

108TH CONGRESS  
2D SESSION

# S. 2160

To regulate interstate commerce by prohibiting the sale of children's personally identifiable information for commercial marketing purposes.

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IN THE SENATE OF THE UNITED STATES

MARCH 3, 2004

Mr. WYDEN (for himself, Mr. STEVENS, and Ms. MURKOWSKI) introduced the following bill; which was read twice and referred to the Committee on Commerce, Science, and Transportation

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## A BILL

To regulate interstate commerce by prohibiting the sale of children's personally identifiable information for commercial marketing 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 "Children's Listbroker  
5 Privacy Act".

6 **SEC. 2. FINDINGS.**

7 The Congress finds the following:

8 (1) Commercial list brokers routinely advertise  
9 and sell detailed information on children, including

1 names, addresses, ages, and other data, for use in  
2 marketing. This data is commonly available on chil-  
3 dren as young as two years old, enabling marketers  
4 to target specific demographics such as junior high  
5 school, elementary school, or even preschool.

6 (2) Commercially available marketing databases  
7 can be very large, covering millions of children.

8 (3) Commercially available marketing databases  
9 can include a variety of information on the children  
10 they cover, from ethnicity to family income to hob-  
11 bies and interests.

12 (4) Money spent on marketing to children has  
13 been estimated at \$12 billion per year.

14 (5) Several Federal statutes, including section  
15 1061 of the No Child Left Behind Act, the Chil-  
16 dren's Online Privacy Protection Act, and the Fam-  
17 ily and Educational Rights and Privacy Act, restrict  
18 the collection and disclosure of information about  
19 children or students under specified circumstances.  
20 When data on children is collected in a manner that  
21 is outside the scope of those statutes, however, Fed-  
22 eral law does not significantly restrict the commer-  
23 cial sale or resale of such data.

24 (6) The ability to sell information about chil-  
25 dren to marketers for a profit creates an economic

1 incentive to find new and creative ways to collect  
2 and compile such information, and possibly to cir-  
3 cumvent or subvert the intent of those federal stat-  
4 utes that do govern the collection of information  
5 about children or students. There are a variety of  
6 means and sources that marketers and list brokers  
7 can and do use to compile names, addresses, and  
8 other data about children.

9 **SEC. 3. RESTRICTION ON SALE OR PURCHASE OF CHIL-**  
10 **DREN'S PERSONAL INFORMATION.**

11 (a) IN GENERAL.—It is unlawful—

12 (1) to sell personal information about an indi-  
13 vidual the seller knows to be a child;

14 (2) to purchase personal information about an  
15 individual identified by the seller as a child, for the  
16 purpose of marketing to that child; or

17 (3) for a person who has provided a certifi-  
18 cation pursuant to subsection (b)(2), in connection  
19 with the purchase of personal information about an  
20 individual identified by the seller as a child, to en-  
21 engage in any practice that violates the terms of the  
22 certification.

23 (b) EXCEPTIONS.—

24 (1) PARENTAL CONSENT.—Subsection (a) does  
25 not apply to any sale, purchase, or use of personal

1 information about a child if the parent of the child  
2 has granted express consent to that sale, purchase,  
3 or use of the information.

4 (2) CERTIFICATION.—Subsection (a)(1) shall  
5 not apply to the sale of personal information about  
6 a child if the purchaser certifies to the seller, elec-  
7 tronically or in writing, before the sale is com-  
8 pleted—

9 (A) the purpose for which the information  
10 will be used by the purchaser; and

11 (B) that the purchaser will neither—

12 (i) use the information for marketing  
13 that child; nor

14 (ii) permit the information to be used  
15 by others for the purpose of marketing to  
16 that child.

17 **SEC. 4. ADMINISTRATION AND ENFORCEMENT.**

18 (a) IN GENERAL.—Except as provided in subsection  
19 (b), this Act shall be enforced by the Commission as if  
20 the violation of section 3 of this Act were an unfair or  
21 deceptive act or practice proscribed under section  
22 18(a)(1)(B) of the Federal Trade Commission Act (15  
23 U.S.C. 57a(a)(1)(B)).

