

106TH CONGRESS
1ST SESSION

S. 1903

To amend the privacy provisions of the Gramm-Leach-Bliley Act.

IN THE SENATE OF THE UNITED STATES

NOVEMBER 10, 1999

Mr. SHELBY (for himself and Mr. BRYAN) introduced the following bill; which was read twice and referred to the Committee on Banking, Housing, and Urban Affairs

A BILL

To amend the privacy provisions of the Gramm-Leach-Bliley Act.

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 “Consumer’s Right to
5 Financial Privacy Act”.

6 **SEC. 2. AMENDMENT.**

7 Title V of the Gramm-Leach-Bliley Act is amended
8 to read as follows:

1 **“TITLE V—PRIVACY OF**
2 **CONSUMER INFORMATION**
3 **“Subtitle A—Disclosure of**
4 **Nonpublic Personal Information**

5 **“SEC. 501. PROTECTION OF NONPUBLIC PERSONAL INFOR-**
6 **MATION.**

7 “(a) **PRIVACY OBLIGATION POLICY.**—It is the policy
8 of the Congress that each financial institution has an af-
9 firmative and continuing obligation to respect the privacy
10 of its customers and to protect the security and confiden-
11 tiality of those customers’ nonpublic personal information.

12 “(b) **FINANCIAL INSTITUTIONS SAFEGUARDS.**—In
13 furtherance of the policy in subsection (a), each agency
14 or authority described in section 504(a) shall establish by
15 rule or order appropriate standards for the financial insti-
16 tutions subject to their jurisdiction, and the Commission
17 shall establish such standards for any financial institu-
18 tions not subject to such jurisdiction, relating to adminis-
19 trative, technical, and physical safeguards—

20 “(1) to insure the security and confidentiality of
21 customer records and information;

22 “(2) to protect against any anticipated threats
23 or hazards to the security or integrity of such
24 records; and

1 “(3) to protect against unauthorized access to
2 or use of such records or information which could
3 result in substantial harm or inconvenience to any
4 customer.

5 **“SEC. 502. OBLIGATIONS WITH RESPECT TO PERSONAL**
6 **INFORMATION.**

7 “(a) GENERAL REQUIREMENTS.—Except as other-
8 wise provided in this subtitle, a financial institution may
9 not, directly or through any affiliate, disclose or make an
10 unrelated use of any nonpublic personal information col-
11 lected by the financial institution in connection with any
12 transaction with a consumer in any financial product or
13 any financial service, unless such financial institution pro-
14 vides or has provided to the consumer a notice that com-
15 plies with section 503 and the rules thereunder.

16 “(b) OPT-IN REQUIRED FOR INFORMATION TRANS-
17 FERS.—

18 “(1) AFFIRMATIVE CONSENT REQUIRED.—Each
19 agency or authority described in section 504(a) shall
20 by rule prohibit a financial institution that is subject
21 to its jurisdiction from making available any non-
22 public personal information to any affiliate or other
23 person that is not an employee or agent of the insti-
24 tution, unless the consumer to whom the information
25 pertains—

1 “(A) has affirmatively consented in accord-
2 ance with such rule to the transfer of such in-
3 formation; and

4 “(B) has not withdrawn the consent.

5 “(2) FLEXIBILITY OF FORM.—A financial insti-
6 tution may, in complying with paragraph (1),
7 present the opportunity to consent in a clear and
8 conspicuous manner that permits the consumer to
9 consent—

10 “(A)(i) with respect to both affiliates and
11 nonaffiliated persons;

12 “(ii) separately with respect to affiliates
13 generally and nonaffiliated persons generally; or

14 “(iii) separately with respect to specified
15 affiliates and nonaffiliated persons; and

16 “(B) separately with respect to specified fi-
17 nancial and nonfinancial products and services
18 that may be offered to the consumer.

19 “(3) DENIAL OF SERVICE PROHIBITED.—The
20 rule prescribed pursuant to paragraph (1) shall pro-
21 hibit a financial institution from denying any con-
22 sumer a financial product or a financial service for
23 the refusal by the consumer to grant the consent re-
24 quired by such rule.

1 “(c) ACCESS TO AND CORRECTION OF INFORMATION
2 VENDED TO THIRD PARTIES.—

3 “(1) RULE REQUIRED.—Each agency or au-
4 thority described in section 504(a) shall by rule re-
5 quire a financial institution that is subject to its ju-
6 risdiction and that makes available nonpublic per-
7 sonal information collected by the financial institu-
8 tion to any person or entity other than an employee
9 or agent of such institution to afford that
10 consumer—

11 “(A) the opportunity to examine, upon re-
12 quest, all nonpublic personal information that
13 was so made available; and

14 “(B) the opportunity to dispute the accu-
15 racy of any of such information, and to present
16 evidence thereon.

17 “(d) LIMITATIONS ON THE SHARING OF ACCOUNT
18 NUMBER INFORMATION FOR MARKETING PURPOSES.—A
19 financial institution shall not disclose an account number
20 or similar form of access number or access code for a cred-
21 it card account, deposit account, or transaction account
22 of a consumer to any affiliate or any nonaffiliated third
23 party for use in telemarketing, direct mail marketing, or
24 other marketing through electronic mail or other electronic
25 means to the consumer.

