

7 The Congress hereby finds that—

1 (1) recent advances in information and tele-
2 communications technologies have rapidly expanded
3 the collection of personal data on individuals, and
4 improved the speed and access with which such data
5 can be retrieved and disseminated;

6 (2) the increased use of these technologies and
7 their related systems, channels, and services has se-
8 rious implications for injury to individual privacy
9 that can occur from any collection, maintenance,
10 use, or dissemination of personal information;

11 (3) neither existing privacy legislation nor the
12 Communications Act of 1934 provides for the peri-
13 odic assessment and evaluation of personal privacy
14 implications regarding data information maintained,
15 transmitted, or accessed via computer cable, broad-
16 cast, common carrier, or related new technologies;

17 (4) the right to privacy is a personal and fun-
18 damental right protected by the Constitution of the
19 United States; and

20 (5) in order to determine the extent to which
21 the privacy of individuals identified in information
22 systems maintained by or accessed via cable, broad-
23 cast, common carrier, and related new technologies
24 is protected, it is necessary and proper for the Con-

1 gress to require the collection and evaluation of data
2 relevant to this purpose.

3 **SEC. 3. DEFINITION OF SYSTEM OF RECORDS.**

4 Section 552a(a)(5) of title 5, United States Code, is
5 amended to read as follows:

6 “(5) the term ‘system of records’ means a
7 group of any records under the control of any agen-
8 cy in which individual records are—

9 “(A)(i) systematically filed, stored, or oth-
10 erwise maintained according to an established
11 retrieval scheme or indexing structure; and

12 “(ii) in practice, accessed by use of, or by
13 reference to, such retrieval scheme or indexing
14 structure for the principal purpose of retrieving
15 the record (or any portion thereof) on the basis
16 of the identity of, or so as to identify, an indi-
17 vidual; or

18 “(B) otherwise readily accessible because—

19 “(i) the agency is able to access the
20 record without an unreasonable expendi-
21 ture of time, money, effort, or other re-
22 sources; or

23 “(ii) the individual to whom a record
24 pertains is able to provide sufficiently spe-
25 cific locating information so as to render

1 the record accessible without such an un-
2 reasonable expenditure;”.

3 **SEC. 4. DEFINITION OF ROUTINE USE.**

4 Section 552a(a)(7) of title 5, United States Code, is
5 amended to read as follows:

6 “(7) the term ‘routine use’ means the use or
7 disclosure of an individually identifiable record for a
8 purpose which is—

9 “(A) compatible with the purpose for
10 which the information in the record was col-
11 lected or obtained; and

12 “(B) consistent with the conditions or rea-
13 sonable expectations of the use and disclosure
14 under which the information in the record was
15 provided, collected, or obtained.”.

16 **SEC. 5. PENALTIES FOR VIOLATION.**

17 Section 552a(g)(4) of title 5, United States Code, is
18 amended—

19 (1) by striking out “\$1,000; and” in subpara-
20 graph (A) and inserting in lieu thereof “\$2,000;”;

21 (2) by redesignating subparagraph (B) as sub-
22 paragraph (C); and

23 (3) by inserting after subparagraph (A), the fol-
24 lowing new subparagraph:

1 “(B) general damages sustained by the in-
2 dividual as a result of the refusal or failure, but
3 in no case shall a person entitled to recovery re-
4 ceive less than the sum of \$2,000, nor more
5 than the sum of \$20,000 as general damages;
6 and”.

7 **SEC. 6. ESTABLISHMENT OF THE INDIVIDUAL PRIVACY**
8 **PROTECTION BOARD.**

9 (a) ESTABLISHMENT; MEMBERSHIP; BUDGETARY
10 AND LEGISLATIVE RECOMMENDATIONS.—(1) There is es-
11 tablished an Individual Privacy Protection Board (herein-
12 after referred to as the “Board”) which shall be composed
13 of five members appointed by the President, by and with
14 the advice and consent of the Senate. Members of the
15 Board shall be chosen on the basis of their experience,
16 integrity, impartiality, and good judgment from among in-
17 dividuals who, at the time of their appointment, are not
18 elected or appointed officers or employees in the executive,
19 legislative, or judicial branch of the Government.

20 (2) Each member of the Board shall hold office for
21 a term of four years, except that a member may continue
22 to serve until a successor has taken office. Any vacancy
23 in the membership of the Board, as long as there are four
24 members in office, shall not impair the power of the Board
25 but shall be filled in the same manner in which the original

1 appointment was made. No member shall be eligible to
2 serve for more than two complete terms of office on the
3 Board.

