

108TH CONGRESS  
1ST SESSION

# H. R. 3233

To require financial institutions and financial service providers to notify customers of the unauthorized use of personal information, to amend the Fair Credit Reporting Act to require fraud alerts to be included in consumer credit files in such cases, and to provide customers with enhanced access to credit reports in such cases.

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## IN THE HOUSE OF REPRESENTATIVES

OCTOBER 2, 2003

Mr. GUTIERREZ introduced the following bill; which was referred to the  
Committee on Financial Services

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## A BILL

To require financial institutions and financial service providers to notify customers of the unauthorized use of personal information, to amend the Fair Credit Reporting Act to require fraud alerts to be included in consumer credit files in such cases, and to provide customers with enhanced access to credit reports in such cases.

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 “Identity Theft Notifi-  
5       cation and Credit Restoration Act of 2003”.

1 **SEC. 2. FINDINGS.**

2 The Congress finds as follows:

3 (1) The privacy and financial security of indi-  
4 viduals is increasingly at risk due to the ever more  
5 widespread collection of personal information by  
6 both the private and public sector.

7 (2) Credit card transactions, real estate  
8 records, consumer surveys, credit reports, and Inter-  
9 net websites are all sources of personal information  
10 and form the source material for identity thieves.

11 (3) Identity theft is one of the fastest growing  
12 crimes committed in the United States, and identity  
13 theft has become one of the major law enforcement  
14 challenges of the new economy, as vast quantities of  
15 sensitive personal information are now vulnerable to  
16 criminal interception and misuse.

17 (4) Criminals who steal personal information  
18 use the information to open fraudulent credit card  
19 accounts, write bad checks, buy products, and com-  
20 mit other financial crimes with assumed financial  
21 identities.

22 (5) In September of 2003, the Federal Trade  
23 Commission released a survey showing that  
24 27,300,000 Americans have been victims of identity  
25 theft in the last 5 years, including 9,900,000 people  
26 in the last year alone.

1           (6) According to the survey, last year's identity  
2       theft losses to businesses and financial institutions  
3       totaled nearly \$48,000,000,000 and consumer vic-  
4       tims reported \$5,000,000,000 in out-of-pocket ex-  
5       penses.

6           (7) Identity theft is costly to consumers and to  
7       the United States marketplace.

8           (8) Victims of identity theft are often required  
9       to contact numerous Federal, State, and local law  
10      enforcement agencies, consumer credit reporting  
11      agencies, and creditors over many years, as each  
12      event of fraud arises.

13          (9) The Federal Government, financial institu-  
14      tions, financial service providers, and credit report-  
15      ing agencies that handle sensitive personal informa-  
16      tion of consumers have a shared responsibility to  
17      protect the information from identity thieves, to as-  
18      sist identity theft victims, and to mitigate the harm  
19      that results from fraud perpetrated in the name of  
20      the victim.

21          (10) The private sector can better protect con-  
22      sumers by improving customer notification, imple-  
23      menting effective fraud alerts, affording greater con-  
24      sumer access to credit reports, and establishing  
25      other financial identity theft prevention measures.

1 **SEC. 3. TIMELY NOTIFICATION OF UNAUTHORIZED ACCESS**  
2 **TO PERSONAL INFORMATION.**

3 Subtitle B of title V of the Gramm-Leach-Bliley Act  
4 (15 U.S.C. 6821 et seq.) is amended—

5 (1) by redesignating sections 526 and 527 as  
6 sections 528 and 529, respectively; and

7 (2) by inserting after section 525 the following:

8 **“SEC. 526. NOTIFICATION TO CUSTOMERS OF UNAUTHOR-**  
9 **IZED ACCESS TO PERSONAL INFORMATION.**

10 “(a) **DEFINITIONS.**—For purposes of this section, the  
11 following definitions shall apply:

12 “(1) **BREACH.**—The term ‘breach’—

13 “(A) means unauthorized acquisition of  
14 computerized data or paper records which com-  
15 promises the security, confidentiality, or integ-  
16 rity of personal information maintained by or  
17 on behalf of a financial institution; and

18 “(B) does not include a good faith acqui-  
19 sition of personal information by an employee or  
20 agent of a financial institution for a business  
21 purpose of the institution, if the personal infor-  
22 mation is not subject to further unauthorized  
23 disclosure; and

24 “(2) **PERSONAL INFORMATION.**—With respect  
25 to a customer of a financial institution, the term  
26 ‘personal information’ means the first name or first

1 initial and last name of the customer, in combina-  
2 tion with any 1 or more of the following data ele-  
3 ments, when either the name or the data element is  
4 not encrypted:

5 “(A) A social security number.

