

117TH CONGRESS
1ST SESSION

S. 81

To protect the privacy of health information during a national health emergency.

IN THE SENATE OF THE UNITED STATES

JANUARY 28, 2021

Mr. BLUMENTHAL (for himself, Mr. WARNER, Mr. MARKEY, Ms. BALDWIN, Ms. HIRONO, Mr. BOOKER, Mr. MENENDEZ, Mr. KING, Mr. BENNET, Ms. WARREN, Ms. KLOBUCHAR, and Mr. DURBIN) introduced the following bill; which was read twice and referred to the Committee on Health, Education, Labor, and Pensions

A BILL

To protect the privacy of health information during a national health emergency.

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 “Public Health Emer-
5 gency Privacy Act”.

6 **SEC. 2. DEFINITIONS.**

7 In this Act:

1 (1) AFFIRMATIVE EXPRESS CONSENT.—The
2 term “affirmative express consent” means an affirm-
3 ative act by an individual that—

4 (A) clearly and conspicuously commu-
5 nicates the individual’s authorization of an act
6 or practice;

7 (B) is made in the absence of any mecha-
8 nism in the user interface that has the purpose
9 or substantial effect of obscuring, subverting, or
10 impairing decision making or choice to obtain
11 consent; and

12 (C) cannot be inferred from inaction.

13 (2) COLLECT.—The term “collect”, with re-
14 spect to emergency health data, means obtaining in
15 any manner by a covered organization.

16 (3) COMMISSION.—The term “Commission”
17 means the Federal Trade Commission.

18 (4) COVERED ORGANIZATION.—

19 (A) IN GENERAL.—The term “covered or-
20 ganization” means any person (including a gov-
21 ernment entity)—

22 (i) that collects, uses, or discloses
23 emergency health data electronically or
24 through communication by wire or radio;
25 or

(ii) that develops or operates a website, web application, mobile application, mobile operating system feature, or smart device application for the purpose of tracking, screening, monitoring, contact tracing, or mitigation, or otherwise responding to the COVID–19 public health emergency.

(B) EXCLUSIONS.—The term “covered organization” does not include—

- (i) a health care provider;
- (ii) a person engaged in a de minimis collection or processing of emergency health data;
- (iii) a service provider;
- (iv) a person acting in their individual or household capacity; or
- (v) a public health authority.

(5) DEMOGRAPHIC DATA.—The term “demographic data” means information relating to the actual or perceived race, color, ethnicity, national origin, religion, sex, gender, gender identity, sexual orientation, age, Tribal affiliation, disability, domicile, employment status, familial status, immigration sta-

1 tus, or veteran status of an individual or group of
2 individuals.

3 (6) DEVICE.—The term “device” means any
4 electronic equipment that is primarily designed for
5 or marketed to consumers.

6 (7) DISCLOSURE.—The term “disclosure”, with
7 respect to emergency health data, means the releas-
8 ing, transferring, selling, providing access to, licens-
9 ing, or divulging in any manner by a covered organi-
10 zation to a third party.

11 (8) EMERGENCY HEALTH DATA.—The term
12 “emergency health data” means data linked or rea-
13 sonably linkable to an individual or device, including
14 data inferred or derived about the individual or de-
15 vice from other collected data provided such data is
16 still linked or reasonably linkable to the individual or
17 device, that concerns the public COVID–19 health
18 emergency. Such data includes—

19 (A) information that reveals the past,
20 present, or future physical or behavioral health
21 or condition of, or provision of healthcare to, an
22 individual, including—

23 (i) data derived from the testing or
24 examination of a body part or bodily sub-
25 stance, or a request for such testing;

(ii) whether or not an individual has contracted or been tested for, or an estimate of the likelihood that a particular individual may contract, such disease or disorder; and

(iii) genetic data, biological samples, and biometrics; and

(B) other data collected in conjunction with other emergency health data or for the purpose of tracking, screening, monitoring, contact tracing, or mitigation, or otherwise responding to the COVID–19 public health emergency, including—

