

118TH CONGRESS
1ST SESSION

S. 631

To protect the privacy of personally identifiable health and location data,
and for other purposes.

IN THE SENATE OF THE UNITED STATES

MARCH 2, 2023

Ms. KLOBUCHAR (for herself, Ms. WARREN, and Ms. HIRONO) introduced the
following bill; which was read twice and referred to the Committee on
Commerce, Science, and Transportation

A BILL

To protect the privacy of personally identifiable health and
location data, 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 “Upholding Protections
5 for Health and Online Location Data Privacy Act of
6 2023” or the “UPHOLD Privacy Act of 2023”.

7 **SEC. 2. PRIVACY OF HEALTH DATA.**

8 (a) PROHIBITION ON THE USE OF HEALTH DATA IN
9 COMMERCIAL ADVERTISING.—It shall be unlawful for any
10 covered entity to use the health data of an individual that

1 is collected from any source (including data volunteered
2 by an individual, medical center-derived data, data from
3 a wearable fitness tracker, data from web browsing his-
4 tory, or any other source determined appropriate by the
5 Commission) for commercial advertising.

6 (b) MINIMIZATION OF COLLECTING, RETAINING,
7 USING, AND DISCLOSING HEALTH DATA.—A covered en-
8 tity may not collect, retain, use, or disclose health data
9 except—

10 (1) with the express consent of the individual to
11 whom such data relates; or

12 (2) as is strictly necessary to provide a product
13 or service that the individual to whom such data re-
14 lates has requested from such covered entity.

15 (c) MINIMIZATION OF EMPLOYEE ACCESS.—A cov-
16 ered entity shall restrict access to health data by any em-
17 ployee or service provider of the covered entity to only such
18 an employee or service provider for which access is nec-
19 essary to provide a product or service that the individual
20 to whom such data relates has requested from the covered
21 entity.

22 (d) PRIVACY POLICY.—

23 (1) POLICY REQUIRED.—A covered entity shall
24 maintain a privacy policy relating to the practices of

1 such covered entity regarding the collecting, retain-
2 ing, using, and disclosing of health data.

3 (2) PUBLICATION REQUIRED.—If a covered en-
4 tity has a website, such covered entity shall promi-
5 nently publish the privacy policy described in para-
6 graph (1) on such website.

7 (3) CONTENTS.—The privacy policy described
8 in paragraph (1) shall be clear and conspicuous and
9 contain, at a minimum, the following:

10 (A) A description of the practices of the
11 covered entity regarding the collecting, retain-
12 ing, using, and disclosing of health data.

13 (B) A clear and concise statement of the
14 categories of such data collected, retained, used,
15 or disclosed by the covered entity.

16 (C) A clear and concise statement of the
17 covered entity's purposes for the collecting, re-
18 taining, using, or disclosing of such data.

19 (D) A list of the specific third parties to
20 which the covered entity discloses such data,
21 and a clear and concise statement of the pur-
22 poses for which the covered entity discloses
23 such data, including how the data may be used
24 by each such third party.

1 (E) A list of the specific third parties from
2 which the covered entity has collected such
3 data, and a clear and concise statement of the
4 purposes for which the covered entity collects
5 such data.

6 (F) A clear and concise statement describ-
7 ing the extent to which an individual may exer-
8 cise control over the collecting, retaining, using,
9 and disclosing of health data by the covered en-
10 tity, and the steps an individual must take to
11 implement such controls.

12 (G) A clear and concise statement describ-
13 ing the efforts of the covered entity to protect
14 health data from unauthorized disclosure.

15 **SEC. 3. UNFAIR AND DECEPTIVE ACTS AND PRACTICES RE-**
16 **LATING TO LOCATION DATA.**

17 (a) PROHIBITION ON SALE FROM DATA BROKERS.—
18 It shall be unlawful for a data broker to sell, resell, license,
19 trade, transfer, share, or otherwise provide or make avail-
20 able location data (including data volunteered by an indi-
21 vidual, medical center-derived data, data from a wearable
22 fitness tracker, data from web browsing history, or any
23 other source determined appropriate by the Commission).

24 (b) PROHIBITION ON SALE TO DATA BROKERS.—It
25 shall be unlawful for any person to sell, resell, license,

1 trade, transfer, share, or otherwise provide or make avail-
2 able location data (including data volunteered by an indi-
3 vidual, medical center-derived data, data from a wearable
4 fitness tracker, data from web browsing history, or any
5 other source determined appropriate by the Commission)
6 to a data broker.

