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(Original Signature of Member)

113TH CONGRESS  
1ST SESSION

**H. R.** \_\_\_\_\_

To amend section 340A of the Public Health Service Act to protect the privacy of personally identifiable information in relation to enrollment activities of health insurance exchanges, and for other purposes.

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IN THE HOUSE OF REPRESENTATIVES

Mr. Ross introduced the following bill; which was referred to the Committee  
on \_\_\_\_\_

\_\_\_\_\_  
**A BILL**

To amend section 340A of the Public Health Service Act to protect the privacy of personally identifiable information in relation to enrollment activities of health insurance exchanges, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Security Before Access  
5 Act of 2013”.

1 **SEC. 2. PROTECTING THE PRIVACY OF PERSONALLY IDEN-**  
2 **TIFIABLE INFORMATION IN ENROLLMENT**  
3 **ACTIVITIES OF HEALTH INSURANCE EX-**  
4 **CHANGES.**

5 (a) IN GENERAL.—Section 340A(c) of the Public  
6 Health Service Act (42 U.S.C. 256a(c)) is amended by  
7 adding at the end the following new paragraph:

8 “(3) ENSURING PRIVACY OF PERSONALLY  
9 IDENTIFIABLE INFORMATION; LIABILITY; PEN-  
10 ALTIES; CONSUMER OPT OUT.—

11 “(A) IN GENERAL.—The Secretary shall  
12 require each recipient of a grant under this sec-  
13 tion to implement procedures specified by the  
14 Secretary consistent with this paragraph in  
15 order protect the privacy of personally identifi-  
16 able information.

17 “(B) REQUIRED PROCEDURES.—The pro-  
18 cedures specified by the Secretary under sub-  
19 paragraph (A) shall include at least the fol-  
20 lowing:

21 “(i) PROHIBITION OF ACCESS WITH-  
22 OUT EXPLICIT CONSENT.—No certified ap-  
23 plication counselor, health insurance navi-  
24 gator, or non-navigator assistance per-  
25 sonnel shall have access to personally iden-  
26 tifiable information relating to an indi-

1           vidual without the express, witnessed, writ-  
2           ten consent of that individual.

3           “(ii) REQUIRING LICENSURE, BACK-  
4           GROUND CHECKS.—No such individual  
5           shall have access to personally identifiable  
6           information unless the individual—

7                       “(I) has undergone, within 60  
8                       days before commencing enrollment  
9                       assistance for any consumer seeking  
10                      coverage through health insurance ex-  
11                      changes, both a criminal background  
12                      and finger-print check and has a clean  
13                      record free of criminal infractions;  
14                      and

15                     “(II) meets educational and li-  
16                     censure requirements that are iden-  
17                     tical or comparable to those currently  
18                     applicable to health insurance agents  
19                     and brokers within the State they  
20                     seek to assist consumers with health  
21                     insurance enrollment.

22                     “(iii) REQUIREMENT FOR PRIOR CER-  
23                     TIFICATION OF SAFEGUARDS.—The recipi-  
24                     ent of the grant may not collect personally  
25                     identifiable information for any reason

1           until the Comptroller General of the  
2           United States, in agreement with the In-  
3           spector General of the Department of  
4           Health and Human Service, certifies to  
5           Congress that such Department, along  
6           with any other relevant Federal agencies  
7           involved with health insurance assistance  
8           or enrollment, or collection or verification  
9           of personally identifiable information, have  
10          implemented all appropriate and necessary  
11          actions to safeguard both the such infor-  
12          mation and financial information of indi-  
13          viduals seeking enrollment in a health plan  
14          through an Exchange and to protect such  
15          individuals from fraud and abuse.

16               “(C) LIABILITY.—Not later than 90 days  
17          after the date of the enactment of this para-  
18          graph, the Secretary—

19                   “(i) shall issue guidance concerning  
20                   how liability and penalties will be applied  
21                   in instances of failure to comply with re-  
22                   quirements of this paragraph, including  
23                   where consumer outreach and enrollment  
24                   assistance causes harm to an individual as  
25                   a result of misuse or negligence in protec-

1           tion and privacy of personally identifiable  
2           information;

3           “(ii) shall determine whether such li-  
4           ability lies with the person (such as a navi-  
5           gator, certified application counselor, or  
6           non-navigator assistance personnel) having  
7           direct contact with the prospective enrollee  
8           in enrollment assistance-related actions or  
9           whether liability lies with the entity that  
10          received Federal or Exchange-generated  
11          funds to carry out consumer outreach ac-  
12          tivities; and

13          “(iii) shall determine whether the en-  
14          tities identified under clause (ii) are re-  
15          quired to obtain professional liability cov-  
16          erage.