1 (b) ENFORCEMENT BY CERTAIN OTHER AGEN-  
2 CIES.—Compliance with this Act shall be enforced  
3 under—

4 (1) section 8 of the Federal Deposit Insurance  
5 Act (12 U.S.C. 1818), in the case of—

6 (A) national banks, and Federal branches  
7 and Federal agencies of foreign banks, by the  
8 Office of the Comptroller of the Currency;

9 (B) member banks of the Federal Reserve  
10 System (other than national banks), branches  
11 and agencies of foreign banks (other than Fed-  
12 eral branches, Federal agencies, and insured  
13 State branches of foreign banks), commercial  
14 lending companies owned or controlled by for-  
15 eign banks, and organizations operating under  
16 section 25 or 25A of the Federal Reserve Act  
17 (12 U.S.C. 601 and 611), by the Board; and

18 (C) banks insured by the Federal Deposit  
19 Insurance Corporation (other than members of  
20 the Federal Reserve System) and insured State  
21 branches of foreign banks, by the Board of Di-  
22 rectors of the Federal Deposit Insurance Cor-  
23 poration;

24 (2) section 8 of the Federal Deposit Insurance  
25 Act (12 U.S.C. 1818), by the Director of the Office

1 of Thrift Supervision, in the case of a savings asso-  
2 ciation the deposits of which are insured by the Fed-  
3 eral Deposit Insurance Corporation;

4 (3) the Federal Credit Union Act (12 U.S.C.  
5 1751 et seq.) by the National Credit Union Adminis-  
6 tration Board with respect to any Federal credit  
7 union;

8 (4) part A of subtitle VII of title 49, United  
9 States Code, by the Secretary of Transportation  
10 with respect to any air carrier or foreign air carrier  
11 subject to that part;

12 (5) the Packers and Stockyards Act, 1921 (7  
13 U.S.C. 181 et seq.) (except as provided in section  
14 406 of that Act (7 U.S.C. 226, 227)), by the Sec-  
15 retary of Agriculture with respect to any activities  
16 subject to that Act; and

17 (6) the Farm Credit Act of 1971 (12 U.S.C.  
18 2001 et seq.) by the Farm Credit Administration  
19 with respect to any Federal land bank, Federal land  
20 bank association, Federal intermediate credit bank,  
21 or production credit association.

22 (c) EXERCISE OF CERTAIN POWERS.—For the pur-  
23 pose of the exercise by any agency referred to in sub-  
24 section (b) of its powers under any Act referred to in that  
25 subsection, a violation of section 3 of this Act I is deemed

1 to be a violation of a requirement imposed under that Act.  
2 In addition to its powers under any provision of law spe-  
3 cifically referred to in subsection (b), each of the agencies  
4 referred to in that subsection may exercise, for the pur-  
5 pose of enforcing compliance with any requirement im-  
6 posed under section 3 of this Act, any other authority con-  
7 ferred on it by law.

8 (d) ACTIONS BY THE COMMISSION.—The Commis-  
9 sion shall prevent any person from violating section 3 of  
10 this Act in the same manner, by the same means, and  
11 with the same jurisdiction, powers, and duties as though  
12 all applicable terms and provisions of the Federal Trade  
13 Commission Act (15 U.S.C. 41 et seq.) were incorporated  
14 into and made a part of this Act. Any entity that violates  
15 any provision of that section is subject to the penalties  
16 and entitled to the privileges and immunities provided in  
17 the Federal Trade Commission Act in the same manner,  
18 by the same means, and with the same jurisdiction, power,  
19 and duties as though all applicable terms and provisions  
20 of the Federal Trade Commission Act were incorporated  
21 into and made a part of that section.

22 (e) PRESERVATION OF COMMISSION AUTHORITY.—  
23 Nothing contained in this section shall be construed to  
24 limit the authority of the Commission under any other  
25 provision of law.

1 **SEC. 5. ACTIONS BY STATES.**

2 (a) IN GENERAL.—

3 (1) CIVIL ACTIONS.—In any case in which the  
4 attorney general of a State has reason to believe  
5 that an interest of the residents of that State has  
6 been or is threatened or adversely affected by the  
7 engagement of any person in a practice that section  
8 3 of this Act, the State, as *parens patriae*, may  
9 bring a civil action on behalf of the residents of the  
10 State in a district court of the United States of ap-  
11 propriate jurisdiction—

12 (A) to enjoin that practice;

13 (B) to enforce compliance with the rule;

14 (C) to obtain damage, restitution, or other  
15 compensation on behalf of residents of the  
16 State; or

17 (D) to obtain such other relief as the court  
18 may consider to be appropriate.

19 (2) NOTICE.—

20 (A) IN GENERAL.—Before filing an action  
21 under paragraph (1), the attorney general of  
22 the State involved shall provide to the Commis-  
23 sion—

24 (i) written notice of that action; and

25 (ii) a copy of the complaint for that  
26 action.