7 **SEC. 4. RIGHT OF ACCESS AND DELETION.**

8 (a) RIGHT OF ACCESS.—

9 (1) IN GENERAL.—A covered entity shall make
10 available a reasonable mechanism by which an indi-
11 vidual, upon verified request, may access—

12 (A) any health data or location data relat-
13 ing to such individual that is retained by such
14 covered entity, including—

15 (i) in the case of such data that the
16 covered entity collected from any third
17 party, how and from which specific third
18 party the covered entity collected such
19 data; and

20 (ii) such data that the covered entity
21 inferred about the individual; and

22 (B) a list of the specific third parties to
23 which the covered entity has disclosed any
24 health data or location data relating to such in-
25 dividual.

1 (2) **FORMAT.**—A covered entity shall make the
2 information described in paragraph (1) available in
3 both a human-readable and a structured, interoper-
4 able, and machine-readable format.

5 (b) **RIGHT OF DELETION.**—A covered entity shall
6 make available a reasonable mechanism by which an indi-
7 vidual, upon verified request, may request the deletion of
8 any health data or location data relating to such individual
9 that is retained by the covered entity, including any such
10 information that the covered entity collected from a third
11 party or inferred from other information retained by the
12 covered entity.

13 (c) **REQUIREMENTS FOR ACCESS AND DELETION.**—

14 (1) **TIMELINE FOR COMPLYING WITH RE-**
15 **QUESTS.**—A covered entity shall comply with a
16 verified request received under this section without
17 undue delay, but not later than 15 days after the
18 date on which the covered entity receives such
19 verified request.

20 (2) **FEEES PROHIBITED.**—A covered entity may
21 not charge a fee to an individual for a request made
22 under this section.

23 (3) **RULES OF CONSTRUCTION.**—Nothing in
24 this section shall be construed to require a covered
25 entity to—

1 (A) take an action that would convert in-
2 formation that is not health data or location
3 data into health data or location data;

4 (B) collect or retain health data or location
5 data that the covered entity would not other-
6 wise collect or retain; or

7 (C) retain health data or location data
8 longer than the covered entity would otherwise
9 retain such data.

10 (d) REASONABLE MECHANISM DEFINED.—In this
11 section, the term “reasonable mechanism” means, with re-
12 spect to a covered entity and a right under this section,
13 a mechanism that—

14 (1) is equivalent in availability and ease of use
15 to that of other mechanisms for communicating or
16 interacting with the covered entity; and

17 (2) includes an online means of exercising any
18 such right.

19 **SEC. 5. EXCEPTIONS.**

20 (a) PUBLICATION OF NEWSWORTHY INFORMATION
21 OF LEGITIMATE PUBLIC CONCERN.—Nothing in this Act,
22 or a regulation promulgated under this Act, shall apply
23 with respect to health data or location data that is col-
24 lected, retained, used, or disclosed by a covered entity for
25 the publication of newsworthy information of legitimate

1 public concern to the public, or to the collecting, retaining,
2 using, or disclosing of such data by a covered entity for
3 that purpose, if such covered entity has reasonable safe-
4 guards and processes that prevent the collecting, retain-
5 ing, using, or disclosing of health data or location data
6 for commercial purposes other than the publication of
7 newsworthy information of legitimate public concern.

8 (b) PUBLIC HEALTH CAMPAIGNS.—The prohibition
9 under section 2(a) shall not apply to any public health
10 campaign directed toward individuals or subpopulations of
11 individuals.

12 (c) DISCLOSURE PURSUANT TO VALID AUTHORIZA-
13 TION.—

14 (1) IN GENERAL.—Nothing in this Act shall be
15 construed to prohibit a disclosure of the health data
16 or location data of an individual for which the indi-
17 vidual provides valid authorization.

18 (2) VALID AUTHORIZATION DEFINED.—For
19 purposes of paragraph (1), the term “valid author-
20 ization” has the meaning given such term in section
21 164.508 of title 45, Code of Federal Regulations (or
22 a successor regulation), subject to any such adapta-
23 tion the Commission shall deem necessary to apply
24 such term to the disclosure of both health data and
25 location data.

