

Union Calendar No. 430

105TH CONGRESS
2^D Session

H. R. 4321

[Report No. 105-701, Parts I and II]

A BILL

To protect consumers and financial institutions by preventing personal financial information from being obtained from financial institutions under false pretenses.

SEPTEMBER 25, 1998

Reported from the Committee on Commerce with an amendment

SEPTEMBER 25, 1998

The Committee on the Judiciary discharged; committed to the Committee of the Whole House on the State of the Union and ordered to be printed

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To protect consumers and financial institutions by preventing personal financial information from being obtained from financial institutions under false pretenses.

IN THE HOUSE OF REPRESENTATIVES

JULY 23, 1998

Mr. LEACH (for himself, Mr. LAZIO of New York, Mr. CASTLE, Mr. LaFALCE, Mr. HINCHEY, and Mr. VENTO) introduced the following bill; which was referred to the Committee on Banking and Financial Services

AUGUST 21, 1998

Reported with an amendment, referred to the Committee on the Judiciary for a period ending not later than September 25, 1998, for consideration of such provisions of the bill and amendment as fall within the jurisdiction of that committee pursuant to clause 1(j), rule X

[Strike out all after the enacting clause and insert the part printed in italic]

SEPTEMBER 14, 1998

Referred to the Committee on Commerce for a period ending not later than September 25, 1998, for consideration of such provisions of the bill and amendment as fall within the jurisdiction of that committee pursuant to clause 1(e), rule X

SEPTEMBER 25, 1998

Additional sponsors: Mrs. KELLY, Ms. DANNER, and Mrs. ROUKEMA

SEPTEMBER 25, 1998

Reported from the Committee on Commerce with an amendment

[Strike out all after the enacting clause and insert the part printed in boldface roman]

SEPTEMBER 25, 1998

The Committee on the Judiciary discharged; committed to the Committee of the Whole House on the State of the Union and ordered to be printed

A BILL

To protect consumers and financial institutions by preventing personal financial information from being obtained from financial institutions under false pretenses.

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 “Financial Information*
5 *Privacy Act of 1998”.*

6 **SEC. 2. FINANCIAL INFORMATION PRIVACY.**

7 *(a) IN GENERAL.—The Consumer Credit Protection*
8 *Act (15 U.S.C. 1601 et seq.) is amended by adding at the*
9 *end the following:*

10 **“TITLE X—FINANCIAL INFORMATION PRIVACY**
11 **PROTECTION**

“Sec.

“1001. Short title.

“1002. Definitions.

“1003. Privacy protection for customer information of financial institutions.

“1004. Administrative enforcement.

“1005. Civil liability.

“1006. Criminal penalty.

“1007. Relation to State laws.

“1008. Agency guidance.

12 **“§ 1001. Short title**

13 *“This title may be cited as the ‘Financial Information*
14 *Privacy Act’.*

1 **“§ 1002. Definitions**

2 *“For purposes of this title, the following definitions*
 3 *shall apply:*

4 *“(1) CUSTOMER.—The term ‘customer’ means,*
 5 *with respect to a financial institution, any person (or*
 6 *authorized representative of a person) to whom the fi-*
 7 *nancial institution provides a product or service, in-*
 8 *cluding that of acting as a fiduciary.*

9 *“(2) CUSTOMER INFORMATION OF A FINANCIAL*
 10 *INSTITUTION.—The term ‘customer information of a*
 11 *financial institution’ means any information main-*
 12 *tained by a financial institution which is derived*
 13 *from the relationship between the financial institution*
 14 *and a customer of the financial institution and is*
 15 *identified with the customer.*

16 *“(3) DOCUMENT.—The term ‘document’ means*
 17 *any information in any form.*

18 *“(4) FINANCIAL INSTITUTION.—*

19 *“(A) IN GENERAL.—The term ‘financial in-*
 20 *stitution’ means any institution engaged in the*
 21 *business of providing financial services to cus-*
 22 *tomers who maintain a credit, deposit, trust, or*
 23 *other financial account or relationship with the*
 24 *institution.*

25 *“(B) CERTAIN FINANCIAL INSTITUTIONS*
 26 *SPECIFICALLY INCLUDED.—The term ‘financial*

institution’ includes any depository institution (as defined in section 19(b)(1)(A) of the Federal Reserve Act), any loan or finance company, any credit card issuer or operator of a credit card system, and any consumer reporting agency that compiles and maintains files on consumers on a nationwide basis (as defined in section 603(p)).