1 “(e) LIMITS ON REUSE OF INFORMATION.—Except
2 as otherwise provided in this subtitle, an affiliate or a non-
3 affiliated third party that receives from a financial institu-
4 tion nonpublic personal information under this section
5 shall not, directly or through an affiliate of such receiving
6 third party, disclose such information to any other person
7 that is an affiliate or a nonaffiliated third party of both
8 the financial institution and such receiving third party,
9 unless such disclosure would be lawful if made directly to
10 such other person by the financial institution.

11 “(f) GENERAL EXCEPTIONS.—Subsections (a) and
12 (b) shall not prohibit the disclosure of nonpublic personal
13 information—

14 “(1) as necessary to effect, administer, or en-
15 force a transaction requested or authorized by the
16 consumer, or in connection with—

17 “(A) servicing or processing a financial
18 product or service requested or authorized by
19 the consumer;

20 “(B) maintaining or servicing the con-
21 sumer’s account with the financial institution;

22 or

23 “(C) a proposed or actual securitization,
24 secondary market sale (including sales of serv-

1 icing rights), or similar transaction related to a
2 transaction of the consumer;

3 “(2) with the consent or at the direction of the
4 consumer;

5 “(3)(A) to protect the confidentiality or security
6 of the financial institution’s records pertaining to
7 the consumer, the service or product, or the trans-
8 action therein; (B) to protect against or prevent ac-
9 tual or potential fraud, unauthorized transactions,
10 claims, or other liability; (C) for required institu-
11 tional risk control, or for resolving customer disputes
12 or inquiries; (D) to persons holding a legal or bene-
13 ficial interest relating to the consumer; or (E) to
14 persons acting in a fiduciary or representative capac-
15 ity on behalf of the consumer;

16 “(4) to provide information to insurance rate
17 advisory organizations, guaranty funds or agencies,
18 applicable rating agencies of the financial institu-
19 tion, and the institution’s attorneys, accountants,
20 and auditors;

21 “(5) to the extent specifically permitted or re-
22 quired under other provisions of law and in accord-
23 ance with the Right to Financial Privacy Act of
24 1978, to law enforcement agencies (including a Fed-
25 eral functional regulator, the Secretary of the Treas-

1 ury with respect to subchapter II of chapter 53 of
2 title 31, United States Code, and chapter 2 of title
3 I of Public Law 91–508 (12 U.S.C. 1951–1959), a
4 State insurance authority, or the Federal Trade
5 Commission), self-regulatory organizations, or for an
6 investigation on a matter related to public safety;

7 “(6)(A) to a consumer reporting agency in ac-
8 cordance with the Fair Credit Reporting Act, or (B)
9 from a consumer report reported by a consumer re-
10 porting agency in accordance with the Fair Credit
11 Reporting Act;

12 “(7) in connection with a proposed or actual
13 sale, merger, transfer, or exchange of all or a por-
14 tion of a business or operating unit if the disclosure
15 of nonpublic personal information concerns solely
16 consumers of such business or unit; or

17 “(8) to comply with Federal, State, or local
18 laws, rules, and other applicable legal requirements;
19 to comply with a properly authorized civil, criminal,
20 or regulatory investigation or subpoena or summons
21 by Federal, State, or local authorities; or to respond
22 to judicial process or government regulatory authori-
23 ties having jurisdiction over the financial institution
24 for examination, compliance, or other purposes as
25 authorized by law.

1 **“SEC. 503. NOTICE CONCERNING DISCLOSING INFORMA-**
2 **TION.**

3 “(a) **RULE REQUIRED.**—Each agency or authority
4 described in section 504(a) shall prescribe rules in accord-
5 ance with this section to prohibit unfair and deceptive acts
6 or practices in connection with the disclosing of nonpublic
7 personal information or with making unrelated uses of
8 such information. Such rules shall require any financial
9 institution, through the use of a form that complies with
10 the rules prescribed under subsection (b), to clearly and
11 conspicuously disclose to the consumer at the time of es-
12 tablishing a customer relationship with a consumer and
13 not less than annually during the continuation of such
14 relationship—

15 “(1) the categories of nonpublic personal infor-
16 mation that are collected by the financial institution;

17 “(2) the practices and policies of the financial
18 institution with respect to disclosing nonpublic per-
19 sonal information, or making unrelated uses of such
20 information, including—

21 “(A) the categories of persons to whom the
22 information is or may be disclosed or who may
23 be permitted to make unrelated uses of such in-
24 formation, other than the persons to whom the
25 information must be provided to effect, admin-
26 ister, or enforce the transaction; and

1 “(B) the practices and policies of the insti-
2 tution with respect to disclosing or making un-
3 related uses of nonpublic personal information
4 of persons who have ceased to be customers of
5 the financial institution;

6 “(3) the policies that the institution maintains
7 to protect the confidentiality and security of non-
8 public personal information;

9 “(4) the practices and policies of the institution
10 with respect to providing consumers the opportunity
11 to examine and dispute information pursuant to the
12 rule prescribed under section 502(c); and

13 “(5) the right of the consumer under such sec-
14 tion to examine, upon request, the nonpublic per-
15 sonal information, to dispute the accuracy of any of
16 such information, and to present evidence thereon.

