

A BILL

To provide safeguards for the confidentiality of records maintained by the Federal Statistical System, and to improve the efficiency of Federal statistical programs by permitting limited sharing of records for statistical purposes under strong safeguards.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled:

SHORT TITLE

Sec. 101. This Title may be cited as the "Confidentiality of Federal Statistical Records Act".

FINDINGS AND STATEMENT OF PURPOSES

Sec. 102. The Congress finds that--

(a) Accurate, consistent and timely data are essential to the conduct of statistical programs;

(b) Information collected or compiled by Federal agencies for statistical purposes should not be used in individually identifiable form to make decisions affecting the person to whom the information pertains;

(c) There is a need to permit the sharing of individually identifiable data for statistical purposes among the Federal agencies, and those performing statistical activities for them, in order to reduce paperwork burden and improve the quality of Federal statistical data; and

(d) Such sharing should be limited to statistical purposes which are of sufficient importance to justify interagency exchange of identifiable data.

(a) To provide that individually identifiable information furnished to the Federal Government by persons about themselves for statistical purposes shall be used only for such purposes and shall not be used or disclosed for any other purpose without their consent;

(b) To reduce the reporting burden and expenses on the public by establishing conditions for inter-agency exchange of individually identifiable data solely for statistical purposes under strong safeguards to protect the confidentiality of such data; and

(c) To prohibit the use in individually identifiable form of any information collected, compiled or maintained solely for statistical purposes under Federal authority or with Federal funds to make any decision or take any action directly affecting the rights, benefits, and privileges of the person to whom the information pertains, except with the person's consent.

DEFINITIONS

Sec. 104. For purposes of this Act, the term--

(a) "Agency" means agency as defined in 5 U.S.C. 552(e).

(b) "Cooperative statistical program" means a Federally initiated or sponsored statistical program in which units of State and local government participate in the collection or compilation of nationally standardized statistics. A cooperative statistical program is undertaken to develop data of a recurrent nature for the mutual benefit of the participants and involves multiple States (and in some cases local jurisdictions).

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(c) "Employee" means any full or part-time employee or officer of an agency, as defined in 5 U.S.C. 2104 and 2105, as well as any other personnel retained by the agency under contract, grant, or otherwise, including employees of contractors and grantees, and of State and local agencies participating in cooperative statistical programs with an agency.

(d) "Federal files" means collections or groupings of individually identifiable records in the possession of an agency, as well as those maintained for the agency under Federal contract (including contracts with State and local governments), or pursuant to a cooperative agreement with a State or local government.

(e) "Individually identifiable record" means a record about a person, obtained from any source, that could reasonably be uniquely associated with the identity of the person to whom it pertains.

(f) "Person" means any individual, family, household, proprietorship, partnership, corporation, association, business, institution, establishment, religious body or organization of any nature whatsoever, but not including units of State and local government.

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(g) "Protected statistical center" means an agency or organizational unit within an agency designated for protection under the provisions of this Act.

(h) "Protected statistical file" means a statistical file designated for protection under the provisions of this Act.

(i) "Record" means any item, collection, or grouping of information about a person, or a portion of any grouping or collection, including:

(1) normal directory information, such as the person's name, address, telephone number, business address or similar information;

(2) other numbers, symbols, fingerprints, voiceprints, photographs, or identifying particulars assigned to, or associated with, a person;

(3) any commercial or financial information associated with a person; or

(4) any other attributes, affiliations, opinions or characteristics associated with or assigned to a person.

(j) "Statistical file" means a Federal file created or maintained and used exclusively for statistical purposes. *do we have any line this*

(k) "Statistical purpose" means an objective to develop or report aggregate or anonymous data in such a way that the identity of specific persons is not discernable and is not material to the intended uses of the data.

THE CHIEF STATISTICIAN

Sec. 105. The Chief Statistician shall be that person designated by the Director of the Office of Management and Budget to carry out the functions assigned by this Act.

PROTECTED STATISTICAL FILES

- Sec. 106.

(a) A statistical file shall be designated in writing by the Chief Statistician as a protected statistical file upon the written request of the head of the agency maintaining the file. Such designation shall be made only when the Chief Statistician has determined that:

(1) the file is a statistical file;

conditions for becoming psc
(2) the agency has established and maintains appropriate administrative, technical and physical safeguards to insure the integrity, confidentiality, and security of the records in the file; and

(3) the file was not or is not being created under the authority of a statute which requires disclosure which conflicts with the provisions of this Act.