6 “(B) A driver’s license number or other of-  
7 ficially recognized form of identification.

8 “(C) A credit card number, debit card  
9 number, or any required security code, access  
10 code, or password that would permit access to  
11 financial account information relating to that  
12 customer.

13 “(b) NOTIFICATION RELATING TO BREACH OF PER-  
14 SONAL INFORMATION.—

15 “(1) FINANCIAL INSTITUTION REQUIREMENT.—

16 In any case in which there has been a breach of per-  
17 sonal information at a financial institution, or such  
18 a breach is reasonably believed to have occurred, the  
19 financial institution shall promptly notify—

20 “(A) each customer affected by the viola-  
21 tion or suspected violation;

22 “(B) each consumer reporting agency de-  
23 scribed in section 603(p) of the Fair Credit Re-  
24 porting Act; and

1 “(C) appropriate law enforcement agencies,  
2 in any case in which the financial institution  
3 has reason to believe that the breach or sus-  
4 pected breach affects a large number of cus-  
5 tomers, including as described in subsection  
6 (e)(1)(C), subject to regulations of the Federal  
7 Trade Commission.

8 “(2) OTHER ENTITIES.—For purposes of para-  
9 graph (1), any person that maintains personal infor-  
10 mation for or on behalf of a financial institution  
11 shall promptly notify the financial institution of any  
12 case in which such customer information has been,  
13 or is reasonably believed to have been, breached.

14 “(c) TIMING.—Any notification required by this sec-  
15 tion shall be made—

16 “(1) promptly and without unreasonable delay,  
17 upon discovery of the breach or suspected breach;  
18 and

19 “(2) consistent with—

20 “(A) the legitimate needs of law enforce-  
21 ment, as provided in subsection (d); and

22 “(B) any measures necessary to determine  
23 the scope of the breach or restore the reason-  
24 able integrity of the information security system  
25 of the financial institution.

1       “(d) DELAYS FOR LAW ENFORCEMENT PURPOSES.—  
2 Any notification required by this section may be delayed  
3 if a law enforcement agency determines that the notifica-  
4 tion would impede a criminal investigation, and in any  
5 such case, notification shall be made promptly after the  
6 law enforcement agency determines that it would not com-  
7 promise the investigation.

8       “(e) FORM OF NOTICE.—Any notification required by  
9 this section may be provided—

10           “(1) to a customer—

11               “(A) in writing;

12               “(B) in electronic form, if the notice pro-  
13 vided is consistent with the provisions regarding  
14 electronic records and signatures set forth in  
15 section 101 of the Electronic Signatures in  
16 Global and National Commerce Act;

17               “(C) if the Federal Trade Commission de-  
18 termines that the number of all customers af-  
19 fected by, or the cost of providing notifications  
20 relating to, a single breach or suspected breach  
21 would make other forms of notification prohibi-  
22 tive, or in any case in which the financial insti-  
23 tution certifies in writing to the Federal Trade  
24 Commission that it does not have sufficient cus-

1           tomer contact information to comply with other  
2           forms of notification, in the form of—

3                   “(i) an e-mail notice, if the financial  
4                   institution has access to an e-mail address  
5                   for the affected customer that it has rea-  
6                   son to believe is accurate;

7                   “(ii) a conspicuous posting on the  
8                   Internet website of the financial institu-  
9                   tion, if the financial institution maintains  
10                  such a website; or

11                  “(iii) notification through the media  
12                  that a breach of personal information has  
13                  occurred or is suspected that compromises  
14                  the security, confidentiality, or integrity of  
15                  customer information of the financial insti-  
16                  tution; or

17                  “(D) in such other form as the Federal  
18                  Trade Commission may by rule prescribe; and

19                  “(2) to consumer reporting agencies and law  
20                  enforcement agencies (where appropriate), in such  
21                  form as the Federal Trade Commission may pre-  
22                  scribe, by rule.