17 “(b) DESIGN OF NOTICE REQUIREMENTS.—In pre-
18 scribing the form of a notice for purposes of subsection
19 (a), each agency or authority described in section 504(a)
20 shall ensure that consumers are provided a clear and con-
21 spicuous disclosure that permits them to compare dif-
22 ferences in the measures that the financial institution
23 takes, and the policies that the institution has established,
24 to protect the consumer’s privacy as compared to the
25 measures taken and the policies established by other fi-

1 nancial institutions. Such form shall specifically identify
2 the rights the institution affords consumers to grant or
3 deny consent to (1) the disclosing of nonpublic personal
4 information for any purpose other than as required in
5 order to effect, administer, or enforce the consumer’s
6 transaction, or (2) the making of an unrelated use of such
7 information.

8 “(c) ADDITIONAL CONTENTS OF RULES; EXEMPTIVE
9 RULES.—Each agency or authority described in section
10 504(a) shall, by rule, and may by order—

11 “(1) specify the disclosures and uses of infor-
12 mation which, for purposes of this subtitle and the
13 rules prescribed thereunder, may be treated as nec-
14 essary to effect, administer, or enforce a consumer’s
15 transaction with respect to a variety of financial
16 services and financial products;

17 “(2) specify timing requirements with respect to
18 notices to new and existing customers, which shall
19 not require notices more frequently than annually
20 unless there has been a change in the information
21 required to be disclosed pursuant to subsection (a);
22 and

23 “(3) provide, consistent with the purposes of
24 this subtitle, exemptions or temporary waivers to, or

1 delayed effective dates for, any requirement of this
2 subtitle or the rules prescribed thereunder.

3 **“SEC. 504. ENFORCEMENT.**

4 “(a) IN GENERAL.—This subtitle and the rules pre-
5 scribed thereunder shall be enforced by the Federal func-
6 tional regulators, the State insurance authorities, and the
7 Federal Trade Commission with respect to financial insti-
8 tutions and other persons subject to their jurisdiction
9 under applicable law, as follows:

10 “(1) Under section 8 of the Federal Deposit In-
11 surance Act, in the case of—

12 “(A) national banks, Federal branches and
13 Federal agencies of foreign banks by the Office
14 of the Comptroller of the Currency;

15 “(B) member banks of the Federal Reserve
16 System (other than national banks), branches
17 and agencies of foreign banks (other than Fed-
18 eral branches, Federal agencies, and insured
19 State branches of foreign banks), commercial
20 lending companies owned or controlled by for-
21 eign banks, organizations operating under sec-
22 tion 25 or 25A of the Federal Reserve Act,
23 bank holding companies by the Board of Gov-
24 ernors of the Federal Reserve System;

1 “(C) banks insured by the Federal Deposit
2 Insurance Corporation (other than members of
3 the Federal Reserve System), insured State
4 branches of foreign banks by the Board of Di-
5 rectors of the Federal Deposit Insurance Cor-
6 poration; and

7 “(D) savings association the deposits of
8 which are insured by the Federal Deposit In-
9 surance Corporation by the Director of the Of-
10 fice of Thrift Supervision.

11 “(2) Under the Federal Credit Union Act, by
12 the Administrator of the National Credit Union Ad-
13 ministration with respect to any Federal or state
14 chartered credit union.

15 “(3) Under the Securities Exchange Act of
16 1934, by the Securities and Exchange Commission
17 with respect to any broker-dealer.

18 “(4) Under the Investment Company Act of
19 1940, by the Securities and Exchange Commission
20 with respect to investment companies.

21 “(5) Under the Investment Advisers Act of
22 1940, by the Securities and Exchange Commission
23 with respect to investment advisers registered with
24 the Commission under such Act.

1 “(6) Under the Federal Home Loan Bank Act,
2 by the Federal Housing Finance Board with respect
3 to Federal home loan banks.

4 “(7) In the case of any person engaged in pro-
5 viding insurance, by the State insurance authority,
6 if that State has elected to become a participating
7 State, notwithstanding any of the limitations of sec-
8 tion 104 of the Gramm-Leach-Bliley Act.

9 “(8) Under the Federal Trade Commission Act,
10 by the Federal Trade Commission for—

11 “(A) any other financial institution (other
12 than a person engaged in providing insurance)
13 or any other person that is not subject to the
14 jurisdiction of any agency or authority under
15 paragraphs (1) through (6) of this subsection;
16 and

17 “(B) any person engaged in providing in-
18 surance who is domiciled in a State that does
19 not elect to become a participating State.

20 “(b) ENFORCEMENT OF SECTION 501.—

21 “(1) IN GENERAL.—Except as provided in para-
22 graph (2), the agencies and authorities described in
23 subsection (a) shall implement the standards pre-
24 scribed under section 501(b) in the same manner, to
25 the extent practicable, as standards prescribed pur-

1 suant to subsection (a) of section 39 of the Federal
2 Deposit Insurance Act are implemented pursuant to
3 such section.

4 “(2) EXCEPTION.—The agencies and authori-
5 ties described in paragraphs (3), (4), (5), (7), and
6 (8) of subsection (a) shall implement the standards
7 prescribed under section 501(b) by rule with respect
8 to the financial institutions subject to their respec-
9 tive jurisdictions under subsection (a).

