
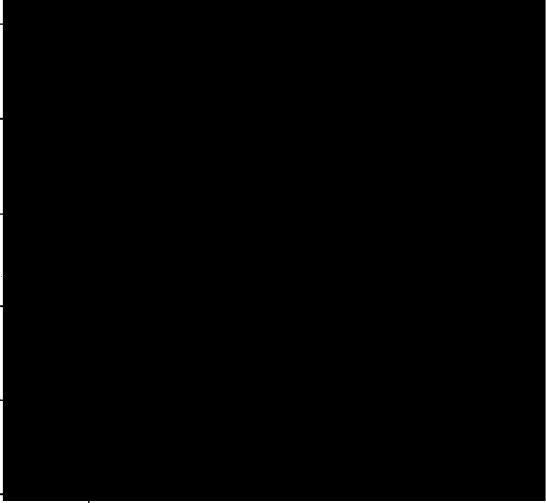


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### ROUTING AND RECORD SHEET

SUBJECT: (Optional)			
FROM: OLC 7D35 HQ		EXTENSION 6136	NO. DATE 18 December 1974
TO: (Officer designation, room number, and building)	DATE		OFFICER'S INITIALS
	RECEIVED	FORWARDED	
1.			<p>Attached is the text of the Privacy Act, S. 3418, as it passed the Senate. Our exemption is section (j)(1). Note that section (c)(4) on page S. 21813 was erroneously included in our exemption; it is being dropped by the House. House passage is expected without change and the bill should go to the President for signature on Friday, 20 December.</p> <p style="text-align: center;"> Assistant Legislative Counsel</p> <p style="text-align: center;"></p> <p style="text-align: right;">STATINTL !</p>
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21808

## CONGRESSIONAL RECORD — SENATE

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airmail rates, and shall further consider the competitive disadvantage to U.S. flag air carriers resulting from foreign air carriers receiving Universal Postal Union rates for the carriage of U.S. mail and the national origin mail of their own countries."

Mr. CANNON. Mr. President, this amendment simply eliminates the requirement that the UPU be paid for carriage of foreign mail transportation and requires that that must be a factor taken into consideration by the Civil Aeronautics Board in fixing the rates.

The PRESIDING OFFICER. The question is on agreeing to the amendment.

Mr. GOLDWATER. Mr. President, I have a question of the Senator from Nevada. Would this have a salutary effect on Pan American's—

Mr. CANNON. Yes. The answer to the question is that this would have a salutary effect. The provision that we have requires the Board to act immediately in fixing a temporary rate pending the outcome of the mail rate case that is now under consideration before the Board.

The passage of this bill would result in an increased payment to Pan Am upon the determination of the fair and reasonable rate to be paid, which has been determined by the end of this month by the Civil Aeronautics Board.

In addition, it has certain policy matters set forth in the bill that we have already acted on that are going to require the Department of State and the Board to get off the dime and try to help the U.S. air carriers, to try to prohibit discrimination against U.S. air carriers that is carried on at the present time.

Mr. GOLDWATER. I thank the Senator very much.

Mr. CANNON. Mr. President, I move that the Senate concur in the House amendment, with the amendment that we have just submitted.

The PRESIDING OFFICER. The question is on agreeing to the motion.

The motion was agreed to.

#### PRIVACY ACT OF 1974

Mr. ERVIN. Mr. President, I ask the Chair to lay before the Senate a message from the House of Representatives on S. 3418.

The PRESIDING OFFICER laid before the Senate the amendments of the House of Representatives to the bill (S. 3418) to establish a Privacy Protection Commission, to provide management systems in Federal agencies and certain other organizations with respect to the gathering and disclosure of information concerning individuals, and for other purposes, as follows:

Strike out all after the enacting clause, and insert: That this Act may be cited as the "Privacy Act of 1974".

SEC. 2. (a) The Congress finds that—

(1) the privacy of an individual is directly affected by the collection, maintenance, use, and dissemination of personal information by Federal agencies;

(2) the increasing use of computers and sophisticated information technology, while essential to the efficient operations of the Government, has greatly magnified the harm to individual privacy that can occur from

any collection, maintenance, use, or dissemination of personal information;

(3) the opportunities for an individual to secure employment, insurance, and credit, and his right to due process, and other legal protections are endangered by the misuse of certain information systems;

(4) the right to privacy is a personal and fundamental right protected by the Constitution of the United States; and

(5) in order to protect the privacy of individuals identified in information systems maintained by Federal agencies, it is necessary and proper for the Congress to regulate the collection, maintenance, use, and dissemination of information by such agencies.

(b) The purpose of this Act is to provide certain safeguards for an individual against an invasion of personal privacy by requiring Federal agencies, except as otherwise provided by law, to—

(1) permit an individual to determine what records pertaining to him are collected, maintained, used, or disseminated by such agencies;

(2) permit an individual to prevent records pertaining to him obtained by such agencies for a particular purpose from being used or made available for another purpose without his consent;

(3) permit an individual to gain access to information pertaining to him in Federal agency records, to have a copy made of all or any portion thereof, and to correct or amend such records;

(4) collect, maintain, use, or disseminate any record of identifiable personal information in a manner that assures that such action is for a necessary and lawful purpose, that the information is current and accurate for its intended use, and that adequate safeguards are provided to prevent misuse of such information;

(5) permit exemptions from the requirements with respect to records provided in this Act only in those cases where there is an important public policy need for such exemption as has been determined by specific statutory authority; and

(6) be subject to civil suit for any damages which occur as a result of willful, arbitrary, or capricious action which violates any individual's rights under this Act.

SEC. 3. Title 5, United States Code, is amended by adding after section 552 the following new section:

"§ 552a. Records maintained on individuals  
"(a) DEFINITIONS.—For purposes of this section—

"(1) the term 'agency' means agency as defined in section 552(e) of this title;

"(2) the term 'individual' means a citizen of the United States or an alien lawfully admitted for permanent residence;

"(3) the term 'maintain' includes maintain, collect, use, or disseminate;

"(4) the term 'record' means any collection or grouping of information about an individual that is maintained by an agency and that contains his name, or the identifying number, symbol, or other identifying particular assigned to the individual;

"(5) the term 'system of records' means a group of any records under the control of any agency from which information is retrieved by the name of the individual or by some identifying number, symbol, or other identifying particular assigned to the individual; and

"(6) the term 'statistical research or reporting record' means a record in a system of records maintained for statistical research or reporting purposes only and not used in whole or in part in making any determination about an identifiable individual, except as provided by section 8 of title 13.

"(b) CONDITIONS OF DISCLOSURE.—No agency shall disclose any record which is contained in a system of records by any means

of communication to any person, or to another agency, except pursuant to a written request by, or with the prior written consent of, the individual to whom the record pertains, unless disclosure of the record would be—

"(1) to those officers and employees of the agency which maintains the record who have a need for the record in the performance of their duties;

"(2) for a routine use described under subsection (e) (2) (D) of this section;

"(3) to the Bureau of the Census for purposes of planning or carrying out a census or survey or related activity pursuant to the provisions of title 13;

"(4) to a recipient who has provided the agency with advance adequate written assurance that the record will be used solely as a statistical research or reporting record, and the record is to be transferred in a form that is not individually identifiable;

"(5) to the National Archives of the United States as a record which has sufficient historical or other value to warrant its continued preservation by the United States Government, or for evaluation by the Administrator of General Services or his designee to determine whether the record has such value;

"(6) to another agency or to an instrumentality of any governmental jurisdiction within or under the control of the United States for a law enforcement activity if the activity is authorized by law, and if the head of the agency or instrumentality has made a written request to the agency which maintains the record specifying the particular portion desired and the law enforcement activity for which the record is sought;

"(7) to a person who is actively engaged in saving the life of such individual, if upon such disclosure notification is transmitted to the last known address of such individual;

"(8) to either House of Congress, or, to the extent of matter within its jurisdiction, any committee or subcommittee thereof, or any joint committee of Congress or subcommittee of any such joint committee; or

"(9) pursuant to the order of a court of competent jurisdiction.

(c) ACCOUNTING OF CERTAIN DISCLOSURES.—Each agency, with respect to each system of records under its control, shall—

"(1) except for disclosures made under subsection (b) (1) of this section or disclosures to the public from records which by law or regulation are open to public inspection or copying, keep an accurate accounting of—

"(A) the date, nature, and purpose of each disclosure of a record to any person or to another agency made under subsection (b) of this section; and

"(B) the name and address of the person or agency to whom the disclosure is made;

"(2) retain the accounting made under paragraph (1) of this subsection for at least five years after the disclosure for which the accounting is made;

"(3) except for disclosures made under subsection (b) (6) of this section, make the accounting made under paragraph (1) of this subsection available to the individual named in the record at his request; and

"(4) inform any person or other agency about any correction or notation of dispute made by the agency in accordance with subsection (d) of this section of any record that has been disclosed to the person or agency within two years preceding the making of the correction of the record of the individual, except that this paragraph shall not apply to any record that was disclosed prior to the effective date of this section or for which no accounting of the disclosure is required.

"(d) ACCESS TO RECORDS.—Each agency that maintains a system of records shall—

"(1) upon request by any individual to

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State must report back to the Secretary of Transportation who, with the approval of the Secretary of State will determine what compensatory charges must be levied on the foreign airlines involved as a condition of landing in this country.

The Secretary of the Treasury collects the charges and accumulates the money in a special account. The Secretary of the Treasury is then to make payments to U.S. air carriers which have been affected by the discriminatory treatment in order to compensate them for the money they are forced to pay to foreign nations. The Secretary of Transportation is to promulgate such regulations as are necessary to create a mechanism for those payments.

Section 5 amends title XI of the Federal Aviation Act of 1958 by requiring that preference be given to U.S. carriers when the U.S. Government arranges for the movement of people or goods to or between foreign ports. The Comptroller General of the United States is authorized to approve payments to other carriers only when there is a showing that it was necessary to engage their services in the particular instance.

Section 6 amends section 2 of the International Travel Act of 1961 (22 U.S.C. 2122) in order to direct the Secretary of Commerce to promote and encourage travel to and from the United States on U.S. air carriers.

Mr. President, the only controversy over this bill arises out of differing views on the question of postal rates paid for the international carriage of airmail—rates paid by the United States to our carriers, rates paid by the United States to foreign carriers, and rates paid by foreign governments to their carriers and others for the transportation of air mail.

Section 4 of the House-passed bill contains an amendment passed on the House floor by a narrow margin which was not supported by the Senate or by the House Committee on Interstate and Foreign Commerce when it reported this bill to the House floor. The amendment is known as the Murphy amendment or the UPU amendment to most of my colleagues. This provision amends the Federal Aviation Act to eliminate discrimination which now exists in rates paid to U.S.- and foreign-flag airlines by the U.S. Postal Service for the transportation of U.S. international mail. The provision precludes payment by our own Government of mail transportation rates to U.S.-flag airlines lower than those paid to foreign-flag airlines.

The Federal Aviation Act empowers the CAB to set the rate to be paid U.S.-flag airlines for the transportation of international air mail. The rate being paid today, basically unchanged since 1968, averages \$0.31 per ton-mile despite substantial increases in airline costs and despite substantial increases in postal service revenue for international mail.

The U.S. Postal Service, however, pays foreign flag airlines up to \$1.73 per ton-mile for letter class mail, and 57.7 cents per ton-mile for all other classes of mail. This higher payment is the maximum rate for the air transportation of mail which is established periodically by in-

ternational agreement of the various national postal administrations, including the United States, in the Universal Postal Union—UPU. According to testimony in our hearings, foreign flag airline competitors received from the U.S. Government last year a mail transportation rate over six times higher than that paid to the U.S.-flag airlines.

In contrast, most other nations of the world pay their international airlines the higher, internationally agreed upon mail rate for the transportation of international mail. U.S. airlines compete in passenger and cargo markets with these same airlines at rates that are agreed to by international airlines and their governments to assure international parity for similar air transport services. However, in the case of mail payments, the third major source of international airline revenue, such parity does not exist. As a result of this disparity in mail rates, U.S.-flag airlines in 1973, for example, received \$68 million less than they would have if they were reimbursed by the U.S. Government at the rate paid to foreign flag airlines which compete with them for international business.

Our committee thoroughly considered requiring that the CAB set international mail rates for U.S. carriers at a level no less than the current Universal Postal Union rate. However, we chose not to do so for two important reasons. First, we are convinced that the UPU postal rate is set at a level significantly above what it costs air carriers to carry the mail. In establishing the rate, different costing methods are used than those used by the CAB and the costs also reflect the relative inefficiencies of short-haul foreign air carriers.

In effect, we believe the UPU rate is an indirect subsidy for carrying the mail which many nations choose to pay their air carriers and other air carriers without regard to realistic costs. While we realize that this indirect subsidization provides a competitive advantage to many foreign airlines, we do not believe that that fact requires that the United States indirectly subsidize its privately owned airlines. Second, if the United States paid the UPU postal rates to all U.S. international airlines, the rate increase would go to the financially healthy international carriers as well as the relatively weak. In other words, U.S. carriers not now experiencing financial difficulty would receive windfall revenues under the UPU rate which we do not believe are justified.

Accordingly, the Senate Commerce Committee today approved an amendment to S. 3481, as passed by the House, which would strike the mandatory UPU postal rates from the House bill and substitute a provision similar to the original Senate bill.

In effect, the committee amendment continues to leave with the CAB the responsibility for setting fair and reasonable air mail rates at whatever level the board finds appropriate. However, the amendment admonishes the Board in setting such rates that—

It shall take into consideration rates paid for transportation of mail pursuant to the universal postal union convention as rati-

fied by the United States Government, shall take into account all of the rate-making elements employed by the Universal Postal Union in fixing its airmail rates and shall further consider the competitive disadvantage to U.S. flag air carriers resulting from foreign air carriers receiving universal postal union rates for the carriage of U.S. mail and the national origin mail of their own countries.

Mr. President, we think that this is a fair and equitable amendment and will result in mail rates that are just and reasonable taking into account all carriers' costs, including the ever-rising cost of fuel and a reasonable return on investment. While we are aware that there has been considerable lobbying of the Congress by Pan American Airways and its employees over the UPU postal rate, we still do not believe that that rate is justified by the facts. We in the Commerce Committee feel that this bill as I have proposed to amend it will be very helpful in the future in making a better competitive climate in the international area without the need for indirect subsidy from the international arena.

I urge my colleagues to support this bill as I have proposed to amend it and send it back to the House in hopes that the House might accept our amendment so as to insure final passage and Presidential signature this year.

Now, Mr. President, there was a hold placed on the bill by both Senators McCREE and PROXMIER. The amendment that I am offering is satisfactory to them. The proposed amendment has been approved by the Commerce Committee, as I have stated, as of this morning.

Mr. President, I send the amendment to the desk and ask that it be stated.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

On page 4, strike section 4 in its entirety and insert in lieu thereof: "Rates for transportation of United States mail in foreign air transportation."

The amendment is as follows:

On page 4, strike section 4 in its entirety and insert in lieu thereof:

RATES FOR TRANSPORTATION OF UNITED STATES MAIL IN FOREIGN AIR TRANSPORTATION

"SEC. 4. Subsection (h) of section 406 of the Federal Aviation Act of 1958 (49 U.S.C. 1376) is amended by inserting "(1)" immediately after "(h)", and by adding at the end thereof the following new paragraph:

"(2) The Secretary of State and the Postmaster General each shall take all necessary and appropriate actions to assure that the rates paid for the transportation of mail pursuant to the Universal Postal Union Convention shall not be higher than fair and reasonable rates for such services. The Secretary of State and the Postmaster General shall oppose any present or proposed Universal Postal Union rates which are higher than such fair and reasonable rates.

"(3) The Civil Aeronautics Board shall act expeditiously on any proposed changes in rates for the transportation of mail by aircraft in foreign air transportation. In establishing such rates, the Board shall take into consideration rates paid for transportation of mail pursuant to the Universal Postal Union Convention as ratified by the United States Government, shall take into account all of the rate-making elements employed by the Universal Postal Union in fixing its

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gain access to his record or to any information pertaining to him which is contained in the system, permit him to review the record and have a copy made of all or any portion thereof in a form comprehensible to him;

"(2) permit the individual to request amendment of a record pertaining to him and either—

"(A) make any correction of any portion thereof which the individual believes is not accurate, relevant, timely, or complete; or

"(B) promptly inform the individual of its refusal to amend the record in accordance with his request, the reason for the refusal, the procedures established by the agency for the individual to request a review by the agency of that refusal, and the name and business address of the official within the agency to whom the request for review may be taken;

"(3) permit any individual who disagrees with the refusal of the agency to amend his record to request review of the refusal by the official named in accordance with paragraph (2) (B) of this subsection; and if, after the review, that official also refuses to amend the record in accordance with the request, permit the individual to file with the agency a concise statement setting forth the reasons for his disagreement with the refusal of the agency;

"(4) in any disclosure, containing information about which the individual has filed a statement of disagreement, occurring after the filing of the statement under paragraph (3) of this subsection, clearly note any portion of the record which is disputed and, upon request, provide copies of the statement and, if the agency deems it appropriate, copies of a concise statement of the reasons of the agency for not making the amendments requested, to persons or other agencies to whom the disputed record has been disclosed; and

"(5) nothing in this section shall allow an individual access to any information compiled in reasonable anticipation of a civil action or proceeding.