17          “(D) PENALTIES.—

18                 “(i) CRIMINAL PENALTIES.—

19                         “(I) Any individual or entity who,  
20                         under this section, has possession of,  
21                         or access to, personally identifiable in-  
22                         formation the disclosure of which is  
23                         prohibited by this section (or section  
24                         552a of title 5, United States Code)  
25                         or by rules or regulations established

1           thereunder, and who knowing that  
2           disclosure of the specific material is so  
3           prohibited, willfully discloses the ma-  
4           terial in any manner to any person or  
5           entity not entitled to receive it, shall  
6           be guilty of a misdemeanor and fined  
7           not more than \$5,000.

8                       “(II) A person who commits the  
9           offense described under subclause (I)  
10          with the intent to sell, transfer, or use  
11          personally identifiable information for  
12          commercial advantage, personal gain,  
13          or malicious harm shall be fined not  
14          more than \$250,000, imprisoned for  
15          not more than 10 years, or both.

16                      “(III) Any person who knowingly  
17          and willfully requests or obtains any  
18          personally identifiable information  
19          protected under this section con-  
20          cerning an individual under false pre-  
21          tenses shall be guilty of a felony and  
22          fined not more than \$100,000, impris-  
23          oned for not more than 5 years, or  
24          both.

1           “(ii) POTENTIAL EXPOSURE TO TAX  
2 PENALTY.—Any navigator, certified appli-  
3 cation counselor, or non-navigator assist-  
4 ance personnel who engages in health plan  
5 enrollment consumer assistance activities  
6 under this section and who is exposed to  
7 consumer tax return information is poten-  
8 tially subject to criminal liability under  
9 section 7213(a) of the Internal Revenue  
10 Code of 1986 for any instances of unau-  
11 thorized disclosure of such information.

12           “(iii) DISQUALIFICATION FROM FUR-  
13 THER ASSISTANCE.—If the Secretary de-  
14 termines that any individual, including any  
15 navigator, certified application counselor,  
16 or non-navigator assistance personnel, has  
17 a criminal background or is otherwise in  
18 violation of this paragraph with respect to  
19 the requirements relating to disclosure and  
20 use of personally identifiable information ,  
21 the Secretary shall permanently disqualify  
22 the individual from any further involve-  
23 ment in consumer assistance activities re-  
24 quired under this section or the Patient  
25 Protection and Affordable Care Act and

1           may disqualify and rescind the Federal  
2           and Exchange-generated funds from the  
3           entity which employs or contracts with  
4           such an individual.

5           “(E) CONSUMER OPT OUT FOR LACK OF  
6           PRIVACY PROTECTION.—Beginning on the date  
7           of health insurance exchange operations for  
8           both individuals and businesses, no individual  
9           consumer shall be made responsible for failure  
10          to meet a requirement under the Patient Pro-  
11          tection and Affordable Care Act (including any  
12          amendments made by this Act) for obtaining  
13          qualified health insurance coverage through an  
14          Exchange unless the Secretary has dem-  
15          onstrated with reasonable certainty that effec-  
16          tive and comprehensive protection of personally  
17          identifiable information, with respect to any  
18          health insurance enrollment activity electronic  
19          or otherwise, are in place prior to any consumer  
20          disclosure or transmission of personally identifi-  
21          able information for health insurance enroll-  
22          ment purposes.

23          “(F) PERSONALLY IDENTIFIABLE INFOR-  
24          MATION DEFINED.—In this paragraph, the term  
25          ‘personally identifiable information’ includes So-

1           cial Security numbers, bank account informa-  
2           tion, insurance records, health records, personal  
3           income data, and any other information deemed  
4           personally identifiable and sensitive in nature  
5           by the Federal Trade Commission, the Depart-  
6           ment of Justice, the Social Security Adminis-  
7           tration, the Consumer Financial Protection Bu-  
8           reau, the President’s Task Force on Identity  
9           Theft, and any other relevant Federal agency,  
10          which is disclosed or obtained in connection  
11          with any health insurance enrollment activity  
12          conducted under this section.”.

13          (b) **EFFECTIVE DATE.**—The amendment made by  
14          subsection (a) shall take effect on the date of the enact-  
15          ment of this Act and shall apply to grants made before,  
16          on, or after the date of the enactment of this Act. The  
17          Secretary of Health and Human Services shall provide for  
18          the prompt modification of such grants made before the  
19          date of the enactment of this Act in order to comply with  
20          the requirement imposed by such amendment.