(b) The Chief Statistician shall publish, with an opportunity for public comment, all designations of protected statistical files in the Federal Register.

PROTECTED STATISTICAL CENTERS - *statistical file becomes "psf"*

Sec. 107.

statutory psc
(a) The Bureau of the Census and the Bureau of Economic Analysis within the Department of Commerce; the Bureau of Labor Statistics within the Department of Labor; the National Center for Health Statistics and the Office of Research and Statistics of the Social Security Administration within the Department of Health and Human Services; the Statistical Reporting Service and the Economic Research Service within the Department of Agriculture; and the Division of Science Resources Studies within the National Science Foundation are hereby designated as protected statistical centers, and are subject to the authority of the President to revoke such a designation pursuant to section 107(d).

other psc
(b) The President may designate other agencies or organizational units within an agency as protected statistical centers upon the written request of the head of the agency, if the President determines that:

(1) all files maintained by the agency or organizational unit are statistical files, except files required for internal administrative purposes and files containing exclusively information which is compiled from or provided in public records;

(2) the particular agency or organizational unit is not specifically required by its substantive law to operate under disclosure rules which conflict with the provisions of this Act; and

(3) the agency or unit has established and maintains appropriate administrative, technical, and physical safeguards to assure the integrity, confidentiality, and security of the statistical files.

J (c) Upon designation of an agency or organizational unit as a protected statistical center, each statistical file maintained by it acquires the status of a protected statistical file, except for files containing exclusively information which is compiled from or provided in public records.

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(d) The President may revoke the designation of a protected statistical center whenever he determines that the standards in Section 107(b) are no longer being met. However, such revocation shall not affect the status of the protected statistical files being maintained by the agency or organizational unit.

(e) The President shall publish all designations of a protected statistical center in the Federal Register, in accordance with 5 U.S.C. 553. All revocations of such designations shall be published in the Federal Register.

CONFIDENTIALITY OF RECORDS CONTAINED
IN PROTECTED STATISTICAL FILES

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from psf's*

Sec. 108. Except as provided in Sections 109 and 110 of this Act, no agency or employee of an agency shall:

(a) Disclose, in an individually identifiable form, any record contained in a protected statistical file;

(b) Publish or otherwise disclose any information compiled or obtained from a protected statistical file in any manner which could reasonably be expected to reveal, in an individually identifiable form, any information contained in that file; or

(c) Use the information contained in a protected statistical file for any purpose other than a statistical purpose.

DISCLOSURES FROM PROTECTED STATISTICAL FILES

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Sec. 109.

Records, including returns and return information as defined in 26 U.S.C. 6103(b), contained in protected statistical files may only be disclosed in an individually identifiable form under any of the conditions which follow (except that, returns and return information in protected statistical files may not be disclosed unless the disclosure is permissible under 26 U.S.C. 6103):

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(a) To those employees of the agency (or in the case of a protected statistical center, to those employees of the center) which maintains the records who have a need for the records in the performance of their statistical duties. Where disclosure under this provision is to persons performing work for an agency under a contract, grant, or cooperative statistical agreement,

use of the records disclosed must be restricted to statistical purposes, provided for in the contract, grant, or statistical agreement; except that no disclosure in individually identifiable form of records or information either collected and maintained by the Bureau of Census under authority of Title 13, United States Code, or received from the Bureau of Census by a protected statistical center shall be made to persons performing work for a protected statistical center under a contract, grant, or cooperative statistical agreement.

(b) To a protected statistical center pursuant to Section 110 of this Act;

Subject of record
(c) Pursuant to a written request by, or with the prior written consent of, the person to whom the record pertains, provided that:

(1) the parent of any minor;

(2) 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;

(3) the administrator, executor or trustee of a decedent's estate;

(4) a decedent's heir at law or next of kin; or

(5) any legal successor to a business entity

may authorize the disclosure of a record contained in a protected statistical file on behalf of the person to whom the record pertains. When an agency requests authorization to disclose information to someone, other than the person to whom the record pertains or to that person's representative, it must identify the persons to whom the information will be disclosed and the uses

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that will be made of the information, and must specify the duration of time during which disclosures can be made;

(d) 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;

to state local or private
(e) To an agency or to an organizational unit of an agency not designated as a protected statistical center, or to an organizational unit of a State or local government, provided that such disclosure has been approved in writing by the Chief Statistician.