10 “(c) STATE ACTION FOR VIOLATIONS.—

11 “(1) AUTHORITY OF STATES.—In addition to
12 such other remedies as are provided under State
13 law, if the chief law enforcement officer of a State,
14 or an official or agency designated by a State, has
15 reason to believe that any person has violated or is
16 violating this subtitle or a rule prescribed under this
17 subtitle, other than section 501 or a rule prescribed
18 under such section, the State—

19 “(A) may bring an action to enjoin such
20 violation in any appropriate United States dis-
21 trict court or in any other court of competent
22 jurisdiction; and

23 “(B) may bring an action on behalf of the
24 residents of the State to enforce compliance
25 with such rule, to obtain damages, restitution,

1 or other compensation on behalf of residents of
2 such State, or to obtain such further and other
3 relief as the court may deem appropriate.

4 “(2) RIGHTS OF FEDERAL REGULATORS.—

5 “(A) PRIOR NOTICE.—The State shall
6 serve prior written notice of any action under
7 paragraph (1) upon the Federal Trade Commis-
8 sion and provide the Federal Trade Commission
9 with a copy of its complaint, except in any case
10 in which such prior notice is not feasible, in
11 which case the State shall serve such notice im-
12 mediately upon instituting such action.

13 “(B) RIGHT TO INTERVENE.—The Federal
14 Trade Commission shall transmit the notice re-
15 ceived under subparagraph (A) to the agency or
16 authority that has jurisdiction of the subject of
17 the complaint, and such agency or authority
18 shall have the right—

19 “(i) to intervene in an action under
20 paragraph (1);

21 “(ii) upon so intervening, to be heard
22 on all matters arising therein;

23 “(iii) to remove the action to the ap-
24 propriate United States district court; and

25 “(iv) to file petitions for appeal.

1 “(3) INVESTIGATORY POWERS.—For purposes
2 of bringing any action under this subsection, no pro-
3 vision of this subsection shall be construed as pre-
4 venting the chief law enforcement officer, or an offi-
5 cial or agency designated by a State, from exercising
6 the powers conferred on the chief law enforcement
7 officer or such official by the laws of such State to
8 conduct investigations or to administer oaths or af-
9 firmations or to compel the attendance of witnesses
10 or the production of documentary and other evi-
11 dence.

12 “(4) LIMITATION ON STATE ACTION WHILE
13 FEDERAL ACTION PENDING.—If a Federal agency or
14 authority has instituted a civil action for a violation
15 of this subtitle, no State may, during the pendency
16 of such action, bring an action under this section
17 against any defendant named in the complaint of the
18 Federal agency or authority or such agency for any
19 violation of this subtitle that is alleged in that com-
20 plaint.

21 “(d) DEFINITIONS.—The terms used in subsection
22 (a)(1) that are not defined in this subtitle or otherwise
23 defined in section 3(s) of the Federal Deposit Insurance
24 Act shall have the meaning given to them in section 1(b)
25 of the International Banking Act of 1978.

1 **“SEC. 505. FAIR CREDIT REPORTING ACT AMENDMENT.**

2 “(a) AMENDMENT.—Section 621 of the Fair Credit
3 Reporting Act (15 U.S.C. 1681s) is amended—

4 “(1) in subsection (d), by striking everything
5 following the end of the second sentence; and

6 “(2) by striking subsection (e) and inserting in
7 lieu thereof the following:

8 “ “(e) REGULATORY AUTHORITY.—

9 “ “(1) The Federal banking agencies referred to
10 in paragraphs (1) and (2) of subsection (b) shall
11 jointly prescribe such regulations as necessary to
12 carry out the purposes of this Act with respect to
13 any persons identified under paragraphs (1) and (2)
14 of subsection (b).

15 “ “(2) The Administrator of the National Credit
16 Union Administration shall prescribe such regula-
17 tions as necessary to carry out the purposes of this
18 Act with respect to any persons identified under
19 paragraph (3) of subsection (b).

20 “ “(3) The Federal Trade Commission shall pre-
21 scribe such regulations as necessary to carry out the
22 purposes of this Act with respect to any persons
23 identified under subsection (a).’.

24 “(b) RELATION TO OTHER PROVISIONS.—Except for
25 the amendment made by this section, nothing in this title
26 shall be construed to modify, limit, or supersede the oper-

1 ation of the Fair Credit Reporting Act, and no inference
2 shall be drawn on the basis of the provisions of this title
3 regarding whether information is transaction or experience
4 information under section 603 of such Act.

5 **“SEC. 506. STATE ELECTION TO PARTICIPATE.**

6 “(a) REGULATIONS.—The Secretary of the Treasury
7 may promulgate such regulations as may be necessary to
8 establish the procedures governing whether the election re-
9 quired under section 504(a)(7) has been made.

10 “(b) DEADLINE.—The deadline for a State to elect
11 to become a participating state is the first day of the first
12 calendar quarter beginning after the close of the first leg-
13 islative session of the State legislature that begins on or
14 after the date the regulations required by section 504(a)
15 are issued in final form. For purposes of the previous sen-
16 tence, in the case of a State that has a 2-year legislative
17 session, each year of such session shall be deemed to be
18 a separate regular session of the State legislature.