"(e) AGENCY REQUIREMENTS.—Each agency that maintains a system of records shall—

"(1) inform each individual whom it asks to supply information, on the form which it uses to collect the information or on a separate form that can be retained by the individual—

"(A) which Federal statute or regulation, if any, requires disclosure of the information;

"(B) the principal purpose or purposes for which the information is intended to be used;

"(C) other purposes for which the information may be used, as published pursuant to paragraph (2) (D) of this subsection; and

"(D) the effects on him, if any, of not providing all or any part of the requested information;

"(2) subject to the provisions of paragraph (5) of this subsection, publish in the Federal Register at least annually a notice of the existence and character of the system of records, which notice shall include—

"(A) the name and location of the system;

"(B) the categories of individuals on whom records are maintained in the system;

"(C) the categories of records maintained in the system;

"(D) each routine purpose for which the records contained in the system are used or intended to be used, including the categories of users of the records for each such purpose;

"(E) the policies and practices of the agency regarding storage, retrievability, access controls, retention, and disposal of the records;

"(F) the title and business address of the agency official who is responsible for the system of records;

"(G) the agency procedures whereby an individual can be notified at his request if the system of records contains a record pertaining to him; and

"(H) the agency procedures whereby an individual can be notified at his request how he can gain access to any record pertaining to him contained in the system of records, and how he can contest its content;

"(3) maintain all records which are used by the agency in making any determination about any individual with such accuracy, relevance, timeliness, and completeness as is reasonably necessary to assure fairness to the individual in the determination;

"(4) maintain no record concerning the political or religious belief or activity of any individual, unless expressly authorized by statute or by the individual about whom the record is maintained: *Provided, however*, That the provisions of this paragraph shall not be deemed to prohibit the maintenance of any record of activity which is pertinent to and within the scope of a duly authorized law enforcement activity; and

"(5) at least 30 days prior to publication of information under paragraph (2) (D) of this subsection published in the Federal Register notice of the use or intended use of the information in the system, and provide an opportunity for interested persons to submit written data, views, or arguments to the agency.

"(f) AGENCY RULES.—In order to carry out the provisions of this section, each agency that maintains a system of records shall promulgate rules, in accordance with the requirements (including general notice) of section 553 of this title, which shall—

"(1) establish procedures whereby an individual can be notified in response to his request if any system of records named by the individual contains a record pertaining to him;

"(2) define reasonable times, places, and requirements for identifying an individual who requests his record or information pertaining to him before the agency shall make the record or information available to the individual;

"(3) establish procedures for the disclosure to an individual upon his request of his record or information pertaining to him, including special procedure, if deemed necessary, for the disclosure to an individual of medical records, including psychological records, pertaining to him;

"(4) establish procedures for reviewing a request from an individual concerning the amendment of any record or information pertaining to the individual, for making a determination on the request, for an appeal within the agency of an initial adverse agency determination, and for whatever additional means the head of the agency may deem necessary for each individual to be able to exercise fully his rights under this section; and

"(5) establish fees to be charged, if any, to any individual for making copies of his record, excluding the cost of any search for and review of the record.

The Office of the Federal Register shall annually compile and publish the rules promulgated under this subsection and agency notices published under subsection (e) (2) of this section in a form available to the public at low cost.

"(g) (1) CIVIL REMEDIES.—Whenever any agency (A) refuses to comply with an individual request under subsection (d) (1) of this section, (B) fails to maintain any record concerning any individual with such accuracy, relevance, timeliness, and completeness as is necessary to assure fairness in any determination relating to the qualifications, character, rights, or opportunities of, or benefits to the individual that may be made on the basis of records and consequently a determination is made which is adverse to the

individual, or (C) fails to comply with any other provision of this section, or any rule promulgated thereunder, in such a way as to have an adverse effect on an individual, the individual may bring a civil action against the agency, and the district courts of the United States shall have jurisdiction in the matters under the provisions of this subsection.

"(2) (A) In any suit brought under the provisions of subsection (g) (1) (A) of this section, the court may enjoin the agency from withholding the records and order the production to the complainant of any agency records improperly withheld from him. In such a case the court shall determine the matter de novo, and may examine the contents of any agency records in camera to determine whether the records or any portion thereof may be withheld under any of the exemptions set forth in subsection (k) of this section, and the burden is on the agency to sustain its action.

"(B) The court may assess against the United States reasonable attorney fees and other litigation costs reasonably incurred in any case under this paragraph in which the complainant has substantially prevailed.

"(3) In any suit brought under the provisions of subsection (g) (1) (B) or (C) of this section in which the court determines that the agency acted in a manner which was willful, arbitrary, or capricious, the United States shall be liable to the individual in an amount equal to the sum of—

"(A) actual damages sustained by the individual as a result of the refusal or failure; and

"(B) the costs of the action together with reasonable attorney fees as determined by the court.

"(4) An action to enforce any liability created under this section may be brought in the district court of the United States in the district in which the complainant resides, or has his principal place of business, or in which the agency records are situated, or in the District of Columbia, without regard to the amount in controversy, within two years from the date on which the cause of action arises, except that where an agency has materially and willfully misrepresented any information required under this section to be disclosed to an individual and the information so misrepresented is material to the establishment of the liability of the agency to the individual under this section, the action may be brought at any time within two years after discovery by the individual of the misrepresentation.

"(h) RIGHTS OF LEGAL GUARDIANS.—For the purposes of this section, the parent of any minor, or the legal guardian of any individual who has been declared to be incompetent due to physical or mental incapacity or age by a court of competent jurisdiction, may act on behalf of the individual.

"(1) (1) CRIMINAL PENALTIES.—Any officer or employee of the United States, who by virtue of his employment or official position, has possession of, or access to, agency records which contain individually identifiable information the disclosure of which is prohibited by this section or by rules or regulations established thereunder, and who knowing that disclosure of the specific material is so prohibited, willfully discloses the material in any manner to any person or agency not entitled to receive it, shall be fined not more than \$5,000.

"(2) Any person who knowingly and willfully requests or obtains any record concerning an individual from an agency under false pretenses shall be fined not more than \$5,000.

"(j) GENERAL EXEMPTIONS.—The head of any agency may promulgate rules, in accordance with the requirements (including general notice) of section 553 of this title, to exempt any system of records within the

agency from any part of this section except subsections (b) and (e) (2) (A) through (F) and (i) if the system of records is—

"(1) maintained by the Central Intelligence Agency; or

"(2) maintained by an agency or component thereof which performs as its principal function any activity pertaining to the enforcement of criminal laws, including police efforts to prevent, control, or reduce crime or to apprehend criminals, and the activities of prosecutors, courts, correctional, probation, pardon, or parole authorities, and which consists of (A) information compiled for the purpose of identifying individual criminal offenders and alleged offenders and consisting only of identifying data and notations of arrests, the nature and disposition of criminal charges, sentencing, confinement, release, and parole and probation status; (B) information compiled for the purpose of a criminal investigation, including reports of informants and investigators, and associated with an identifiable individual; or (C) reports identifiable to an individual compiled at any stage of the process of enforcement of the criminal laws from arrest or indictment through release from supervision.

"(k) SPECIFIC EXEMPTIONS.—The head of any agency may promulgate rules, in accordance with the requirements (including general notice) of section 553 of this title, to exempt any system of records within the agency from subsections (c) (3), (d), (e) (1), (e) (2) (G) and (H), and (f) of this section if the system of records is—

"(1) subject to the provisions of section 552(b) (1) of this title;

"(2) investigatory material compiled for law enforcement purposes, other than material within the scope of subsection (j) (2) of this section: *Provided, however,* That if any individual is denied any right, privilege, or benefit that he would otherwise be entitled by Federal law, or for which he would otherwise be eligible, as a result of the maintenance of such material, such material shall be provided to such individual, except to the extent that the disclosure of such material would reveal the identity of a source who furnished information to the Government under an express promise that the identity of the source would be held in confidence, or, prior to the effective date of this section, under an implied promise that the identity of the source would be held in confidence;

"(3) maintained in connection with providing protective services to the President of the United States or other individuals pursuant to section 3056 of title 18;

"(4) required by statute to be maintained and used solely as statistical research or reporting records;

"(5) investigatory material compiled solely for the purpose of determining suitability, eligibility, or qualifications for Federal civilian employment, military service, Federal contracts, or access to classified information, but only to the extent that the disclosure of such material would reveal the identity of a source who furnished information to the Government under an express promise that the identity of the source would be held in confidence, or, prior to the effective date of this section, under an implied promise that the identity of the source would be held in confidence;

"(6) testing or examination material used solely to determine individual qualifications for appointment or promotion in the Federal service the disclosure of which would compromise the objectivity or fairness of the testing or examination process; or

"(7) evaluation material used to determine potential for promotion in the armed services, but only to the extent that the disclosure of such material would reveal the identity of a source who furnished information to the Government under an express promise that the identity of the source

would be held in confidence, or, prior to the effective date of this section, under an implied promise that the identity of the source would be held in confidence.

"(1) (1) ARCHIVAL RECORDS.—Each agency record which is accepted by the Administrator of General Services for storage, processing, and servicing in accordance with section 3103 of title 44 shall, for the purposes of this section, be considered to be maintained by the agency which deposited the record and shall be subject to the provisions of this section. The Administrator of General Services shall not disclose the record except to the agency which maintains the record, or under rules established by that agency which are not inconsistent with the provisions of this section.

"(2) Each agency record pertaining to an identifiable individual which was transferred to the National Archives of the United States as a record which has sufficient historical or other value to warrant its continued preservation by the United States Government, prior to the effective date of this section, shall, for the purposes of this section, be considered to be maintained by the National Archives and shall not be subject to the provisions of this section.

"(3) Each agency record pertaining to an identifiable individual which is transferred to the National Archives of the United States as a record which has sufficient historical or other value to warrant its continued preservation by the United States Government, on or after the effective date of this section, shall, for the purposes of this section, be considered to be maintained by the National Archives and shall be subject to all provisions of this section except subsections (c) (4); (d) (2), (3), and (4); (e) (1), (2) (H) and (3); (f) (4); (g) (1) (B) and (C), and (3).

"(m) (1) MORATORIUM ON THE USE OF THE SOCIAL SECURITY ACCOUNT NUMBER.—No Federal agency, or any State or local government acting in compliance with any Federal law or federally assisted program, shall deny any individual any right, benefit, or privilege provided by law by reason of such individual's refusal to disclose his social security account number.

"(2) This subsection shall not apply—

"(A) with respect to any system of records in existence and operating prior to January 1, 1975; and

"(B) when disclosure of a social security account number is required by Federal law.

"(3) No Federal agency, or any State or local government acting in compliance with any Federal law or federally assisted program, shall use the social security account number for any purpose other than for verification of the identity of an individual unless such other purpose is specifically authorized by Federal law.

"(n) ANNUAL REPORT.—The President shall submit to the Speaker of the House and the President of the Senate, by June 30 of each calendar year, a consolidated report, separately listing for each Federal agency the number of records contained in any system of records which were exempted from the application of this section under the provisions of subsections (j) and (k) of this section during the preceding calendar year, and the reasons for the exemptions, and such other information as indicates efforts to administer fully this section."

Sec. 4. The chapter analysis of chapter 5 of title 5, United States Code, is amended by inserting:

"552a. Records about individuals."

immediately below:

"552. Public information; agency rules, opinions, orders, and proceedings."

Sec. 5. The amendments made by this Act shall become effective on the one hundred and eightieth day following the date of enactment of this Act.

Amend the title so as to read: "An act to amend title 5, United States Code, by adding a section 552a to safeguard individual privacy from the misuse of Federal records and to provide that individuals be granted access to records concerning them which are maintained by Federal agencies."

Mr. ERVIN. Mr. President, on November 21, just before the Thanksgiving recess, both the Senate and the House adopted in different forms—

The PRESIDING OFFICER. Will the Senator suspend briefly until the Chair gets order in the Senate.

I would like to ask the Members of the Senate to please bring order to the Chamber because the Senator from North Carolina is entitled to be heard and he cannot be heard. Would those members conversing please remove themselves to the cloakroom.

The Senator will continue to suspend until there is order in the Chamber.

The Senator may proceed.

Mr. ERVIN. On November 21, just before the Thanksgiving recess, both the Senate and the House passed in different forms Federal privacy legislation. Because of the limited amount of time available between the time of the reconvening of Congress after the recess and the end of the session of Congress members of the Government Operations Committee of the Senate and the House agreed that they would have the different versions studied by their respective staffs during the recess.

After the recess the members of the staffs who had made this study reported to the members of the two committees, and after that the members of the two committees met informally and agreed on the amendments that I will offer in behalf of all the original cosponsors of the privacy bill.

We thought this was a better way of doing it without having a conference and I have been assured by the members of the House Government Operations Committee interested in privacy legislation, that the House will accept these amendments which I propose on behalf of myself and all of the original cosponsors of the bill.

The main differences between the two versions which are reconciled here was that instead of establishing a privacy board, as the Senate bill did, that we will have a privacy study commission to study the subject and report back to the President, to the Senate, and to the House.

We also eliminated, in deference to the House, provisions of the bill dealing with the private sector and we also eliminated some of the provisions dealing with law enforcement agencies.

Now, Mr. President, on behalf of the original cosponsors of the Senate bill and myself, I make this motion.

Mr. President, I move that the Senate agree to the engrossed amendments of the House to the bill (S. 3418) to establish a Privacy Protection Commission, to provide management systems in Federal agencies and certain other organizations with respect to the gathering and disclosure of information concerning individuals, and for other purposes, with



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the following amendments to such engrossed amendments:

In lieu of the matter proposed to be inserted by the House to the text of the bill, insert the following amendment which I now send to the desk.

The **PRESIDING OFFICER.** The amendment will be stated.

The assistant legislative clerk proceeded to read the amendment.

Mr. **ERVIN.** Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The **PRESIDING OFFICER.** Without objection, it is so ordered.

The amendment is as follows:

In lieu of the matter proposed to be inserted by the House to the text of the bill, insert the following:

That this Act may be cited as the "Privacy Act of 1974".

Sec. 2. (a) The Congress finds that—

(1) the privacy of an individual is directly affected by the collection, maintenance, use, and dissemination of personal information by Federal agencies;

(2) the increasing use of computers and sophisticated information technology, while essential to the efficient operations of the Government, has greatly magnified the harm to individual privacy that can occur from any collection, maintenance, use, or dissemination of personal information;

(3) the opportunities for an individual to secure employment, insurance, and credit, and his right to due process, and other legal protections are endangered by the misuse of certain information systems;

(4) the right to privacy is a personal and fundamental right protected by the Constitution of the United States; and

(5) in order to protect the privacy of individuals identified in information systems maintained by Federal agencies, it is necessary and proper for the Congress to regulate the collection, maintenance, use, and dissemination of information by such agencies.

(b) The purpose of this Act is to provide certain safeguards for an individual against an invasion of personal privacy by requiring Federal agencies, except as otherwise provided by law, to—

(1) permit an individual to determine what records pertaining to him are collected, maintained, used, or disseminated by such agencies;

(2) permit an individual to prevent records pertaining to him obtained by such agencies for a particular purpose from being used or made available for another purpose without his consent;

(3) permit an individual to gain access to information pertaining to him in Federal agency records, to have a copy made of all or any portion thereof, and to correct or amend such records;

(4) collect, maintain, use or disseminate any record of identifiable personal information in a manner that assures that such action is for a necessary and lawful purpose, that the information is current and accurate for its intended use, and that adequate safeguards are provided to prevent misuse of such information;

(5) permit exemptions from the requirements with respect to records provided in this Act only in those cases where there is an important public policy need for such exemption as has been determined by specific statutory authority; and

(6) be subject to civil suit for any damages which occur as a result of willful or intentional action which violates any individual's rights under this Act.