“(C) *FURTHER DEFINITION BY REGULATION.*—The Board of Governors of the Federal Reserve System may prescribe regulations further defining the term ‘financial institution’, in accordance with subparagraph (A), for purposes of this title.

“§ 1003. Privacy protection for customer information of financial institutions

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

“(1) by knowingly making a false, fictitious, or fraudulent statement or representation to an officer, employee, or agent of a financial institution with the intent to deceive the officer, employee, or agent into

1 *relying on that statement or representation for pur-*
2 *poses of releasing the customer information;*

3 *“(2) by knowingly making a false, fictitious, or*
4 *fraudulent statement or representation to a customer*
5 *of a financial institution with the intent to deceive*
6 *the customer into relying on that statement or rep-*
7 *resentation for purposes of releasing the customer in-*
8 *formation or authorizing the release of such informa-*
9 *tion; or*

10 *“(3) by knowingly providing any document to*
11 *an officer, employee, or agent of a financial institu-*
12 *tion, knowing that the document is forged, counterfeit,*
13 *lost, or stolen, was fraudulently obtained, or contains*
14 *a false, fictitious, or fraudulent statement or represen-*
15 *tation, if the document is provided with the intent to*
16 *deceive the officer, employee, or agent into relying on*
17 *that document for purposes of releasing the customer*
18 *information.*

19 *“(b) PROHIBITION ON SOLICITATION OF A PERSON TO*
20 *OBTAIN CUSTOMER INFORMATION FROM FINANCIAL INSTI-*
21 *TUTION UNDER FALSE PRETENSES.—It shall be a violation*
22 *of this title to request a person to obtain customer informa-*
23 *tion of a financial institution, knowing or consciously*
24 *avoiding knowing that the person will obtain, or attempt*

1 *to obtain, the information from the institution in any man-*
2 *ner described in subsection (a).*

3 “(c) *NONAPPLICABILITY TO LAW ENFORCEMENT*
4 *AGENCIES.—No provision of this section shall be construed*
5 *so as to prevent any action by a law enforcement agency,*
6 *or any officer, employee, or agent of such agency, to obtain*
7 *customer information of a financial institution in connec-*
8 *tion with the performance of the official duties of the agen-*
9 *cy.*

10 “(d) *NONAPPLICABILITY TO FINANCIAL INSTITUTIONS*
11 *IN CERTAIN CASES.—No provision of this section shall be*
12 *construed so as to prevent any financial institution, or any*
13 *officer, employee, or agent of a financial institution, from*
14 *obtaining customer information of such financial institu-*
15 *tion in the course of—*

16 “(1) *testing the security procedures or systems of*
17 *such institution for maintaining the confidentiality of*
18 *customer information;*

19 “(2) *investigating allegations of misconduct or*
20 *negligence on the part of any officer, employee, or*
21 *agent of the financial institution; or*

22 “(3) *recovering customer information of the fi-*
23 *nancial institution which was obtained or received by*
24 *another person in any manner described in subsection*
25 *(a) or (b).*

1 “(e) *NONAPPLICABILITY TO CERTAIN TYPES OF CUS-*
 2 *TOMER INFORMATION OF FINANCIAL INSTITUTIONS.*—No
 3 *provision of this section shall be construed so as to prevent*
 4 *any person from obtaining customer information of a fi-*
 5 *nanacial institution that otherwise is available as a public*
 6 *record filed pursuant to the securities laws (as defined in*
 7 *section 3(a)(47) of the Securities Exchange Act of 1934).*

8 **“§ 1004. Administrative enforcement**

9 “(a) *ENFORCEMENT BY FEDERAL TRADE COMMIS-*
 10 *SION.*—*Except as provided in subsection (b), compliance*
 11 *with this title shall be enforced by the Federal Trade Com-*
 12 *mission in the same manner and with the same power and*
 13 *authority as the Commission has under the title VIII, the*
 14 *Fair Debt Collection Practices Act, to enforce compliance*
 15 *with such title.*

16 “(b) *ENFORCEMENT BY OTHER AGENCIES IN CERTAIN*
 17 *CASES.*—

18 “(1) *IN GENERAL.*—*Compliance with this title*
 19 *shall be enforced under—*

20 “(A) *section 8 of the Federal Deposit Insur-*
 21 *ance Act, in the case of—*