1 (d) HIPAA-COMPLIANT ACTIONS.—

2 (1) IN GENERAL.—Nothing in this Act shall be
3 construed to prohibit any action taken with respect
4 to the health information of an individual by a data
5 broker that is a business associate or covered entity
6 that is permissible under the Federal regulations
7 concerning standards for privacy of individually
8 identifiable health information promulgated under
9 section 264(c) of the Health Insurance Portability
10 and Accountability Act of 1996 (42 U.S.C. 1320d–
11 2 note).

12 (2) TERMS DEFINED.—For purposes of para-
13 graph (1), the terms “business associate”, “covered
14 entity”, and “health information” shall have the
15 meanings given those terms in the Federal regula-
16 tions specified in such section 264(c) of the Health
17 Insurance Portability and Accountability Act of
18 1996 (42 U.S.C. 1320d–2 note).

19 **SEC. 6. EFFECTIVE DATE.**

20 (a) IN GENERAL.—The prohibitions under sections 2
21 and 3 shall take effect on the earlier of—

22 (1) the date the Commission issues the final
23 rule under subsection (b); or

24 (2) 180 days after the date of enactment of this
25 Act.

1 (b) RULEMAKING.—

2 (1) FINAL RULE.—Not later than 180 days
3 after the date of enactment of this Act, the Commis-
4 sion shall promulgate regulations, pursuant to sec-
5 tion 553 of title 5, United States Code, to carry out
6 the provisions of this Act.

7 (2) ADDITIONAL GUIDANCE.—The Commission
8 may promulgate further regulations, pursuant to
9 such section 553, to update and carry out the provi-
10 sions of this Act, including further guidance regard-
11 ing the types of data described in sections 2 and 3.

12 **SEC. 7. ENFORCEMENT.**

13 (a) ENFORCEMENT BY THE FEDERAL TRADE COM-
14 MISSION.—

15 (1) UNFAIR OR DECEPTIVE ACTS OR PRAC-
16 TICES.—A violation of section 2, 3, or 4 shall be
17 treated as a violation of a rule defining an unfair or
18 a deceptive act or practice under section 18(a)(1)(B)
19 of the Federal Trade Commission Act (15 U.S.C.
20 57a(a)(1)(B)).

21 (2) POWERS OF THE COMMISSION.—

22 (A) IN GENERAL.—Except as provided in
23 subparagraphs (D) and (E), the Commission
24 shall enforce this Act and any regulation pro-
25 mulgated thereunder in the same manner, by

1 the same means, and with the same jurisdic-
2 tion, powers, and duties as though all applicable
3 terms and provisions of the Federal Trade
4 Commission Act (15 U.S.C. 41 et seq.) were in-
5 corporated into and made a part of this Act.

6 (B) PRIVILEGES AND IMMUNITIES.—Sub-
7 ject to subparagraph (F), any covered entity or
8 data broker who violates this Act or any regula-
9 tion promulgated thereunder shall be subject to
10 the penalties and entitled to the privileges and
11 immunities provided in the Federal Trade Com-
12 mission Act (15 U.S.C. 41 et seq.).

13 (C) AUTHORITY PRESERVED.—Nothing in
14 this Act shall be construed to limit the author-
15 ity of the Federal Trade Commission under any
16 other provision of law.

17 (D) SCOPE OF JURISDICTION.—Notwith-
18 standing section 4, 5(a)(2), or 6 of the Federal
19 Trade Commission Act (15 U.S.C. 44, 45(a)(2),
20 46), or any jurisdictional limitation of the Com-
21 mission, the Commission shall also enforce this
22 Act and the regulations promulgated under this
23 Act, in the same manner provided in subpara-
24 graph (A), with respect to—

1 (i) common carriers subject to the
2 Communications Act of 1934 (47 U.S.C.
3 151 et seq.) and Acts amendatory thereof
4 and supplementary thereto; and

5 (ii) organizations that are not orga-
6 nized to carry on business for their own
7 profit or that of their members.

8 (E) INDEPENDENT LITIGATION AUTHOR-
9 ITY.—In any case in which the Commission has
10 reason to believe that a covered entity or data
11 broker is violating or has violated section 2, 3,
12 or 4, the Commission may bring a civil action,
13 subject to subsection (c), to—

14 (i) enjoin any further such violation
15 by such covered entity or data broker;

16 (ii) enforce compliance with this Act,
17 including through deletion of the relevant
18 information;

19 (iii) obtain a permanent, temporary,
20 or preliminary injunction;

21 (iv) obtain civil penalties;

22 (v) obtain damages (whether actual,
23 punitive, or otherwise), restitution,
24 disgorgement of unjust enrichment, or

1 other compensation on behalf of aggrieved
2 persons; or

3 (vi) obtain any other appropriate equi-
4 table relief.