Sec. 3. Title 5, United States Code, is amended by adding after section 552 the following new section:

"§ 552a. Records maintained on individuals

"(a) **DEFINITIONS.**—For purposes of this section—

"(1) the term 'agency' means agency as defined in section 552(e) of this title;

"(2) the term 'individual' means a citizen of the United States or an alien lawfully admitted for permanent residence;

"(3) the term 'maintain' includes maintain, collect, use, or disseminate;

"(4) the term 'record' means any item, collection, or grouping of information about an individual that is maintained by an agency, including, but not limited to, his education, financial transactions, medical history, and criminal or employment history and that contains his name, or the identifying number, symbol, or other identifying particular assigned to the individual, such as a finger or voice print or a photograph;

"(5) the term 'system of records' means a group of any records under the control of any agency from which information is retrieved by the name of the individual or by some identifying number, symbol, or other identifying particular assigned to the individual;

"(6) the term 'statistical record' means a record in a system of records maintained for statistical research or reporting purposes only and not used in whole or in part in making any determination about an identifiable individual, except as provided by section 8 of title 13.

"(7) the term 'routine use' means, with respect to the disclosure of a record, the use of such record for a purpose which is compatible with the purpose for which it was collected.

"(b) **CONDITIONS OF DISCLOSURE.**—No agency shall disclose any record which is contained in a system of records by any means of communication to any person, or to another agency, except pursuant to a written request by, or with the prior written consent of, the individual to whom the record pertains, unless disclosure of the record would be—

"(1) to those officers and employees of the agency which maintains the record who have a need for the record in the performance of their duties;

"(2) required under section 552 of this title;

"(3) for a routine use as defined in subsection (a) (7) of this section and described under subsection (e) (4) (D) of this section;

"(4) to the Bureau of the Census for purposes of planning or carrying out a census or survey or related activity pursuant to the provisions of title 13;

"(5) to a recipient who has provided the agency with advance adequate written assurance that the record will be used solely as a statistical research or reporting record, and the record is to be transferred in a form that is not individually identifiable;

"(6) to the National Archives of the United States as a record which has sufficient historical or other value to warrant its continued preservation by the United States Government, or for evaluation by the Administrator of General Services or his designee to determine whether the record has such value;

"(7) to another agency or to an instrumentality of any governmental jurisdiction within or under the control of the United States for a civil or criminal law enforcement activity if the activity is authorized by law, and if the head of the agency or instrumentality has made a written request to the agency which maintains the record specifying the particular portion desired and the law enforcement activity for which the record is sought;

"(8) to a person pursuant to a showing of compelling circumstances affecting the health or safety of an individual if upon such

disclosure notification is transmitted to the last known address of such individual;

"(9) to either House of Congress, or, to the extent of matter within its jurisdiction, any committee or subcommittee thereof, any joint committee of Congress or subcommittee of any such joint committee;

"(10) to the Comptroller General, or any of his authorized representatives, in the course of the performance of the duties of the General Accounting Office; or

"(11) pursuant to the order of a court of competent jurisdiction.

"(c) **ACCOUNTING OF CERTAIN DISCLOSURES.**—Each agency, with respect to each system of records under its control, shall—

"(1) except for disclosures made under subsections (b) (1) or (b) (2) of this section, keep an accurate accounting of—

"(A) the date, nature, and purpose of each disclosure of a record to any person or to another agency made under subsection (b) of this section; and

"(B) the name and address of the person or agency to whom the disclosure is made;

"(2) retain the accounting made under paragraph (1) of this subsection for at least five years or the life of the record, whichever is longer, after the disclosure for which the accounting is made;

"(3) except for disclosures made under subsection (b) (7) of this section, make the accounting made under paragraph (1) of this subsection available to the individual named in the record at his request; and

"(4) inform any person or other agency about any correction or notation of dispute made by the agency in accordance with subsection (d) of this section of any record that has been disclosed to the person or agency if an accounting of the disclosure was made.

"(d) **ACCESS TO RECORDS.**—Each agency that maintains a system of records shall—

"(1) upon request by any individual to gain access to his record or to any information pertaining to him which is contained in the system, permit him and upon his request, a person of his own choosing to accompany him, to review the record and have a copy made of all or any portion thereof in a form comprehensible to him, except that the agency may require the individual to furnish a written statement authorizing discussion of that individual's record in the accompanying person's presence;

"(2) permit the individual to request amendment of a record pertaining to him and—

"(A) not later than 10 days (excluding Saturdays, Sundays, and legal public holidays) after the date of receipt of such request, acknowledge in writing such receipt; and

"(B) promptly, either—

"(1) make any correction of any portion thereof which the individual believes is not accurate, relevant, timely, or complete; or

"(2) inform the individual of its refusal to amend the record in accordance with his request, the reason for the refusal, the procedures established by the agency for the individual to request a review of that refusal by the head of the agency or an officer designated by the head of the agency, and the name and business address of that official;

"(3) permit the individual who disagrees with the refusal of the agency to amend his record to request a review of such refusal, and not later than 30 days (excluding Saturdays, Sundays, and legal public holidays) from the date on which the individual requests such review, complete such review and make a final determination unless, for good cause shown, the head of the agency extends such 30-day period; and if, after his review, the reviewing official also refuses to amend the record in accordance with the request, permit the individual to file with

the agency a concise statement setting forth the reasons for his disagreement with the refusal of the agency, and notify the individual of the provisions for judicial review of the reviewing official's determination under subsection (g) (1) (A) of this section;

"(4) in any disclosure, containing information about which the individual has filed a statement of disagreement, occurring after the filing of the statement under paragraph (3) of this subsection, clearly note any portion of the record which is disputed and provide copies of the statement and, if the agency deems it appropriate, copies of a concise statement of the reasons of the agency for not making the amendments requested, to persons or other agencies to whom the disputed record has been disclosed; and

"(5) nothing in this section shall allow an individual access to any information compiled in reasonable anticipation of a civil action or proceeding.

"(e) AGENCY REQUIREMENTS.—Each agency that maintains a system of records shall—

"(1) maintain in its records only such information about an individual as is relevant and necessary to accomplish a purpose of the agency required to be accomplished by statute or by executive order of the President;

"(2) collect information to the greatest extent practicable directly from the subject individual when the information may result in adverse determinations about an individual's rights, benefits, and privileges under Federal programs;

"(3) inform each individual whom it asks to supply information, on the form which it uses to collect the information or on a separate form that can be retained by the individual—

"(A) the authority (whether granted by statute, or by executive order of the President) which authorizes the solicitation of the information and whether disclosure of such information is mandatory or voluntary;

"(B) the principal purpose or purposes for which the information is intended to be used;

"(C) the routine uses which may be made of the information, as published pursuant to paragraph

"(4) (D) of this subsection; and

"(D) the effects on him, if any, of not providing all or any part of the requested information;

"(4) subject to the provisions of paragraph (11) of this subsection, publish in the Federal Register at least annually a notice of the existence and character of the system of records, which notice shall include—

"(A) the name and location of the system;

"(B) the categories of individuals on whom records are maintained in the system;

"(C) the categories of records maintained in the system;

"(D) each routine use of the records contained in the system, including the categories of users and the purpose of such use;

"(E) the policies and practices of the agency regarding storage, retrievability, access controls, retention, and disposal of the records;

"(F) the title and business address of the agency official who is responsible for the system of records;

"(G) the agency procedures whereby an individual can be notified at his request if the system of records contains a record pertaining to him;

"(H) the agency procedures whereby an individual can be notified at his request how he can gain access to any record pertaining to him contained in the system of records, and how he can contest its content; and

"(I) the categories of sources of records in the system;

"(5) maintain all records which are used by the agency in making any determination about any individual with such accuracy,

relevance, timeliness, and completeness as is reasonably necessary to assure fairness to the individual in the determination;

"(6) prior to disseminating any record about an individual to any person other than an agency, make reasonable efforts to assure that such records are accurate, complete, timely, and relevant;

"(7) maintain no record describing how any individual exercises rights guaranteed by the first amendment unless expressly authorized by statute or by the individual about whom the record is maintained or unless pertinent to and within the scope of an authorized law enforcement activity;

"(8) make reasonable efforts to serve notice on an individual when any record on such individual is made available to any person under compulsory legal process when such process becomes a matter of public record;

"(9) establish rules of conduct for persons involved in the design, development, operation, or maintenance of any system of records, or in maintaining any record, and instruct each such person with respect to such rules and the requirements of this section, including any other rules and procedures adopted pursuant to this section and the penalties for noncompliance;

"(10) establish appropriate administrative, technical, and physical safeguards to insure the security and confidentiality of records and to protect against any anticipated threats or hazards to their security or integrity which could result in substantial harm, embarrassment, inconvenience, or unfairness to any individual on whom information is maintained; and

"(11) at least 30 days prior to publication of information under paragraph (4) (D) of this subsection, publish in the Federal Register notice of any new use or intended use of the information in the system, and provide an opportunity for interested persons to submit written data, views, or arguments to the agency.

"(f) AGENCY RULES.—In order to carry out the provisions of this section, each agency that maintains a system of records shall promulgate rules, in accordance with the requirements (including general notice) of section 553 of this title, which shall—

"(1) establish procedures whereby an individual can be notified in response to his request if any system of records named by the individual contains a record pertaining to him;

"(2) define reasonable times, places, and requirements for identifying an individual who requests his record or information pertaining to him before the agency shall make the record or information available to the individual;

"(3) establish procedures for the disclosure to an individual upon his request of his record or information pertaining to him, including special procedure, if deemed necessary, for the disclosure to an individual of medical records, including psychological records, pertaining to him;

"(4) establish procedures for reviewing a request from an individual concerning the amendment of any record or information pertaining to the individual, for making a determination on the request, for an appeal within the agency of an initial adverse agency determination, and for whatever additional means may be necessary for each individual to be able to exercise fully his rights under this section; and

"(5) establish fees to be charged, if any, to any individual for making copies of his record, excluding the cost of any search for and review of the record.

The Office of the Federal Register shall annually compile and publish the rules promulgated under this subsection and agency notices published under subsection (e) (4) of this section in a form available to the public at low cost.

"(g) (1) CIVIL REMEDIES.—Whenever any agency

"(A) makes a determination under subsection (d) (3) of this section not to amend an individual's record in accordance with his request, or fails to make such review in conformity with that subsection;

"(B) refuses to comply with an individual request under subsection (d) (1) of this section;

"(C) fails to maintain any record concerning any individual with such accuracy, relevance, timeliness, and completeness as is necessary to assure fairness in my determination relating to the qualifications, character, rights, or opportunities of, or benefits to the individual that may be made on the basis of such record, and consequently a determination is made which is adverse to the individual; or

"(D) fails to comply with any other provision of this section, or any rule promulgated thereunder, in such a way as to have an adverse effect on an individual,

the individual may bring a civil action against the agency, and the district courts of the United States shall have jurisdiction in the matters under the provisions of this subsection.

"(2) (A) In any suit brought under the provisions of subsection (g) (1) (A) of this section, the court may order the agency to amend the individual's record in accordance with his request or in such other way as the court may direct. In such a case the court shall determine the matter de novo.

"(B) The court may assess against the United States reasonable attorney fees and other litigation costs reasonably incurred in any case under this paragraph in which the complainant has substantially prevailed.

"(3) (A) In any suit brought under the provisions of subsection (g) (1) (B) of this section, the court may enjoin the agency from withholding the records and order the production to the complainant of any agency records improperly withheld from him. In such a case the court shall determine the matter de novo, and may examine the contents of any agency records in camera to determine whether the records or any portion thereof may be withheld under any of the exemptions set forth in subsection (k) of this section, and the burden is on the agency to sustain its action.

"(B) The court may assess against the United States reasonable attorney fees and other litigation costs reasonably incurred in any case under this paragraph in which the complainant has substantially prevailed.

"(4) In any suit brought under the provisions of subsection (g) (1) (C) or (D) of this section in which the court determines that the agency acted in a manner which was intentional or willful, the United States shall be liable to the individual in an amount equal to the sum of—

"(A) actual damages sustained by the individual as a result of the refusal or failure, but in no case shall a person entitled to recovery receive less than the sum of \$1,000; and

"(B) the costs of the action together with reasonable attorney fees as determined by the court.

"(5) An action to enforce any liability created under this section may be brought in the district court of the United States in the district in which the complainant resides, or has his principal place of business, or in which the agency records are situated, or in the District of Columbia, without regard to the amount in controversy, within two years from the date on which the cause of action arises, except that where an agency has materially and willfully misrepresented any information required under this section to be disclosed to an individual and the information so misrepresented is material to the establishment of the liability of the agency to the individual under this section,

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the action may be bought at any time within two years after discovery by the individual of the misrepresentation. Nothing in this section shall be construed to authorize any civil action by reason of any injury sustained as the result of a disclosure of a record prior to the effective date of this section.

"(h) RIGHTS OF LEGAL GUARDIANS.—For the purposes of the section, the parent of any minor, or the legal guardian of any individual who has been declared to be incompetent due to physical or mental incapacity or age by a court of competent jurisdiction, may act on behalf of the individual.

"(i) (1) CRIMINAL PENALTIES.—Any officer or employee of an agency, who by virtue of his employment or official position, has possession of, or access to, agency records which contain individually identifiable information the disclosure of which is prohibited by this section or by rules or regulations established thereunder, and who knowing that disclosure of the specific material is so prohibited, willfully discloses the material in any manner to any person or agency not entitled to receive it, shall be guilty of a misdemeanor and fined not more than \$5,000.

"(2) Any officer or employee of any agency who willfully maintains a system of records without meeting the notice requirements of subsection (e) (4) of this section shall be guilty of a misdemeanor and fined not more than \$5,000.

"(3) Any person who knowingly and willfully requests or obtains any record concerning an individual from an agency under false pretenses shall be guilty of a misdemeanor and fined not more than \$5,000.

"(j) GENERAL EXEMPTIONS.—The head of any agency may promulgate rules, in accordance with the requirements (including general notice) of sections 553 (b) (1), (2), and (3), (c), and (e) of this title, to exempt any system of records within the agency from any part of this section except subsections (b), (c) (1), (2), and (4), (e) (4) (A) through (F) (e) (6), (7), (9), (10), and (11), and (i) if the system of records is—

"(1) maintained by the Central Intelligence Agency; or

"(2) maintained by an agency or component thereof which performs as its principal function any activity pertaining to the enforcement of criminal laws, including police efforts to prevent, control, or reduce crime or to apprehend criminals, and the activities of prosecutors, courts, correctional, probation, pardon, or parole authorities, and which consists of (A) information compiled for the purpose of identifying individual criminal offenders and alleged offenders and consisting only of identifying data and notations of arrests, the nature and disposition of criminal charges, sentencing, confinement, release, and parole and probation status; (B) information compiled for the purpose of a criminal investigation, including reports of informants and investigators, and associated with an identifiable individual; or (C) reports identifiable to an individual compiled at any stage of the process of enforcement of the criminal laws from arrest or indictment through release from supervision.

At the time rules are adopted under this subsection, the agency shall include in the statement required under section 553(c) of this title, the reasons why the system of records is to be exempted from a provision of this section.

"(k) SPECIFIC EXEMPTIONS.—The head of any agency may promulgate rules, in accordance with the requirements (including general notice) of sections 553(b) (1), (2) and (3), (c), and (e) of this title, to exempt any system of records within the agency from subsections (c) (3), (d), (e) (1), (e) (4) (G), (H), and (I), and (f) of this section if the system of records is—

"(1) subject to the provisions of section 552(b) (1) of this title;

"(2) investigatory material compiled for law enforcement purposes, other than material within the scope of subsection (j) (2) of this section: *Provided, however*, That if any individual is denied any right, privilege, or benefit that he would otherwise be entitled by Federal law, or for which he would otherwise be eligible, as a result of the maintenance of such material, such material shall be provided to such individual, except to the extent that the disclosure of such material would reveal the identity of a source who furnished information to the Government under an express promise that the identity of the source would be held in confidence, or, prior to the effective date of this section, under an implied promise that the identity of the source would be held in confidence;

"(3) maintained in connection with providing protective services to the President of the United States or other individuals pursuant to section 3056 of title 18;

"(4) required by statute to be maintained and used solely as statistical records;

"(5) investigatory material compiled solely for the purpose of determining suitability, eligibility, or qualifications for Federal civilian employment, military service, Federal contracts, or access to classified information, but only to the extent that the disclosure of such material would reveal the identity of a source who furnished information to the Government under an express promise that the identity of the source would be held in confidence, or, prior to the effective date of this section, under an implied promise that the identity of the source would be held in confidence;

"(6) testing or examination material used solely to determine individual qualifications for appointment or promotion in the Federal service the disclosure of which would compromise the objectivity or fairness of the testing or examination process; or

"(7) evaluation material used to determine potential for promotion in the armed services, but only to the extent that the disclosure of such material would reveal the identity of a source who furnished information to the Government under an express promise that the identity of the source would be held in confidence, or, prior to the effective date of this section, under an implied promise that the identity of the source would be held in confidence.