22 “(i) *national banks, and Federal*
 23 *branches and Federal agencies of foreign*
 24 *banks, by the Office of the Comptroller of*
 25 *the Currency;*

1 “(ii) member banks of the Federal Re-
2 serve System (other than national banks),
3 branches and agencies of foreign banks
4 (other than Federal branches, Federal agen-
5 cies, and insured State branches of foreign
6 banks), commercial lending companies
7 owned or controlled by foreign banks, and
8 organizations operating under section 25 or
9 25A of the Federal Reserve Act, by the
10 Board;

11 “(iii) banks insured by the Federal De-
12 posit Insurance Corporation (other than
13 members of the Federal Reserve System and
14 national nonmember banks) and insured
15 State branches of foreign banks, by the
16 Board of Directors of the Federal Deposit
17 Insurance Corporation; and

18 “(iv) savings associations the deposits
19 of which are insured by the Federal Deposit
20 Insurance Corporation, by the Director of
21 the Office of Thrift Supervision; and

22 “(B) the Federal Credit Union Act, by the
23 Administrator of the National Credit Union Ad-
24 ministration with respect to any Federal credit
25 union.

1 “(2) VIOLATIONS OF THIS TITLE TREATED AS
2 VIOLATIONS OF OTHER LAWS.—For the purpose of the
3 exercise by any agency referred to in paragraph (1)
4 of its powers under any Act referred to in that para-
5 graph, a violation of this title shall be deemed to be
6 a violation of a requirement imposed under that Act.
7 In addition to its powers under any provision of law
8 specifically referred to in paragraph (1), each of the
9 agencies referred to in that paragraph may exercise,
10 for the purpose of enforcing compliance with this title,
11 any other authority conferred on such agency by law.
12 “(c) STATE ACTION FOR VIOLATIONS.—

13 “(1) AUTHORITY OF STATES.—In addition to
14 such other remedies as are provided under State law,
15 if the chief law enforcement officer of a State, or an
16 official or agency designated by a State, has reason
17 to believe that any person has violated or is violating
18 this title, 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 ju-
22 risdiction;

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

1 “(C) *in the case of any successful action*
2 *under subparagraph (A) or (B), shall be award-*
3 *ed the costs of the action and reasonable attorney*
4 *fees as determined by the court.*

5 “(2) *RIGHTS OF FEDERAL REGULATORS.—*

6 “(A) *PRIOR NOTICE.—The State shall serve*
7 *prior written notice of any action under para-*
8 *graph (1) upon the Federal Trade Commission*
9 *and, in the case of an action which involves a*
10 *financial institution described in section*
11 *1004(b)(1), the agency referred to in such section*
12 *with respect to such institution and provide the*
13 *Federal Trade Commission and any such agency*
14 *with a copy of its complaint, except in any case*
15 *in which such prior notice is not feasible, in*
16 *which case the State shall serve such notice im-*
17 *mediately upon instituting such action.*

18 “(B) *RIGHT TO INTERVENE.—The Federal*
19 *Trade Commission or an agency described in*
20 *subsection (b) shall have the right—*

21 “(i) *to intervene in an action under*
22 *paragraph (1);*

23 “(ii) *upon so intervening, to be heard*
24 *on all matters arising therein;*

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

3 “(iv) to file petitions for appeal.

4 “(3) *INVESTIGATORY POWERS.*—For purposes of
5 bringing any action under this subsection, no provi-
6 sion of this subsection shall be construed as prevent-
7 ing the chief law enforcement officer, or an official or
8 agency designated by a State, from exercising the
9 powers conferred on the chief law enforcement officer
10 or such official by the laws of such State to conduct
11 investigations or to administer oaths or affirmations
12 or to compel the attendance of witnesses or the pro-
13 duction of documentary and other evidence.

14 “(4) *LIMITATION ON STATE ACTION WHILE FED-*
15 *ERAL ACTION PENDING.*—If the Federal Trade Com-
16 mission or any agency described in subsection (b) has
17 instituted a civil action for a violation of this title,
18 no State may, during the pendency of such action,
19 bring an action under this section against any de-
20 fendant named in the complaint of the Federal Trade
21 Commission or such agency for any violation of this
22 title that is alleged in that complaint.

