

105TH CONGRESS  
2D SESSION

# S. 2433

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

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## IN THE SENATE OF THE UNITED STATES

SEPTEMBER 2 (legislative day, AUGUST 31), 1998

Mr. D'AMATO introduced the following bill; which was read twice and referred to the Committee on Banking, Housing, and Urban Affairs

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## 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. FINANCIAL INFORMATION PRIVACY.**

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

7 **“TITLE X—FINANCIAL INFORMA-**  
8 **TION PRIVACY 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.

## 1 **“§ 1001. Short title**

2 “This title may be cited as the ‘Financial Information  
3 Privacy Act’.

## 4 **“§ 1002. Definitions**

5 “For purposes of this title, the following definitions  
6 shall apply:

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

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

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

21 “(4) FINANCIAL INSTITUTION.—

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

7           “(B) CERTAIN FINANCIAL INSTITUTIONS  
8           SPECIFICALLY INCLUDED.—The term ‘financial  
9           institution’ includes any depository institution  
10          (as defined in section 19(b)(1)(A) of the Fed-  
11          eral Reserve Act), any loan or finance company,  
12          any credit card issuer or operator of a credit  
13          card system, and any consumer reporting agen-  
14          cy that compiles and maintains files on consum-  
15          ers on a nationwide basis (as defined in section  
16          603(p)).

17          “(C) FURTHER DEFINITION BY REGULA-  
18          TION.—The Board of Governors of the Federal  
19          Reserve System may prescribe regulations fur-  
20          ther defining the term ‘financial institution’, in  
21          accordance with subparagraph (A), for purposes  
22          of this title.

1 **“§ 1003. Privacy protection for customer information**  
2 **of financial institutions**

3 “(a) PROHIBITION ON OBTAINING CUSTOMER INFOR-  
4 MATION BY FALSE PRETENSES.—It shall be a violation  
5 of this title for any person to obtain or attempt to obtain,  
6 or cause to be disclosed or attempt to cause to be disclosed  
7 to any person, customer information of a financial institu-  
8 tion relating to another person—

9 “(1) by knowingly making a false, fictitious, or  
10 fraudulent statement or representation to an officer,  
11 employee, or agent of a financial institution with the  
12 intent to deceive the officer, employee, or agent into  
13 relying on that statement or representation for pur-  
14 poses of releasing the customer information;

15 “(2) by knowingly making a false, fictitious, or  
16 fraudulent statement or representation to a cus-  
17 tomer of a financial institution with the intent to de-  
18 ceive the customer into relying on that statement or  
19 representation for purposes of releasing the cus-  
20 tomer information or authorizing the release of such  
21 information; or

22 “(3) by knowingly providing any document to  
23 an officer, employee, or agent of a financial institu-  
24 tion, knowing that the document is forged, counter-  
25 feit, lost, or stolen, was fraudulently obtained, or  
26 contains a false, fictitious, or fraudulent statement

1 or representation, if the document is provided with  
2 the intent to deceive the officer, employee, or agent  
3 into relying on that document for purposes of releas-  
4 ing the customer information.

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

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

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

1 “(1) testing the security procedures or systems  
 2 of such institution for maintaining the confidential-  
 3 ity 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 CERTAIN TYPES OF  
 12 CUSTOMER INFORMATION OF FINANCIAL INSTITU-  
 13 TIONS.—No provision of this section shall be construed so  
 14 as to prevent any person from obtaining customer infor-  
 15 mation of a financial institution that otherwise is available  
 16 as a public record filed pursuant to the securities laws (as  
 17 defined in section 3(a)(47) of the Securities Exchange Act  
 18 of 1934).

19 **“§ 1004. Administrative enforcement**

20 “(a) ENFORCEMENT BY FEDERAL TRADE COMMIS-  
 21 SION.—Except as provided in subsection (b), compliance  
 22 with this title shall be enforced by the Federal Trade Com-  
 23 mission in the same manner and with the same power and  
 24 authority as the Commission has under title VIII, the Fair

1 Debt Collection Practices Act, to enforce compliance with  
2 such title.

3 “(b) ENFORCEMENT BY OTHER AGENCIES IN CER-  
4 TAIN CASES.—

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

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

9 “(i) national banks, and Federal  
10 branches and Federal agencies of foreign  
11 banks, by the Office of the Comptroller of  
12 the Currency;

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

23 “(iii) banks insured by the Federal  
24 Deposit Insurance Corporation (other than  
25 members of the Federal Reserve System

and national nonmember banks) and insured State branches of foreign banks, by the Board of Directors of the Federal Deposit Insurance Corporation; and

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

“(B) the Federal Credit Union Act, by the Administrator of the National Credit Union Administration with respect to any Federal credit union.

