

106TH CONGRESS
2D SESSION

H. R. 4585

To strengthen consumers' control over the use and disclosure of their health information by financial institutions, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

JUNE 6, 2000

Mr. LEACH introduced the following bill; which was referred to the Committee on Banking and Financial Services, and in addition to the Committee on Commerce, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

To strengthen consumers' control over the use and disclosure of their health information by financial institutions, 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 “Medical Financial Pri-
5 vacy Protection Act”.

1 **SEC. 2. USE AND DISCLOSURE OF HEALTH INFORMATION**
2 **BY FINANCIAL INSTITUTIONS.**

3 (a) IN GENERAL.—Title V of the Gramm-Leach-Bliley Act (15 U.S.C. 6801 et seq.) is amended by inserting
4 after section 502 the following:
5

6 **“SEC. 502A. SPECIAL RULES FOR HEALTH INFORMATION.**

7 **“(a) RULES FOR DISCLOSURE.—**

8 **“(1) GENERAL RULE REQUIRING AFFIRMATIVE**
9 **CONSENT FOR DISCLOSURE.—**

10 **“(A) IN GENERAL.—**A financial institution
11 may not disclose any individually identifiable
12 health information pertaining to a consumer to
13 an affiliate or a nonaffiliated third party unless
14 the financial institution—

15 **“(i)** has provided to the consumer a
16 clear and conspicuous notice in writing, in
17 electronic form, or in another form per-
18 mitted by the regulations implementing
19 this subtitle, of the categories of such in-
20 formation that may be disclosed and the
21 categories of affiliates or nonaffiliated
22 third parties to whom the financial institu-
23 tion discloses such information;

24 **“(ii)** has clearly and conspicuously re-
25 quested in writing, in electronic form, or in
26 another form permitted by the regulations

1 implementing this subtitle, that the con-
2 sumer affirmatively consent to such disclo-
3 sure; and

4 “(iii) has obtained from the consumer
5 such affirmative consent and such consent
6 has not been withdrawn.

7 “(B) WITHDRAWAL OF CONSENT.—Any
8 withdrawal of consent is subject to the rights of
9 any financial institution that acted in reliance
10 on the consent prior to its withdrawal.

11 “(2) DISCLOSURE OF INFORMATION ABOUT
12 PERSONAL SPENDING HABITS.—

13 “(A) IN GENERAL.—If a financial institu-
14 tion provides a service to a consumer through
15 which the consumer makes or receives payments
16 or transfers by check, debit card, credit card, or
17 other similar instrument, the financial institu-
18 tion may not disclose any information described
19 in subparagraph (B) pertaining to the con-
20 sumer to an affiliate or a nonaffiliated third
21 party unless the financial institution has satis-
22 fied the requirements of clauses (i), (ii), and
23 (iii) of paragraph (1)(A) with respect to the dis-
24 closure.

1 “(B) INFORMATION DESCRIBED.—The in-
2 formation described in this paragraph is—

3 “(i) an individualized list of a con-
4 sumer’s transactions or an individualized
5 description of a consumer’s interests, pref-
6 erences, or other characteristics; or

7 “(ii) any such list or description con-
8 structed in response to an inquiry about a
9 specific, named individual;

10 if the list or description is derived from individ-
11 ually identifiable health information collected in
12 the course of providing a service described in
13 subparagraph (A) to the consumer.

14 “(3) DISCLOSURE OF AGGREGATE LISTS.—A fi-
15 nancial institution may not disclose any aggregate
16 list of consumers containing or derived from individ-
17 ually identifiable health information to an affiliate or
18 a nonaffiliated third party unless the financial insti-
19 tution has satisfied, for each consumer on the list,
20 the requirements of clauses (i), (ii), and (iii) of para-
21 graph (1)(A) with respect to the disclosure.

22 “(4) EXCEPTIONS TO DISCLOSURE LIMITA-
23 TIONS.—This section shall not restrict a financial in-
24 stitution from disclosing individually identifiable
25 health information—

1 “(A) for a purpose described in paragraph
2 (1), (2), (3), (5), (7), or (8) of section 502(e);

3 “(B) in order to facilitate customer service,
4 such as maintenance and operation of consoli-
5 dated customer call centers or the use of con-
6 solidated customer account statements; or

7 “(C) to the institution’s attorneys, ac-
8 countants, and auditors.