23 **“§ 1005. Civil liability**

24 “Any person, other than a financial institution, who
25 fails to comply with any provision of this title with respect

1 *to any financial institution or any customer information*
 2 *of a financial institution shall be liable to such financial*
 3 *institution or the customer to whom such information re-*
 4 *lates in an amount equal to the sum of the amounts deter-*
 5 *mined under each of the following paragraphs:*

6 “(1) *ACTUAL DAMAGES.*—*The greater of—*

7 “(A) *the amount of any actual damage sus-*
 8 *tained by the financial institution or customer*
 9 *as a result of such failure; or*

10 “(B) *any amount received by the person*
 11 *who failed to comply with this title, including*
 12 *an amount equal to the value of any nonmone-*
 13 *tary consideration, as a result of the action*
 14 *which constitutes such failure.*

15 “(2) *ADDITIONAL DAMAGES.*—*Such additional*
 16 *amount as the court may allow.*

17 “(3) *ATTORNEYS’ FEES.*—*In the case of any suc-*
 18 *cessful action to enforce any liability under para-*
 19 *graph (1) or (2), the costs of the action, together with*
 20 *reasonable attorneys’ fees.*

21 **“§ 1006. Criminal penalty**

22 “(a) *IN GENERAL.*—*Whoever violates, or attempts to*
 23 *violate, section 1003 shall be fined in accordance with title*
 24 *18, United States Code, or imprisoned for not more than*
 25 *5 years, or both.*

1 “(b) *ENHANCED PENALTY FOR AGGRAVATED CASES.*—
 2 Whoever violates, or attempts to violate, section 1003 while
 3 violating another law of the United States or as part of
 4 a pattern of any illegal activity involving more than
 5 \$100,000 in a 12-month period shall be fined twice the
 6 amount provided in subsection (b)(3) or (c)(3) (as the case
 7 may be) of section 3571 of title 18, United States Code,
 8 imprisoned for not more than 10 years, or both.

9 **“§ 1007. Relation to State laws**

10 “(a) *IN GENERAL.*—This title shall not be construed
 11 as superseding, altering, or affecting the statutes, regula-
 12 tions, orders, or interpretations in effect in any State, ex-
 13 cept to the extent that such statutes, regulations, orders, or
 14 interpretations are inconsistent with the provisions of this
 15 title, and then only to the extent of the inconsistency.

16 “(b) *GREATER PROTECTION UNDER STATE LAW.*—For
 17 purposes of this section, a State statute, regulation, order,
 18 or interpretation is not inconsistent with the provisions of
 19 this title if the protection such statute, regulation, order,
 20 or interpretation affords any person is greater than the pro-
 21 tection provided under this title.

22 **“§ 1008. Agency guidance**

23 “In furtherance of the objectives of this title, each Fed-
 24 eral banking agency (as defined in section 3(z) of the Fed-
 25 eral Deposit Insurance Act) shall issue advisories to deposi-

1 tory institutions under the jurisdiction of the agency, in
 2 order to assist such depository institutions in deterring and
 3 detecting activities proscribed under section 1003.”.

4 (b) *REPORT TO THE CONGRESS.*—Before the end of the
 5 18-month period beginning on the date of the enactment of
 6 this Act, the Comptroller General, in consultation with the
 7 Federal Trade Commission, Federal banking agencies, and
 8 appropriate Federal law enforcement agencies, shall submit
 9 to the Congress a report on the following:

10 (1) *The efficacy and adequacy of the remedies*
 11 *provided in the amendments made by subsection (a)*
 12 *in addressing attempts to obtain financial informa-*
 13 *tion by fraudulent means or by false pretenses.*

14 (2) *Any recommendations for additional legisla-*
 15 *tive or regulatory action to address threats to the pri-*
 16 *vacv of financial information created by attempts to*
 17 *obtain information by fraudulent means or false pre-*
 18 *tenses.*

19 **SECTION 1. SHORT TITLE.**

20 **This Act may be cited as the “Financial In-**
 21 **formation Privacy Act of 1998”.**

22 **SEC. 2. FINANCIAL INFORMATION PRIVACY.**

23 **(a) IN GENERAL.**—**The Consumer Credit**
 24 **Protection Act (15 U.S.C. 1601 et seq.) is**
 25 **amended by adding at the end the following:**

1 **“TITLE X—FINANCIAL INFORMATION PRIVACY**
2 **PROTECTION**

“Sec.

“1001. Short title.

“1002. Definitions.

“1003. Privacy protection for customer information of financial institutions.

“1004. Administrative enforcement.

“1005. Civil liability.

“1006. Criminal penalty.

“1007. Relation to State laws.

“1008. Agency guidance.