(i) geolocation data, when such term means data capable of determining the past or present precise physical location of an individual at a specific point in time, taking account of population densities, including cell-site location information, triangulation data derived from nearby wireless or radio frequency networks, and global positioning system data;

(ii) proximity data, when such term means information that identifies or estimates the past or present physical prox-

imity of one individual or device to another, including information derived from Bluetooth, audio signatures, nearby wireless networks, and near-field communications;

(iii) demographic data;

(iv) contact information for identifiable individuals or a history of the individual’s contacts over a period of time, such as an address book or call log; and

(v) any other data collected from a personal device.

(9) GOVERNMENT ENTITY.—The term “government entity” includes a Federal agency, a State, a local government, and other organizations, as such terms are defined in section 3371 of title 5, United States Code.

(10) HEALTH CARE PROVIDER.—The term “health care provider” has the meaning given the term “eligible health care provider” in title VIII of division B of the CARES Act (Public Law 116–136).

(11) HIPAA REGULATIONS.—The term “HIPAA regulations” means parts 160 and 164 of title 45, Code of Federal Regulations.

1 (12) PUBLIC HEALTH AUTHORITY.—The term
2 “public health authority” means an entity that is
3 authorized by law to collect or receive information
4 for the purpose of preventing or controlling disease,
5 injury, or disability including, but not limited to, the
6 reporting of disease, injury, vital events such as
7 birth or death, and the conduct of public health sur-
8 veillance, public health investigations, and public
9 health interventions, and a person, such as a des-
10 ignated agency or associate, acting under a grant of
11 authority from, or under a contract with, such public
12 entity, including the employees or agents of such en-
13 tity or its contractors or persons or entities to whom
14 it has granted authority.

15 (13) COVID–19 PUBLIC HEALTH EMER-
16 GENCY.—The term “COVID–19 public health emer-
17 gency” means the outbreak and public health re-
18 sponse pertaining to Coronavirus Disease 2019
19 (COVID–19), associated with the emergency de-
20 clared by the Secretary on January 31, 2020, under
21 section 319 of the Public Health Service Act (42
22 U.S.C. 247d), and any renewals thereof and any
23 subsequent declarations by the Secretary related to
24 the coronavirus.

1 (14) SECRETARY.—The term “Secretary”
2 means the Secretary of Health and Human Services.

3 (15) SERVICE PROVIDER.—

4 (A) IN GENERAL.—The term “service pro-
5 vider” means a person that collects, uses, or
6 discloses emergency health data for the sole
7 purpose of, and only to the extent that such en-
8 tity is, conducting business activities on behalf
9 of, for the benefit of, under instruction of, and
10 under contractual agreement with a covered or-
11 ganization.

12 (B) LIMITATION OF APPLICATION.—Such
13 person shall only be considered a service pro-
14 vider in the course of activities described in
15 subparagraph (A).

16 (C) EXCLUSIONS.—The term “service pro-
17 vider” excludes a person that develops or oper-
18 ates a website, web application, mobile applica-
19 tion, or smart device application for the purpose
20 of tracking, screening, monitoring, contact trac-
21 ing, or mitigation, or otherwise responding to
22 the COVID–19 public health emergency.

23 (16) STATE.—The term “State” means each
24 State of the United States, the District of Columbia,
25 each commonwealth, territory, or possession of the

1 United States, and each federally recognized Indian
 2 Tribe.

3 (17) THIRD PARTY.—

4 (A) IN GENERAL.—The term “third party”
 5 means, with respect to a covered organization—

6 (i) another person to whom such cov-
 7 ered organization disclosed emergency
 8 health data; and

9 (ii) a corporate affiliate or a related
 10 party of the covered organization that does
 11 not have a direct relationship with an indi-
 12 vidual with whom the emergency health
 13 data is linked or is reasonably linkable.