(1) Such approval may be given upon the determination by the Chief Statistician that:

(A) the information to be disclosed is restricted to a list containing names, addresses and related information necessary for the collection or compilation of statistics, provided that the list is not derived from the decennial or mid-decade Censuses of Population and Housing;

(B) the information to be disclosed is to be used solely for a statistical purpose involving the collection or compilation of statistical data undertaken by employees of that agency or organizational unit;

(C) the recipient agency or organizational unit of an agency or of a State and local government has established and is maintaining appropriate administrative, technical and physical safeguards to assure the integrity, confidentiality, and security of the records to be released to it; and

(D) in the case of disclosure to organizational units of State or local government;

(i) the release is subject to written agreement by such organizational units which names the employees to whom the material may be disclosed;

(ii) the information is to be used for the collection or compilation of statistical data under a cooperative program; and

(iii) none of the information to be disclosed is a return or return information as defined in 26 U.S.C. 6103(b).

(2) Further use or redisclosure of the list information by the recipient agency or organizational unit of an agency or of a State or local government is prohibited;

to State or local under coop program
(f) To an agency or any organizational unit of a State or local government for a statistical purpose, provided that:

(1) the person to whom the information contained in the records pertains was informed, prior to the collection, that the information was to be given on a voluntary basis and that the information would be used jointly by the collecting agency and the agency or organizational unit to which it is to be disclosed; and

(2) in the case of disclosure to organizational units of State or local government, the information is to be used under a cooperative statistical program;

audit ← (g) To qualified and properly identified persons, where the use of individually identifiable records is necessary, for the purpose of conducting a program evaluation or audit relating to

the collection, compilation, processing and use of information in protected statistical files, provided that:

(1) the audit or evaluation is authorized by statute:

(2) no information so disclosed shall be used as evidence in any administrative, legislative, judicial, or other proceeding against anyone other than the agency or protected statistical center maintaining the files, or its employees;

(3) any information so disclosed shall not be used as evidence or redisclosed in a manner which would reasonably be expected to reveal the information contained in individually identifiable records; and

(4) no recontact of persons to whom the records in the protected statistical file pertain will be made unless the auditor or evaluator determines that:

(A) recontact is necessary to accomplish the audit or evaluation; and

(B) the recontact will be made in a manner that minimizes both the risk of harm or embarrassment to the person and the risk of adverse consequences to the statistical activity being audited or evaluated;

(h) In compliance with an administrative summons or subpoena or with a judicial order, including a search warrant or grand jury subpoena, where the purpose of the disclosure is to assist investigation or prosecution of violations of the provisions of this Act by an agency or employee maintaining protected statistical files, or to the attorneys representing the Government in such investigation or proceedings, provided that:

(1) no information so disclosed shall be used as evidence in any administrative, legislative, judicial, or other proceeding against any one other than the agency or protected statistical center maintaining the files, or its employees;

(2) any information so disclosed shall not be used as evidence or redisclosed in a manner which would reasonably be expected to reveal the information contained in individually identifiable records;

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(i) To an agency, unit of State or local government, or any person, solely for statistical purpose, if the information to be disclosed was obtained from a unit of State government which collected the data under its own legal authority, and provided that:

(1) the State official who has legal custody of the original records gives written consent to the disclosure; and

(2) the disclosure is approved in writing by the Chief Statistician;

DISCLOSURE OF PROTECTED STATISTICAL FILES
TO PROTECTED STATISTICAL CENTERS

Sec. 110.

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psc getting material from another psc for stat purpose - request CS makes det. - example for n71 ser.
(a) Except as provided in Subsection (e), a Federal agency or protected statistical center may disclose records contained in any protected statistical file to a protected statistical center at the request of the protected statistical center to be used for a statistical purpose, provided that the statistical purpose

cannot be accomplished efficiently unless the information requested is disclosed to the receiving center in individually identifiable form.

(b) Protected centers requesting individually identifiable data from protected statistical files shall certify to the Chief Statistician that there is a need for the disclosure.

(c) The receiving center shall remove or destroy the individual identifier or identifiers associated with the records at the earliest time at which such removal or destruction can reasonably be accomplished consistent with the purpose of the statistical project.

(d) The receiving center is forbidden any subsequent use or disclosure of the record in individually identifiable form without the originating agency's written authorization.

(e) If a protected statistical center desires to enter into a contract with an organization other than an agency to obtain individually identifiable data which that organization collects for its own purposes, any limitations on the use of the data which are provided for in the contract will be reviewed and approved by the Chief Statistician before incorporation of these limitations into the contract. If approved by the Chief Statistician, such limitations will become binding on the Chief Statistician and the protected statistical center.