3 **“§ 1001. Short title**

4 **“This title may be cited as the ‘Financial**
5 **Information Privacy Act’.**

6 **“§ 1002. Definitions**

7 **“For purposes of this title, the following**
8 **definitions shall apply:**

9 **“(1) CUSTOMER.—The term ‘customer’**
10 **means, with respect to a financial institu-**
11 **tion, any person (or authorized rep-**
12 **resentative of a person) to whom the fi-**
13 **nancial institution provides a product or**
14 **service, including that of acting as a fidu-**
15 **ciary.**

16 **“(2) CUSTOMER INFORMATION OF A FI-**
17 **NANCIAL INSTITUTION.—The term ‘customer**
18 **information of a financial institution’**
19 **means any information maintained by or**
20 **for a financial institution which is de-**

1 rived from the relationship between the
2 financial institution and a customer of
3 the financial institution and is identified
4 with the customer.

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

7 “(4) FINANCIAL INSTITUTION.—

8 “(A) IN GENERAL.—The term ‘finan-
9 cial institution’ means any institution
10 engaged in the business of providing
11 financial services to customers who
12 maintain a credit, deposit, trust, or
13 other financial account or relation-
14 ship with the institution.

15 “(B) CERTAIN FINANCIAL INSTITU-
16 TIONS SPECIFICALLY INCLUDED.—The
17 term ‘financial institution’ includes
18 any depository institution (as defined
19 in section 19(b)(1)(A) of the Federal
20 Reserve Act), any broker or dealer,
21 any investment adviser or investment
22 company, any insurance company,
23 any loan or finance company, any
24 credit card issuer or operator of a
25 credit card system, and any consumer

1 **reporting agency that compiles and**
2 **maintains files on consumers on a na-**
3 **tionwide basis (as defined in section**
4 **603(p)).**

5 **“(C) SECURITIES INSTITUTIONS.—For**
6 **purposes of subparagraph (B)—**

7 **“(i) the terms ‘broker’ and**
8 **‘dealer’ have the meanings pro-**
9 **vided in section 3 of the Securi-**
10 **ties Exchange Act of 1934 (15**
11 **U.S.C. 78c);**

12 **“(ii) the term ‘investment ad-**
13 **viser’ has the meaning provided**
14 **in section 202(a)(11) of the Invest-**
15 **ment Advisers Act of 1940 (15**
16 **U.S.C. 80b-2(a)); and**

17 **“(iii) the term ‘investment**
18 **company’ has the meaning pro-**
19 **vided in section 3 of the Invest-**
20 **ment Company Act of 1940 (15**
21 **U.S.C. 80a-3).**

22 **“(D) FURTHER DEFINITION BY REGU-**
23 **LATION.—The Federal Trade Commis-**
24 **sion, after consultation with Federal**
25 **banking agencies and the Securities**

1 and Exchange Commission, may pre-
2 scribe regulations clarifying or de-
3 scribing the types of institutions
4 which shall be treated as financial in-
5 stitutions for purposes of this title.

6 **“§ 1003. Privacy protection for customer information**
7 **of financial institutions**

8 **“(a) PROHIBITION ON OBTAINING CUSTOMER**
9 **INFORMATION BY FALSE PRETENSES.—It shall be**
10 **a violation of this title for any person to ob-**
11 **tain or attempt to obtain, or cause to be dis-**
12 **closed or attempt to cause to be disclosed to**
13 **any person, customer information of a finan-**
14 **cial institution relating to another person—**

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

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

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

1 fraudulently obtained, or contains a false,
2 fictitious, or fraudulent statement or rep-
3 resentation.

4 **“(b) PROHIBITION ON SOLICITATION OF A**
5 **PERSON TO OBTAIN CUSTOMER INFORMATION**
6 **FROM FINANCIAL INSTITUTION UNDER FALSE**
7 **PRETENSES.—It shall be a violation of this title**
8 **to request a person to obtain customer infor-**
9 **mation of a financial institution, knowing**
10 **that the person will obtain, or attempt to ob-**
11 **tain, the information from the institution in**
12 **any manner described in subsection (a).**

13 **“(c) NONAPPLICABILITY TO LAW ENFORCE-**
14 **MENT AGENCIES.—No provision of this section**
15 **shall be construed so as to prevent any action**
16 **by a law enforcement agency, or any officer,**
17 **employee, or agent of such agency, to obtain**
18 **customer information of a financial institu-**
19 **tion in connection with the performance of**
20 **the official duties of the agency.**