4 (3) The members of the Board shall elect a Chairman
5 from among themselves. A quorum of the Board shall con-
6 sist of a majority of the members, except that the Board
7 may establish a lower number as a quorum for the purpose
8 of taking testimony. The Board is authorized to establish
9 such committees and delegate such authority to them as
10 may be necessary to carry out its functions. Each member
11 of the Board, including the Chairman, shall have equal
12 responsibility and authority in all decisions and actions of
13 the Board, shall have full access to all information nec-
14 essary to the performance of their functions, and shall
15 have one vote. Action of the Board shall be determined
16 by a majority vote of the members present. The Chairman
17 (or a member designated by the Chairman to be acting
18 Chairman) shall be the official spokesman of the Board
19 in its relations with the Congress, Government agencies,
20 other persons, and the public, and, on behalf of the Board,
21 shall see to the faithful execution of the administrative
22 policies and decisions of the Board, and shall report there-
23 on to the Board from time to time or as the Board may
24 direct.

1 (4)(A) Whenever the Board submits any budget esti-
2 mate or request to the President or the Office of Manage-
3 ment and Budget, it shall concurrently transmit a copy
4 of that request to the Congress.

5 (B) Whenever the Board submits any legislative rec-
6 ommendations, or testimony, or comments on legislation
7 to the President or Office of Management and Budget,
8 it shall concurrently transmit a copy thereof to the Con-
9 gress. No officer or agency of the United States shall have
10 any authority to require the Board to submit its legislative
11 recommendations, or testimony, or comments on legisla-
12 tion, to any officer or agency of the United States for ap-
13 proval, comments, or review, prior to the submission of
14 such recommendations, testimony, or comments to the
15 Congress.

16 (b) DUTIES OF BOARD.—The Board shall—

17 (1) make a study of the data banks, automated
18 data processing programs, information systems, and
19 other telecommunications and data processing tech-
20 nologies and services of governmental, regional, and
21 private organizations, in order to determine the
22 standards and procedures in force for the protection
23 of personal information;

24 (2) recommend to the President and the Con-
25 gress the extent, if any, to which the requirements

1 and principles of section 552a of title 5, United
2 States Code, should be applied to the information
3 practices of those organizations by legislation, ad-
4 ministrative action, or voluntary adoption of such re-
5 quirements and principles, and report on such other
6 legislative recommendations as it may determine to
7 be necessary to protect the privacy of individuals
8 while meeting the legitimate needs of government
9 and society for information;

10 (3) develop guidelines and model regulations for
11 the use of Federal agencies in implementing the pro-
12 visions of section 552a of title 5, United States
13 Code;

14 (4) provide continuing assistance to Federal
15 agencies in implementing section 552a of title 5,
16 United States Code;

17 (5) publish on a regular basis a guide to the
18 use of section 552a of title 5, United States Code,
19 and a compilation of agency system of records no-
20 tices, together with an index (or other finding aids);

21 (6) investigate compliance with section 552a of
22 title 5, United States Code, and report on any viola-
23 tion of any provision thereof (or of any regulation
24 promulgated under such section) to the President,
25 the Attorney General, and the Congress;

1 (7) file comments on any proposal (A) to amend
2 section 552a of title 5, United States Code, or any
3 regulation promulgated under such section, (B) to
4 create or modify a system of records, or (C) to es-
5 tablish or alter routine uses of such a system;

6 (8) review Federal law, Executive orders, regu-
7 lations, directives, and judicial decisions and report
8 on the extent to which they are consistent with the
9 rights of privacy, due process of law, and other
10 guarantees in the Constitution; and

11 (9) comment on the implications for data pro-
12 tection of proposed Federal, State, or local statutes,
13 regulations, or procedures.