9 “(5) LIMITS ON REDISCLOSURE AND REUSE OF
10 INFORMATION.—

11 “(A) IN GENERAL.—Except as provided in
12 subparagraph (B), an affiliate or a nonaffiliated
13 third party that receives individually identifiable
14 health information from a financial institution
15 under this section shall not disclose such infor-
16 mation to any other person, unless such disclo-
17 sure would be lawful if made directly to such
18 other person by the financial institution.

19 “(B) DISCLOSURE UNDER AN EXCEP-
20 TION.—Notwithstanding subparagraph (A), any
21 person that receives individually identifiable
22 health information from a financial institution
23 in accordance with one of the exceptions in
24 paragraph (4) may use or disclose such infor-
25 mation only—

1 “(i) as permitted under that excep-
2 tion; or

3 “(ii) under another exception in such
4 paragraph to carry out the purpose for
5 which the information was disclosed by the
6 financial institution.

7 “(6) CONSTRUCTION.—Except as provided in
8 paragraph (4)(A), this section applies in lieu of sub-
9 sections (b), (c), and (e) of section 502 to a disclo-
10 sure by a financial institution of individually identifi-
11 able health information.

12 “(b) RULES FOR RECEIPT AND USE.—

13 “(1) IN GENERAL.—In deciding whether, or on
14 what terms, to offer, provide, or continue to provide
15 a loan or credit to a consumer, a financial institu-
16 tion shall not request to receive individually identifi-
17 able health information about the consumer from an
18 affiliate or nonaffiliated third party, or use, evaluate,
19 or otherwise consider any such information, unless
20 the financial institution—

21 “(A) has clearly and conspicuously re-
22 quested in writing, in electronic form, or in an-
23 other form permitted by the regulations imple-
24 menting this subtitle, that the consumer affirm-
25 atively consent to such receipt and use; and

1 “(B) has obtained from the consumer such
2 affirmative consent and such consent has not
3 been withdrawn.

4 “(2) RESTRAINT ON INFORMATION RE-
5 QUESTS.—In deciding whether, or on what terms, to
6 offer, provide, or continue to provide a loan or credit
7 to a consumer, a financial institution shall not re-
8 quest the consent described in paragraph (1)(A) to
9 receive individually identifiable health information
10 available from an affiliate, if the financial institution
11 would not otherwise normally receive the same or
12 substantially similar information from a non-
13 affiliated third party if that third party were the
14 only person able to provide the information.

15 “(c) CONSUMER RIGHTS TO ACCESS AND CORRECT
16 INFORMATION.—

17 “(1) ACCESS.—

18 “(A) IN GENERAL.—Upon the request of a
19 consumer, a financial institution shall make
20 available to the consumer individually identifi-
21 able health information about the consumer
22 that is within the possession of the financial in-
23 stitution.

24 “(B) EXCEPTIONS.—Notwithstanding sub-
25 paragraph (A), a financial institution—

1 “(i) shall not be required to disclose
2 to a consumer any confidential commercial
3 information, such as an algorithm used to
4 derive credit scores or other risk scores or
5 predictors;

6 “(ii) shall not be required to create
7 new records in order to comply with the
8 consumer’s request;

9 “(iii) shall not be required to disclose
10 to a consumer any information assembled
11 by the financial institution, in a particular
12 matter, as part of the financial institu-
13 tion’s efforts to comply with laws pre-
14 venting fraud, money laundering, or other
15 unlawful conduct; and

16 “(iv) shall not disclose any informa-
17 tion required to be kept confidential by any
18 other Federal law.

19 “(2) CORRECTION.—

20 “(A) OPPORTUNITY TO DISPUTE.—A fi-
21 nancial institution shall provide a consumer the
22 opportunity to dispute the accuracy of any indi-
23 vidually identifiable health information disclosed
24 to the consumer pursuant to paragraph (1),
25 and to present evidence thereon.

1 “(B) AMENDMENT, CORRECTION, OR DE-
2 LETION.—A financial institution—

3 “(i) shall amend, correct, or delete
4 material information identified by a con-
5 sumer that is materially incomplete or in-
6 accurate; or

7 “(ii) shall notify the consumer of—

8 “(I) its refusal to make such
9 amendment, correction, deletion;

10 “(II) the reasons for the refusal;
11 and

12 “(III) the identity of the person
13 who created the information and shall
14 refer the consumer to that person for
15 purposes of amending or correcting
16 the information or filing with it a con-
17 cise statement of what the consumer
18 believes to be the correct information.