21 **“(d) NONAPPLICABILITY TO FINANCIAL INSTI-**
22 **TUTIONS IN CERTAIN CASES.—No provision of**
23 **this section shall be construed so as to pre-**
24 **vent any financial institution, or any officer,**
25 **employee, or agent of a financial institution,**

1 from obtaining customer information of such
2 financial institution in the course of—

3 “(1) testing the security procedures or
4 systems of such institution for maintain-
5 ing the confidentiality of customer infor-
6 mation;

7 “(2) investigating allegations of mis-
8 conduct or negligence on the part of any
9 officer, employee, or agent of the finan-
10 cial institution; or

11 “(3) recovering customer information
12 of the financial institution which was ob-
13 tained or received by another person in
14 any manner described in subsection (a)
15 or (b).

16 “(e) NONAPPLICABILITY TO INSURANCE INSTI-
17 TUTIONS FOR INVESTIGATION OF INSURANCE
18 FRAUD.—No provision of this section shall be
19 construed so as to prevent any insurance in-
20 stitution, or any officer, employee, or agency
21 of an insurance institution, from obtaining in-
22 formation as part of an insurance investiga-
23 tion into criminal activity, fraud, material
24 misrepresentation, or material nondisclosure

1 that is authorized for such institution under
2 State law, regulation, interpretation, or order.

3 “(f) NONAPPLICABILITY TO CERTAIN TYPES
4 OF CUSTOMER INFORMATION OF FINANCIAL INSTI-
5 TUTIONS.—No provision of this section shall be
6 construed so as to prevent any person from
7 obtaining customer information of a financial
8 institution that otherwise is available as a
9 public record filed pursuant to the securities
10 laws (as defined in section 3(a)(47) of the Se-
11 curities Exchange Act of 1934).

12 “§ 1004. Administrative enforcement

13 “(a) ENFORCEMENT BY FEDERAL TRADE COM-
14 MISSION.—Except as provided in subsection
15 (b), compliance with this title shall be en-
16 forced by the Federal Trade Commission in
17 the same manner and with the same power
18 and authority as the Commission has under
19 the title VIII, the Fair Debt Collection Prac-
20 tices Act, to enforce compliance with such
21 title.

22 “(b) ENFORCEMENT BY OTHER AGENCIES IN
23 CERTAIN CASES.—

24 “(1) IN GENERAL.—Compliance with
25 this title shall be enforced under—

1 “(A) section 8 of the Federal De-
2 posit Insurance Act, in the case of—

3 “(i) national banks, and Fed-
4 eral branches and Federal agen-
5 cies of foreign banks, by the Of-
6 fice of the Comptroller of the Cur-
7 rency;

8 “(ii) member banks of the Fed-
9 eral Reserve System (other than
10 national banks), branches and
11 agencies of foreign banks (other
12 than Federal branches, Federal
13 agencies, and insured State
14 branches of foreign banks), com-
15 mercial lending companies owned
16 or controlled by foreign banks,
17 and organizations operating
18 under section 25 or 25A of the
19 Federal Reserve Act, by the
20 Board;

21 “(iii) banks insured by the
22 Federal Deposit Insurance Cor-
23 poration (other than members of
24 the Federal Reserve System and
25 national nonmember banks) and

1 insured State branches of foreign
2 banks, by the Board of Directors
3 of the Federal Deposit Insurance
4 Corporation; and

5 “(iv) savings associations the
6 deposits of which are insured by
7 the Federal Deposit Insurance
8 Corporation, by the Director of
9 the Office of Thrift Supervision;
10 and

11 “(B) the Federal Credit Union Act,
12 by the Administrator of the National
13 Credit Union Administration with re-
14 spect to any Federal credit union.

15 “(2) VIOLATIONS OF THIS TITLE TREATED
16 AS VIOLATIONS OF OTHER LAWS.—For the
17 purpose of the exercise by any agency re-
18 ferred to in paragraph (1) of its powers
19 under any Act referred to in that para-
20 graph, a violation of this title shall be
21 deemed to be a violation of a requirement
22 imposed under that Act. In addition to its
23 powers under any provision of law spe-
24 cifically referred to in paragraph (1),
25 each of the agencies referred to in that

1 paragraph may exercise, for the purpose
2 of enforcing compliance with this title,
3 any other authority conferred on such
4 agency by law.