19 **“SEC. 507. RELATION TO STATE LAWS.**

20 “(a) IN GENERAL.—This subtitle shall not be con-
21 strued as superseding, altering, or affecting the statutes,
22 regulations, orders, or interpretations in effect in any
23 State, except to the extent that such statutes, regulations,
24 orders, or interpretations are inconsistent with the provi-

1 sions of this subtitle, and then only to the extent of the
2 inconsistency.

3 “(b) GREATER PROTECTION UNDER STATE LAW.—
4 For purposes of this section, a State statute, regulation,
5 order, or interpretation is not inconsistent with the provi-
6 sions of this subtitle if the protection such statute, regula-
7 tion, order, or interpretation affords any person is greater
8 than the protection provided under this subtitle as deter-
9 mined by the Commission or a Federal functional regu-
10 lator, on its own motion or upon the petition of any inter-
11 ested party.

12 **“SEC. 508. DEFINITIONS.**

13 “As used in this subtitle:

14 “(1) COMMISSION.—The term ‘Commission’
15 means the Federal Trade Commission.

16 “(2) FEDERAL FUNCTIONAL REGULATOR.—The
17 term ‘Federal functional regulator’ means—

18 “(A) the Board of Governors of the Fed-
19 eral Reserve System;

20 “(B) the Office of the Comptroller of the
21 Currency;

22 “(C) the Board of Directors of the Federal
23 Deposit Insurance Corporation;

24 “(D) the Director of the Office of Thrift
25 Supervision;

1 “(E) the National Credit Union Adminis-
2 tration Board; and

3 “(F) the Securities and Exchange Commis-
4 sion.

5 “(3) FINANCIAL INSTITUTION.—The term ‘fi-
6 nancial institution’ means any institution the busi-
7 ness of which is engaging in financial activities or
8 activities that are incidental or complementary to fi-
9 nancial activities, as determined under section 4(k)
10 of the Bank Holding Company Act of 1956.

11 “(4) NONPUBLIC PERSONAL INFORMATION.—

12 “(A) The term ‘nonpublic personal infor-
13 mation’ means personally identifiable financial
14 information—

15 “(i) provided by a consumer to a fi-
16 nancial institution;

17 “(ii) resulting from any transaction
18 with the consumer or the service performed
19 for the consumer; or

20 “(iii) otherwise obtained by the finan-
21 cial institution.

22 “(B) Such term does not include publicly
23 available information, as such term is defined
24 by the regulations prescribed under section 504.

1 “(C) Notwithstanding subparagraph (B),
2 such term—

3 (i) shall include any list, description,
4 or other grouping of consumers (and pub-
5 licly available information pertaining to
6 them) that is derived using any personally
7 identifiable information other than publicly
8 available information; but

9 “(ii) shall not include any list, de-
10 scription, or other grouping of consumers
11 (and publicly available information per-
12 taining to them) that is derived without
13 using any nonpublic personal information.

14 “(5) DIRECTORY INFORMATION.—The term
15 ‘publicly available directory information’ means sub-
16 scriber list information required to be made available
17 for publication pursuant to section 222(e) of the
18 Communications Act of 1934 (47 U.S.C. 222(3)).

19 “(6) UNRELATED USE.—The term ‘unrelated
20 use’, when used with respect to information collected
21 by the financial institution in connection with any
22 transaction with a consumer in any financial product
23 or any financial service, means any use other than
24 a use that is necessary to effect, administer, or en-
25 force such transaction.

1 “(7) AFFILIATE.—The term ‘affiliate’ means
2 any company that controls, is controlled by, or is
3 under common control with another company.

4 “(8) NONAFFILIATED THIRD PARTY.—The term
5 ‘nonaffiliated third party’ means any entity that is
6 not an affiliate of, or related by common ownership
7 or affiliated by corporate control with, the financial
8 institution, but does not include a joint employee of
9 such institution.

10 “(9) NECESSARY TO EFFECT, ADMINISTER, OR
11 ENFORCE.—The disclosing or use of nonpublic per-
12 sonal information shall be treated as necessary to ef-
13 fect or administer a transaction with a consumer if
14 the disclosing or use—

15 “(A) is required, or is a usual, appropriate,
16 or acceptable method, to carry out the trans-
17 action or the product or service business of
18 which the transaction is a part, and record or
19 service or maintain the consumer’s account in
20 the ordinary course of providing the financial
21 service or financial product, or to administer or
22 service benefits or claims relating to the trans-
23 action or the product or service business of
24 which it is a part, and includes—

1 “(i) providing the consumer or the
2 consumer’s agent or broker with a con-
3 firmation, statement, or other record of the
4 transaction, or information on the status
5 or value of the financial service or financial
6 product; and

7 “(ii) the accrual or recognition of in-
8 centives or bonuses associated with the
9 transaction that are provided by the finan-
10 cial institution or any other party;

11 “(B) is required, or is one of the lawful or
12 appropriate methods, to enforce the rights of
13 the financial institution or of other persons en-
14 gaged in carrying out the financial transaction,
15 or providing the product or service;

16 “(C) is required, or is a usual, appropriate,
17 or acceptable method, for insurance under-
18 writing at the consumer’s request or for rein-
19 surance purposes, or for any of the following
20 purposes as they relate to a consumer’s insur-
21 ance: account administration, reporting, inves-
22 tigating, or preventing fraud or material mis-
23 representation, processing premium payments,
24 processing insurance claims, administering in-
25 surance benefits (including utilization review ac-

1 activities), participating in research projects, or as
 2 otherwise required or specifically permitted by
 3 Federal or State law; or

4 “(D) the disclosure is required, or is a
 5 usual, appropriate or acceptable method, in con-
 6 nection with—

7 “(i) the authorization, settlement, bill-
 8 ing, processing, clearing, transferring, rec-
 9 onciling, or collection of amounts charged,
 10 debited, or otherwise paid using a debit,
 11 credit or other payment card, check, or ac-
 12 count number, or by other payment means;

13 “(ii) the transfer of receivables, ac-
 14 counts or interests therein; or

15 “(iii) the audit of debit, credit or
 16 other payment information.