At the time rules are adopted under this subsection, the agency shall include in the statement required under section 553(c) of this title, the reasons why the system of records is to be exempted from a provision of this section.

"(1) (1) ARCHIVAL RECORDS.—Each agency record which is accepted by the Administrator of General Services for storage, processing, and servicing in accordance with section 3103 of title 44 shall, for the purposes of this section, be considered to be maintained by the agency which deposited the record and shall be subject to the provisions of this section. The Administrator of General Services shall not disclose the record except to the agency which maintains the record, or under rules established by that agency which are not inconsistent with the provisions of this section.

"(2) Each agency record pertaining to an identifiable individual which was transferred to the National Archives of the United States as a record which has sufficient historical or other value to warrant its continued preservation by the United States Government, prior to the effective date of this section, shall, for the purposes of this section, be considered to be maintained by the National Archives and shall not be subject to the provisions of this section, except that a statement generally describing such records (modeled after the requirements relating to records subject to subsections (a) (4) (A) through (G) of this section) shall be published in the Federal Register.

"(3) Each agency record pertaining to an identifiable individual which is transferred to the National Archives of the United States as a record which has sufficient historical or other value to warrant its continued preservation by the United States Government, on or after the effective date of this section, shall, for the purposes of this section, be considered to be maintained by the National Archives and shall be exempt from the requirements of this section except subsections (e) (4) (A) through (G) and (e) (9) of this section.

"(m) GOVERNMENT CONTRACTORS.—When an agency provides by a contract for the operation by or on behalf of the agency of a system of records to accomplish an agency function, the agency shall, consistent with its authority, cause the requirements of this section to be applied to such system. For purposes of subsection (i) of this section any such contractor and any employee of such contractor, if such contract is agreed to on or after the effective date of this section, shall be considered to be an employee of an agency.

"(n) MAILING LISTS.—An individual's name and address may not be sold or rented by an agency unless such action is specifically authorized by law. This provision shall not be construed to require the withholding of names and addresses otherwise permitted to be made public.

"(o) REPORT ON NEW SYSTEMS.—Each agency shall provide adequate advance notice to Congress and the Office of Management and Budget of any proposal to establish or alter any system of records in order to permit an evaluation of the probable or potential effect of such proposal on the privacy and other personal or property rights of individuals or the disclosure of information relating to such individuals, and its effect on the preservation of the constitutional principles of federalism and separation of powers.

"(p) ANNUAL REPORT.—The President shall submit to the Speaker of the House and the President of the Senate, by June 30 of each calendar year, a consolidated report, separately listing for each Federal agency the number of records contained in any system of records which were exempted from the application of this section under the provisions of subsections (j) and (k) of this section during the preceding calendar year, and the reasons for the exemptions, and such other information as indicates efforts to administer fully this section.

"(q) EFFECT OF OTHER LAWS.—No agency shall rely on any exemption contained in section 552 of this title to withhold from an individual any record which is otherwise accessible to such individual under the provisions of this section."

Sec. 4. The chapter analysis of chapter 5 of title 5, United States Code, is amended by inserting:

"552a. Records about individuals," immediately below:

"552. Public information; agency rules, opinions, orders, and proceedings."

Sec. 5. (a) (1) There is established a Privacy Protection Study Commission (hereinafter referred to as the "Commission") which shall be composed of seven members as follows:

(A) three appointed by the President of the United States,

(B) two appointed by the President of the Senate, and

(C) two appointed by the Speaker of the House of Representatives.

Members of the Commission shall be chosen from among persons who, by reason of their knowledge and expertise in any of the following areas—civil rights and liberties, law, social sciences, computer technology, business, records management, and State and local government—are well qualified for service on the Commission.



(3) The members of the Commission shall elect a Chairman from among themselves.

(3) Any vacancy in the membership of the Commission, as long as there are four members in office, shall not impair the power of the Commission but shall be filled in the same manner in which the original appointment was made.

(4) A quorum of the Commission shall consist of a majority of the members, except that the Commission may establish a lower number as a quorum for the purpose of taking testimony. The Commission is authorized to establish such committees and delegate such authority to them as may be necessary to carry out its functions. Each member of the Commission, including the Chairman, shall have equal responsibility and authority in all decisions and actions of the Commission, shall have full access to all information necessary to the performance of their functions, and shall have one vote. Action of the Commission shall be determined by a majority vote of the members present. The Chairman (or a member designated by the Chairman to be acting Chairman) shall be the official spokesman of the Commission in its relations with the Congress, Government agencies, other persons, and the public, and, on behalf of the Commission, shall see to the faithful execution of the administrative policies and decisions of the Commission, and shall report thereon to the Commission from time to time or as the Commission may direct.

(E)(A) Whenever the Commission submits any budget estimate or request to the President or the Office of Management and Budget, it shall concurrently transmit a copy of that request to Congress.

(B) Whenever the Commission submits any legislative recommendations, or testimony, or comments on legislation to the President or Office of Management and Budget, it shall concurrently transmit a copy thereof to the Congress. No officer or agency of the United States shall have any authority to require the Commission to submit its legislative recommendations, or testimony, or comments on legislation; to any officer or agency of the United States for approval, comments, or review, prior to the submission of such recommendations, testimony, or comments to the Congress.

(b) The Commission shall—

(1) make a study of the data banks, automated data processing programs, and information systems of governmental, regional, and private organizations, in order to determine the standards and procedures in force for the protection of personal information; and

(2) recommend to the President and the Congress the extent, if any, to which the requirements and principles of section 552a of title 5, United States Code, should be applied to the information practices of those organizations by legislation, administrative action, or voluntary adoption of such requirements and principles, and report on such other legislative recommendations as it may determine to be necessary to protect the privacy of individuals while meeting the legitimate needs of government and society for information.

(c)(1) In the course of conducting the study required under subsection (b)(1) of this section, and in its reports thereon, the Commission may research, examine, and analyze—

(A) interstate transfer of information about individuals that is undertaken through manual files or by computer or other electronic or telecommunications means;

(B) data banks and information programs and systems the operation of which significantly or substantially affect the enjoyment of the privacy and other personal and property rights of individuals;

(C) the use of social security numbers, license plate numbers, universal identifiers,

and other symbols to identify individuals in data banks and to gain access to, integrate, or centralize information systems and files; and

(D) the matching and analysis of statistical data, such as Federal census data, with other sources of personal data, such as automobile registries and telephone directories, in order to reconstruct individual responses to statistical questionnaires for commercial or other purposes, in a way which results in a violation of the implied or explicitly recognized confidentiality of such information.

(2)(A) The Commission may include in its examination personal information activities in the following areas: medical; insurance; education; employment and personnel; credit, banking and financial institutions; credit bureaus; the commercial reporting industry; cable television and other telecommunications media; travel, hotel, and entertainment reservations; and electronic check processing.

(B) The Commission shall include in its examination a study of—

(i) whether a person engaged in interstate commerce who maintains a mailing list should be required to remove an individual's name and address from such list upon request of that individual;

(ii) whether the Internal Revenue Service should be prohibited from transferring individually identifiable data to other agencies and to agencies of State governments;

(iii) whether the Federal Government should be liable for general damages incurred by an individual as the result of a willful or intentional violation of the provisions of sections 552a (g) (1) (C) or (D) of title 5, United States Code; and

(iv) whether and how the standards for security and confidentiality of records required under section 552a (e) (10) of such title should be applied when a record is disclosed to a person other than an agency.

(C) The Commission may study such other personal information activities necessary to carry out the congressional policy embodied in this Act, except that the Commission shall not investigate information systems maintained by religious organizations.

(3) In conducting such study, the Commission shall—

(A) determine what laws, Executive orders, regulations, directives, and judicial decisions govern the activities under study and the extent to which they are consistent with the rights of privacy, due process of law, and other guarantees in the Constitution;

(B) determine to what extent governmental and private information systems affect Federal-State relations or the principle of separation of powers;

(C) examine the standards and criteria governing programs, policies, and practices relating to the collection, soliciting, processing, use, access, integration, dissemination, and transmission of personal information; and

(D) to the maximum extent practicable, collect and utilize findings, reports, studies, hearing transcripts, and recommendations of governmental, legislative and private bodies, institutions, organizations, and individuals which pertain to the problems under study by the Commission.

(d) In addition to its other functions the Commission may—

(1) request assistance of the heads of appropriate departments, agencies, and instrumentalities of the Federal Government, of State and local governments, and other persons in carrying out its functions under this Act;

(2) upon request, assist Federal agencies in complying with the requirements of section 552a of title 5, United States Code;

(3) determine what specific categories of information, the collection of which would

violate an individual's right of privacy, should be prohibited by statute from collection by Federal agencies; and

(4) upon request, prepare model legislation for use by State and local governments in establishing procedures for handling, maintaining, and disseminating personal information at the State and local level and provide such technical assistance to State and local governments as they may require in the preparation and implementation of such legislation.

(e)(1) The Commission may, in carrying out its functions under this section, conduct such inspections, sit and act at such times and places, hold such hearings, take such testimony, require by subpoena the attendance of such witnesses and the production of such books, records, papers, correspondence, and documents, administer such oaths, have such printing and binding done, and make such expenditures as the Commission deems advisable. A subpoena shall be issued only upon an affirmative vote of a majority of all members of the Commission. Subpoenas shall be issued under the signature of the Chairman or any member of the Commission designated by the Chairman and shall be served by any person designated by the Chairman or any such member. Any member of the Commission may administer oaths or affirmations to witnesses appearing before the Commission.

(2)(A) Each department, agency, and instrumentality of the executive branch of the Government is authorized to furnish to the Commission, upon request made by the Chairman, such information, data, reports and such other assistance as the Commission deems necessary to carry out its functions under this section. Whenever the head of any such department, agency, or instrumentality submits a report pursuant to section 552a(o) of title 5, United States Code, a copy of such report shall be transmitted to the Commission.

(B) In carrying out its functions and exercising its powers under this section, the Commission may accept from any such department, agency, independent instrumentality, or other person any individually identifiable data if such data is necessary to carry out such powers and functions. In any case in which the Commission accepts any such information, it shall assure that the information is used only for the purpose for which it is provided, and upon completion of that purpose such information shall be destroyed or returned to such department, agency, independent instrumentality, or person from which it is obtained, as appropriate.

(3) The Commission shall have the power to—

(A) appoint and fix the compensation of an executive director, and such additional staff personnel as may be necessary, without regard to the provisions of title 5, United States Code, governing appointments in the competitive service, and without regard to chapter 51 and subchapter III of chapter 53 of such title relating to classification and General Schedule pay rates, but at rates not in excess of the maximum rate for GS-18 of the General Schedule under section 5332 of such title; and

(B) procure temporary and intermittent services to the same extent as is authorized by section 3109 of title 5, United States Code.

The Commission may delegate any of its functions to such personnel of the Commission as the Commission may designate and may authorize such successive redelegations of such functions as it may deem desirable.

(4) The Commission is authorized—

(A) to adopt, amend, and repeal rules and regulations governing the manner of its operations, organization, and personnel;

(B) to enter into contracts or other arrangements or modifications thereof, with

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any government, any department, agency, or independent instrumentality of the United States, or with any person, firm, association, or corporation, and such contracts or other arrangements, or modifications thereof, may be entered into without legal consideration, without performance or other bonds, and without regard to section 3709 of the Revised Statutes, as amended (41 U.S.C. 5);

(c) to make advance, progress, and other payments which the Commission deems necessary under this Act without regard to the provisions of section 3648 of the Revised Statutes, as amended (31 U.S.C. 529); and

(D) to take such other action as may be necessary to carry out its functions under this section.

(1) (1) Each member of the Commission who is an officer or employee of the United States shall serve without additional compensation, but shall continue to receive the salary of his regular position when engaged in the performance of the duties vested in the Commission.

(2) A member of the Commission other than one to whom paragraph (1) applies shall receive per diem at the maximum daily rate for GS-18 of the General Schedule when engaged in the actual performance of the duties vested in the Commission.

(3) All members of the Commission shall be reimbursed for travel, subsistence, and other necessary expenses incurred by them in the performance of the duties vested in the Commission.

(g) The Commission shall, from time to time, and in an annual report, report to the President and the Congress on its activities in carrying out the provisions of this section. The Commission shall make a final report to the President and to the Congress on its findings pursuant to the study required to be made under subsection (b) (1) of this section not later than two years from the date on which all of the members of the Commission are appointed. The Commission shall cease to exist thirty days after the date on which its final report is submitted to the President and the Congress.

(h) (1) Any member, officer, or employee of the Commission, who by virtue of his employment or official position, has possession of, or access to, agency records which contain individually identifiable information the disclosure of which is prohibited by this section, and who knowing that that disclosure of the specific material is so prohibited, willfully discloses the material in any manner to any person or agency not entitled to receive it, shall be fined not more than \$5,000.

(2) Any person who knowingly and willfully requests or obtains any record concerning an individual from the Commission under false pretenses shall be fined not more than \$5,000.

SEC. 6. The Office of Management and Budget shall—

(1) develop guidelines and regulations for the use of agencies in implementing the provisions of section 552a of title 5, United States Code, as added by section 3 of this Act; and

(2) provide continuing assistance and oversight of the implementation of the provisions of such section by agencies.

SEC. 7. (a) (1) It shall be unlawful for any Federal, State or local government agency to deny to any individual any right, benefit, or privilege provided by law because of such individual's refusal to disclose his social security account number.

(2) The provisions of paragraph (1) of this subsection shall not apply with respect to—

(A) any disclosure which is required by Federal statute, or

(B) the disclosure of a social security number to any Federal, State, or local agency maintaining a system of records in existence

and operating before January 1, 1975, if such disclosure was required under statute or regulation adopted prior to such date to verify the identity of an individual.

(b) Any Federal, State, or local government agency which requests an individual to disclose his social security account number shall inform that individual whether that disclosure is mandatory or voluntary, by what statutory or other authority such number is solicited, and what uses will be made of it.

SEC. 8. The provisions of this Act shall be effective on and after the date of enactment, except that the amendments made by sections 3 and 4 shall become effective 270 days following the day on which this Act is enacted.

SEC. 9. There is authorized to be appropriated to carry out the provisions of section 5 of this Act for fiscal years 1975, 1976, and 1977 the sum of \$1,500,000, except that not more than \$750,000 may be expended during any such fiscal year.

In lieu of the engrossed amendment to the title, insert the following:

Amend the title so as to read: "An Act to amend title 5, United States Code, by adding a section 552a to safeguard individual privacy from the misuse of Federal records, to provide that individuals be granted access to records concerning them which are maintained by Federal agencies, to establish a Privacy Protection Study Commission, and for other purposes."

MR. ERVIN. We preserve most of the essential elements of the Senate bill with these few minor changes.

I have been asked by the distinguished Senator from Louisiana, as chairman of the Finance Committee, the question whether these amendments would interfere with the practice of the Internal Revenue Service in furnishing information to the State taxing authorities and to congressional committees, and my assurance is that that will not be interfered with in any respect whatever.

I would like to address more specifically some other questions raised about how the bill will work with respect to tax information and tax returns. Specifically, the questions relate to the ability of the IRS to disclose tax information under the provision of the bill that allows disclosure for a routine use under a purpose which is compatible with the purpose for which the information is collected.

State and local tax agencies now heavily rely on Federal tax information and investigations when State agencies enforce their tax laws. For example, when the IRS sets up a deficiency against a taxpayer who lives in a State, the IRS frequently sends information on this deficiency to the State, or local, tax agency. The States use this information in collecting their own taxes. This information may be sent before the State itself conducts any tax investigation on the individual.

Under the bill, this is intended to constitute a routine use for a purpose compatible with the purpose for which the information was collected, so the IRS could continue to send this information to the State and local tax agencies as is presently done.

Also, the IRS sends to State, and local, tax agencies the Federal tax returns of individuals who live in the State so the State agency can check to see if the

individual has reported the same income and deductions on his Federal and State, or local, tax returns. Again, the States rely on this information in enforcing their own tax laws. Also, this information may be sent to a State before it conducts a tax investigation on its own.

Under the bill, it is intended that this would be a routine use for a purpose compatible with the purpose for which the information is collected so the IRS can continue to send tax information to State and local tax agencies in this way.

The IRS, of course, provides tax information on individuals to the Justice Department when the Justice Department is preparing a tax case against the individual. This information is used by the Justice Department in investigating and preparing tax cases and also is disclosed in court as the Justice Department presents evidence against the individual.