14 (B) EXCLUSION.—The term “third party”
 15 excludes, with respect to a covered organiza-
 16 tion—

17 (i) a service provider of such covered
 18 organization; or

19 (ii) a public health authority.

20 (18) USE.—The term “use”, with respect to
 21 emergency health data, means the processing, em-
 22 ployment, application, utilization, examination, or
 23 analysis of such data by a covered organization that
 24 maintains such data.

1 **SEC. 3. PROTECTING THE PRIVACY AND SECURITY OF**
2 **EMERGENCY HEALTH DATA.**

3 (a) RIGHT TO PRIVACY.—A covered organization that
4 collects emergency health data shall—

5 (1) only collect, use, or disclose such data that
6 is necessary, proportionate, and limited for a good
7 faith public health purpose, including a service or
8 feature to support such a purpose;

9 (2) take reasonable measures, where possible, to
10 ensure the accuracy of emergency health data and
11 provide an effective mechanism for an individual to
12 correct inaccurate information;

13 (3) adopt reasonable safeguards to prevent un-
14 lawful discrimination on the basis of emergency
15 health data; and

16 (4) only disclose such data to a government en-
17 tity when the disclosure—

18 (A) is to a public health authority; and

19 (B) is made in solely for good faith public
20 health purposes and in direct response to exi-
21 gent circumstances.

22 (b) RIGHT TO SECURITY.—A covered organization or
23 service provider that collects, uses, or discloses emergency
24 health data shall establish and implement reasonable data
25 security policies, practices, and procedures to protect the
26 security and confidentiality of emergency health data.

1 (c) PROHIBITED USES.—A covered organization shall
2 not collect, use, or disclose emergency health data for any
3 purpose not authorized under this section, including—

4 (1) commercial advertising, recommendation for
5 e-commerce, or the training of machine-learning al-
6 gorithms related to, or subsequently for use in, com-
7 mercial advertising and e-commerce;

8 (2) soliciting, offering, selling, leasing, licensing,
9 renting, advertising, marketing, or otherwise com-
10 mercially contracting for employment, finance, cred-
11 it, insurance, housing, or education opportunities in
12 a manner that discriminates or otherwise makes op-
13 portunities unavailable on the basis of emergency
14 health data; and

15 (3) segregating, discriminating in, or otherwise
16 making unavailable the goods, services, facilities,
17 privileges, advantages, or accommodations of any
18 place of public accommodation (as such term is de-
19 fined in section 301 of the Americans With Disabil-
20 ities Act of 1990 (42 U.S.C. 12181)), except as au-
21 thorized by a State or Federal Government entity
22 for a public health purpose notwithstanding sub-
23 section (g).

24 (d) CONSENT.—

1 (1) IN GENERAL.—It shall be unlawful for a
 2 covered organization to collect, use, or disclose emer-
 3 gency health data, unless—

4 (A) the individual to whom the data per-
 5 tains has given affirmative express consent to
 6 such collection, use, or disclosure;

7 (B) such collection, use, or disclosure is
 8 necessary and for the sole purpose of—

9 (i) protecting against malicious, de-
 10 ceptive, fraudulent, or illegal activity; or

11 (ii) detecting, responding to, or pre-
 12 venting information security incidents or
 13 threats; or

14 (C) the covered organization is compelled
 15 to do so by a legal obligation.

16 (2) REVOCATION.—

17 (A) IN GENERAL.—A covered organization
 18 shall provide an effective mechanism for an in-
 19 dividual to revoke consent after it is given.

20 (B) EFFECT.—After an individual revokes
 21 consent, the covered organization shall cease
 22 collecting, using, or disclosing the individual's
 23 emergency health data as soon as practicable,
 24 but in no case later than 15 days after the re-
 25 ceipt of the individual's revocation of consent.