5 (F) CIVIL PENALTIES.—In addition to any
6 other penalties as may be prescribed by law, a
7 violation of this Act shall carry a civil penalty
8 not to exceed 15 percent of the revenues earned
9 during the preceding 12-month period by the
10 ultimate parent entity of the covered entity or
11 data broker that committed such violation.

12 (b) PRIVATE RIGHT OF ACTION.—

13 (1) IN GENERAL.—Any individual alleging a
14 violation of this Act or a regulation promulgated
15 thereunder may bring a civil action, subject to sub-
16 section (c).

17 (2) RELIEF.—In a civil action brought under
18 paragraph (1) in which the plaintiff prevails, the
19 court may award—

20 (A) damages in an amount equal to the
21 greater of—

22 (i) actual damages; or

23 (ii) an amount equal to not less than
24 \$100 and not more than \$1,000 per viola-
25 tion, per day;

- 1 (B) punitive damages;
- 2 (C) restitution or other compensation;
- 3 (D) reasonable attorney's fees, including
- 4 litigation expenses, and costs; and
- 5 (E) any other relief determined appro-
- 6 priate by the court, including equitable or de-
- 7 claratory relief.

8 (3) INJURY IN FACT.—A violation of this Act or

9 a regulation promulgated thereunder with respect to

10 health data or location data constitutes a concrete

11 and particularized injury in fact to the individual to

12 whom such data relates.

13 (4) INVALIDITY OF PRE-DISPUTE ARBITRATION

14 AGREEMENTS AND PRE-DISPUTE JOINT-ACTION

15 WAIVERS.—

16 (A) IN GENERAL.—Notwithstanding any

17 other provision of law, no pre-dispute arbitra-

18 tion agreement or pre-dispute joint-action waiv-

19 er shall be valid or enforceable with respect to

20 a dispute arising under this Act.

21 (B) APPLICABILITY.—Any determination

22 as to whether or how this paragraph applies to

23 any dispute shall be made by a court, rather

24 than an arbitrator, without regard to whether

1 such agreement purports to delegate such deter-
2 mination to an arbitrator.

3 (C) DEFINITIONS.—For purposes of this
4 paragraph:

5 (i) PRE-DISPUTE ARBITRATION
6 AGREEMENT.—The term “pre-dispute arbi-
7 tration agreement” means any agreement
8 to arbitrate a dispute that has not arisen
9 at the time of the making of the agree-
10 ment.

11 (ii) PRE-DISPUTE JOINT-ACTION
12 WAIVER.—The term “pre-dispute joint-ac-
13 tion waiver” means an agreement that
14 would prohibit a party from participating
15 in a joint, class, or collective action in a ju-
16 dicial, arbitral, administrative, or other
17 forum, concerning a dispute that has not
18 yet arisen at the time of the making of the
19 agreement.

20 (c) EXCLUSIVE JURISDICTION.—

21 (1) DISTRICT COURTS.—For any action brought
22 under this Act, the following district courts shall
23 have exclusive jurisdiction:

1 (A) COMMISSION.—For actions brought by
2 the Commission, the United States District
3 Court for the District of Columbia.

4 (B) PRIVATE ACTIONS.—For private ac-
5 tions brought by individuals, in the court of the
6 plaintiff's choice between—

7 (i) the United States District Court
8 for the District of Columbia; or

9 (ii) the district court of the United
10 States for the judicial district in which the
11 violation took place or in which any de-
12 fendant resides or does business.

13 (2) COURT OF APPEALS.—The United States
14 Court of Appeals for the District of Columbia Cir-
15 cuit shall have exclusive jurisdiction of appeals from
16 any decision under paragraph (1).

17 (d) STATUTE OF LIMITATIONS.—An action for a vio-
18 lation of this Act may be commenced not later than 6
19 years after the date upon which the plaintiff obtains actual
20 knowledge of the facts giving rise to such violation.

21 **SEC. 8. DEFINITIONS.**

22 (a) IN GENERAL.—In this Act:

23 (1) COLLECT.—The term “collect” means, with
24 respect to health data or location data, to obtain
25 such data in any manner.

1 (2) COMMERCIAL ADVERTISING.—The term
2 “commercial advertising” means communications
3 that promote the sale of or interest in goods or serv-
4 ices, including goods or services that are published
5 digitally, via video or audio, or in print.

