

106TH CONGRESS
2D SESSION

H. R. 5571

To prohibit the making, importation, exportation, distribution, sale, offer for sale, installation, or use of an information collection device without proper labeling or notice and consent.

IN THE HOUSE OF REPRESENTATIVES

OCTOBER 26, 2000

Mr. HOLT introduced the following bill; which was referred to the Committee on Commerce

A BILL

To prohibit the making, importation, exportation, distribution, sale, offer for sale, installation, or use of an information collection device without proper labeling or notice and consent.

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 “Electronic Privacy Pro-
5 tection Act”.

1 **SEC. 2. PROHIBITIONS RELATING TO INFORMATION COL-**
2 **LECTION DEVICES.**

3 (a) PROHIBITION.—It is unlawful for any person to
4 knowingly make, import, export, distribute, sell, offer for
5 sale, install, or use an information collection device in a
6 manner that violates any regulation issued under sub-
7 section (b).

8 (b) REGULATIONS.—

9 (1) IN GENERAL.—Not later than 120 days
10 after the date of the enactment of this Act, the Fed-
11 eral Trade Commission shall issue regulations that
12 make it unlawful under subsection (a) for any
13 person—

14 (A) to knowingly make, import, export, dis-
15 tribute, sell, or offer for sale an information col-
16 lection device, unless the device has a label that
17 discloses in a manner that is readily apparent
18 and understood that the device may transmit
19 from a computer information that is identifiable
20 to that computer, to a primary user of that
21 computer, or to an individual who operates that
22 computer but is not a primary user thereof;

23 (B) to knowingly install an information
24 collection device on a computer that is not
25 under general management and control of that

1 person, unless that person in accordance with
2 regulations issued under paragraph (2)—

3 (i) has given a primary user of that
4 computer notice of such installation; and

5 (ii) after providing such notice to a
6 primary user, has obtained the consent of
7 the primary user to such installation; or

8 (C) to knowingly use an information collec-
9 tion device to transmit from a computer that is
10 not under general management and control of
11 that person, any information that is identifiable
12 to that computer, to a primary user of that
13 computer, or to an individual who operates that
14 computer but is not a primary user thereof, un-
15 less that person in accordance with regulations
16 issued under paragraph (2)—

17 (i) has given a primary user of that
18 computer notice that the device may trans-
19 mit such information; and

20 (ii) after providing such notice to a
21 primary user, has obtained consent by the
22 primary user to such a transmission.

23 (2) NOTICE AND CONSENT.—For purposes of
24 notice and consent required by paragraph (1), regu-
25 lations shall require that—

1 (A) notice be given and consent be ob-
2 tained for each instance of installation or use of
3 an information collection device; and

4 (B) consent is effective only if the person
5 obtaining the consent has a good faith belief
6 that the person giving the consent—

7 (i) has attained 18 years of age; and

8 (ii) has authority to give such consent.

9 (c) LIMITATION ON APPLICATION OF REGULA-
10 TIONS.—Regulations issued under subsection (b)(1)(A)
11 shall not prohibit the making, importation, exportation,
12 distribution, sale, or offer for sale of any information col-
13 lection device made before the date of the enactment of
14 this Act.

15 (d) PENALTY.—

16 (1) IN GENERAL.—Subject to paragraph (2),
17 whoever violates this section shall be fined \$500 for
18 the first such violation and \$1,500 for each subse-
19 quent violation.

20 (2) INFORMATION ABOUT MINORS.—Whoever
21 commits a violation of a regulation issued under
22 subsection (b)(1)(C) shall be fined twice the amount
23 of the fine that would otherwise apply under this
24 subsection if such violation results in the trans-

1 mission from a computer of information that is iden-
2 tifiable to—

3 (A) an individual who operates that com-
4 puter and has not attained 18 years of age; or

5 (B) that computer if a primary user of
6 that computer is an individual who has not at-
7 tained such age.

8 (3) SUBSEQUENT VIOLATIONS.—Each violation
9 of a regulation issued under subsection (b)(1), in-
10 cluding each transmission of information in violation
11 of subsection (b)(1)(C), constitutes a separate viola-
12 tion for purposes of this subsection.

13 (e) DEFINITIONS.—For purposes of this section:

14 (1) COMPUTER.—The term “computer” means
15 a programmable electronically activated device
16 that—

17 (A) is capable of accepting information,
18 applying prescribed processes to the informa-
19 tion, and supplying the results of those proc-
20 esses with or without human intervention; and

21 (B) consists of a central processing unit
22 containing extensive storage, logic, and control
23 capabilities.

1 (2) INFORMATION COLLECTION DEVICE.—The
2 term “information collection device” means any de-
3 vice that—

4 (A) is a computer program that is capable
5 of collecting and transmitting from a computer
6 to a person other than a primary user of that
7 computer, information that is identifiable to
8 that computer, to a primary user of that com-
9 puter, or to an individual who operates that
10 computer but is not a primary user thereof; and

11 (B) does not consist of only a simple iden-
12 tifying string of computer code, commonly re-
13 ferred to as a “cookie”.

14 (3) PRIMARY USER.—The term “primary user”
15 means any individual with general authority over
16 management and use of a computer or any person
17 on whose behalf an individual exercises such general
18 authority.

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