This disclosure both to the Justice Department and in court would represent a routine use of the tax information compatible with the purpose for which it was collected and this disclosure would continue to be possible under the provisions of the bill.

Under the bill tax returns and other tax information can—as under present law—be disclosed to the tax committees of the Congress—the Senate Finance Committee, the House Ways and Means Committee, and the Joint Committee on Internal Revenue Taxation.

Under the bill this information can also continue to be disclosed to the staffs of these committees, as under present law.

Under the bill an agency can disclose tax returns to either House of Congress or to committees of Congress—to the extent of matters within their jurisdiction. Since tax returns can be disclosed by an agency to the Senate and House, it is intended that—as under present law—the committees which have received tax returns can also disclose them to the Senate or House, just as the Joint Committee on Internal Revenue Taxation did with the tax information on President Nixon.

I have also prepared an analysis of these amendments which I submit entitled "Analysis of House and Senate Compromise Amendments to the Federal Privacy Act," which explains the provisions of the amendments.

Mr. President, I ask unanimous consent that this statement be printed at this point in the Record.

There being no objection, the analysis was ordered to be printed in the Record, as follows:

ANALYSIS OF HOUSE AND SENATE COMPROMISE AMENDMENTS TO THE FEDERAL PRIVACY ACT

The establishment of a Privacy Protection Study Commission. Only the Senate bill provided for an oversight and study commission to assist in the implementation of the act and to explore areas concerned with individual privacy which have not been included in the provisions of this legislation. The compromise measure will establish a Privacy Protection Study Commission of seven members instead of the five provided in the Senate bill. Three of these members will be appointed by the President, two by the President of the Senate, and two by the Speaker of the House of Representatives.

The membership should be representa-

tive of the public at large who, by reason of their knowledge and expertise in the areas of civil rights and liberties, law, social sciences, and complete technology, business, and State and local government are well qualified for service on the Commission. While there is no statutory requirement, the Committees could expect that no more than five members of the Commission could be members of one political party.

It is intended that this commission, which will serve for a period of two years, will be solely a study commission. In that capacity it is hoped the commission can assist the Executive Branch and the Congress in their examination of Federal government activities and their impact on privacy as well as representatives of State and local governments and the private sector who are attempting to deal with this important problem.

The scope of the commission's study authority is outlined specifically within the legislation. In subsection (c) (2) (b), the commission is directed to examine certain issues which are not included in the compromise between the House and Senate bill, such as a requirement that a person maintaining mailing lists remove an individual's name upon request; the question of prohibiting the transfer of individually identifiable data from the Internal Revenue Service to other agencies and to State governments; a question of whether the Federal government should be liable for general damages occurring from a willful or intentional violation of the provisions of (g) (1), (C) or (D) or this act; and the extent to which requirements for security and confidentiality of records maintained under this act should be applied to a person other than an agency.

The commission shall from time to time and in an annual report, report to the Congress and to the President on its activities, and it shall submit a final report of its findings two years from the date the members of the commission are appointed.

In addition, the commission is authorized to provide necessary technical assistance and prepare model legislation upon request for State and local governments interested in adopting privacy legislation. Strict standards and penalties are placed upon commission members and employees with regard to the handling and unlawful distribution of information about individuals which it receives in the course of carrying out its functions.

While the provisions of the rest of this act do not go into effect until 270 days from the date of enactment, the commission is authorized to go into effect immediately upon the appointment of its members in order that some of its work may be available to the Congress and the Executive Branch by the time the remainder of the legislation becomes effective.

#### ROUTINE USE

The House bill contains a provision not provided for in the Senate measure exempting certain disclosures of information from the requirement to obtain prior consent from the subject when the disclosure would be for a "routine use". The compromise would define "routine use" to mean: "with respect to the disclosure of a record, the use of such records for a purpose which is compatible with the purpose for which it was collected."

Where the Senate bill would have placed tight restrictions upon the transfer of personal information between or outside Federal agencies, the House bill, under the routine use provision, would permit an agency to describe its routine uses in the Federal Register and then disseminate the information without the consent of the individual or without applying the standards of accuracy, relevancy, timeliness or completeness so long as no determination was being made about the subject.

The compromise definition should serve as a caution to agencies to think out in advance what uses it will make of information. This act is not intended to impose undue burdens on the transfer of information to the Treasury Department to complete payroll checks, the receipt of information by the Social Security Administration to complete quarterly posting of accounts, or other such housekeeping measures and necessarily frequent interagency or intra-agency transfers of information. It is, however, intended to discourage the unnecessary exchange of information to another person or to agencies who may not be as sensitive to the collecting agency's reasons for using and interpreting the material.

#### INFORMATION ON POLITICAL ACTIVITIES

The House bill tells agencies that they may not maintain a record concerning the political or religious beliefs or activities of any individual unless maintenance of the record would be authorized expressly by statute or by the individual about whom the record is maintained. The House bill goes on to provide that this subsection is not deemed to prohibit the maintenance of any record or activity which is pertinent to and within the scope of a duly authorized law enforcement activity.

The Senate bill constitutes a prohibition against agency programs established for the purpose of collecting or maintaining information about how individuals exercise First Amendment rights unless the agency head specifically determines that the program is required for the administration of a statute.

The compromise broadens the House provisions application to all First Amendment rights and directs the prohibition against the maintenance of records. However, as in the House bill, it does permit the maintenance, use, collection or dissemination of these records which are expressly authorized by statute or the individual subject or are pertinent to a duly authorized law enforcement activity.

#### CONFIDENTIAL SOURCES OF INFORMATION

The compromise provision for the maintenance of information received from confidential sources represents an acceptance of the House language after receiving an assurance that in no instance would that language deprive an individual from knowing of the existence of any information maintained in a record about him which was received from a "confidential source." The agencies would not be able to claim that disclosure of even a small part of a particular item would reveal the identity of a confidential source. The confidential information would have to be characterized in some general way. The fact of the item's existence and a general characterization of that item would have to be made known to the individual in every case.

Furthermore, the acceptance of this section in no way precludes an individual from knowing the substance and source of confidential information, should that information be used to deny him a promotion in a government job or access to classified information or some other right, benefit or privilege for which he was entitled to bring legal action when the government wished to base any part of its legal case on that information.

Finally, it is important to note that the House provision would require that all future promises of confidentiality to sources of information be expressed and not implied promises. Under the authority to prepare guidelines for the administration of this act it is expected that the Office of Management and Budget will work closer with agencies to insure that Federal investigators make sparing use of the ability to make express promises of confidentiality.

#### STANDARDS APPLIED TO DISSEMINATION OUTSIDE THE GOVERNMENT

H.R. 16373 requires that all records which are used by an agency in making any determination about an individual be maintained with such accuracy, relevance, timeliness and completeness as is reasonably necessary to assure fairness to the individual in the determination. S. 3418 goes much further and requires that agencies apply these standards at any time that access is granted to the file, material is added to or taken from the file, or at any time it is used to make a determination affecting the subject of the file.

The difference between these two measures represents a difference in philosophy regarding the handling of personal information. The Senate measure is designed to complement the requirement that agencies maintain only information which is relevant and necessary to accomplish a statutory purpose. The standard of relevancy should be that statutory basis for an information program which is now set forth in (e) (1) of the compromise measure. By adopting this section, the Senate hoped to encourage a periodic review of personal information contained in Federal records as those records were used or disseminated for any purpose.

The House provision would have applied these important standards for maintenance of information in records at any time a determination is made about an individual. The House bill goes on to permit additional "routine uses" of information which may not rise to the threshold of an "agency determination" without requiring that the information be upgraded to meet these standards.

The compromise amendment would adopt the section of the House bill applying the standards of accuracy, relevance, timeliness and completeness at the time of a determination. It would add the additional requirement, however, that prior to the dissemination of any record about an individual to any person other than an other agency, the sending agency shall make a reasonable effort to assure that the record is accurate, complete, timely, and relevant. This proviso was included because Federal agencies would be governed by a requirement to clean up their records before a determination is made and limited by a requirement to publish each routine use of information in the Federal Register, but the use of information by persons outside the Federal government would not be governed by this act. Therefore, agencies are directed to be far more careful about the dissemination of personal information to persons not governed by the enforcement provisions of this bill.

#### THE FREEDOM OF INFORMATION ACT AND PRIVACY

Perhaps the most difficult task in drafting Federal privacy legislation was that of determining the proper balance between the public's right to know about the conduct of their government and their equally important right to have information which is personal to them maintained with the greatest degree of confidence by Federal agencies. The House bill made no specific provision for Freedom of Information Act requests of material which might contain information protected by the Privacy Act. Instead, in the committee report on the bill, it recognized that:

"This legislation would have an effect on subsection (b) (6) of the Freedom of Information Act (5 U.S.C., Section 552) which states that the provisions regarding disclosure of information to the public shall not apply to material 'the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.' H.R. 16373 would make all individually identifiable information in government files exempt from public disclosure. Such disclosure could be made available to the public only pursuant to rules

published by agencies in the Federal Register permitting the transfer of particular data to persons other than the individuals to whom they pertain."

The committee report went on to express a desire that agencies continue to make certain individually identifiable records open to the public because such disclosure would be in the public interest.

The Senate bill reflected the position of an earlier draft of the House measure in Section 205(b) where it provided that nothing in the act shall be construed to permit the withholding of any personal information which is otherwise required to be disclosed by law or any regulation thereunder. This section was intended as specific recognition of the need to permit disclosure under the Freedom of Information Act.

The compromise amendment would add an additional condition of disclosure to the House bill which prohibits disclosure without written request of an individual unless disclosure of the record would be pursuant to Section 552 of the Freedom of Information Act. This compromise is designed to preserve the status quo as interpreted by the courts regarding the disclosure of personal information under that section.

A related amendment taken from the Senate bill would prohibit any agency from relying upon any exemption contained in Section 552 to withhold from an individual any record which is otherwise accessible to such individual under the provisions of this section.

#### CIVIL REMEDIES

Under the House bill an individual would be permitted to seek an injunction against an agency only to produce his record upon a failure of an agency to comply with his request. An individual would be able to sue for damages only if an agency failed to maintain a record about him with such accuracy, relevance, timeliness and completeness as would be necessary to assure fairness and a determination about him, and consequently an adverse determination was made. A suit for damages would also be in order against an agency if it fails to comply with any other provision of this act in such a way to have an adverse effect on the individual.

Under the Senate bill injunctive relief would be available to an individual to enforce any right granted to him. And an individual would be permitted to sue for damages for any action or omission of an officer or employee of the government who violates a provision of the act.

The standard for recovery of damages under the House bill would have rested on the determination by a court that the agency acted in a manner which was willful, arbitrary, or capricious. The Senate bill would have permitted recovery against an agency on a finding that the agency was negligent in handling his records.

These amendments represent a compromise between the two positions, permitting an individual to seek injunctive relief to correct or amend a record maintained by an agency. In a suit for damages, the amendment reflects a belief that a finding of willful, arbitrary, or capricious action is too harsh a standard of proof for an individual to exercise the rights granted by this legislation. Thus the standard for recovery of damages was reduced to "willful or intentional" action by an agency. On a continuum between negligence and the very high standard of willful, arbitrary, or capricious conduct, this standard is viewed as only somewhat greater than gross negligence.

Both the House and Senate bills provided for an individual to recover reasonable attorney fees and costs of litigation. The compromise amendments adopt the standard of the House bill permitting the court to award attorney fees and reasonable costs to an individual where the complainant has sub-

stantially prevailed, in an injunctive action. Fees would be required to be paid with any award of damages.

#### ACCESS AND CHALLENGE TO RECORDS

The House bill would apply a standard of promptness to agency considerations of requests for access to records and requests to challenge or correct those records. In addition, it allows the individual to request a review of a refusal to correct a record by the agency official named in its public notice of information systems.

The Senate bill requires the agency to make a determination with respect to an individual's request for a record change within 60 days of the request and to permit him a hearing within 30 days of a request for one, with extension for good cause permitted. The individual would have the option of a formal or informal hearing procedure within the agency upon a refusal of a request to correct or amend a record. The compromise amendment would require the agency to respond within 10 working days to acknowledge an individual's request to amend a record. Following acknowledgement, the agency must promptly correct the information which the individual believes is not accurate, relevant, timely or complete or inform the individual of its refusal.

If the individual disagrees with the refusal of the agency to amend his record, the agency shall conduct a review of that refusal within 30 working days, provided that an extension may be obtained for good cause. We expect that agency heads will conduct these reviews themselves or assign officers of the rank of Deputy Assistant Secretary or above to review them.

The House bill would not have permitted a Federal District Court to review de novo an agency's refusal to amend a record. The compromise adopts the Senate provision which would require a de novo review of such refusal and to order a correction where merited. Finally, the compromise requires that in any disclosure of information subject to disagreement that the agency include with the disclosure a notation of any dispute over the information or a copy of any statement submitted by the individual stating his reasons for disagreement with the information.

#### ACCOUNTING FOR DISCLOSURES

Section c of the House bill requires an agency to inform any person or another agency about a correction or notation of dispute regarding a record that has been disclosed to that person or agency within two years before making the correction or notation. It would not apply if no accounting of the disclosure had been required. No such limitation was placed upon accounting for disclosures in the Senate bill and the compromise measure would require any person or agency receiving the record at any time before a notation or dispute is made to be notified if an accounting of the disclosures were made.

The House bill requires an agency to maintain an accounting for disclosures for only five years. The Senate bill places no limitation on the length of time for maintaining such disclosures. The compromise amendment would require maintaining of the disclosure for five years or the life of the record, whichever is longer.

#### LIMITATIONS ON THE TYPES OF INFORMATION COLLECTED AND THE USE OF THIRD PARTY INFORMATION

The Senate bill requires Federal agencies to maintain only such information about an individual as is relevant and necessary to accomplish a statutory purpose of the agency. The House bill did not address this issue. The compromise amendment modifies the Senate provision to permit the collection of information which would be required to accomplish not only a purpose set out by a

statute but also a purpose outlined by a Presidential Executive Order.

The provision is included to limit the collection of extraneous information by Federal agencies. It requires that a conscious decision be made that the information is required to meet the needs of an agency as dictated by a statute. Agencies should formulate as precisely as possible the policy objectives to be served by a data gathering activity before it is undertaken. It is hoped that multiple requests for information will be reduced and that agencies will collect no more sensitive personal information than is necessary.

The Senate bill also requires agencies to collect information to the greatest extent practicable directly from the subject when that information could result in an adverse determination about an individual's rights and benefits and privileges under a Federal program. The House bill had no provision, but the compromise amendment accepts the Senate language. This section is designed to discourage the collection of personal information from third party sources and therefore to encourage the accuracy of Federal data gathering. It supports the principle that an individual should to the greatest extent possible be in control of information about him which is given to the government. This may not be practical in all cases for financial or logistical reasons or because of other statutory requirements. However, it is a principle designed to insure fairness in information collection which should be instituted wherever possible.

#### ARCHIVAL RECORDS

The House bill provides that records accepted by the Administrator of General Services for temporary storage and servicing shall be considered for purposes of this act, to be maintained by the agency which deposits the records. Records transferred to the National Archives after the effective date of this Act for purposes of historical preservation are considered to be maintained by the Archives and are subject only to limited provisions of the Act. Records transferred to the National Archives before the effective date of this Act are not subject to the provisions of this Act.

The Senate bill provides that records accepted by the Administrator of General Services for temporary storage and servicing shall be considered, for purposes of this Act, to be maintained by the agency which deposits the records. All records transferred to the National Archives for purposes of historical preservation are considered to be maintained by the Archives and are subject only to those provisions of this Act requiring annual public notice of the existence and character of the information systems maintained by the Archives, establishment of appropriate safeguards to insure the security and integrity of preserved personal information, and promulgation and implementation of rules to insure the effective enforcement of those safeguards.

The compromise amendment subjects records transferred to the National Archives for historical preservation to a modified requirement for annual public notice. It is intended that the notice provision not be applied separately and specifically to each of the many thousands of separate systems of records transferred to the Archives prior to the effective date of this Act, but rather that a more general description be provided which pertains to meaningful groupings of record systems. However, record systems transferred to the Archives after the effective date of this Act are individually subject to the specific notice provisions. This coverage is intended to support and encourage improvements in the organization and cataloging of records maintained by the Archives, both to make authorized access to such records simpler and



to insure broader application to Archival records of safeguards for data security and confidentiality.