(f) Should the originating agency refuse to disclose the requested individually identifiable records, the requesting agency may appeal to the Chief Statistician for a determination of the need for the requested records. The Chief Statistician may not require the disclosure if:

(1) the data were collected solely for statistical purposes prior to the effective date of this Act and with an express guarantee of confidentiality which precludes such disclosures;

(2) the data were collected in the 1980 Census of Population and Housing;

(3) the data were collected or obtained under contracts, cooperative agreements, or cooperative statistical agreements executed prior to the date of enactment of this Act and the terms of the contract or agreement prohibit such disclosures;

(4) the disclosure is prohibited under terms of a contract approved by the Chief Statistician as provided in Subsection (e);

(5) the data were obtained from State agencies and such disclosures are prohibited by State law; or

(6) the disclosure is prohibited by statute in the interest of national security of foreign policy.

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IMMUNITY FROM LEGAL PROCESS OF RECORDS IN
PROTECTED STATISTICAL FILES

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+ b = gotten otherwise
include FOIA*

Sec. 111.

(a) Except as provided by this Act, all records in protected statistical files and all individually identifiable records extracted or derived from such files:

(1) shall be immune from legal process and shall not be admitted as evidence or used for any purpose in any Federal, State, or local action, suit, or any judicial, administrative, legislative, or any other proceeding; and

(2) shall not be disclosed pursuant to any Federal, State, or local law, including the Freedom of Information Act (5 U.S.C. 552).

(b) The provisions of Section 111(a) shall also apply to records not in protected statistical files which are:

(1) in the possession of the person to whom they pertain; and

(2) are file copies of a Federal, State, or local statistical report form, the sole purpose of which is to obtain information for inclusion in a protected statistical file, except that persons in possession of such copies are not restricted from disclosing them voluntarily.

DISCLOSURE OF FILES OTHER THAN PROTECTED
STATISTICAL FILES

Any Agency record, if not protected under this Act, can be disclosed to a stat. ctr.

Sec. 112. Any record or information, except returns and return information as defined in 26 U.S.C. 6103(b), collected or maintained by an agency in a file other than a protected statistical file may be disclosed for a statistical purpose to a protected statistical center under this Act.

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SANCTIONS AND PENALTIES

Sec. 113.

(a) Criminal penalties

Whoever, being or having been an employee, as defined by this Act:

(1) Intentionally publishes or communicates any information, the disclosure of which is prohibited under the provisions of this Act, and which comes into his possession by reason of his being employed (or otherwise performing services) under the provisions of this Act; or

(2) Knowingly uses or attempts to use the authority of this Act to establish files for non-statistical purposes, or knowingly places, causes to be placed or attempts to have placed among protected statistical files any information, records or materials other than statistical files shall be guilty of a misdemeanor and fined not more than \$10,000, in addition to any other penalty imposed by law.

(b) Civil liability

(1) Any person aggrieved by a violation of this Act with respect to a record in a protected statistical file which pertains to that person may maintain a civil action for damages and for equitable relief against any violator other than an employee of an agency. A violator shall be liable for all actual damages sustained by the person as a result of the violation.

(2) In addition to any actual damages awarded under paragraph (1), any agency or person, other than an employee of an agency, who violates this Act shall be liable to the aggrieved person for such general damages as the court may allow, but no less than \$100 nor more than \$10,000. In determining the amount of general damages, the court shall consider, among other relevant factors, the amount of any actual damages awarded, the nature and seriousness of any intangible harm suffered by the person, and the extent to which the defendant's violation was intentional.

(3) Upon application by an aggrieved person, the appropriate United States district court may grant such equitable and declaratory relief as is necessary to enforce the requirements imposed under the Act.

(4) In a successful action brought under paragraphs (1), (2), or (3), the costs of the action, together with reasonable attorney's fees as determined by the court, may be awarded in addition to any damages.

(5) Any action under this section may be brought in the appropriate United States district court without regard to the amount in controversy.

(c) Administrative sanctions

Any contractor or grantee other than a unit of State or local government who knowingly violates the provisions of this Act shall be subject to a fine of up to \$50,000 or the value of the contract, whichever is less. Any contractor or grantee who knowingly and repeatedly violates the provisions of this Act shall be subject to debarment from participation in any grant or contract with the Federal government involving collection or compilation of individually identifiable records for protected statistical files or use of individually identifiable records

from protected statistical files for a period of not less than one year and not more than ten years. Determinations of violations and the terms of debarment shall be made by the head of the funding agency in an administrative proceeding after opportunity for a hearing in accordance with section 554 of title 5, United States Code.