17 Each agency or authority described in section 504(a)
 18 shall, consistent with the purposes of this subtitle,
 19 prescribe by rule actions that shall, in a variety of
 20 financial services, and with respect to a variety of fi-
 21 nancial products, be treated as necessary to effect,
 22 administer, or enforce a financial transaction.

23 “(10) FINANCIAL SERVICES; FINANCIAL PROD-
 24 UCTS; TRANSACTION; RELATED TRANSACTION.—

25 Each agency or authority described in section 504(a)

1 shall, consistent with the purposes of this subtitle,
2 prescribe by rule definitions of the terms ‘financial
3 services’, ‘financial products’, ‘transaction’, ‘related
4 transaction’, and ‘unrelated third party’ for purposes
5 of this subtitle.

6 “(11) STATE INSURANCE AUTHORITY.—The
7 term ‘State insurance authority’ means, in the case
8 of any person engaged in providing insurance, the
9 State insurance authority of the State in which the
10 person is domiciled.

11 “(12) CONSUMER.—The term ‘consumer’
12 means an individual who obtains, from a financial
13 institution, financial products or services which are
14 to be used primarily for personal, family, or house-
15 hold purposes, and also means the legal representa-
16 tive of such an individual.

17 “(13) CUSTOMER RELATIONSHIP.—The term
18 ‘time of establishing a customer relationship’ shall
19 be defined by the regulations prescribed under sec-
20 tion 504.

21 **“SEC. 509. EFFECTIVE DATE.**

22 “This subtitle shall take effect 6 months after the
23 date on which rules are required to be prescribed under
24 section 504(a)(3), except—

1 “(1) to the extent that a later date is specified
2 in the rules prescribed under section 504; and

3 “(2) that sections 504 and 506 shall be effective
4 upon enactment.

5 **“Subtitle B—Fraudulent Access to**
6 **Financial Information**

7 **“SEC. 521. PRIVACY PROTECTION FOR CUSTOMER INFORMATION OF FINANCIAL INSTITUTIONS.**

9 “(a) PROHIBITION ON OBTAINING CUSTOMER INFORMATION BY FALSE PRETENSES.—It shall be a violation
10 of this subtitle for any person to obtain or attempt to obtain,
11 or cause to be disclosed or attempt to cause to be
12 disclosed to any person, customer information of a financial
13 institution relating to another person—

15 “(1) by making a false, fictitious, or fraudulent
16 statement or representation to an officer, employee,
17 or agent of a financial institution;

18 “(2) by making a false, fictitious, or fraudulent
19 statement or representation to a customer of a financial
20 institution; or

21 “(3) by providing any document to an officer,
22 employee, or agent of a financial institution, knowing
23 that the document is forged, counterfeit, lost, or
24 stolen, was fraudulently obtained, or contains a

1 false, fictitious, or fraudulent statement or represen-
2 tation.

3 “(b) PROHIBITION ON SOLICITATION OF A PERSON
4 TO OBTAIN CUSTOMER INFORMATION FROM FINANCIAL
5 INSTITUTION UNDER FALSE PRETENSES.—It shall be a
6 violation of this subtitle to request a person to obtain cus-
7 tomer information of a financial institution, knowing that
8 the person will obtain, or attempt to obtain, the informa-
9 tion from the institution in any manner described in sub-
10 section (a).

11 “(c) NONAPPLICABILITY TO LAW ENFORCEMENT
12 AGENCIES.—No provision of this section shall be con-
13 strued so as to prevent any action by a law enforcement
14 agency, or any officer, employee, or agent of such agency,
15 to obtain customer information of a financial institution
16 in connection with the performance of the official duties
17 of the agency.

18 “(d) NONAPPLICABILITY TO FINANCIAL INSTITU-
19 TIONS IN CERTAIN CASES.—No provision of this section
20 shall be construed so as to prevent any financial institu-
21 tion, or any officer, employee, or agent of a financial insti-
22 tution, from obtaining customer information of such finan-
23 cial institution in the course of—

1 “(1) testing the security procedures or systems
2 of such institution for maintaining the confiden-
3 tiality of customer information;

4 “(2) investigating allegations of misconduct or
5 negligence on the part of any officer, employee, or
6 agent of the financial institution; or

7 “(3) recovering customer information of the fi-
8 nancial institution which was obtained or received by
9 another person in any manner described in sub-
10 section (a) or (b).