1 (B) EXEMPTION.—

2 (i) IN GENERAL.—Subparagraph (A)  
3 shall not apply with respect to the filing of  
4 an action by an attorney general of a State  
5 under this subsection, if the attorney gen-  
6 eral determines that it is not feasible to  
7 provide the notice described in that sub-  
8 paragraph before the filing of the action.

9 (ii) NOTIFICATION.—In an action de-  
10 scribed in clause (i), the attorney general  
11 of a State shall provide notice and a copy  
12 of the complaint to the Commission at the  
13 same time as the attorney general files the  
14 action.

15 (b) INTERVENTION.—

16 (1) IN GENERAL.—On receiving notice under  
17 subsection (a)(2), the Commission shall have the  
18 right to intervene in the action that is the subject  
19 of the notice.

20 (2) EFFECT OF INTERVENTION.—If the Com-  
21 mission intervenes in an action under subsection (a),  
22 it shall have the right—

23 (A) to be heard with respect to any matter  
24 that arises in that action; and

25 (B) to file a petition for appeal.

1           (c) CONSTRUCTION.—For purposes of bringing any  
2 civil action under subsection (a), nothing in this subtitle  
3 shall be construed to prevent an attorney general of a  
4 State from exercising the powers conferred on the attorney  
5 general by the laws of that State to—

6           (1) conduct investigations;

7           (2) administer oaths or affirmations; or

8           (3) compel the attendance of witnesses or the  
9 production of documentary and other evidence.

10          (d) ACTIONS BY THE COMMISSION.—In any case  
11 in which an action is instituted by or on behalf of the  
12 Commission for violation of section 2 of this Act, no  
13 State may, during the pendency of that action, institute  
14 an action under subsection (a) against any defendant  
15 named in the complaint in that action for violation of  
16 that section.

17          (e) VENUE; SERVICE OF PROCESS.—

18           (1) VENUE.—Any action brought under sub-  
19 section (a) may be brought in the district court of  
20 the United States that meets applicable require-  
21 ments relating to venue under section 1391 of title  
22 28, United States Code.

23           (2) SERVICE OF PROCESS.—In an action  
24 brought under subsection (a), process may be served  
25 in any district in which the defendant—

1 (A) is an inhabitant; or

2 (B) may be found.

3 **SEC. 6. DEFINITIONS.**

4 In this Act:

5 (1) CHILD.—The term “child” means an indi-  
6 vidual under the age of 16.

7 (2) COMMISSION.—The term “Commission”  
8 means the Federal Trade Commission.

9 (3) EXPRESS CONSENT.—

10 (A) IN GENERAL.—The term “express con-  
11 sent” means an affirmative indication of per-  
12 mission in writing or electronic form. The term  
13 “express consent” does not include consent in-  
14 ferred from a failure to indicate affirmatively  
15 that consent is denied or withheld.

16 (B) PREREQUISITES.—Express consent is  
17 not valid unless—

18 (i) before granting the consent the in-  
19 dividual granting the consent was informed  
20 of the purpose for which the information  
21 would be sold, purchased, or used; and

22 (ii) consent was not granted as a con-  
23 dition for making a product, service, or  
24 warranty available to the individual or the  
25 child to which the information pertains.

1           (4) **MARKETING.**—The term “marketing”  
2 means making a communication to encourage the  
3 purchase or use of a commercial product or service.  
4 For purposes of this paragraph, a product or service  
5 shall be considered to be commercial if some or all  
6 of the proceeds from the sale inure to the benefit of  
7 an enterprise conducted for profit.

8           (5) **PARENT.**—The term “parent” includes a  
9 legal guardian.

10          (6) **PERSONAL INFORMATION.**—The term “per-  
11 sonal information” means identifiable information  
12 about an individual, including—

13               (A) a name;

14               (B) a home or other physical address in-  
15 cluding street name and name of a city or town;

16               (C) an e-mail address or online username;

17               (D) a telephone number;

18               (E) a Social Security number; or

19               (F) any other information that permits a  
20 specific individual to be identified.

21          (7) **PURCHASE; SELL; SALE.**—In section 3, the  
22 terms “purchase”, “sell”, and “sale” include the  
23 purchase and sale of the right to use personal infor-  
24 mation, without regard to whether—

25               (A) the right is limited or unlimited;

1           (B) the transaction is characterized as a  
2           purchase, sale, lease, or otherwise; and

3           (C) the consideration for the transaction is  
4           monetary, goods, or services.

5 **SEC. 7. EFFECTIVE DATE.**

6           This Act takes effect 6 months after the date of en-  
7           actment.

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