5 “(3) **RESTITUTION.**—In the case of any
6 failure by an entity referred to in para-
7 graph (1) to comply with the require-
8 ments of this title, an agency referred to
9 in such paragraph may require such en-
10 tity to make restitution to any person
11 harmed by such failure in the manner
12 provided under section 8(b)(6)(A) of the
13 Federal Deposit Insurance Act or section
14 206(e)(3)(A) of the Federal Credit Union
15 Act, as the case may be, without regard
16 to clauses (i) and (ii) of such sections, and
17 in an amount equal to the sum of the
18 amounts determined under each of the
19 following subparagraphs:

20 “(A) **ACTUAL DAMAGES.**—The great-
21 er of—

22 “(i) the amount of any actual
23 damage sustained by the person
24 as a result of such failure; or

1 “(ii) any amount received by
2 the entity which failed to comply
3 with this title, including an
4 amount equal to the value of any
5 nonmonetary consideration, as a
6 result of the action which con-
7 stitutes such failure.

8 “(B) ADDITIONAL DAMAGES.—Such
9 additional amount as the agency may
10 determine to be appropriate under
11 the circumstances.

12 “(c) STATE ACTION FOR VIOLATIONS.—

13 “(1) AUTHORITY OF STATES.—In addi-
14 tion to such other remedies as are pro-
15 vided under State law, if the chief law en-
16 forcement officer of a State, or an official
17 or agency designated by a State, has rea-
18 son to believe that any person has vio-
19 lated or is violating this title, the State—

20 “(A) may bring an action to enjoin
21 such violation in any appropriate
22 United States district court or in any
23 other court of competent jurisdiction;

24 “(B) may bring an action on be-
25 half of the residents of the State to

1 **recover damages of not more than**
2 **\$1,000 for each violation; and**

3 **“(C) in the case of any successful**
4 **action under subparagraph (A) or (B),**
5 **shall be awarded the costs of the ac-**
6 **tion and reasonable attorney fees as**
7 **determined by the court.**

8 **“(2) RIGHTS OF FEDERAL REGULATORS.—**

9 **“(A) PRIOR NOTICE.—The State**
10 **shall serve prior written notice of any**
11 **action under paragraph (1) upon the**
12 **Federal Trade Commission and—**

13 **“(i) in the case of an action**
14 **which involves a financial institu-**
15 **tion described in section**
16 **1004(b)(1), the agency referred to**
17 **in such section with respect to**
18 **such institution; or**

19 **“(ii) in the case of an action**
20 **which involves a financial institu-**
21 **tion subject to regulation by the**
22 **Securities and Exchange Commis-**
23 **sion, such Commission.**

24 **The State shall provide the Federal**
25 **Trade Commission and any such**

1 agency with a copy of its complaint,
2 except in any case in which such
3 prior notice is not feasible, in which
4 case the State shall serve such notice
5 immediately upon instituting such ac-
6 tion.

7 “(B) RIGHT TO INTERVENE.—The
8 Federal Trade Commission or an
9 agency described in subsection (b)
10 shall have the right—

11 “(i) to intervene in an action
12 under paragraph (1);

13 “(ii) upon so intervening, to
14 be heard on all matters arising
15 therein;

16 “(iii) to remove the action to
17 the appropriate United States dis-
18 trict court; and

19 “(iv) to file petitions for ap-
20 peal.

21 “(3) INVESTIGATORY POWERS.—For pur-
22 poses of bringing any action under this
23 subsection, no provision of this sub-
24 section shall be construed as preventing
25 the chief law enforcement officer, or an

1 official or agency designated by a State,
2 from exercising the powers conferred on
3 the chief law enforcement officer or such
4 official by the laws of such State to con-
5 duct investigations or to administer
6 oaths or affirmations or to compel the at-
7 tendance of witnesses or the production
8 of documentary and other evidence.

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

20 “(d) NOTICE TO SEC OF ACTIONS.—The Fed-
21 eral Trade Commission shall notify the Secu-
22 rities and Exchange Commission whenever
23 the Federal Trade Commission initiates an in-
24 vestigation with respect to a financial institu-

1 tion subject to regulation by the Securities
2 and Exchange Commission.