11 “(e) NONAPPLICABILITY TO INSURANCE INSTITU-
12 TIONS FOR INVESTIGATION OF INSURANCE FRAUD.—No
13 provision of this section shall be construed so as to prevent
14 any insurance institution, or any officer, employee, or
15 agency of an insurance institution, from obtaining infor-
16 mation as part of an insurance investigation into criminal
17 activity, fraud, material misrepresentation, or material
18 nondisclosure that is authorized for such institution under
19 State law, regulation, interpretation, or order.

20 “(f) NONAPPLICABILITY TO CERTAIN TYPES OF CUS-
21 TOMER INFORMATION OF FINANCIAL INSTITUTIONS.—No
22 provision of this section shall be construed so as to prevent
23 any person from obtaining customer information of a fi-
24 nancial institution that otherwise is available as a public

1 record filed pursuant to the securities laws (as defined in
2 section 3(a)(47) of the Securities Exchange Act of 1934).

3 **“SEC. 522. ADMINISTRATIVE ENFORCEMENT.**

4 “(a) ENFORCEMENT BY FEDERAL TRADE COMMIS-
5 SION.—Compliance with this subtitle shall be enforced by
6 the Federal Trade Commission in the same manner and
7 with the same power and authority as the Commission has
8 under the title VIII, the Fair Debt Collection Practices
9 Act, to enforce compliance with such title.

10 “(b) NOTICE OF ACTIONS.—The Federal Trade Com-
11 mission shall—

12 “(1) notify the Securities and Exchange Com-
13 mission whenever the Federal Trade Commission ini-
14 tiates an investigation with respect to a financial in-
15 stitution subject to regulation by the Securities and
16 Exchange Commission;

17 “(2) notify the Federal banking agency (as de-
18 fined in section 3(z) of the Federal Deposit Insur-
19 ance Act) whenever the Commission initiates an in-
20 vestigation with respect to a financial institution
21 subject to regulation by such Federal banking agen-
22 cy; and

23 “(3) notify the appropriate State insurance reg-
24 ulator whenever the Commission initiates an inves-

1 tigation with respect to a financial institution sub-
2 ject to regulation by such regulator.

3 “(c) STATE ACTION FOR VIOLATIONS.—

4 “(1) AUTHORITY OF STATES.—In addition to
5 such other remedies as are provided under State
6 law, if the chief law enforcement officer of a State,
7 or an official or agency designated by a State, has
8 reason to believe that any person has violated or is
9 violating this subtitle, the State—

10 “(A) may bring an action to enjoin such
11 violation in any appropriate United States dis-
12 trict court or in any other court of competent
13 jurisdiction;

14 “(B) may bring an action on behalf of the
15 residents of the State to recover damages of not
16 more than \$1,000 for each violation; and

17 “(C) in the case of any successful action
18 under subparagraph (A) or (B), shall be award-
19 ed the costs of the action and reasonable attor-
20 ney fees as determined by the court.

21 “(2) RIGHTS OF FEDERAL REGULATORS.—

22 “(A) PRIOR NOTICE.—The State shall
23 serve prior written notice of any action under
24 paragraph (1) upon the Federal Trade Commis-
25 sion and provide the Federal Trade Commission

1 with a copy of its complaint, except in any case
2 in which such prior notice is not feasible, in
3 which case the State shall serve such notice im-
4 mediately upon instituting such action.

5 “(B) RIGHT TO INTERVENE.—The Federal
6 Trade Commission shall have the right—

7 “(i) to intervene in an action under
8 paragraph (1);

9 “(ii) upon so intervening, to be heard
10 on all matters arising therein;

11 “(iii) to remove the action to the ap-
12 propriate United States district court; and

13 “(iv) to file petitions for appeal.

14 “(3) INVESTIGATORY POWERS.—For purposes
15 of bringing any action under this subsection, no pro-
16 vision of this subsection shall be construed as pre-
17 venting the chief law enforcement officer, or an offi-
18 cial or agency designated by a State, from exercising
19 the powers conferred on the chief law enforcement
20 officer or such official by the laws of such State to
21 conduct investigations or to administer oaths or af-
22 firmations or to compel the attendance of witnesses
23 or the production of documentary and other evi-
24 dence.

1 “(4) LIMITATION ON STATE ACTION WHILE
2 FEDERAL ACTION PENDING.—If the Federal Trade
3 Commission has instituted a civil action for a viola-
4 tion of this subtitle, no State may, during the pend-
5 ency of such action, bring an action under this sec-
6 tion against any defendant named in the complaint
7 of the Federal Trade Commission or such agency for
8 any violation of this subtitle that is alleged in that
9 complaint.

10 **“SEC. 523. CRIMINAL PENALTY.**

11 “(a) IN GENERAL.—Whoever knowingly and inten-
12 tionally violates, or knowingly and intentionally attempts
13 to violate, section 521 shall be fined in accordance with
14 title 18, United States Code, or imprisoned for not more
15 than 5 years, or both.

16 “(b) ENHANCED PENALTY FOR AGGRAVATED
17 CASES.—Whoever violates, or attempts to violate, section
18 521 while violating another law of the United States or
19 as part of a pattern of any illegal activity involving more
20 than \$100,000 in a 12-month period shall be fined twice
21 the amount provided in subsection (b)(3) or (c)(3) (as the
22 case may be) of section 3571 of title 18, United States
23 Code, imprisoned for not more than 10 years, or both.