REGULATIONS

Sec. 114.

The Chief Statistician shall promulgate regulations necessary to carry out the provisions of this Act in accordance with the requirements of the Administrative Procedure Act.

EFFECTIVE DATE

Sec. 115.

The provisions of this Act shall take effect one hundred and eighty days from the date of enactment.

CONFORMING AMENDMENTS

Sec. 116.

(a) Conforming amendment to the Privacy Act of 1974.

Section 552a of Title 5, United States Code, is amended--

(1) by deleting the word "and" at the end of subsection (a) (6), deleting the period at the end of subsection (a) (7) and adding a semicolon, followed by the word "and," and adding the following:

"(8) the term 'protected statistical file' means a statistical file designated for protection under the provisions of the Confidentiality of Federal Statistical Records Act".

(2) by deleting the word "or" at the end of subsection (b) (10), deleting the period at the end of subsection (b) (11) and adding a semicolon, followed by the word "or", and adding the following:

"(b) (12) to a protected statistical center for a statistical purpose, as provided in Section 112 of the Confidentiality of Federal Statistical Records Act."

(3) by striking out the words "subsections (j) and (k)" in subsection (p) and inserting in their place the words "subsections (j), (k), and (r);" and

(4) by adding after subsection (q) the following new subsection:

"(r) RECORDS IN PROTECTED STATISTICAL FILES

(1) Records in protected statistical files shall be exempt from the provisions of this section, except subsections (b) (4), (b) (6), (e) (3), (e) (4) (A) through (F) and (I), (e) (9), and (e) (10), (l), (o), and (p).

(2) Records in protected statistical files shall be governed by the provisions of the Confidentiality of Federal Statistical Records Act."

(b) Conforming amendments to statutes governing confidentiality of statistical files maintained by or for agencies or units named as protected statistical centers in Section 7(a) of this Act.

(1) Conforming amendment to Title 13, United States Code--Census

Section 9(a)(3) of Subchapter I of Chapter 1 of Title 13, United States Code is amended by deleting the period at the end thereof and adding:

"except to the extent permitted by the Confidentiality of Federal Statistical Records Act."

(2) Conforming amendment to Title 15, United States Code

Section 176a, Title 15, United States Code is amended to read as follows:

"The confidentiality of information furnished to the Bureau of Economic Analysis under the provisions of this title shall be governed by the provisions of the Confidentiality of Federal Statistical Records Act"

(3) Conforming amendment to the Public Health Service Act Code

Section 308(d) of the Public Health Service Act, as amended (42 USC 242m(d)) is amended to read as follows:

"(d) (1) the confidentiality of all information furnished to the National Center for Health Statistics under Section 304, 305, 306 or 307 shall be governed by the provisions of the Confidentiality of Federal Statistical Records Act.

"(2) No information obtained in the course of activities undertaken or supported under section 304, 305, 306, or 307 by units of the Department of Health and Human Services other than the National Center for Health Statistics may be used for any purpose other than the purpose for which it was supplied; and (1) in the case of information obtained in the course of health statistical activities under section 304 or 306, such information may not be published or released in other form if the particular establishment or person supplying the information or described in it is identifiable unless such establishment or person has consented (as determined under regulations of the Secretary) to its publication or release in other form, and (2) in the case of information obtained in the course of health services research, evaluations, or demonstrations under section 304 or 305, such information may not be published or released in other form if the person who supplied the information or who is described in it is identifiable unless such person has consented (as determined under regulations of the Secretary) to its publication or release in other form"

(4) Conforming amendment to the Social Security Act.

Section 1106 of the Social Security Act is amended by adding after subsection (e) the following new subsection

"(f) Notwithstanding any other provision of this section, the confidentiality of individually identifiable records in protected statistical files maintained by or for the Office of Research and Statistics of the Social Security Administration, Department of Health and Human Services will be governed by the provisions of the Confidentiality of Federal Statistical Records Act."

(c) Conforming amendment to Section 6103 of the Internal Revenue Code

Section 6103 of Title 26--Internal Revenue Code is amended--

(1) by amending that part of subsection (j)(1) which follows (j)(1)(B) to read as follows:

"as the Secretary may prescribe by regulation for the purpose of, but only to the extent necessary in, the structuring of censuses and national economic accounts, the maintenance of the Standard Statistical Establishment List, and conducting related statistical activities authorized by law."

(2) by amending subsection (j)(4), replacing the period at the end of the amended subsection with a comma, and adding the words "except as provided by Section 109(e) of the Confidentiality of Federal Statistical Records Act."