14 (c) AUTHORITY TO CONDUCT RESEARCH.—(1) In
15 the course of conducting the study required under sub-
16 section (b)(1) of this section, and in its reports thereon,
17 the Board may research, examine, and analyze—

18 (A) interstate transfer of information about in-
19 dividuals that is undertaken through manual files or
20 by computer or other electronic or telecommuni-
21 cations means;

22 (B) data banks and information programs and
23 systems the operation of which significantly or sub-
24 stantially affect the enjoyment of the privacy and
25 other personal and property rights of individuals;

1 (C) the use of social security numbers, license
2 plate numbers, universal identifiers, and other sym-
3 bols to identify individuals in data banks and to gain
4 access to, integrate, or centralize information sys-
5 tems and files; and

6 (D) the matching and analysis of statistical
7 data, such as Federal census data, with other
8 sources of personal data, such as automobile reg-
9 istries and telephone directories, in order to recon-
10 struct individual responses to statistical question-
11 naires for commercial or other purposes, in a way
12 which results in a violation of the implied or explic-
13 itly recognized confidentiality of such information.

14 (2)(A) The Board may include in its examination per-
15 sonal information activities in the following areas: medical;
16 insurance; education; employment and personnel; credit,
17 banking and financial institutions; credit bureaus; the
18 commercial reporting industry; cable television and other
19 telecommunications media; travel, hotel, and entertain-
20 ment reservations; and electronic check processing.

21 (B) The Board shall include in its examination a
22 study of—

23 (i) whether a person engaged in interstate com-
24 merce who maintains a mailing list should be re-

1 quired to remove an individual's name and address
2 from such list upon request of that individual;

3 (ii) whether the Internal Revenue Service
4 should be prohibited from transferring individually
5 identifiable data to other agencies and to agen-
6 cies of State governments;

7 (iii) whether the Federal Government should be
8 liable for general damages incurred by an individual
9 as the result of a willful or intentional violation of
10 the provisions of section 552a(g)(1) (C) or (D) of
11 title 5, United States Code; and

12 (iv) whether and how the standards for security
13 and confidentiality of records required under section
14 552a(e)(10) of such title should be applied when a
15 record is disclosed to a person other than an agency.

16 (C) The Board may study such other personal infor-
17 mation activities necessary to carry out the congressional
18 policy embodied in this Act, except that the Board
19 shall not investigate information systems maintained by
20 religious organizations.

21 (3) In conducting such study, the Board shall—

22 (A) determine the laws, Executive orders, regu-
23 lations, directives, and judicial decisions that govern
24 the activities under study and the extent to which
25 they are consistent with the rights of privacy, due

1 process of law, and other guarantees in the Con-
2 stitution;

3 (B) determine to what extent governmental and
4 private information systems affect Federal-State re-
5 lations or the principle of separation of powers;

6 (C) examine the standards and criteria govern-
7 ing programs, policies, and practices relating to the
8 collection, soliciting, processing, use, access, integra-
9 tion, dissemination, and transmission of personal in-
10 formation; and

11 (D) to the maximum extent practicable, collect
12 and utilize findings, reports, studies, hearing tran-
13 scripts, and recommendations of governmental, legis-
14 lative and private bodies, institutions, organizations,
15 and individuals which pertain to the problems under
16 study by the Board.

17 (d) ADDITIONAL AUTHORITIES.—In addition to its
18 other functions the Board may—

19 (1) request assistance of the heads of appro-
20 priate departments, agencies, and instrumentalities
21 of the Federal Government, of State and local gov-
22 ernments, and of other persons in carrying out its
23 functions under this Act;

1 (2) upon request, assist Federal agencies in
2 complying with the requirements of section 552a of
3 title 5, United States Code;

4 (3) determine what specific categories of infor-
5 mation, the collection of which would violate an indi-
6 vidual's right of privacy, should be prohibited by
7 statute from collection by Federal agencies; and

8 (4) upon request, prepare model legislation for
9 use by State and local governments in establishing
10 procedures for handling, maintaining, and dissemi-
11 nating personal information at the State and local
12 level and provide such technical assistance to State
13 and local governments as they may require in the
14 preparation and implementation of such legislation.

15 (e) INVESTIGATIONS AND HEARINGS.—(1) The
16 Board may, in carrying out its functions under this sec-
17 tion, conduct such inspections, sit and act at such times
18 and places, hold such hearings, take such testimony, re-
19 quire by subpoena the attendance of such witnesses and
20 the production of such books, records, papers, correspond-
21 ence, and documents, administer such oaths, have such
22 printing and binding done, and make such expenditures
23 as the Board deems advisable. A subpoena shall be issued
24 only upon an affirmative vote of a majority of all members
25 of the Board. Subpoenas shall be issued under the signa-

1 ture of the Chairman or any member of the Board des-
2 igned by the Chairman and shall be served by any per-
3 son designated by the Chairman or any such member. Any
4 member of the Board may administer oaths or affirma-
5 tions to witnesses appearing before the Board.