1 (C) DESTRUCTION.—Not later than 30
2 days after the receipt of an individual’s revoca-
3 tion of consent, a covered organization shall de-
4 stroy or render not linkable that individuals
5 emergency health data under the same proce-
6 dures in subsection (f).

7 (e) NOTICE.—A covered organization that collects,
8 uses, or discloses emergency health data shall provide to
9 an individual a privacy policy that—

10 (1) is disclosed in a clear and conspicuous man-
11 ner, in the language in which the individual typically
12 interacts with the covered organization, prior to or
13 at the point of the collection of emergency health
14 data;

15 (2) describes how and for what purposes the
16 covered organization collects, uses, and discloses
17 emergency health data, including the categories of
18 recipients to whom it discloses data and the purpose
19 of disclosure for each category;

20 (3) describes the covered organization’s data re-
21 tention and data security policies and practices for
22 emergency health data; and

23 (4) describes how an individual may exercise
24 the rights under this Act and how to contact the
25 Commission to file a complaint.

1 (f) PUBLIC REPORTING.—

2 (1) IN GENERAL.—A covered organization that
3 collects, uses, or discloses emergency health data of
4 at least 100,000 individuals shall, at least once every
5 90 days, issue a public report—

6 (A) stating in aggregate terms the number
7 of individuals whose emergency health data the
8 covered organization collected, used, or dis-
9 closed to the extent practicable; and

10 (B) describing the categories of emergency
11 health data collected, used, or disclosed, the
12 purposes for which each such category of emer-
13 gency health data was collected, used, or dis-
14 closed, and the categories of third parties to
15 whom it was disclosed.

16 (2) RULES OF CONSTRUCTION.—Nothing in
17 this subsection shall be construed to require a cov-
18 ered organization to—

19 (A) take an action that would convert data
20 that is not emergency health data into emer-
21 gency health data;

22 (B) collect or maintain emergency health
23 data that the covered organization would other-
24 wise not maintain; or

1 (C) maintain emergency health data longer
2 than the covered organization would otherwise
3 maintain such data.

4 (g) REQUIRED DATA DESTRUCTION.—

5 (1) IN GENERAL.—A covered organization may
6 not use or maintain emergency health data of an in-
7 dividual after the later of—

8 (A) the date that is 60 days after the ter-
9 mination of the public health emergency de-
10 clared by the Secretary on January 31, 2020,
11 pertaining to Coronavirus Disease 2019
12 (COVID–19) under section 319 of the Public
13 Health Service Act (42 U.S.C. 247d) and any
14 renewals thereof;

15 (B) the date that is 60 days after the ter-
16 mination of a public health emergency declared
17 by a governor or chief executive of a State per-
18 taining to Coronavirus Disease 2019 (COVID–
19 19) in which the individual resides; or

20 (C) 60 days after collection.

21 (2) REQUIREMENT.—For the requirements
22 under paragraph (1), data shall be destroyed or ren-
23 dered not linkable in such a manner that it is impos-
24 sible or demonstrably impracticable to identify any
25 individual from the data.

1 (3) RELATION TO CERTAIN REQUIREMENTS.—

2 The provisions of this subsection shall not supersede
3 any requirements or authorizations under—

4 (A) the Privacy Act of 1974 (Public Law
5 93–79);

6 (B) the HIPPA regulations; or

7 (C) Federal or State medical records reten-
8 tion and health privacy laws or regulations, or
9 other applicable Federal or State laws.

10 (h) EMERGENCY DATA COLLECTED, USED, OR DIS-
11 CLOSED BEFORE ENACTMENT.—

12 (1) INITIATING A RULEMAKING.—Not later
13 than 7 days after the date of enactment of this Act,
14 the Commission shall initiate a public rulemaking to
15 promulgate regulations to ensure a covered organiza-
16 tion that has collected, used, or disclosed emergency
17 health data before the date of enactment of this Act
18 is in compliance with this Act, to the degree prac-
19 ticable.