23                  “(f) CONTENT OF NOTIFICATION.—Each notification  
24                  to a customer under subsection (b) shall include—

25                   “(1) a statement that—



1           “(A) credit reporting agencies have been  
2           notified of the relevant breach or suspected  
3           breach; and

4           “(B) the credit report and file of the cus-  
5           tomer will contain a fraud alert to make credi-  
6           tors aware of the breach or suspected breach,  
7           and to inform creditors that the express author-  
8           ization of the customer is required for any new  
9           issuance or extension of credit (in accordance  
10          with section 605(g) of the Fair Credit Report-  
11          ing Act); and

12          “(2) such other information as the Federal  
13          Trade Commission determines is appropriate.

14          “(g) COMPLIANCE.—Notwithstanding subsection (e),  
15          a financial institution shall be deemed to be in compliance  
16          with this section if—

17               “(1) the financial institution has established a  
18               comprehensive information security program that is  
19               consistent with the standards prescribed by the ap-  
20               propriate regulatory body under section 501(b);

21               “(2) the financial institution notifies affected  
22               customers and consumer reporting agencies in ac-  
23               cordance with its own internal information security  
24               policies in the event of a breach or suspected breach  
25               of personal information; and

1           “(3) such internal security policies incorporate  
2       notification procedures that are consistent with the  
3       requirements of this section and the rules of the  
4       Federal Trade Commission under this section.

5       “(h) CIVIL PENALTIES.—

6           “(1) DAMAGES.—Any customer injured by a  
7       violation of this section may institute a civil action  
8       to recover damages arising from that violation.

9           “(2) INJUNCTIONS.—Actions of a financial in-  
10      stitution in violation or potential violation of this  
11      section may be enjoined.

12          “(3) CUMULATIVE EFFECT.—The rights and  
13      remedies available under this section are in addition  
14      to any other rights and remedies available under ap-  
15      plicable law.

16      “(i) RULES OF CONSTRUCTION.—

17          “(1) IN GENERAL.—Compliance with this sec-  
18      tion by a financial institution shall not be construed  
19      to be a violation of any provision of subtitle A, or  
20      any other provision of Federal or State law prohib-  
21      iting the disclosure of financial information to third  
22      parties.

23          “(2) LIMITATION.—Except as specifically pro-  
24      vided in this section, nothing in this section requires  
25      or authorizes a financial institution to disclose infor-

1       mation that it is otherwise prohibited from disclosing  
2       under subtitle A or any other provision of Federal  
3       or State law.

4               “(3) NO NEW RECORDKEEPING OBLIGATION.—  
5       No provision of this section shall be construed as  
6       creating an obligation on the part of a financial in-  
7       stitution to obtain, retain, or maintain information  
8       or records that are not otherwise required to be ob-  
9       tained, retained, or maintained in the ordinary  
10      course of business of the financial institution or  
11      under other applicable law.”.

12 **SEC. 4. INCLUSION OF FRAUD ALERTS IN CONSUMER**  
13 **CREDIT REPORTS.**

14      Section 605 of the Fair Credit Reporting Act (15  
15      U.S.C. 1681c) is amended by adding at the end the fol-  
16      lowing:

17      “(g) FRAUD ALERTS.—

18               “(1) DEFINED TERM.—For purposes of this  
19      subsection, the term ‘fraud alert’ means a clear and  
20      conspicuous statement in the file of a consumer that  
21      notifies all prospective users of the consumer credit  
22      report (or any portion thereof) relating to the con-  
23      sumer, that—

24               “(A) the identity of the consumer may  
25      have been used, without the consent of the con-

1           sumer, to fraudulently obtain goods or services  
2           in the name of the consumer; and

3           “(B) the consumer does not authorize the  
4           issuance or extension of credit in the name of  
5           the consumer, unless the issuer of such credit,  
6           upon receiving appropriate evidence of the true  
7           identity of the consumer—

8           “(i) obtains express preauthorization  
9           from the consumer at a telephone number  
10          designated by the consumer; or

11          “(ii) utilizes another reasonable means  
12          of communication to obtain the express  
13          preauthorization of the consumer.