1 **“SEC. 524. RELATION TO STATE LAWS.**

2 “(a) IN GENERAL.—This subtitle shall not be con-
3 strued as superseding, altering, or affecting the statutes,
4 regulations, orders, or interpretations in effect in any
5 State, except to the extent that such statutes, regulations,
6 orders, or interpretations are inconsistent with the provi-
7 sions of this subtitle, and then only to the extent of the
8 inconsistency.

9 “(b) GREATER PROTECTION UNDER STATE LAW.—
10 For purposes of this section, a State statute, regulation,
11 order, or interpretation is not inconsistent with the provi-
12 sions of this subtitle if the protection such statute, regula-
13 tion, order, or interpretation affords any person is greater
14 than the protection provided under this subtitle as deter-
15 mined by the Commission, on its own motion or upon the
16 petition of any interested party.

17 **“SEC. 525. AGENCY GUIDANCE.**

18 “*In furtherance of the objectives of this subtitle, each*
19 *Federal banking agency (as defined in section 3(z) of the*
20 *Federal Deposit Insurance Act) and the Securities and*
21 *Exchange Commission or self-regulatory organizations, as*
22 *appropriate, shall review regulations and guidelines appli-*
23 *cable to financial institutions under their respective juris-*
24 *dictions and shall prescribe such revisions to such regula-*
25 *tions and guidelines as may be necessary to ensure that*
26 *such financial institutions have policies, procedures, and*

1 controls in place to prevent the unauthorized disclosure
2 of customer financial information and to deter and detect
3 activities proscribed under section 521.

4 **“SEC. 526. REPORTS.**

5 “(a) REPORT TO THE CONGRESS.—Before the end of
6 the 18-month period beginning on the date of the enact-
7 ment of this Act, the Comptroller General, in consultation
8 with the Federal Trade Commission, Federal banking
9 agencies, the Securities and Exchange Commission, appro-
10 priate Federal law enforcement agencies, and appropriate
11 State insurance regulators, shall submit to the Congress
12 a report on the following:

13 “(1) The efficacy and adequacy of the remedies
14 provided in this subtitle in addressing attempts to
15 obtain financial information by fraudulent means or
16 by false pretenses.

17 “(2) Any recommendations for additional legis-
18 lative or regulatory action to address threats to the
19 privacy of financial information created by attempts
20 to obtain information by fraudulent means or false
21 pretenses.

22 “(b) ANNUAL REPORT BY ADMINISTERING AGEN-
23 CIES.—The Federal Trade Commission and the Attorney
24 General shall submit to Congress an annual report on

1 number and disposition of all enforcement actions taken
2 pursuant to this subtitle.

3 **“SEC. 527. DEFINITIONS.**

4 “For purposes of this subtitle, the following defini-
5 tions shall apply:

6 “(1) CUSTOMER.—The term ‘customer’ means,
7 with respect to a financial institution, any person (or
8 authorized representative of a person) to whom the
9 financial institution provides a product or service,
10 including that of acting as a fiduciary.

11 “(2) CUSTOMER INFORMATION OF A FINANCIAL
12 INSTITUTION.—The term “customer information of
13 a financial institution” means any information main-
14 tained by or for a financial institution which is de-
15 rived from the relationship between the financial in-
16 stitution and a customer of the financial institution
17 and is identified with the customer.

18 “(3) DOCUMENT.—The term ‘document’ means
19 any information in any form.

20 “(4) FINANCIAL INSTITUTION.—

21 “(A) IN GENERAL.—The term ‘financial
22 institution’ means any institution engaged in
23 the business of providing financial services to
24 customers who maintain a credit, deposit, trust,

1 or other financial account or relationship with
2 the institution.

3 “(B) CERTAIN FINANCIAL INSTITUTIONS
4 SPECIFICALLY INCLUDED.—The term ‘financial
5 institution’ includes any depository institution
6 (as defined in section 19(b)(1)(A) of the Fed-
7 eral Reserve Act), any broker or dealer, any in-
8 vestment adviser or investment company, any
9 insurance company, any loan or finance com-
10 pany, any credit card issuer or operator of a
11 credit card system, and any consumer reporting
12 agency that compiles and maintains files on
13 consumers on a nationwide basis (as defined in
14 section 603(p)).

15 “(C) SECURITIES INSTITUTIONS.—For
16 purposes of subparagraph (B)—

17 “(i) the terms ‘broker’ and ‘dealer’
18 have the meanings provided in section 3 of
19 the Securities Exchange Act of 1934 (15
20 U.S.C. 78c);

21 “(ii) the term ‘investment adviser’ has
22 the meaning provided in section 202(a)(11)
23 of the Investment Advisers Act of 1940
24 (15 U.S.C. 80b-2(a)); and

1 “(iii) the term ‘investment company’
2 has the meaning provided in section 3 of
3 the Investment Company Act of 1940 (15
4 U.S.C. 80a-3).

5 “(D) FURTHER DEFINITION BY REGULA-
6 TION.—The Federal Trade Commission, after
7 consultation with Federal banking agencies and
8 the Securities and Exchange Commission, may
9 prescribe regulations clarifying or describing
10 the types of institutions which shall be treated
11 as financial institutions for purposes of this
12 subtitle.

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