20 (2) COMPLETING A RULEMAKING.—The Com-
21 mission shall complete the rulemaking within 45
22 days after the date of enactment of this Act.

23 (i) NON-APPLICATION TO MANUAL CONTACT TRAC-
24 ING AND CASE INVESTIGATION.—Nothing in this Act shall
25 be construed to limit or prohibit a public health authority

1 from administering programs or activities to identify indi-
 2 viduals who have contracted, or may have been exposed
 3 to, COVID–19 through interviews, outreach, case inves-
 4 tigation, and other recognized investigatory measures by
 5 a public health authority or their designated agent by a
 6 public health authority or their designated agent intended
 7 to monitor and mitigate the transmission of a disease or
 8 disorder.

9 (j) RESEARCH AND DEVELOPMENT.—This section
 10 shall not be construed to prohibit—

11 (1) public health or scientific research associ-
 12 ated with the COVID–19 public health emergency
 13 by—

14 (A) a public health authority;

15 (B) a nonprofit organization, as described
 16 in section 501(c)(3) of the Internal Revenue
 17 Code of 1986; or

18 (C) an institution of higher education, as
 19 such term is defined in section 101 of the High-
 20 er Education Act of 1965 (20 U.S.C. 1001); or

21 (2) research, development, manufacture, or dis-
 22 tribution of a drug, biological product, or vaccine
 23 that relates to a disease or disorder that is associ-
 24 ated or potentially associated with a public health
 25 emergency.

1 (k) **LEGAL REQUIREMENTS.**—Notwithstanding sub-
 2 section (a)(5), nothing in this Act shall be construed to
 3 prohibit a good faith response to, or compliance with, oth-
 4 erwise valid subpoenas, court orders, or other legal proc-
 5 esses, or to prohibit storage or providing information as
 6 otherwise required by law.

7 (l) **APPLICATION TO HIPAA COVERED ENTITIES.**—

8 (1) **IN GENERAL.**—This Act does not apply to
 9 a “covered entity” or a person acting as a “business
 10 associate” under the HIPAA regulations (to the ex-
 11 tent that such entities or associates are acting in
 12 such capacity) or any health care provider.

13 (2) **GUIDANCE FOR CONSISTENCY.**—Not later
 14 than 30 days after the date of enactment of this
 15 Act, the Secretary shall promulgate guidance on the
 16 applicability of requirements, similar to those in this
 17 section to “covered entities” and persons acting as
 18 “business associates” under the HIPAA regulations.
 19 In promulgating such guidance, the Secretary shall
 20 reduce duplication of requirements and may exclude
 21 a requirement of this section if such requirement is
 22 already a requirement of the HIPAA regulations.

23 **SEC. 4. PROTECTING THE RIGHT TO VOTE.**

24 (a) **IN GENERAL.**—A government entity may not, and
 25 a covered organization may not knowingly facilitate, on

1 the basis of an individual’s emergency health data, medical
 2 condition, or participation or non-participation in a pro-
 3 gram to collect emergency health data—

4 (1) deny, restrict, or interfere with the right to
 5 vote in a Federal, State, or local election;

6 (2) attempt to deny, restrict, or interfere with
 7 the right to vote in a Federal, State, or local elec-
 8 tion; or

9 (3) retaliate against an individual for voting in
 10 a Federal, State, or local election.

11 (b) CIVIL ACTION.—In the case of any violation of
 12 subsection (a), an individual may bring a civil action to
 13 obtain appropriate relief against a government entity in
 14 a Federal district court.

15 **SEC. 5. REPORTS ON CIVIL RIGHTS IMPACTS.**

16 (a) REPORT REQUIRED.—The Secretary, in consulta-
 17 tion with the United States Commission on Civil Rights
 18 and the Commission, shall prepare and submit to Con-
 19 gress reports that examines the civil rights impact of the
 20 collection, use, and disclosure of health information in re-
 21 sponse to the COVID–19 public health emergency.