14          “(2) INCLUSION OF FRAUD ALERT IN CON-  
15          SUMER FILE.—

16          “(A) UPON NOTIFICATION BY FINANCIAL  
17          INSTITUTION.—A consumer reporting agency  
18          shall include a fraud alert meeting the require-  
19          ments of this subsection in the file of a con-  
20          sumer promptly upon receipt of a notice from  
21          a financial institution under section  
22          526(b)(1)(B) of the Gramm-Leach-Bliley Act  
23          relating to the consumer.

24          “(B) UPON REQUEST OF CONSUMER.—A  
25          consumer reporting agency shall include a fraud

1 alert meeting the requirements of this sub-  
2 section in the file of a consumer promptly upon  
3 receipt of—

4 “(i) a request by the consumer; and

5 “(ii) appropriate evidence of—

6 “(I) the true identity of the per-  
7 son making the request; and

8 “(II) the claim of identity theft  
9 forming the basis for the request.

10 “(3) CONSUMER REPORTING AGENCY RESPON-  
11 SIBILITIES.—A consumer reporting agency shall en-  
12 sure that each person procuring consumer credit in-  
13 formation with respect to a consumer is made aware  
14 of the existence of a fraud alert in the file of that  
15 consumer, regardless of whether a full credit report,  
16 credit score, or summary report is requested.

17 “(4) REMOVAL OF FRAUD ALERTS.—The Fed-  
18 eral Trade Commission shall issue appropriate regu-  
19 lations to establish—

20 “(A) the duration of fraud alerts required  
21 by this subsection, which standard shall be ap-  
22 plied consistently to all consumer reporting  
23 agencies, to the extent possible; and

1           “(B) procedures for the removal of fraud  
2 alerts included in the files of consumers under  
3 this subsection.

4           “(5) VIOLATIONS.—

5           “(A) CONSUMER REPORTING AGENCY.—A  
6 consumer reporting agency that fails to notify  
7 any user of a consumer credit report of the ex-  
8 istence of a fraud alert in that report shall be  
9 in violation of this section.

10           “(B) USER OF A CONSUMER REPORT.—A  
11 user of a consumer report that fails to comply  
12 with preauthorization procedures contained in a  
13 fraud alert in the file of a consumer and issues  
14 or extends credit in the name of the consumer  
15 to a person other than the consumer shall be in  
16 violation of this subsection.

17           “(C) NO ADVERSE ACTION BASED SOLELY  
18 ON FRAUD ALERT.—It shall be a violation of  
19 this title for the user of a consumer report to  
20 take adverse action with respect to a consumer  
21 based solely on the inclusion of a fraud alert in  
22 the file of that consumer, as required by this  
23 subsection.”.

1 **SEC. 5. ACCESS TO CREDIT REPORTS AND SCORES.**

2 (a) NO FEE IN CERTAIN CASES.—Section 612(c) of  
3 the Fair Credit Reporting Act (15 U.S.C. 1681j(c)) is  
4 amended to read as follows:

5 “(c) NO-COST ACCESS TO CREDIT REPORTS AND  
6 SCORES.—

7 “(1) IN GENERAL.—Upon request of a con-  
8 sumer, and without charge to the consumer, a con-  
9 sumer reporting agency shall make all of the disclo-  
10 sures listed under section 609 to the consumer—

11 “(A) once during each calendar year; and

12 “(B) once every 3 months during the 1-  
13 year period beginning on the date on which a  
14 fraud alert is included in the file of a consumer  
15 under section 605(g).

16 “(2) FEE AUTHORIZED.—A credit reporting  
17 agency may charge a reasonable fee for the costs of  
18 disclosures under paragraph (1)(B) to the financial  
19 institution providing the notification that is the basis  
20 for the subject fraud alert, as required by section  
21 526(b)(1)(B) of the Gramm-Leach-Bliley Act.”.

22 (b) INCLUSION OF CREDIT SCORES.—Section  
23 609(a)(1) of the Fair Credit Reporting Act (15 U.S.C.  
24 1681g(a)(1)) is amended by striking “except that” and  
25 all that follows through “predictors” and inserting “in-  
26 cluding any credit score”.

1 **SEC. 6. REGULATIONS.**

2       Not later than 180 days after the date of enactment  
3 of this Act, the Federal Trade Commission, after consulta-  
4 tion with Federal banking agencies, the Securities and Ex-  
5 change Commission, and other appropriate financial serv-  
6 ices regulatory agencies, shall issue final regulations to  
7 carry out the amendments made by this Act.

○