#### MORATORIUM ON THE USE OF THE SOCIAL SECURITY ACCOUNT NUMBER

The House bill provides that a Federal agency, or a State or local government acting in compliance with Federal law or a federally assisted program, is prohibited from denying to individuals rights, benefits or privileges by reason of refusal to disclose the social security account number. Any such governmental agency is further prohibited from utilizing the social security account number for purposes apart from verification of individual identity except where another purpose is specifically authorized by law. Exempt from these prohibitions are systems of records in existence and operating prior to January 1, 1975. Exemption is further granted where disclosure of a social security account number is required by Federal law.

The Senate bill provides that a Federal agency, or a State or local government, is prohibited from denying to individuals rights, benefits or privileges by reason of refusal to disclose the social security account number. Persons engaged in the business of commercial transactions or activities are prohibited from discriminating against any individual in the course of such activities by reason of refusal to disclose the social security account number. Exempt from these prohibitions are systems of records in existence and operating prior to January 1, 1975. Also exempt are disclosures of the social security account number required by Federal law. This section further provides that any Federal, State or local government agency or any person who requests an individual to disclose his social security number shall inform that individual whether that disclosure is mandatory or voluntary, by what statutory or other authority such number is solicited, what uses will be made of it, and what rules of confidentiality will govern it.

The compromise amendment changes the House language by broadening the coverage of State and local governments so as to prohibit any new activity by such a government that would condition a right, benefit or privilege upon an individual's disclosure of his social security account number.

To clarify the intent of the Senate and House, the grandfather clause of this section was re-stated to exempt only those governmental uses of the social security account number continuing from before January 1, 1975, pursuant to a prior law or regulation that, for purposes of verifying identity, required individuals to disclose their social security account number as a condition for exercising a right, benefit, or privilege. Thus, for illustration, after January 1, 1975, it will be unlawful to commence operation of a State or local government procedure that requires individuals to disclose their social security account number in order to register a motor vehicle, obtain a driver's license or other permit, or exercise the right to vote in an election. The House section was amended to include the Senate provision for informing an individual requested to disclose his social security account number of the nature, authority and purpose of the request. This provision is intended to permit an individual to make an informed decision whether or not to disclose. The social security account number, and it is intended to bring recognition to, and discourage, unnecessary or improper uses of that number.

#### MAILING LISTS

The Senate bill prohibits the sale or rental of an individual's name and address by a Federal agency unless such action is specifically authorized by law. This section further

provides that upon written request of any individual, any person engaged in interstate commerce who maintains a mailing list shall remove the individual's name and address from such list.

The compromise amendment accepts the Senate prohibition of the sale or rental of mailing lists by Federal agencies. Names and addresses associated with other personal information obtained by Federal agencies pursuant to statute or executive order, or by unauthorized means, are thus not permitted to be sold or rented to the public. Public disclosure of mailing lists by authority of Section 552(b), the Freedom of Information Act, or by authority of other Federal law, is not prohibited. Public disclosure would be permitted in certain other circumstances where the agency determines that the potential for adverse effects from such disclosure on the privacy or other rights of persons on a mailing list are inconsequential and that the benefits likely to accrue to such persons and to the general public are clear and significant. In this regard, a directive from the Office of Management and Budget forbidding disclosure by Federal agencies of a person's name absent his specific consent would be relevant to the intent of this subsection.

#### RULEMAKING PROCEDURES FOR MAKING EXEMPTIONS

To obtain an exemption from certain provisions of this Act under the House bill, agencies entitled to those exemptions would be required to publish notice of the proposed exemptions in the Federal Register pursuant to Section 553 of the Administrative Procedures Act permitting comments to be submitted in writing for inclusion in the Record with such exemptions.

The Senate bill applied a much more stringent standard and would have required agencies to hold adjudicatory hearings as provided in APA Sections 556 and 557. The compromise agreement would no longer require full adjudicatory proceedings by any agency seeking an exemption permitted under the act. However, agencies would still be required to publish notice of a proposed rulemaking in the Federal Register and could not waive the 30 day period for such publication. In addition it is specifically provided in this act that agencies obtaining such exemptions state the reasons why the system of records is to be exempted. Should objection be filed with the Commission to any rulemaking exemption, it is expected that the agency would respond specifically to each objection in setting forth its reason in support of the exemption.

#### DUTIES OF THE OFFICE OF MANAGEMENT AND BUDGET

Under the Senate bill the Privacy Protection Commission was directed to develop model guidelines and conduct certain oversight of the implementation of this Act to Federal agencies. Since the compromise amendment would change the scope of authority of the commission, it was felt there remained a need for an agency within the government to develop guidelines and regulations for agencies to use in implementing the provisions of the Act and to provide continuing assistance to and oversight of the implementation of the provisions of this Act by the agencies.

This function has been assigned to the Office of Management and Budget.

#### REPORTS ON NEW SYSTEMS

Under the Senate bill the Privacy Protection Commission was to have a central role in evaluating proposals to establish or alter new systems of information in the Federal government. If the commission had determined that such a proposal was not in compliance with the standards established by the Senate bill the agency which prepared the report could not proceed to establish

or modify an information system for 60 days in order to give the Congress and the President an opportunity to review that report and the commission's recommendations.

The compromise amendment still would require that agencies provide adequate advance notice to the Congress and to the Office of Management and Budget of any proposal to establish or alter a system of records in order to permit an evaluation of the privacy impact of that proposal. In addition to the privacy impact, consideration should be given to the effect the proposal may have on our Federal system and on the separation of powers between the three branches of government. These concerns are expressed in connection with recent proposals by the General Services Administration and Department of Agriculture to establish a giant data facility for the storing and sharing of information between those and perhaps other departments. The language in the Senate report on pages 64-66 reflects the concern attached to the inclusion of this language in S. 3418.

The acceptance of the compromise amendment does not question the motivation or need for improving the Federal government's data gathering and handling capabilities. It does express a concern, however, that the office charged with central management and oversight of Federal activities and the Congress have an opportunity to examine the impact of new or altered data systems on our citizens, the provisions for confidentiality and security in those systems and the extent to which the creation of the system will alter or change interagency or intergovernmental relationships related to information programs.

#### GOVERNMENT CONTRACTS

The Senate bill would have extended its provisions outside the Federal government only to those contractors, grantees or participants in agreements with the Federal government, where the purpose of the contract, grant or agreement was to establish or alter an information system. It addressed a concern over the policy governing the sharing of Federal criminal history information with State and local government law enforcement agencies and for the amount of money which has been spent through the Law Enforcement Assistance Administration for the purchase of State and local government criminal information systems.

The compromise amendment would now permit Federal law enforcement agencies to determine to what extent their information systems would be covered by the Act and to what extent they will extend that coverage to those with which they share that information or resources.

At the same time it is recognized that many Federal agencies contract for the operation of systems of records on behalf of the agency in order to accomplish an agency function. It was provided therefore that such contracts if agreed to on or after the effective date of this legislation shall provide that those contractors and any employees of those contractors shall be considered to be employees of an agency and subject to the provisions of the legislation.

#### DEFINITION OF RECORD

The definition of the term "Record" as provided in the House bill has been expanded to assure the intent that a record can include as little as one descriptive item about an individual and that such records may incorporate but not be limited to information about an individual's education, financial transactions, medical history, criminal or employment records, and that they may contain his name, or the identifying number, symbol, or other identifying particularly assigned to the individual, such as a finger or voice print or a photograph. The amended



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definition was adopted to more closely reflect the definition of "personal information" as used in the Senate bill.

## DEFINITION OF THE TERM AGENCY

Some questions have been raised regarding the applicability of H.R. 16373 and S. 3418 to the U.S. Postal Service, the Postal Rate Commission and similarly related entities.

H.R. 16373 defines "agency" to mean an agency as defined in Section 552(e) of Title V, S. 3418 defines the term "Federal agency" to mean any department, agency, instrumentality, or establishment in the Executive Branch of the Government of the United States and includes any officer or employee thereof.

A compromise agreement adopts the definition by reference to section 552(e) as provided in H.R. 16373. It is the intention of the House and Senate that the Federal Privacy Act clearly apply to the Postal Service, the Postal Rate Commission, and government corporations or government controlled corporations now in existence or which may be created in the future as provided in Public Law 93-502, the amendments to the Freedom of Information Act.

While Section 410(a) of Title 39 of the U.S. Code exempts the Postal Service and Postal Rate Commission from legislation generally applicable to Federal agencies, barring a clear expression of Congressional intent to the contrary, is the considered intent of the committees which consider this legislation that it should apply to the Postal Service and Postal Rate Commission, notwithstanding the operation of Title 39 Section 14(a) of the United States Code.

Mr. ERVIN. Mr. President, I have also prepared a statement giving credit to members of the Government Operations Committee, and another statement giving credit to members of the Subcommittee on Constitutional Rights, which worked on privacy matters for many years, commending them for their work.

I would like to ask unanimous consent these be printed in the Record at this point.

There being no objection, the statements were ordered to be printed in the Record, as follows:

## STATEMENT TO MEMBERS OF THE GOVERNMENT OPERATION COMMITTEE

Mr. President, S. 3418 represents the culmination of many months of work by the Committee on Government Operations to fashion legislation that will guarantee the rights of all Americans with respect to the gathering, use, and disclosure of information about them by the Federal Government.

Again, I want to express my gratitude to two members of this committee who have helped make this legislation possible Senator Percy from Illinois, the ranking minority member, and Senator Muskie from Maine, the chairman of the Subcommittee on Intergovernmental Relations.

Their efforts, and that of their staffs have been indispensable in helping to reach the compromise reflected in the amendments adopted by the Senate today.

Great credit also is due to Senator Ribicoff, Senator Javits and the other cosponsors of this legislation as well as to all the members of the Committee on Government Operations. Without their many valuable contributions, we would have been unable to develop the sensible bill that the committee reported unanimously to the Senate.

Finally, the Committee wishes to express appreciation for the valuable time and effort devoted to the drafting of this legislation by Mr. Bill Ticer, in the office of the Senate Legislative Counsel.

Mr. President, I am pleased to note that the compromise which has been reached between the Senate and the House on this privacy legislation will provide for the establishment of a Privacy Protection Study Commission. While the scope of the commission's authority is not as broad as we had sought in the Senate bill, it should serve as an important function in providing the President and the Congress with the kind and caliber of information about problems related to privacy in the public and private sectors which are needed to make informed decisions.

I believe that this bill also strengthens the ability of the individual to enforce the rights granted to him under this act from the provisions which were contained in the House measure.

Finally the compromise bill contains the minimum recommendations made for protecting privacy and for establishing rules of due process for the Government's use of computer technology for personal data systems.

It is in keeping with the recommendation of the Committee on Government Operations which stated the purpose of the Senate bill is to:

Promote government respect for the privacy of citizens by requiring all departments and agencies of the executive branch and their employees to observe certain constitutional rules in the computerizing, collection, management, use and disclosure of personal information about individuals.

It is to promote accountability, responsibility, legislative oversight, and open government with respect to the use of computer technology in the personal information systems and data banks of the Federal government and with respect to all of its other manual or mechanized files.

It is designed to prevent the kind of illegal, unwise, over-broad, investigation and record surveillance or law-abiding citizens which has resulted in recent years from actions of some over-zealous investigators, from the curiosity of some government administrators, and from the wrongful disclosure and use of personal files held by Federal agencies.

It is to prevent the secret gathering of information or the creation of secret information systems or data banks on Americans by employees of the departments and agencies of the Executive branch.

It is designed to set in motion a long-overdue evaluation of the needs of the Federal government to acquire and retain personal information on Americans, by requiring stricter review within agencies or criteria for collection and retention of such information.

It is also to promote observance of valued principles of fairness and individual privacy by those who develop, operate and administer other major institutional and organizational data banks of government and society.

While this is a momentous day for the Senate, it's work in the field of privacy is not completed with the adoption of this legislation. It will require aggressive oversight by the Committee on Government Operations, and I would hope that Senator Muskie through his Subcommittee on Intergovernmental Relations, and that Senator Percy, as the ranking minority member of the Committee on Government Operations, will continue to exercise their leadership in this regard.

## STATEMENT TO MEMBERS OF THE SUBCOMMITTEE ON CONSTITUTIONAL RIGHTS

Mr. ERVIN. Mr. President, when the Senate approved S. 3418 in November, I paid tribute to the contributions of the members and the staff of the Government Operations Committee and to the staffs of the members of the Committee who had worked on the bill.

I wish to acknowledge also the valuable contributions of the Committee's special consultant, Professor Alan F. Westin of Columbia University, whose testimony in June and expert counsel through the summer provided the basis for policy judgments and for detailed amendment of the bill in order that a workable proposal could be reported to the Senate. Professor Christopher Pyle of the John Jay College of Criminal Justice in New York, also rendered valuable assistance to the Committee, as he has during his service as a consultant of the Constitutional Rights Subcommittee.

Much credit is also due to Lawrence Baskir, former chief counsel of the Constitutional Rights Subcommittee, Mark Gitenstein, present chief Counsel of the Subcommittee, Irene Margolis, Dorothy Glanzer and the rest of the Subcommittee staff who helped immeasurably in the development of the bill and report during the joint hearings and study.

Furthermore, no person who has walked on Capitol Hill merits greater commendation in this connection than Marcia MacNaughton, who served for a substantial time on the staff of the Subcommittee on Constitutional Rights and made herself most knowledgeable in respect to privacy and the threats to it. During past months she left the academic world temporarily to aid the Senate Committee on Government Operations in the drafting of S. 3418.

I believe the comprehensive hearings and studies of the Constitutional Rights Subcommittee have helped to provide the Congress with an excellent basis for this and other needed legislation in years to come. I hope the many published volumes of the result of the Subcommittee's work on privacy, computers and data banks will aid those working on this subject in the future. The members who serve on that Subcommittee have made many contributions to the protection of privacy by their sponsorship of legislation and their support and participation of the investigations and reports which were needed to draft legislation. They have also provided the Executive Branch with the background and information for reports and action to protect privacy and I hope officials in all federal departments and agencies will continue to take advantage of this research and this documentation of public concern over governmental incursion on individual freedoms.

Since the Senate and the House passed their respective privacy bills, Jim Davidson has labored tirelessly to reconcile their varying provisions and thus make the enactment of legislation to protect the rights of privacy of Americans possible. I will always be grateful to him for his most helpful assistance to me.

Mr. ERVIN. Mr. President, I would urge all Members of the Senate to support these amendments with my assurance that I have been informed by the House that the House will immediately take them and send the bill to the White House and we will have, for the first time in the history of our Nation, some effective privacy legislation.

Mr. PERCY. Mr. President, the compromise privacy bill we bring before the Senate today is a remarkable achievement. It marks the culmination of more than 10 years of concern and attention by the Congress to the fundamental issue of personal privacy. It represents the continuing efforts by the distinguished senior Senator from North Carolina (Mr. ERVIN) to cultivate that concern and I believe this legislation is a fine tribute to Senator ERVIN's work.

I would like to strongly commend the staff of the Government Operations Committee in their efforts to produce a com-

promise with the House. Their diligent efforts have been quite crucial to the successful resolution of extremely difficult policy differences. In this regard, I would like to give a special commendation and extend my appreciation to Mr. Bill Ticer, office of the Senate Legislative Counsel, for his dedicated assistance to the committee staff during the past 6 months. I understand that his participation was of immense value in clarifying difficult portions of the legislation.

I also commend Congressman MOORHEAD of Pennsylvania, Congressman ERLENBORN, and Congressman GOLDWATER for their diligent efforts in connection with this legislation.

I am pleased to note that the compromise which has been reached does include a provision for a 2-year Privacy Protection Study Commission. While this Commission does not retain some of the enforcement powers afforded to it in the Senate-passed bill, S. 3418, I believe that it is certainly equipped to perform the functions intended by the Senate. The Commission will be responsible for assembling experts in the fields of computer science, law, social sciences, business, and Government to study and recommend solutions to privacy problems not adequately addressed by this bill. I believe that the Commission will serve to keep focused attention on this important issue of public policy so that Federal agencies, State and local governments, and private organizations will continue to implement the basic principles of fair treatment for personal data contained in this bill.

I am pleased that the compromise bill contains the provision, introduced by Senator GOLDWATER and myself, to limit abuses of the social security number. I look forward to a more final solution to the problems associated with this number, which is widely used as a universal identifier in this country. The Privacy Protection Study Commission will study the problem and bring back to the Congress policy recommendations on this matter.

Finally, I am pleased that Congress has acted with authority to establish, across the board in the Federal Government, fundamental protections of personal privacy. The challenge now rests with the Federal agencies to adopt regulations and implement procedures to carry out the intent of this statute. We intend to work with the agencies and we hope that they will cooperate fully, in return, with the Government Operations Committees of both Houses, in their oversight capacity, and with the Privacy Protection Study Commission, in its study capacity.