6 (3) COMMISSION.—The term “Commission”
7 means the Federal Trade Commission.

8 (4) COVERED ENTITY.—

9 (A) IN GENERAL.—The term “covered en-
10 tity” means any entity that—

11 (i) is engaged in activities in or affect-
12 ing commerce (as defined in section 4 of
13 the Federal Trade Commission Act (15
14 U.S.C. 44)); and

15 (ii) is—

16 (I) a person, partnership, or cor-
17 poration subject to the jurisdiction of
18 the Commission under section 5(a)(2)
19 of the Federal Trade Commission Act
20 (15 U.S.C. 45(a)(2)); or

21 (II) notwithstanding section 4,
22 5(a)(2), or 6 of the Federal Trade
23 Commission Act (15 U.S.C. 44,
24 45(a)(2), 46) or any jurisdictional
25 limitation of the Commission—

1 (aa) a common carrier sub-
2 ject to the Communications Act
3 of 1934 (47 U.S.C. 151 et seq.)
4 and all Acts amendatory thereof
5 and supplementary thereto; or

6 (bb) an organization not or-
7 ganized to carry on business for
8 its own profit or that of its mem-
9 bers.

10 (B) EXCLUSIONS.—The term “covered en-
11 tity” does not include an entity that is—

12 (i) a covered entity, as defined in sec-
13 tion 160.103 of title 45, Code of Federal
14 Regulations (or a successor regulation), to
15 the extent such entity is acting as a cov-
16 ered entity under the HIPAA privacy regu-
17 lations (as defined in section 1180(b)(3) of
18 the Social Security Act (42 U.S.C. 1320d-
19 9(b)(3)));

20 (ii) an entity that is a business asso-
21 ciate, as defined in section 160.103 of title
22 45, Code of Federal Regulations (or a suc-
23 cessor regulation), to the extent such enti-
24 ty is acting as a business associate under

1 the HIPAA privacy regulations (as defined
2 in such section 1180(b)(3)); or

3 (iii) an entity that is subject to re-
4 strictions on disclosure of records under
5 section 543 of the Public Health Service
6 Act (42 U.S.C. 290dd-2), to the extent
7 such entity is acting in a capacity subject
8 to such restrictions.

9 (5) DATA BROKER.—The term “data broker”
10 means an individual or entity that—

11 (A) collects, buys, licenses, or infers data
12 about an individual; and

13 (B) sells, licenses, or trades such data.

14 (6) DISCLOSE.—The term “disclose” means,
15 with respect to health data or location data, for a
16 covered entity to release, transfer, sell, provide ac-
17 cess to, license, or divulge such data in any manner
18 to a third party or government entity.

19 (7) EXPRESS CONSENT.—

20 (A) IN GENERAL.—The term “express con-
21 sent” means, with respect to the collecting, re-
22 taining, using, or disclosing of health data or
23 location data, the informed, opted-in, voluntary,
24 specific, and unambiguous written consent of an
25 individual (which may include written consent

1 provided by electronic means) to such collecting,
2 retaining, using, or disclosing of such data.

3 (B) EXCLUSIONS.—The term “express
4 consent” does not include any of the following:

5 (i) Consent secured without first pro-
6 viding to the individual a clear and con-
7 spicuous disclosure, apart from any privacy
8 policy, terms of service, terms of use, gen-
9 eral release, user agreement, or other simi-
10 lar document, of all information material
11 to the provision of consent.

12 (ii) Hovering over, muting, pausing,
13 or exiting a given piece of content.

14 (iii) Agreement obtained through the
15 use of a user interface designed or manipu-
16 lated with the substantial effect of sub-
17 verting or impairing user autonomy, deci-
18 sion making, or choice.

19 (8) HEALTH DATA.—The term “health data”
20 means data that identifies, relates to, describes, or
21 reveals—

22 (A) the search for, attempt to obtain, or
23 receipt of any health services;

24 (B) any past, present, or future disability,
25 physical health condition, mental health condi-

1 tion, or health condition of an individual, in-
 2 cluding efforts to research or obtain health
 3 services or supplies (including location data
 4 that might indicate an attempt to acquire or re-
 5 ceive such information services or supplies);

6 (C) any treatment or diagnosis of a dis-
 7 ability or condition described in subparagraph
 8 (B); or

9 (D) any information described in subpara-
 10 graph (A) through subparagraph (C) that is de-
 11 rived or extrapolated from non-health informa-
 12 tion (such as proxy, derivative, inferred, emer-
 13 gent, or algorithmic data).

