

105TH CONGRESS
2D SESSION

H. R. 4388

To amend the Consumer Credit Protection Act to ensure financial institution privacy protections, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

AUGUST 4, 1998

Mr. LAFALCE introduced the following bill; which was referred to the Committee on Banking and Financial Services

A BILL

To amend the Consumer Credit Protection Act to ensure financial institution privacy protections, 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 “Consumer Financial
5 Privacy Protection Act of 1998”.

6 **SEC. 2. CONSUMER FINANCIAL PRIVACY.**

7 The Consumer Credit Protection Act (15 U.S.C.
8 1601 et seq.) is amended by adding at the end the follow-
9 ing new title:

1 **“TITLE X—CONSUMER**
2 **FINANCIAL PRIVACY**
3 **“CHAPTER 1—GENERAL PROVISIONS**

4 **“SEC. 1001. SHORT TITLE.**

5 “‘This chapter may be cited as the ‘Financial Institu-
6 tion Privacy Protection Act’.

7 **“SEC. 1002. DEFINITIONS.**

8 “‘For purposes of this title, the following definitions
9 shall apply:

10 “(1) CUSTOMER.—The term ‘customer’ has the
11 meaning given to such term in section 1101(5) of
12 the Right to Financial Privacy Act of 1978.

13 “(2) CUSTOMERS’ FINANCIAL INFORMATION.—
14 The term ‘customers’ financial information’ means
15 any information maintained by a financial institu-
16 tion which is derived from the relationship between
17 the financial institution and a customer of the finan-
18 cial institution and is identifiable to the customer,
19 including account numbers, account balances and
20 other account data, transactional information con-
21 cerning any account, and codes, passwords, and
22 other means of access to accounts or means to initi-
23 ate transactions.

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

1 “(4) FINANCIAL INSTITUTION.—

2 “(A) IN GENERAL.—The term ‘financial
3 institution’ means any institution engaged in
4 the business of providing financial services to
5 customers who maintain a credit, deposit, trust,
6 or other financial account or relationship with
7 the institution.

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

20 “(C) FURTHER DEFINITION BY REGULA-
21 TION.—The Federal Trade Commission may
22 prescribe regulations clarifying or describing
23 the types of institutions which shall be treated
24 as financial institutions for purposes of this
25 title.

1 “(5) FINANCIAL REGULATORY AGENCY.—The
2 term ‘financial regulatory agency’ means any Fed-
3 eral banking agency (as defined in section 3(z) of
4 the Federal Deposit Insurance Act, the National
5 Credit Union Administration Board, the Securities
6 and Exchange Commission, the Commodity Futures
7 Trading Commission, the Secretary of the Treasury,
8 and the Federal Trade Commission.

9 “(6) PERSONAL INFORMATION.—The term ‘per-
10 sonal information’ means any information which is
11 not financial information and is personal to or iden-
12 tifiable with any individual or other person, includ-
13 ing any current or former name of the person, any
14 current or former address, telephone number, and e-
15 mail address (including any information relating to
16 any change of name, address, or telephone number)
17 of the person or any member of the person’s family
18 (including any ancestor of such person), any Social
19 Security or tax identification number of the person
20 or any member of such person’s family, the date of
21 birth of the person or any member of the person’s
22 family, and other information which could be used to
23 identify the person.

24 “(7) RECORD.—The term ‘record’ means any
25 customer personal or financial information or any

1 document, file, film, electronic file, or other instru-
2 ment used to collect, aggregate, store, identify, or
3 disseminate personal or financial information.

4 **“SEC. 1003. PROTECTION OF FINANCIAL INFORMATION.**

5 “(a) IN GENERAL.—Financial institutions have an
6 affirmative and continuing obligation to respect the pri-
7 vacy of their customers and to protect the security and
8 confidentiality of customers’ financial and personal infor-
9 mation.

10 “(b) FINANCIAL INSTITUTION SAFEGUARDS.—Pur-
11 suant to subsection (a), financial institutions shall estab-
12 lish appropriate administrative, technical and physical
13 safeguards to insure the security and confidentiality of fi-
14 nancial and personal records and to protect against any
15 anticipated threats or hazards to the security or integrity
16 of such records which could result in substantial harm,
17 embarrassment, inconvenience, or unfairness to any cus-
18 tomer or other persons on whom such information is main-
19 tained.

20 “(c) INFORMATION COLLECTION AND DISCLO-
21 SURE.—

22 “(1) COLLECTION OF ONLY ESSENTIAL CUS-
23 TOMER INFORMATION.—A financial institution shall
24 collect personal and financial information about a
25 customer only to the extent necessary to facilitate

1 customer-initiated transactions and to administer an
2 ongoing business relationship with the customer,
3 provided that the financial institution reasonably be-
4 lieves that such information will be protected against
5 any disclosure or use that may harm, embarrass, or
6 inconvenience the customer.