19 “(3) COORDINATION AND CONSULTATION.—In
20 prescribing regulations implementing this subsection,
21 the Federal agencies specified in section 504(a) shall
22 consult with one another to ensure that the
23 regulations—

1 “(A) impose consistent requirements on
2 the financial institutions under their respective
3 jurisdictions;

4 “(B) take into account conditions under
5 which financial institutions do business both in
6 the United States and in other countries; and

7 “(C) are consistent with the principle of
8 technology neutrality.

9 “(4) CHARGES FOR DISCLOSURES.—A financial
10 institution may impose a reasonable charge for mak-
11 ing a disclosure under this subsection, which charge
12 shall be disclosed to the consumer before making the
13 disclosure.

14 “(d) SPECIAL REQUIREMENT TO PROTECT MENTAL
15 HEALTH INFORMATION.—In any case in which this sec-
16 tion requires a person to obtain a consumer’s affirmative
17 consent to a receipt, use, or disclosure of individually iden-
18 tifiable health information, the person shall obtain a sepa-
19 rate and specific consent with respect to any information
20 pertaining to the mental health or mental condition of an
21 individual.

22 “(e) RELATIONSHIP TO OTHER LAWS.—Nothing in
23 this section shall be construed as—

1 “(1) modifying, limiting, or superseding stand-
2 ards promulgated by the Secretary of Health and
3 Human Services under—

4 “(A) part C of title XI of the Social Secu-
5 rity Act (42 U.S.C. 1320d et seq.); or

6 “(B) section 264(c) of the Health Insur-
7 ance Portability and Accountability Act of 1996
8 (Public Law 104–191; 110 Stat. 2033); or

9 “(2) authorizing the use or disclosure of indi-
10 vidually identifiable health information in a manner
11 other than as permitted by other applicable law.”.

12 (b) DEFINITION OF INDIVIDUALLY IDENTIFIABLE
13 HEALTH INFORMATION.—Section 509 of the Gramm-
14 Leach-Bliley Act (15 U.S.C. 6809) is amended by adding
15 at the end the following:

16 “(12) INDIVIDUALLY IDENTIFIABLE HEALTH
17 INFORMATION.—The term ‘individually identifiable
18 health information’ means any information, includ-
19 ing demographic information obtained from or about
20 an individual, that is described in section
21 1171(6)(B) of the Social Security Act (42 U.S.C.
22 1320d(6)(B)).”.

23 (c) CLERICAL AMENDMENT.—The table of contents
24 for the Gramm-Leach-Bliley Act is amended by inserting
25 after the item relating to section 502 the following:

“Sec. 502A. Special rules for health information.”.

1 **SEC. 3. REGULATIONS; EFFECTIVE DATE.**

2 (a) REGULATIONS.—

3 (1) REGULATORY AUTHORITY.—Section 504(a)
4 of the Gramm-Leach-Bliley Act (15 U.S.C. 6804(a))
5 shall apply to the issuance of regulations to carry
6 out the amendments made by this Act in the same
7 manner as such section applies to the issuance of
8 other regulations to carry out subtitle A of title V
9 of the Gramm-Leach-Bliley Act, except as provided
10 in paragraph (4).

11 (2) AUTHORITY TO GRANT EXCEPTIONS.—The
12 regulations issued to carry out the amendments
13 made by this Act may include such additional excep-
14 tions to the provisions of section 502A of the
15 Gramm-Leach-Bliley Act, as inserted by section 2,
16 as are deemed consistent with the purposes of sub-
17 title A of title V of such Act, except as provided in
18 paragraph (3)(B).

19 (3) SPECIAL PROTECTIONS FOR MENTAL
20 HEALTH INFORMATION.—

21 (A) IN GENERAL.—The regulations issued
22 to carry out the amendments made by this Act
23 shall, where appropriate, include special policies
24 and procedures to protect the confidentiality of
25 individually identifiable health information re-

1 lating to the mental health or mental condition
2 of an individual.

3 (B) AUTHORITY TO GRANT EXCEPTIONS.—

4 The regulations issued to carry out the amend-
5 ments made by this Act may not include any
6 exception to the provisions of section 502A of
7 the Gramm-Leach-Bliley Act, as inserted by
8 section 2, that diminishes the protection af-
9 forded by such section to the confidentiality of
10 individually identifiable health information re-
11 lating to the mental health or mental condition
12 of an individual.

13 (4) DEADLINE.—Regulations to carry out the
14 amendments made by this Act shall be issued in
15 final form not later than 6 months after the date of
16 the enactment of this Act.

17 (b) EFFECTIVE DATE.—The amendments made by
18 this Act shall take effect 6 months after the date on which
19 regulations are required to be issued under subsection
20 (a)(4), except to the extent that a later date is specified
21 in such regulations.

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