22 (b) SCOPE OF REPORT.—Each report required under
 23 subsection (a) shall, at a minimum—

24 (1) evaluate the impact of such practices on
 25 civil rights and protections for individuals based on

1 race, color, ethnicity, national origin, religion, sex,
2 gender, gender identity, sexual orientation, age,
3 Tribal affiliation, disability, domicile, employment
4 status, familial status, immigration status, or vet-
5 eran status;

6 (2) analyze the impact, risks, costs, legal con-
7 siderations, disparate impacts, and other implica-
8 tions to civil rights of policies to incentivize or re-
9 quire the adoption of digital tools or apps used for
10 contact tracing, exposure notification, or health
11 monitoring; and

12 (3) include recommendations on preventing and
13 addressing undue or disparate impact, segregation,
14 discrimination, or infringements of civil rights in the
15 collection and use of health information, including
16 during a national health emergency.

17 (c) TIMING.—

18 (1) INITIAL REPORT.—The Secretary shall sub-
19 mit an initial report under subsection (a) not sooner
20 than 9 months, and not later than 12 months after
21 the date of enactment of this Act.

22 (2) SUBSEQUENT REPORTS.—The Secretary
23 shall submit reports annually after the initial report
24 required under paragraph (1) until 1 year after the
25 termination of any public health emergency per-

1 taining to Coronavirus Disease 2019 (COVID–19)
2 under section 319 of the Public Health Service Act
3 (42 U.S.C. 247d).

4 **SEC. 6. ENFORCEMENT.**

5 (a) FEDERAL TRADE COMMISSION.—

6 (1) UNFAIR OR DECEPTIVE ACTS OR PRAC-
7 TICES.—A violation of this Act or a regulation pro-
8 mulgated under this Act shall be treated as a viola-
9 tion of a rule defining an unfair or deceptive act or
10 practice under section 18(a)(1)(B) of the Federal
11 Trade Commission Act (15 U.S.C. 57a(a)(1)(B)) re-
12 garding unfair or deceptive acts or practices.

13 (2) POWERS OF COMMISSION.—The Commis-
14 sion shall enforce this Act and the regulations pro-
15 mulgated under this Act in the same manner, by the
16 same means, and with the same jurisdiction, powers,
17 and duties as though all applicable terms and provi-
18 sions of the Federal Trade Commission Act (15
19 U.S.C. 41 et seq.) were incorporated into and made
20 a part of this Act. Any person who violates this Act
21 or a regulation promulgated under this Act shall be
22 subject to the penalties and entitled to the privileges
23 and immunities provided in the Federal Trade Com-
24 mission Act. Provided, however, that, notwith-
25 standing the requirements of section 16(a) of the

1 Federal Trade Commission Act (15 U.S.C. 56(a)),
2 the Commission shall have the exclusive authority to
3 commence or defend, and supervise the litigation of,
4 any action for a violation of this Act or a regulation
5 promulgated under this Act and any appeal of such
6 action in its own name by any of its attorneys des-
7 ignated by it for such purpose, without first refer-
8 ring the matter to the Attorney General.

9 (3) RULEMAKING AUTHORITY.—

10 (A) IN GENERAL.—The Commission shall
11 have authority under section 553 of title 5,
12 United States Code, to promulgate any regula-
13 tions necessary to implement this Act.

14 (B) CONSULTATION.—In promulgating any
15 regulations under this Act, the Commission
16 shall consult with the Secretary.

17 (4) COMMON CARRIERS AND NONPROFIT ORGA-
18 NIZATIONS.—Notwithstanding section 4, 5(a)(2), or
19 6 of the Federal Trade Commission Act (15 U.S.C.
20 44; 45(a)(2); 46) or any jurisdictional limitation of
21 the Commission, the Commission shall also enforce
22 this Act, in the same manner provided in paragraphs
23 (1) and (2) of this paragraph, with respect to—

24 (A) common carriers subject to the Acts to
25 regulate commerce, air carriers, and foreign air

1 carriers subject to part A of subtitle VII of title
2 49, and persons, partnerships, or corporations
3 insofar as they are subject to the Packers and
4 Stockyards Act, 1921 (7 U.S.C. 181 et seq.),
5 except as provided in section 406(b) of such Act
6 (7 U.S.C. 227(b)); and

7 (B) organizations not organized to carry
8 on business for their own profit or that of their
9 members.