3 “§ 1005. Civil liability

4 “Any person, other than a financial insti-
5 tution, who fails to comply with any provision
6 of this title with respect to any financial insti-
7 tution or any customer information of a finan-
8 cial institution shall be liable to such finan-
9 cial institution or the customer to whom such
10 information relates in an amount equal to the
11 sum of the amounts determined under each of
12 the following paragraphs:

13 “(1) ACTUAL DAMAGES.—The greater
14 of—

15 “(A) the amount of any actual
16 damage sustained by the financial in-
17 stitution or customer as a result of
18 such failure; or

19 “(B) any amount received by the
20 person who failed to comply with this
21 title, including an amount equal to
22 the value of any nonmonetary consid-
23 eration, as a result of the action
24 which constitutes such failure.

1 **“(2) ADDITIONAL DAMAGES.—Such addi-**
2 **tional amount as the court may allow.**

3 **“(3) ATTORNEYS’ FEES.—In the case of**
4 **any successful action to enforce any li-**
5 **ability under paragraph (1) or (2), the**
6 **costs of the action, together with reason-**
7 **able attorneys’ fees.**

8 **“§ 1006. Criminal penalty**

9 **“(a) IN GENERAL.—Whoever knowingly and**
10 **intentionally violates, or knowingly and in-**
11 **tentionally attempts to violate, section 1003**
12 **shall be fined in accordance with title 18,**
13 **United States Code, or imprisoned for not**
14 **more than 5 years, or both.**

15 **“(b) ENHANCED PENALTY FOR AGGRAVATED**
16 **CASES.—Whoever violates, or attempts to vio-**
17 **late, section 1003 while violating another law**
18 **of the United States or as part of a pattern of**
19 **any illegal activity involving more than**
20 **\$100,000 in a 12-month period shall be fined**
21 **twice the amount provided in subsection**
22 **(b)(3) or (c)(3) (as the case may be) of section**
23 **3571 of title 18, United States Code, impris-**
24 **oned for not more than 10 years, or both.**

1 **“§ 1007. Relation to State laws**

2 **“(a) IN GENERAL.—This title shall not be**
3 **construed as superseding, altering, or affect-**
4 **ing the statutes, regulations, orders, or inter-**
5 **pretations in effect in any State, except to the**
6 **extent that such statutes, regulations, orders,**
7 **or interpretations are inconsistent with the**
8 **provisions of this title, and then only to the**
9 **extent of the inconsistency.**

10 **“(b) GREATER PROTECTION UNDER STATE**
11 **LAW.—For purposes of this section, a State**
12 **statute, regulation, order, or interpretation is**
13 **not inconsistent with the provisions of this**
14 **title if the protection such statute, regulation,**
15 **order, or interpretation affords any person is**
16 **greater than the protection provided under**
17 **this title.**

18 **“§ 1008. Agency guidance**

19 **“In furtherance of the objectives of this**
20 **title, each Federal banking agency (as defined**
21 **in section 3(z) of the Federal Deposit Insur-**
22 **ance Act) and the Securities and Exchange**
23 **Commission or self-regulatory organizations,**
24 **as appropriate, shall review regulations and**
25 **guidelines applicable to financial institutions**
26 **under their respective jurisdictions and shall**

1 prescribe such revisions to such regulations
2 and guidelines as may be necessary to ensure
3 that such financial institutions have policies,
4 procedures, and controls in place to prevent
5 the unauthorized disclosure of customer fi-
6 nancial information and to deter and detect
7 activities proscribed under section 1003.”.

8 (b) REPORT TO THE CONGRESS.—Before the
9 end of the 18-month period beginning on the
10 date of the enactment of this Act, the Comp-
11 troller General, in consultation with the Fed-
12 eral Trade Commission, Federal banking
13 agencies, the Securities and Exchange Com-
14 mission, and appropriate Federal law enforce-
15 ment agencies, shall submit to the Congress a
16 report on the following:

17 (1) The efficacy and adequacy of the
18 remedies provided in the amendments
19 made by subsection (a) in addressing at-
20 tempts to obtain financial information by
21 fraudulent means or by false pretenses.

22 (2) Any recommendations for addi-
23 tional legislative or regulatory action to
24 address threats to the privacy of finan-
25 cial information created by attempts to

1 **obtain information by fraudulent means**
2 **or false pretenses.**

3 **(c) ANNUAL REPORT BY ADMINISTERING**
4 **AGENCIES.—The Federal Trade Commission,**
5 **the Attorney General, and each of the agen-**
6 **cies referred to in section 1004(b)(1) of Finan-**
7 **cial Information Privacy Act (as added by this**
8 **Act) shall submit to Congress an annual re-**
9 **port on number and disposition of all enforce-**
10 **ment actions taken pursuant to such Act.**