6 (2)(A) Each department, agency, and instrumentality
7 of the executive branch of the Government is authorized
8 to furnish to the Board, upon request made by the Chair-
9 man, such information, data, reports and such other as-
10 sistance as the Board deems necessary to carry out its
11 functions under this section. Whenever the head of any
12 such department, agency, or instrumentality submits a re-
13 port pursuant to section 552a(o) of title 5, United States
14 Code, a copy of such report shall be transmitted to the
15 Board.

16 (B) In carrying out its functions and exercising its
17 powers under this section, the Board may accept from any
18 such department, agency, independent instrumentality, or
19 other person any individually identifiable data if such data
20 is necessary to carry out such powers and functions. In
21 any case in which the Board accepts any such information,
22 it shall assure that the information is used only for the
23 purpose for which it is provided, and upon completion of
24 that purpose such information shall be destroyed or re-
25 turned to such department, agency, independent instru-

1 mentality, or person from which it is obtained, as appro-
2 priate.

3 (f) PERSONNEL.—(1) The Board shall have the
4 power to—

5 (A) appoint and fix the compensation of an ex-
6 ecutive director, and such additional staff personnel
7 as may be necessary, without regard to the provi-
8 sions of title 5, United States Code, governing ap-
9 pointments in the competitive service, and without
10 regard to chapter 51 and subchapter III of chapter
11 53 of such title relating to classification and General
12 Schedule pay rates, but at rates not in excess of the
13 maximum rate payable under section 5376 of such
14 title; and

15 (B) procure temporary and intermittent services
16 to the same extent as is authorized by section 3109
17 of title 5, United States Code.

18 (2) The Board may delegate any of its functions to
19 such personnel of the Board as the Board may designate
20 and may authorize such successive redelegations of such
21 functions as it may deem desirable.

22 (g) GENERAL AUTHORITY.—The Board is author-
23 ized—

1 (1) to adopt, amend, and repeal rules and regu-
2 lations governing the manner of its operations, orga-
3 nization, and personnel;

4 (2) to enter into contracts or other arrange-
5 ments or modifications thereof, with any govern-
6 ment, any department, agency, or independent in-
7 strumentality of the United States, or with any per-
8 son, firm, association, or corporation, and such con-
9 tracts or other arrangements, or modifications there-
10 of, may be entered into without legal consideration,
11 without performance or other bonds, and without re-
12 gard to section 3709 of the Revised Statutes (41
13 U.S.C. 5);

14 (3) to make advance, progress, and other pay-
15 ments which the Board deems necessary under this
16 Act without regard to the provisions of section 3324
17 of title 31, United States Code; and

18 (4) to take such other action as may be nec-
19 essary to carry out its functions under this section.

20 (h) COMPENSATION AND EXPENSES OF MEMBERS.—

21 (1) Each member of the Board who is an officer or em-
22 ployee of the United States shall serve without additional
23 compensation, but shall continue to receive the salary of
24 his regular position when engaged in the performance of
25 the duties vested in the Board.

1 (2) A member of the Board other than one to whom
2 paragraph (1) applies shall receive per diem at the maxi-
3 mum daily rate payable under section 5376 of title 5,
4 United States Code, when engaged in the actual perform-
5 ance of the duties vested in the Board.

6 (3) All members of the Board shall be reimbursed for
7 travel, subsistence, and other necessary expenses incurred
8 by them in the performance of the duties vested in the
9 Board.

10 (i) ANNUAL AND OTHER REPORTS.—The Board
11 shall, from time to time, and in an annual report, report
12 to the President and the Congress on its activities in car-
13 rying out the provisions of this section.

14 (j) PENALTY FOR VIOLATION OF PRIVACY RIGHTS.—
15 (1) Any member, officer, or employee of the Board, who
16 by virtue of his employment or official position, has pos-
17 session of, or access to, agency records which contain indi-
18 vidually identifiable information the disclosure of which is
19 prohibited by this section, and who knowing that disclo-
20 sure of the specific material is so prohibited, willfully dis-
21 closes the material in any manner to any person or agency
22 not entitled to receive it, shall be guilty of a misdemeanor
23 and fined not more than \$5,000.

24 (2) Any person who knowingly and willfully requests
25 or obtains any record concerning an individual from the

1 Board under false pretenses shall be guilty of a mis-
2 demeanor and fined not more than \$5,000.

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