10 (b) ENFORCEMENT BY STATES.—

11 (1) IN GENERAL.—In any case in which the at-
12 torney general of a State has reason to believe that
13 an interest of the residents of the State has been or
14 is threatened or adversely affected by the engage-
15 ment of any person subject to this Act in a practice
16 that violates such subsection, the attorney general of
17 the State may, as *parens patriae*, bring a civil action
18 on behalf of the residents of the State in an appro-
19 priate district court of the United States to obtain
20 appropriate relief.

21 (2) RIGHTS OF THE FEDERAL TRADE COMMIS-
22 SION.—

23 (A) NOTICE TO FEDERAL TRADE COMMIS-
24 SION.—

1 (i) IN GENERAL.—Except as provided
 2 in clause (iii), the attorney general of a
 3 State shall notify the Commission in writ-
 4 ing that the attorney general intends to
 5 bring a civil action under paragraph (1)
 6 before initiating the civil action against a
 7 person subject to this Act.

8 (ii) CONTENTS.—The notification re-
 9 quired by clause (i) with respect to a civil
 10 action shall include a copy of the complaint
 11 to be filed to initiate the civil action.

12 (iii) EXCEPTION.—If it is not feasible
 13 for the attorney general of a State to pro-
 14 vide the notification required by clause (i)
 15 before initiating a civil action under para-
 16 graph (1), the attorney general shall notify
 17 the Commission immediately upon insti-
 18 tuting the civil action.

19 (B) INTERVENTION BY THE FEDERAL
 20 TRADE COMMISSION.—The Commission may—

21 (i) intervene in any civil action
 22 brought by the attorney general of a State
 23 under paragraph (1); and

24 (ii) upon intervening—

1 (I) be heard on all matters arising in the civil action; and

2
3 (II) file petitions for appeal of a
4 decision in the civil action.

5 (C) INVESTIGATORY POWERS.—Nothing in
6 this subsection may be construed to prevent the
7 attorney general of a State from exercising the
8 powers conferred on the attorney general by the
9 laws of the State to conduct investigations, to
10 administer oaths or affirmations, or to compel
11 the attendance of witnesses or the production of
12 documentary or other evidence.

13 (3) ACTION BY THE FEDERAL TRADE COMMISSION.—If the Commission institutes a civil action
14 with respect to a violation of this Act, the attorney
15 general of a State may not, during the pendency of
16 such action, bring a civil action under paragraph (1)
17 of this subsection against any defendant named in
18 the complaint of the Commission for the violation
19 with respect to which the Commission instituted
20 such action.

22 (4) VENUE; SERVICE OF PROCESS.—

23 (A) VENUE.—Any action brought under
24 paragraph (1) may be brought in—

1 (i) the district court of the United
 2 States that meets applicable requirements
 3 relating to venue under section 1391 of
 4 title 28, United States Code; or

5 (ii) another court of competent juris-
 6 diction.

7 (B) SERVICE OF PROCESS.—In an action
 8 brought under paragraph (1), process may be
 9 served in any district in which the defendant—

10 (i) is an inhabitant; or

11 (ii) may be found.

12 (C) ACTIONS BY OTHER STATE OFFI-
 13 CIALS.—

14 (i) IN GENERAL.—In addition to civil
 15 actions brought by attorneys general under
 16 paragraph (1), any other officer of a State
 17 who is authorized by the State to do so
 18 may bring a civil action under paragraph
 19 (1), subject to the same requirements and
 20 limitations that apply under this sub-
 21 section to civil actions brought by attor-
 22 neys general.