7 “(2) PROHIBITION ON DISCLOSURES.—A finan-
8 cial institution shall not disclose or provide customer
9 financial or personal information to a third party for
10 their independent use, except to the extent that dis-
11 closure of such information—

12 “(A) is necessary to complete a customer-
13 initiated transaction;

14 “(B) is requested by the customer and rea-
15 sonable steps are taken to verify the identity of
16 the customer pursuant to section 1004;

17 “(C) is required by law by a public agency
18 or court as part of an investigation, subpoena,
19 judgment, or other legal or public proceeding;
20 or

21 “(D) is disclosed to the customer, with
22 separate and explicit notice identifying the pur-
23 pose for such disclosure, the customer’s right to
24 deny disclosure of such information and the

1 procedures for making such denial, as provided
2 in regulation under section 1004(a)(5).

3 **“SEC. 1004. REGULATIONS.**

4 “(a) REGULATIONS REQUIRED.—The financial regu-
5 latory agencies shall prescribe uniform regulations to
6 carry out the purposes of this chapter.

7 “(b) SAFEGUARDS.—Regulations prescribed under
8 this section shall require each financial institution (which
9 is subject to such regulation) to establish appropriate safe-
10 guards to insure the security and confidentiality of cus-
11 tomer records, including policies and procedures to—

12 “(1) assure that customer records are current
13 and accurate and provide for prompt correction of
14 any record or information in response to a cus-
15 tomer’s inquiry where such customer has reason to
16 believe that the information is incomplete or inac-
17 curate.

18 “(2) limit employee access to financial records
19 and personally identifiable information and to train
20 employees on how to maintain the security and con-
21 fidentiality of such records and information;

22 “(3) maintain appropriate security standards
23 and procedures to prevent unauthorized access to
24 consumer identifiers and information, which shall in-
25 clude appropriate procedures for customer identifica-

1 tion and verification, including use of customer pass-
2 words other than information readily available in the
3 public domain, biometric identifiers, and other tech-
4 nical or electronic security measures;

5 “(4) require that third parties that receive cus-
6 tomer information also agree to maintain the con-
7 fidentiality of customer information; and

8 “(5) provide appropriate disclosure to cus-
9 tomers regarding the financial institution’s privacy
10 policies and customer privacy rights, which shall in-
11 clude clear and conspicuous disclosure of the follow-
12 ing information—

13 “(A) the type of information to be dis-
14 closed to third parties and the purposes for
15 such disclosure;

16 “(B) the option and procedure available to
17 the customer to prevent such disclosure of in-
18 formation; and

19 “(C) the procedures for filing a complaint
20 regarding the use of any confidential informa-
21 tion disclosed to a third party by the financial
22 institution, including the appropriate telephone
23 numbers for filing a complaint with the finan-
24 cial institution and with Federal and State reg-
25 ulatory agencies.

1 “(c) MODEL FORMS AND DISCLOSURES.—The finan-
2 cial regulatory agencies shall provide model disclosure
3 statements and clauses, as appropriate, to facilitate com-
4 pliance with the disclosure requirements of section
5 1003(c)(2)(D). A financial institution that properly uses
6 the material aspects of the model disclosures shall be
7 deemed to be in compliance with the requirement for dis-
8 closure under this section.

9 “(d) EFFECTIVE DATES.—A regulation prescribed
10 under this section shall not take effect before the end of
11 the 6-month period beginning on the date the regulation
12 is published in final form in the Federal Register. A finan-
13 cial regulatory agency may lengthen this period where, in
14 its determination, additional time is necessary to permit
15 appropriate implementation of security measures by finan-
16 cial institutions.

17 **“SEC. 1005. ADMINISTRATIVE ENFORCEMENT.**

18 “(a) ENFORCEMENT BY FEDERAL TRADE COMMIS-
19 SION.—

20 “(1) IN GENERAL.—Except as provided in sub-
21 section (b), compliance with this title shall be en-
22 forced under the Federal Trade Commission Act by
23 the Federal Trade Commission.

1 “(2) VIOLATIONS OF THIS TITLE TREATED AS
2 VIOLATIONS OF FEDERAL TRADE COMMISSION
3 ACT.—

4 “(A) IN GENERAL.—For the purpose of
5 the exercise by the Federal Trade Commission
6 of the Commission’s functions and powers
7 under the Federal Trade Commission Act, any
8 violation of any requirement or prohibition im-
9 posed under this title with respect to informa-
10 tion brokers shall constitute an unfair or decep-
11 tive act or practice in commerce in violation of
12 section 5(a) of the Federal Trade Commission
13 Act.