14 (9) LOCATION DATA.—

15 (A) IN GENERAL.—The term “location
 16 data” means data derived from a device or
 17 technology that reveals the past or present
 18 physical location of an individual or device with
 19 sufficient precision to identify street-level loca-
 20 tion information of the individual or device
 21 within 1,850 feet or less.

22 (B) EXCLUSION.—The term “location
 23 data” does not include geolocation information
 24 identifiable or derived solely from the visual
 25 content of a legally obtained image, including

1 the location of the device that captured such
2 image.

3 (10) SERVICE PROVIDER.—

4 (A) IN GENERAL.—The term “service pro-
5 vider” means an individual or entity that—

6 (i) collects, retains, uses, or discloses
7 health data for the sole purpose of, and
8 only to the extent that such individual or
9 entity is, conducting business activities on
10 behalf of, for the benefit of, under instruc-
11 tion of, or under contractual agreement
12 with a covered entity and not any other in-
13 dividual or entity; and

14 (ii) does not divulge health data to
15 any individual or entity other than such
16 covered entity or a contractor to such serv-
17 ice provider bound to information proc-
18 essing terms no less restrictive than terms
19 to which such service provider is bound.

20 (B) LIMITATION OF APPLICATION.—Such
21 individual or entity shall only be considered a
22 service provider in the course of activities de-
23 scribed in subparagraph (A)(i).

24 (C) MINIMIZATION BY SERVICE PRO-
25 VIDERS.—For purposes of section 2, a request

1 from an individual to a covered entity for a
2 product or service, and an express consent from
3 the individual to the covered entity, shall be
4 treated as having also been provided to the
5 service provider of the covered entity.

6 (11) STATE.—The term “State” means each of
7 the several States, the District of Columbia, each
8 commonwealth, territory, or possession of the United
9 States, and each Federally recognized Indian Tribe.

10 (12) THIRD PARTY.—The term “third party”
11 means, with respect to the disclosing or collecting of
12 health data, any individual or entity that is not—

13 (A) the covered entity that is disclosing or
14 collecting such information;

15 (B) the individual to whom such informa-
16 tion relates; or

17 (C) a service provider.

18 (13) ULTIMATE PARENT ENTITY.—The term
19 “ultimate parent entity” has the meaning given the
20 term in section 801.1 of title 16, Code of Federal
21 Regulations (or a successor regulation).

22 (b) RULEMAKING.—

23 (1) IN GENERAL.—Not later than 180 days
24 after the date of enactment of this Act, the Commis-
25 sion shall conduct a rulemaking pursuant to section

1 553 of title 5, United States Code, to define the
2 terms “public health campaign” and “data” for pur-
3 poses of implementing and enforcing this Act.

4 (2) REQUIREMENT.—For purposes of the rule-
5 making required under paragraph (1), the term
6 “data” shall include information that is linked, or
7 reasonably linkable, to—

8 (A) specific individuals; or

9 (B) specific groups of individuals who
10 share the same place of residence or internet
11 protocol address.

12 **SEC. 9. RELATIONSHIP TO FEDERAL AND STATE LAWS.**

13 (a) FEDERAL LAW PRESERVATION.—Nothing in this
14 Act, or a regulation promulgated under this Act, shall be
15 construed to limit any other provision of Federal law, ex-
16 cept as specifically provided in this Act.

17 (b) STATE LAW PRESERVATION.—

18 (1) IN GENERAL.—Nothing in this Act, or a
19 regulation promulgated under this Act, shall be con-
20 strued to preempt, displace, or supplant any State
21 law, except to the extent that a provision of State
22 law conflicts with a provision of this Act, or a regu-
23 lation promulgated under this Act, and then only to
24 the extent of the conflict.

1 (2) GREATER PROTECTION UNDER STATE
2 LAW.—For purposes of this subsection, a provision
3 of State law does not conflict with a provision of this
4 Act, or a regulation promulgated under this Act, if
5 such provision of State law provides greater privacy
6 protection than the privacy protection provided by
7 such provision of this Act or such regulation.

8 **SEC. 10. SEVERABILITY CLAUSE.**

9 If any provision of this Act, or the application thereof
10 to any individual, entity, or circumstance, is held invalid,
11 the remainder of this Act, and the application of such pro-
12 vision to other persons not similarly situated or to other
13 circumstances, shall not be affected by the invalidation.

○