Mr. MUSKIE. Mr. President, this is a momentous day for the Senate and for every citizen of this country on whom the Government maintains a record.

The compromise agreement which has been worked out between the Senate and the House under the able leadership of the chairman of the Committee on Government Operations, Mr. ERVIN, represents the first major assault on the invasion of privacy in recent decades.

Mr. President, I would like to note the outstanding work in the development of

this bill by Mr. James H. Davidson, of the staff of my Subcommittee on Intergovernmental Relations, who has spent countless hours working on this legislation.

The passage of this legislation will rightfully earn for this Congress the reputation as the Privacy Congress.

While the courts have begun to recognize the capacity and the practices of the government to invade the privacy of its citizens, it is the responsibility of the Congress to develop the legislative protection against those invasions.

The Federal Privacy Act draws upon the constitutional and judicial recognition accorded to the right of privacy and translates it into a system of procedural and substantive safeguards against obtrusive Government information-gathering practices.

Until now we have allowed technological advances in Federal recordkeeping to outpace our efforts to control and safeguard the information we have collected. This act would restore balance against those advances by adding new protections for every citizen.

I am pleased to note that this act has developed an important balance between the rights of privacy of each of our citizens and the public need for disclosure of Government materials under the Freedom of Information Act.

Mr. President, this legislation incorporates fundamental rights of fair information practices into Federal information systems. It is an important beginning. And I hope to be able to follow the implementation of this act in the next Congress through the work of my Subcommittee on Intergovernmental Relations.

Mr. BROCK. Will the Senator yield?  
Mr. ERVIN. I yield to the Senator from Tennessee.

Mr. BROCK. Mr. President, may I take a moment to express my gratitude to the Senator from North Carolina for his leadership in a matter in which I have had, as so many others have had, a great, continuing, and growing concern. The privacy bill is a much-needed piece of reform legislation which I am proud to have sponsored.

There is no question about the abuse of personal privacy in this country, and it is growing at a geometric rate each year. I understand, for example, that it is presently possible to have every telephone in America bugged.

Privacy is not a privilege, it is a basic right, a fundamental freedom which is deeply rooted in our American heritage. It is the ability to be secure in our homes, persons, and papers. We simply must take firm and specific action to protect the people of this Nation from the erosion of their personal liberties.

This bill, which addresses itself to the use and abuse of Federal data banks, establishes several basic standards. First, only relevant personal information can be collected, and the individual must be informed as to which data is required, which is voluntary, why it is needed, and under which authority. Second, only timely data may be maintained and disseminated, and access to, and security

of, the data must be regulated. Additionally, the nature of all data banks must be announced. Individuals will have access to inspect their records and must be told the source of the data and how it is used. Finally, information challenged by an individual must be reinvestigated and, where proper, modified or corrected.

I personally want to express my great debt to the Senator from North Carolina for his efforts to remedy this problem.

We did have differences with the House, but the compromise is an effort to deal with those differences in a very frank and very healthy way.

I appreciate the result of the labors of the gentleman and I want him to know it.

Mr. ERVIN. I thank my friend from Tennessee and want to commend him for the work he did in the Government Operations Committee in this legislation.

Mr. President, I ask for the yeas and nays on the motion.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

Mr. ERVIN. I yield the floor.

Mr. HRUSKA. Mr. President.

The PRESIDING OFFICER. The Senator from Nebraska.

Mr. HRUSKA. Mr. President, I yield to the Senator from West Virginia, reserving my right to the floor, for a brief statement.

#### AMENDMENT OF THE SOLID WASTE DISPOSAL ACT

Mr. RANDOLPH. Mr. President, I report from the Committee on Public Works H.R. 16045, and ask unanimous consent for its immediate consideration.

The PRESIDING OFFICER. The bill will be stated by title.

The assistant legislative clerk read as follows:

A bill (H.R. 16045) to amend the Solid Waste Disposal Act to authorize appropriations for fiscal years 1975 and 1976 and to make certain technical and conforming changes, reported with an amendment.

The PRESIDING OFFICER. Is there objection to the consideration of the bill.

There being no objection, the Senate proceeded to consider the bill (H.R. 16045) which had been reported from the Committee on Public Works with an amendment to strike out all after the enacting clause and insert:

That paragraph (2) of subsection (a) of section 216 of the Solid Waste Disposal Act, as amended (87 Stat. 11), is amended by striking "and not to exceed \$76,000,000 for the fiscal year ending June 30, 1974," and inserting in lieu thereof "not to exceed \$76,000,000 for the fiscal year ending June 30, 1974, and not to exceed \$76,000,000 for the fiscal year ending June 30, 1975."

The amendment was agreed to.

The amendment was ordered to be engrossed and the bill to be read a third time.

The bill was read the third time, and passed.

The title was amended so as to read: "To amend the Solid Waste Disposal Act

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to authorize appropriations for fiscal year 1975."

## ORDER OF BUSINESS

Mr. ROBERT C. BYRD. Will the Senator from Nebraska yield for 30 seconds without losing his right to the floor?

Mr. HRUSKA. I am happy to yield.

Mr. ROBERT C. BYRD. With the understanding his remarks not be interrupted in the Record.

Mr. ROBERT C. BYRD. Mr. President, for the information of the Senators, following this rollcall I would anticipate another measure that will be coming up that would very likely generate another rollcall.

I thank the Senator.

## PRIVACY ACT OF 1974

The Senate continued with the consideration of the message from the House of Representatives on the bill (S. 3418) to establish a Privacy Protection Commission, to provide management systems in Federal agencies and certain other organizations with respect to the gathering and disclosure of information concerning individuals, and for other purposes.

The PRESIDING OFFICER. The Senator from Nebraska.

Mr. HRUSKA. Mr. President, I rise to suggest that the consideration of the instant bill, S. 3418, pursuant to the motion of the Senator from North Carolina, is not exactly in keeping with the better traditions of this body regarding consideration of legislative of this gravity.

I am not going to take very long, but I would like to recite briefly the chronology of this legislation and what we are doing here today.

Last month, Mr. President, S. 3418 was approved by this body and sent to the other body. The bill, incidentally, as passed by the Senate, was about 40 printed pages in length.

The House also passed a measure, at approximately the same time, H.R. 16373, which dealt with the question of privacy individuals' records. While many provisions of the House and Senate bill were similar, the Senate version contained provisions establishing a privacy commission, with far reaching powers, and providing extensive coverage of law enforcement records, features not found in the House bill.

The other body took the Senate bill S. 3418, and, upon consideration thereof, voted to strike all but the enacting clause and insert entirely in place therein the text of H.R. 16373, which consisted of approximately 20 printed pages. Apparently, the members of the Senate Government Operations Committee were displeased with the House version. There was contact established between the staff of the Government Operations Committee of the Senate and the staff of the Government Operations Committee of the House. There emanated therefrom, Mr. President, the text and the substance of the motion now pending by way of an amendment to the House bill, which I understand was completed yesterday.

This text, Mr. President, was submitted to my office less than 24 hours ago. It consists of approximately 40 pages of typewritten material. It is in many respects from the bill as passed by the Senate in the original instance. And it is different than the text of the bill that was approved by the other body.

In addition to that text, I was furnished by the very courteous and distinguished Senator from North Carolina with a copy of his remarks, consisting of an analysis of House and Senate compromise amendments to the Federal Privacy Act.

Let me suggest, Mr. President, that this occurred about 24 hours ago. I believe I received these remarks probably at 4 o'clock yesterday afternoon and the actual text of the amendment shortly after 6 p.m.

We adjourned the Senate, Mr. President, at about 6:40 p.m. yesterday. We convened at 9:30, as I remember it. I have been in committee most of the day. I started my first committee meeting at 9:30 this morning.

I know all of my colleagues have been very busy in the later part of this session, in the closing hours of this session.

I make no apology for the fact that I did not have time to read and to study this bill, nor the remarks of the Senator from North Carolina. I did impose upon my staff for the consumption on their part of a little midnight oil. I find, Mr. President, it is not quite as easy to explain the lack of difference between the House bill and the compromise bill as we might imagine.

There are some things that are of real substance. There are some items that are of very substantial difference; and, in my judgment, some items, on the basis of this staff analysis, that would bear close study and scrutiny, and which should receive a little more deliberate treatment than a mere consideration of the motion of amendment as proposed, and which we are considering now.

Let me suggest, Mr. President, first of all there is the suggestion, and there is the representation made, that the law enforcement files are exempted. Of course, that was one of our original objections to the bill as approved by the Senate. When I say "our" I mean those who are interested with me in the preservation of the integrity of law enforcement files, particularly the investigatory files, and to prevent a compromise thereof.

As I suggested at that time, the area of law enforcement files is of such complexity that it should not be dealt with on the same terms as civil records. I believe it can be readily understood that criminal justice or law enforcement information gives rise to problems requiring treatment different from that of information used to carry out the social, health, or money benefit programs in which the Government may be involved. Law enforcement records should be treated in separate legislation.

The Senate Constitutional Rights Subcommittee presently has such legislation before it, S. 2963 and S. 2964. Many hours of hearings and research have gone into perfecting the provisions

of this legislation in order to strike a proper and equitable balance between the individual's rights to privacy and society's interest in receiving good and effective law enforcement.

This legislation, represented by S. 2963 and S. 2964, is well along and near resolution. It is expected that similar legislation will be reported to the Senate floor early next year. It is my understanding that the Members in the House similarly expect to act on legislation dealing with law enforcement files early in the next Congress. It is further my understanding that this was the reason that H.R. 16373 contained an exemption from most of its provisions for criminal law enforcement files and records, an exemption which I found acceptable.

The staff compromise we have before us in the form of the amendment in question, however, narrows the law enforcement exemption, by making additional provisions of the bill applicable to law enforcement.

For example, the requirement that an accounting of all disclosures of a record be kept for a period of 5 years, "or for the life of the record, whichever is the longer" would now be applied to law enforcement files.

It should be noted that the statute of limitations for civil suits related to improperly disclosed records is only 2 years. The provision that all future disclosures of the record be accompanied by notice of disputes as to its accuracy is also applied to law enforcement records.

Similarly, law enforcement would be covered by the requirement that proposed rulemaking hearings be held with respect to a statement of the routine uses to which records would be subject.

The expanded coverage of the law enforcement files is objectionable as a matter of principle, and may raise serious practical problems of which we may be unaware after only a brief study of the amendment.

Mr. PERCY. Would my distinguished colleague mind just a brief comment? If the distinguished Senator from Nebraska has finished the history of what happened on this legislation, I think for purposes of accuracy it would be well to make one insertion.

Mr. HRUSKA. I will yield briefly for that purpose. I do not want to detain the Senate too long. I shall cite one other example of detriment in the proposed amendment. Then I shall put the rest of this statement into the Record. If it is a brief comment, I will be happy to yield.

Mr. PERCY. I very much appreciate the deep interest that our distinguished colleague has taken in this legislation.

It would be, I believe, unfair to the Senate to assume, however, that what has resulted is a result only of staff discussions between the House and Senate. Obviously, on this legislation, as in most legislation, staff has done a great deal of work. But we cannot overlook the fact that Senator ERVIN and myself, as the chairman and the ranking minority member of the Senate Government Operations Committee, and Congressman MOORHEAD of Pennsylvania, and Congressman ERLBORN, of Illinois, as the House Foreign Operations and Govern-

ment Information Subcommittee chairman and the ranking minority member of the House Government Operations Committee, met together for a very extended session to discuss our respective bills.

We worked out compromises. We negotiated differences. We came to an accord, and we put the stamp of approval of two Senators and two Congressmen, representing the chairmen and ranking members of the respective committees, before it was brought before the Senate today.

I believe that this one additional point would update and complete the historical account of this legislation up to this point.

I thank my distinguished colleague.

Mr. HRUSKA. I am happy to accept that supplement to the description of the history of this bill, Mr. President. It was not my intention to exclude from the consideration of the amendment before us the participation by members of the committee. But the bulk of the work, I am confident, was done by the staff. Many of the changes pertaining to law enforcement may have been inadvertently included with a full realization of their total effect.

Mr. President, I am just going to outline one other change. That has to do with the access to law enforcement records intelligence information by the privacy commission. The compromise with which we are now confronted would create a seven-member study commission with a broad mandate to examine privacy considerations as applied, Mr. President, to Federal, State, and private records.

The study commission would have full access to all information relating to the performance of their function, and it could issue subpoenas as to enforce its request for information. I am concerned, Mr. President, that individual's rights may be offended by fishing expeditions by the commission into the raw background files maintained by the Government and into other particularly sensitive law enforcement and intelligence records.

I feel the compromise gives the commission too broad authority to examine Government records under the language in the bill.

I ask unanimous consent, Mr. President, that this memorandum, which was prepared by staff and from which I have quoted, and which I have checked with the text of the bill and its proposed compromise, be printed in the Record at this point.

There being no objection, the memorandum was ordered to be printed in the Record, as follows:

#### MEMORANDUM

The "final" staff compromise which is now before the Senate presents real problems for law enforcement generally.

*Exemption of law enforcement files.* H.R. 16373 contained an exemption from most of its provisions for criminal law enforcement files and records. It was acceptable in this regard. The staff compromise narrows the law enforcement exemption, thus making additional provisions of the bill applicable to law enforcement. For example, the requirement that an accounting of all disclosures of a record be kept for a period of

five years "or the life of the record whichever is longer" would now be applied to law enforcement files. (Note that the statute of limitations for civil suits relating to improperly disclosed records is only two years). The provision that all future disclosures of the record be accompanied by notice of disputes as to its accuracy is also applied to law enforcement records. Compare p. 24 with page 9. Similarly, law enforcement would be covered by the requirement that proposed rule making hearings be held with respect to a statement of the "routine uses" to which such records would be subject, p. 17. The expanded coverage of law enforcement files is objectionable as a matter of principle and may raise serious practical problems.

*New provisions concerning law enforcement.* The staff compromise defines records as including not only collections of information about individuals but also an "item" of information about an individual. The intent of this change is not clear but it could be read so broadly as to include any single piece of paper bearing an individual's name within the meaning of record even though it may be filed as part of an investigatory file on a corporation or on some other individual. This would, among other things, require that annual notice of such "items" be published in the *Federal Register*. See § 3(a) (4) [p. 5].

The new definition of record also includes a reference to fingerprints, voice prints and photographs. The same reference is not included, however, in the description of those law enforcement files which may be exempted from provisions of the bill such as individual access to records or limitations on disclosure without the individual's consent. While it would be ludicrous to interpret the bill to require a fugitive's consent before his photograph is displayed on a wanted poster, the bill literally has this effect. Moreover, it may be read to permit individual access to photographs or voice prints in an investigatory file even though access to the file itself is not permitted by the bill. 3(a) (4) [p. 5].

"Routine" exchanges of information among government agencies—see 3(a) (7) [p. 6] 3 (b) (3) [p. 6]—are permitted by the bill so long as annual notice describing such routine exchanges is published. We were successful in obtaining a fuller explanation of routine exchange in the House which would be helpful to law enforcement. The bill, however, has added a definition of "routine use" which may present problems for law enforcement. "Routine" use is defined as that which is compatible with the purpose for which the information was originally collected. There may be numerous exchanges of information with the FBI that are now undertaken by non-law enforcement agencies which would not fall within the scope of this definition, for example, information concerning possible civil disturbance activities. If such exchanges do not fall within the definition of routine use then it would be necessary to secure the consent of the individual before furnishing it to the FBI or it would be necessary for the Director to make a written request for the information.

Since the information is of the sort normally brought to our attention only when it is voluntarily provided to us, the provision for requesting such records is virtually meaningless.

Among the new provisions added to the staff compromise is a requirement that before disseminating a record the agency must assure that the record is accurate, complete, timely and relevant. No standard is provided as to the proper application of these terms. The provision is applicable to law enforcement files as well as all other records. It would, of course, put the burden on the Identification Division to assure the completeness and relevance, as well as accuracy, of all rap sheets before dissemina-

tion. Moreover, it would appear to require that investigatory files be accurate, complete, timely and relevant before they are disseminated regardless of the purpose of the dissemination. Presumably this would even apply to old investigatory records made available pursuant to the historic records policy adopted under the Freedom of Information Act.—See § 3(e) (6) p. 16

*Access to law enforcement records.* The staff compromise would create a seven member study commission with a broad mandate to examine privacy considerations as applied to federal, state and private records. The study commission would have "full access to all information relating to the performance of their functions" and could issue subpoenas to enforce its requests for information. This could include requests for "raw files" and other sensitive law enforcement and intelligence records. The staff compromise, we feel, gives the Commission too broad authority to examine government records. [p. 38] § 5(e) (1)

*Civil law enforcement problems.* The bill requires that whenever an agency seeks information from an individual it must inform him of the source of its authority to seek the information, the purpose for which it is sought, routine uses that may be made of it, and the effects of not providing the information. Criminal law enforcement is exempt from these provisions but civil law enforcement is not. In certain cases such as civil frauds, civil rights investigations, anti-trust investigations, etc. this may produce an inhibiting effect on a potential witness. (There is also the incidental burden of including all of this information on all applicant forms as well.)