14 “(B) ENFORCEMENT AUTHORITY UNDER
15 OTHER LAW.—All functions and powers of the
16 Federal Trade Commission under the Federal
17 Trade Commission Act shall be available to the
18 Commission to enforce compliance with this
19 title by any person subject to enforcement by
20 the Federal Trade Commission pursuant to this
21 subsection, including the power to enforce the
22 provisions of this title in the same manner as
23 if the violation had been a violation of any Fed-
24 eral Trade Commission trade regulation rule,
25 without regard to whether the person—

1 “(i) is engaged in commerce; or

2 “(ii) meets any other jurisdictional
3 tests in the Federal Trade Commission
4 Act.

5 “(C) CIVIL PENALTIES.—Any person vio-
6 lating any of the provisions of this title (other
7 than a person subject to enforcement in accord-
8 ance with subsection (b)) shall be subject to the
9 penalties and entitled to the privileges and im-
10 munities provided in the Federal Trade Com-
11 mission Act as though the applicable terms and
12 provisions thereof were part of this title.

13 “(b) ENFORCEMENT BY OTHER AGENCIES IN CER-
14 TAIN CASES.—

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

17 “(A) section 8 of the Federal Deposit In-
18 surance Act, in the case of—

19 “(i) national banks, and Federal
20 branches and Federal agencies of foreign
21 banks, by the Comptroller of the Currency;

22 “(ii) member banks of the Federal
23 Reserve System (other than national
24 banks), branches and agencies of foreign
25 banks (other than Federal branches, Fed-

1 eral agencies, and insured State branches
2 of foreign banks), commercial lending com-
3 panies owned or controlled by foreign
4 banks, and organizations operating under
5 section 25 or 25A of the Federal Reserve
6 Act, by the Board of Governors of the Fed-
7 eral Reserve System;

8 “(iii) banks insured by the Federal
9 Deposit Insurance Corporation (other than
10 members of the Federal Reserve System)
11 and insured State branches of foreign
12 banks, by the Board of Directors of the
13 Federal Deposit Insurance Corporation;

14 “(iv) savings associations the deposits
15 of which are insured by the Federal De-
16 posit Insurance Corporation, by the Direc-
17 tor of the Office of Thrift Supervision;

18 “(B) the Federal Credit Union Act, by the
19 Administrator of the National Credit Union Ad-
20 ministration with respect to any Federal credit
21 union;

22 “(C) the Farm Credit Act of 1971, by the
23 Farm Credit Administration with respect to any
24 Federal land bank, Federal land bank associa-

1 tion, Federal intermediate credit bank, or pro-
2 duction credit association

3 “(D) the securities laws (as defined in sec-
4 tion 3(a)(47) of the Securities Exchange Act of
5 1934) by the Securities and Exchange Commis-
6 sion with respect to any person subject to the
7 securities laws; and

8 “(E) the Commodity Exchange Act, by the
9 Commodity Futures Trading Commission with
10 respect to any person subject to such Act.

11 **“SEC. 1006. CIVIL LIABILITY.**

12 “If any person knowingly fails to comply with any
13 requirement of this chapter or any regulation issued under
14 this chapter and a customer of a financial institution sus-
15 tains substantial financial injury and inconvenience as a
16 result of the disclosure of confidential information, such
17 person shall be liable to the customer in an amount equal
18 to the sum of—

19 “(1) the greater of—

20 “(A) any actual damages sustained by the
21 customer as a result of the failure; or

22 “(B) \$500;

23 “(2) such amount of additional damages as the
24 court may allow; and

1 “(3) in the case of any successful action to en-
2 force any liability under this section, the costs of the
3 action together with reasonable attorney’s fees as de-
4 termined by the court.

5 **“SEC. 1007. WAIVER OF RIGHTS.**

6 “(a) WAIVER OF RIGHTS, REMEDIES, REQUIRE-
7 MENTS, AND OBLIGATIONS PROHIBITED.—No writing or
8 other agreement between a financial institution and any
9 customer may contain any provision which constitutes a
10 waiver of any requirement or obligation under this chapter
11 nor a waiver of any right or cause of action created by
12 this chapter.

13 “(b) RULE OF CONSTRUCTION.—Subsection (a) shall
14 not be construed as prohibiting any writing or other agree-
15 ment between a financial institution and a customer which
16 grants to a consumer a more extensive right or remedy
17 or greater protection than that contained in or required
18 under this chapter.

19 **“SEC. 1008. RELATION TO STATE LAW.**

20 “(a) IN GENERAL.—This chapter shall not be con-
21 strued as annulling, altering, or affecting the laws of any
22 State with respect to financial privacy practices, or ex-
23 empting any person subject to the provisions of this title
24 from complying with such State laws, except to the extent

1 that those laws are inconsistent with any provision of this
2 chapter, and then only to the extent of the inconsistency.

3 “(b) GREATER PROTECTION UNDER STATE LAW.—

4 For purposes of this section, a State law is not inconsis-
5 ent with this title if the protection such law affords any
6 consumer is greater than the protection provided by this
7 chapter.”.