23 (ii) SAVINGS PROVISION.—Nothing in
 24 this subsection may be construed to pro-
 25 hibit an authorized official of a State from

1 initiating or continuing any proceeding in
 2 a court of the State for a violation of any
 3 civil or criminal law of the State.

4 (c) PRIVATE RIGHT OF ACTION.—

5 (1) ENFORCEMENT BY INDIVIDUALS.—

6 (A) IN GENERAL.—Any individual alleging
 7 a violation of this Act may bring a civil action
 8 in any court of competent jurisdiction, State or
 9 Federal.

10 (B) RELIEF.—In a civil action brought
 11 under paragraph (1) in which the plaintiff pre-
 12 vails, the court may award—

13 (i) an amount not less than \$100 and
 14 not greater than \$1,000 per violation
 15 against any person who negligently violates
 16 a provision of this Act;

17 (ii) an amount not less than \$500 and
 18 not greater than \$5,000 per violation
 19 against any person who recklessly, will-
 20 fully, or intentionally violates a provision of
 21 this Act;

22 (iii) reasonable attorney's fees and
 23 litigation costs; and

1 (iv) any other relief, including equi-
 2 table or declaratory relief, that the court
 3 determines appropriate.

4 (C) INJURY IN FACT.—A violation of this
 5 Act with respect to the emergency health data
 6 of an individual constitutes a concrete and par-
 7 ticularized injury in fact to that individual.

8 (2) INVALIDITY OF PRE-DISPUTE ARBITRATION
 9 AGREEMENTS AND PRE-DISPUTE JOINT ACTION
 10 WAIVERS.—

11 (A) IN GENERAL.—Notwithstanding any
 12 other provision of law, no pre-dispute arbitra-
 13 tion agreement or pre-dispute joint action waiv-
 14 er shall be valid or enforceable with respect to
 15 a dispute arising under this Act.

16 (B) APPLICABILITY.—Any determination
 17 as to whether or how this subsection applies to
 18 any dispute shall be made by a court, rather
 19 than an arbitrator, without regard to whether
 20 such agreement purports to delegate such deter-
 21 mination to an arbitrator.

22 (C) DEFINITIONS.—In this subsection:

23 (i) The term “pre-dispute arbitration
 24 agreement” means any agreement to arbi-

1 trate a dispute that has not arisen at the
2 time of making the agreement.

3 (ii) The term “pre-dispute joint-action
4 waiver” means an agreement, whether or
5 not part of a pre-dispute arbitration agree-
6 ment, that would prohibit, or waive the
7 right of, one of the parties to the agree-
8 ment to participate in a joint, class, or col-
9 lective action in a judicial, arbitral, admin-
10 istration, or other forum, concerning a dis-
11 pute that has not yet arisen at the time of
12 making the agreement.

13 (iii) The term “dispute” means any
14 claim related to an alleged violation of this
15 Act and between an individual and a cov-
16 ered organization.

17 **SEC. 7. NONPREEMPTION.**

18 Nothing in this Act shall preempt or supersede, or
19 be interpreted to preempt or supersede, any Federal or
20 State law or regulation, or limit the authority of the Com-
21 mission or the Secretary under any other provision of law.

22 **SEC. 8. EFFECTIVE DATE.**

23 (a) IN GENERAL.—This Act shall apply beginning on
24 the date that is 30 days after the date of enactment of
25 this Act.

1 (b) AUTHORITY TO PROMULGATE REGULATIONS AND
2 TAKE CERTAIN OTHER ACTIONS.—Nothing in subsection

3 (a) affects—

4 (1) the authority of any person to take an ac-
5 tion expressly required by a provision of this Act be-
6 fore the effective date described in such subsection;
7 or

8 (2) the authority of the Commission to promul-
9 gate regulations to implement this Act or begin a
10 rulemaking to promulgate such regulations.

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