In a related vein, each agency is required to publish annually a description of its records systems. Except in the case of law enforcement, national defense, and similar files, a description of the "categories of sources" is to be included in the description. This too may present difficulties with respect to civil rights, fraud, and antitrust investigations where sources may require as much protection as they do in criminal cases.

An agency would be required to serve notice on an individual when a record pertaining to the individual is to be disclosed subject to "compulsory legal process." While law enforcement records would be exempt from this requirement, civil investigatory files would not be. Again this may present particular problems with respect to those civil actions which are quasi-criminal in nature. Moreover, it places an enormous burden on agencies and may, through motions to quash and similar interventions, seriously delay civil litigation.

*Relationship to Freedom of Information Act.* The Staff draft expressly provides that nothing in the Freedom of Information Act permits withholding a record from the subject of that record. This presents no serious problems since the bill itself permits withholding investigatory and similar files from the individual. The bill also provides, however, that disclosure is not permitted without an individual's consent unless disclosure would be required under FOI. Since the FOI Act itself authorizes the refusal of disclosure where this would constitute an "unwarranted invasion of privacy" the privacy bill's disclaimer of any intent to affect FOI is circular. In the face of the disclaimer, the government's efforts to mesh the two bills when faced with litigation over the nondisclosure of records to protect privacy may meet considerable difficulty.

Mr. HRUSKA. Mr. President, the motion before us and the amendment before us may be a good one. It may have merit. Maybe that would be the ultimate result of the action taken by the Senate.

As I indicated when S. 3418 was before

December 17, 1974

## CONGRESSIONAL RECORD — SENATE

S 21823

us last month, Mr. President, I share the objective of my good friend from North Carolina to protect Americans in their right to privacy. The declared purposes of this bill are desirable and worthy. It is, Mr. President, only some of the specific features of the bill, which I have mentioned briefly, with which I have question.

I do not know how many copies of this 40-page typewritten manuscript which contains the compromise measure have been made, or how many are available. As I indicated, I did not get one in my office until 6:30 last night. I have not made inquiry as to its distribution. It just seems to me that notwithstanding the lateness of this session, this subject and this measure are entitled to a little more deliberate, proper, and complete consideration by the Senate. It is an important subject and I hope that in our rush to enact this legislation that we are not inadvertently including provisions that will trouble us later.

I have no disposition to get into the matter of proposing an amendment at this time. If I did, Mr. President, I would propose an amendment by way of a substitute to reinstate, a substitute for the Ervin amendment, by way of a substitute to that, the text of the bill as originally passed by the House, which was understandable, which had been closely studied; and with which we have had some familiarity. I shall not do that, because to do that at this late hour would be putting the Senate in the same position with regard to that substitute measure that it is placed in with regard to the principal amendment—to wit, we would not have that discretion and we would not have that amplification upon the content of the amendment, and that would not be fair.

So I submit again, Mr. President, that it is a mistake to proceed at this late hour with the consideration of the pending amendment. It is my hope that it will not be approved. If the amendment before us does not succeed, we will have before the House version of the privacy bill which I find an extremely meritorious measure. It will readily achieve the objectives of the protection of privacy we seek and would receive my strong support.

The PRESIDING OFFICER. The question is on agreeing to the motion of the Senator from North Carolina. On this question the yeas and nays have been ordered, and the clerk will call the roll.

The legislative clerk called the roll.  
Mr. ROBERT C. BYRD. I announce that the Senator from Texas (Mr. BENTSEN), the Senator from Nevada (Mr. BIBLE), the Senator from Alaska (Mr. GRAVEL), the Senator from Rhode Island (Mr. PASTORE), the Senator from California (Mr. CRANSTON), the Senator from Mississippi (Mr. EASTLAND), the Senator from Arkansas (Mr. FULBRIGHT), the Senator from Louisiana (Mr. JOHNSTON), the Senator from Arkansas (Mr. McCLELLAN), the Senator from Connecticut (Mr. RIBICOFF), and the Senator from Georgia (Mr. TALMADGE) are necessarily absent.

I further announce that the Senator from Montana (Mr. MANSFIELD) is absent on official business.

I also announce that the Senator from Maine (Mr. HATHAWAY) is absent because of a death in the family.

I further announce that, if present and voting, the Senator from Rhode Island (Mr. PASTORE) would vote "yea."

Mr. GRIFFIN. I announce that the Senator from Oklahoma (Mr. BELLMON) and the Senator from Utah (Mr. BENNETT) are necessarily absent.

The result was announced—yeas 77, nays 8, as follows:

[No. 567 Leg.]

## YEAS—77

Abourezk	Goldwater	Moss
Allen	Griffin	Muskie
Baker	Hansen	Nelson
Bartlett	Hart	Nunn
Bayh	Hartke	Packwood
Beall	Haskell	Pearson
Biden	Hatfield	Pell
Brook	Helms	Percy
Brooke	Hollings	Proxmire
Buckley	Huddleston	Randolph
Burdick	Hughes	Roth
Byrd,	Humphrey	Schweiker
Harry F., Jr.	Inouye	Scott, Hugh
Byrd, Robert C.	Jackson	Scott,
Canron	Javits	William L.
Case	Kennedy	Sparkman
Chiles	Long	Stafford
Church	Magnuson	Stennis
Clark	Mathias	Stevens
Cook	McClure	Stevenson
Dole	McGee	Symington
Domenici	McGovern	Thurmond
Dominick	McIntyre	Tunney
Eagleton	Metcalf	Weicker
Ervin	Metzenbaum	Williams
Fannin	Mondale	
Fong	Montoya	

## NAYS—8

Aiken	Gurney	Tower
Cotton	Hruska	Young
Curtis	Taft	

## NOT VOTING—15

Bellmon	Eastland	Mansfield
Bennett	Fulbright	McClellan
Bentsen	Gravel	Pastore
Bible	Hathaway	Ribicoff
Cranston	Johnston	Talmadge

So Mr. ERVIN's motion to concur in the House amendment with amendments was agreed to.

Mr. ERVIN. Mr. President, I move to reconsider the vote by which the Senate amendments were agreed to.

Mr. CHURCH. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the Senator from Washington (Mr. JACKSON) may proceed for 1 minute.

The PRESIDING OFFICER. Without objection, it is so ordered.

## LOWELL HISTORIC CANAL DISTRICT

Mr. JACKSON. Mr. President, I move that the Committee on Interior and Insular Affairs be discharged from the consideration of H.R. 14689, and that it be laid before the Senate for immediate consideration. Mr. President, this matter has been cleared with the minority. It is a very minor bill. Both Senators from Massachusetts have expressed their interest in it.

The motion was agreed to.

The PRESIDING OFFICER. The bill will be stated by title.

The legislative clerk read as follows:

A bill (H.R. 14689) to provide for a plan for the preservation, interpretation, development, and use of the historic, cultural, and

architectural resources of the Lowell Historic Canal District in Lowell, Massachusetts, and for other purposes.

Mr. JACKSON. Mr. President, this is a House-passed bill which calls for the expenditure of no more than \$150,000 to study and prepare a plan for the historic preservation of the Lowell Canal District in Lowell, Mass.

I have cleared the matter with the minority. Both Senators from Massachusetts have expressed a strong interest in this legislation, and I hope that the Senate will take appropriate action.

Mr. KENNEDY. Mr. President, I rise in support of H.R. 14689, the Lowell Historic Canal District bill. The Lowell area has been one of the hardest hit in the Nation in our deepening recession. This bill will provide a significant step toward restoring Lowell to its potential place in our economy, while helping restore Lowell's historic significance to the State of Massachusetts and to the Nation at large.

This bill provides \$150,000 for the development of a plan for the preservation, development, interpretation, and use of the historic, cultural, and architectural resources of Lowell, Mass. The nine-member Commission, composed of private citizens as well as government officials, is to produce a plan for protecting and restoring the historic properties in Lowell and make specific recommendations for its implementation. The completed plan is to be submitted to Congress within 2 years. Further congressional action will then be necessary to authorize any Federal commitment in implementing the recommendations.

Lowell, Mass., represents an important and often neglected chapter of American history. The coming of the industrial revolution, with all its concomitant social and economic effects, is the story to be told here.

The falls of the Merrimack River attracted the attention of the pioneering New England industrialists in the early 19th century. They realized the power of the water falling through the locks of a transportation canal which bypassed the rapids could be harnessed to drive the textile machinery that was then being developed. The Merrimack Manufacturing Co. pioneered the growth of Lowell, improving the canal and constructing the first of the major industries to locate in what was then a remote and thinly settled area.

Of signal importance in this process was that the industrialists, recognizing the need for a stable labor source as well as the water power Lowell had to offer, developed the area as a planned industrial community. Their intent was to dispel the fears of the evils of industrial change which had grown out of the early factory complexes in England. To accomplish this, the companies constructed a model community in which even the off-duty hours of employees were supervised.

The early years of this industrial development saw Lowell hailed as an industrial utopia. The management of the town by the companies, while classified by modern standards as paternalistic, represented a major departure from many of the exploitative aspects of the



industrial growth of that era. Lowell drew admiring visitors from both the United States and abroad, and the area drew wide attention for its success in combining industrial and social values.

The experiment that was Lowell at last began to change. Following the Civil War, increased competition, lower labor costs in other areas, and poor management all played a part in leading to the decline in prominence of the Lowell area.

Now there is widespread support from the citizens of Lowell as well as historians and other interested parties for preserving and restoring the structures and areas which interpret the significance of Lowell. Perhaps the single event which catalyzed this interest was the demolishing of the original Merrimack Manufacturing Co. mill to make way for a high rise structure. It became apparent that without some organized approach, the important reminders of Lowell as a part of our growth as a Nation will disappear through attrition. H.R. 14689 is the vehicle through which a plan that takes account of the history and the present and future needs of this area can be developed.

In addition to the \$150,000 provided in this bill, it is gratifying to know that the State of Massachusetts has pledged \$9,700,000 in further support of the project associated with this legislation.

Mr. President, I wish to thank the Senator from Washington (Mr. JACKSON) the chairman of the Interior Committee and the Senator from Nevada (Mr. BRUBLE) the chairman of the subcommittee for their support and aid in steering this legislation to consideration by the Senate.

This bill will help restore Lowell's place in the Nation's history and help strengthen its present economic situation. I urge the Senate to pass this bill.

Mr. BROOKE. Mr. President, today is a day the citizens of Lowell, Mass., have long been waiting for. The city of Lowell is one of America's oldest industrial centers and possesses what is probably the finest set of working canals and mills in this country. The Senate action today has all but insured that much of this great city will be preserved for all Americans as an example of the kind of industrial center that made this country what it is today.

This bill sets in motion a study which will decide exactly what the best course of preservation should be for this great city. It will only cost \$150,000 and in return the people of this country will be able to see for themselves what industrial America looked like in the 19th century.

I commend Senator Jackson and the Senate Interior and Insular Affairs Committee for their prompt action on this bill and I commend my colleagues for their support. I would also like to take this opportunity to commend the diligent work of Representative PAUL CRONIN. He has skillfully managed this measure through the House and deserves much of the credit for its success in this session of the Congress. We have insured that future generations will have a firsthand glimpse of one of American history's important chapters.

The PRESIDING OFFICER. The bill is open to amendment. If there be no amendment to be proposed, the question is on the third reading of the bill.

The bill (H.R. 14689) was ordered to a third reading, was read the third time, and passed.

#### EXTENSION OF AUTHORIZATIONS FOR THE STRIKING OF COMMEMORATIVE MEDALS

Mr. ROBERT C. BYRD. Mr. President, I understand that this request has been cleared on both sides of the aisle, specifically with the Senator from Oregon (Mr. PACKWOOD) and the Senator from Pennsylvania (Mr. SCHWEIKER) on the other side of the aisle, and with the Senator from Idaho (Mr. CHURCH), the Senator from California (Mr. CRANSTON), and the Senator from Wisconsin (Mr. PROXMIER) on this side of the aisle. I make the request on behalf of the Senator from Illinois (Mr. STEVENSON).

I ask unanimous consent that the Chair lay before the Senate a message from the House of Representatives on H.R. 17556.

The PRESIDING OFFICER laid before the Senate H.R. 17556, an act to extend for 2 years the authorizations for the striking of medals in commemoration of the 100th anniversary of the cable car in San Francisco and in commemoration of Jim Thorpe, and for other purposes.

Mr. ROBERT C. BYRD. I ask unanimous consent that the bill be considered as having been read the first and second time, and that the Senate proceed to its immediate consideration.

The PRESIDING OFFICER. Without objection, it is so ordered.

The Senate proceeded to consider the bill.

Mr. ROBERT C. BYRD. I ask unanimous consent, this request having been cleared with the aforementioned Senators, that there be a time limitation of one-half hour on the bill, to be equally divided between the Senator from Illinois (Mr. STEVENSON) and the Senator from Pennsylvania (Mr. SCHWEIKER), and that there be a time limitation on any amendments of 20 minutes, and a time limitation on any debatable motion or appeal of 10 minutes, and that the agreement be in the usual form, with the exception of one amendment which will be offered by the Senator from Illinois (Mr. STEVENSON), which is not germane.

The PRESIDING OFFICER. Without objection, it is so ordered. The bill is open to amendment.

Mr. STEVENSON. Mr. President, I call up an amendment which I have at the desk, and ask for its immediate consideration.

The PRESIDING OFFICER. Will the Senator send his amendment to the desk?

The amendment will be stated.

The legislative clerk read as follows:

The Senator from Illinois (Mr. STEVENSON) proposes an amendment, at the end of the bill, to insert a new section entitled "Charter Amendments."

Mr. STEVENSON. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. STEVENSON's amendment is as follows:

At the end thereof, insert the following:

#### CHARTER AMENDMENTS

Sec. 5. Section 2a(1) of the Export-Import Bank Act of 1945 is amended--

(1) by inserting in the third sentence immediately after "other evidences of indebtedness;" the following: "to guarantee, insure coinsure, and reinsure against political and credit risks of loss.;"

(2) by inserting in the third sentence immediately after "competent jurisdiction;" the following: "to represent itself or to contract for representation in all legal and arbitral proceedings outside the United States.;" and

(3) by inserting after the fourth sentence the following new sentence: "The Bank is authorized to publish or arrange for the publication of any documents, reports, contracts, or other material necessary in connection with or in furtherance of its objects and purposes without regard to the provisions of section 501 of title 44, United States Code, whenever the Bank determines that publication in accordance with the provisions of such section would not be practicable."

#### POLICY

Sec. 6. Section 2(b)(1) of the Export-Import Bank Act of 1945 is amended to read as follows:

"(b)(1)(A) It is the policy of the United States to foster expansion of exports of goods and related services, thereby contributing to the promotion and maintenance of high levels of employment and real income and to the increased development of the productive resources of the United States. To meet this objective, the Export-Import Bank is directed, in the exercise of its functions, to provide guarantees, insurance, and extensions of credit at rates and on terms and other conditions which are competitive with the Government-supported rates and terms and other conditions available for the financing of exports from the principal countries whose exporters compete with United States exporters. The Bank shall, in cooperation with the export financing instrumentalities of other governments, seek to minimize competition in government-supported export financing. The Bank shall, on a semiannual basis, report to the appropriate committees of Congress its actions in complying with these directives. In this report the Bank shall include a survey of all other major export-financing facilities available from other governments and government-related agencies through which foreign exporters compete with the United States exporters and indicate in specific terms the ways in which the Bank's rates, terms, and other conditions compare with those offered from such other governments directly or indirectly. Further, the Bank shall at the same time survey a representative number of United States exporters and United States commercial lending institutions which provide export credit to determine their experience in meeting financial competition from other countries whose exporters compete with United States exporters. The results of this survey shall be included as part of the semiannual report required by the subparagraph. The Bank shall also include in the semiannual report a description of each loan by the Bank involving the export of any product or service related to the production, refining or transportation of any type of energy or the development of any energy resource with a statement assessing the impact, if any, on the availability of such products, services, or energy supplies thus developed for use within the United States.

"(B) It is further the policy of the United States that loans made by the Bank shall bear interest at rates determined by the Board of Directors of the Bank, taking into account the cost of money to