“(2) VIOLATIONS OF THIS TITLE TREATED AS VIOLATIONS OF OTHER LAWS.—For the purpose of the exercise by any agency referred to in paragraph (1) of its powers under any Act referred to in that paragraph, a violation of this title shall be deemed to be a violation of a requirement imposed under that Act. In addition to its powers under any provision of law specifically referred to in paragraph (1), each of the agencies referred to in that paragraph may exercise, for the purpose of enforcing compliance with this title, any other authority conferred on such agency by law.

“(c) STATE ACTION FOR VIOLATIONS.—



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

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

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

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

18          “(2) RIGHTS OF FEDERAL REGULATORS.—

19          “(A) PRIOR NOTICE.—The State shall  
20      serve prior written notice of any action under  
21      paragraph (1) upon the Federal Trade Commis-  
22      sion and, in the case of an action which involves  
23      a financial institution described in section  
24      1004(b)(1), the agency referred to in such sec-  
25      tion with respect to such institution and provide

1 the Federal Trade Commission and any such  
2 agency with a copy of its complaint, except in  
3 any case in which such prior notice is not fea-  
4 sible, in which case the State shall serve such  
5 notice immediately upon instituting such action.

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

9 “(i) to intervene in an action under  
10 paragraph (1);

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

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

15 “(iv) to file petitions for appeal.

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

1 or the production of documentary and other evi-  
 2 dence.

3 “(4) LIMITATION ON STATE ACTION WHILE  
 4 FEDERAL ACTION PENDING.—If the Federal Trade  
 5 Commission or any agency described in subsection  
 6 (b) has instituted a civil action for a violation of this  
 7 title, no State may, during the pendency of such ac-  
 8 tion, bring an action under this section against any  
 9 defendant named in the complaint of the Federal  
 10 Trade Commission or such agency for any violation  
 11 of this title that is alleged in that complaint.

12 **“§ 1005. Civil liability**

13 “Any person, other than a financial institution, who  
 14 fails to comply with any provision of this title with respect  
 15 to any financial institution or any customer information  
 16 of a financial institution shall be liable to such financial  
 17 institution or the customer to whom such information re-  
 18 lates in an amount equal to the sum of the amounts deter-  
 19 mined under each of the following paragraphs:

20 “(1) ACTUAL DAMAGES.—The greater of—

21 “(A) the amount of any actual damage  
 22 sustained by the financial institution or cus-  
 23 tomer as a result of such failure; or

24 “(B) any amount received by the person  
 25 who failed to comply with this title, including

1 an amount equal to the value of any nonmone-  
2 tary consideration, as a result of the action  
3 which constitutes such failure.

4 “(2) ADDITIONAL DAMAGES.—Such additional  
5 amount as the court may allow.

6 “(3) ATTORNEYS’ FEES.—In the case of any  
7 successful action to enforce any liability under para-  
8 graph (1) or (2), the costs of the action, together  
9 with reasonable attorneys’ fees.

10 **“§ 1006. Criminal penalty**

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

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

23 **“§ 1007. Relation to State laws**

24 “(a) IN GENERAL.—This title shall not be construed  
25 as superseding, altering, or affecting the statutes, regula-

1 tions, orders, or interpretations in effect in any State, ex-  
2 cept to the extent that such statutes, regulations, orders,  
3 or interpretations are inconsistent with the provisions of  
4 this title, and then only to the extent of the inconsistency.

5 “(b) GREATER PROTECTION UNDER STATE LAW.—  
6 For purposes of this section, a State statute, regulation,  
7 order, or interpretation is not inconsistent with the provi-  
8 sions of this title if the protection such statute, regulation,  
9 order, or interpretation affords any person is greater than  
10 the protection provided under this title.

11 **“§ 1008. Agency guidance**

12 “In furtherance of the objectives of this title, each  
13 Federal banking agency (as defined in section 3(z) of the  
14 Federal Deposit Insurance Act) shall issue advisories to  
15 depository institutions under the jurisdiction of the agen-  
16 cy, in order to assist such depository institutions in deter-  
17 ring and detecting activities proscribed under section  
18 1003.”.

19 (b) REPORT TO THE CONGRESS.—Before the end of  
20 the 18-month period beginning on the date of the enact-  
21 ment of this Act, the Comptroller General, in consultation  
22 with the Federal Trade Commission, Federal banking  
23 agencies, and appropriate Federal law enforcement agen-  
24 cies, shall submit to the Congress a report on the follow-  
25 ing:

1           (1) The efficacy and adequacy of the remedies  
2       provided in the amendments made by subsection (a)  
3       in addressing attempts to obtain financial informa-  
4       tion by fraudulent means or by false pretenses.

5           (2) Any recommendations for additional legisla-  
6       tive or regulatory action to address threats to the  
7       privacy of financial information created by attempts  
8       to obtain information by fraudulent means or false  
9       pretenses.

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