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S. 1336

To establish procedures for the protection of consumers from misuse of, and unauthorized access to, sensitive personal information contained in private information files maintained by commercial entities engaged in, or affecting, interstate commerce, provide for enforcement of those procedures by the Federal Trade Commission, and for other purposes.

IN THE SENATE OF THE UNITED STATES

JUNE 29, 2005

Mr. PRYOR introduced the following bill; which was read twice and referred to the Committee on Commerce, Science, and Transportation

A BILL

To establish procedures for the protection of consumers from misuse of, and unauthorized access to, sensitive personal information contained in private information files maintained by commercial entities engaged in, or affecting, interstate commerce, provide for enforcement of those procedures by the Federal Trade Commission, 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; TABLE OF CONTENTS..**

4 (a) SHORT TITLE.—This Act may be cited as the
5 “Consumer Identity Protection and Security Act”.

1 (b) TABLE OF CONTENTS.—The table of contents for
 2 this Act is as follows:

- Sec. 1. Short title; table of contents.
- Sec. 2. Consumer right to security freeze.
- Sec. 3. Limited or temporary access to frozen report.
- Sec. 4. Termination of security freeze.
- Sec. 5. Denial of third party requests.
- Sec. 6. Exceptions to security freeze.
- Sec. 7. Notification of violation.
- Sec. 8. Application to other consumer reporting agencies.
- Sec. 9. Enforcement.
- Sec. 10. Private right of action.
- Sec. 11. Service fees and charges.
- Sec. 12. Definitions.
- Sec. 13. Regulations.

3 **SEC. 2. CONSUMER RIGHT TO SECURITY FREEZE.**

4 (a) IN GENERAL.—A consumer reporting agency
 5 shall place a security freeze on a private information file
 6 when requested by the consumer to whom that file re-
 7 lates—

8 (1) by certified mail,

9 (2) by telephone by providing certain sensitive
 10 personal information, or

11 (3) through a secure electronic mail connection
 12 if such connection is made available by the consumer
 13 reporting agency.

14 (b) TIMING.—A consumer reporting agency shall
 15 place the requested security freeze on the private informa-
 16 tion file no later than 2 business days after receiving a
 17 written or telephone request from the consumer or 24
 18 hours after receiving a secure electronic mail request.

1 (c) CONFIRMATION.—Within 2 business days after
2 placing a security freeze on a private information file
3 under subsection (a), the consumer reporting agency that
4 received the request from the consumer shall—

5 (1) send a written confirmation of the security
6 freeze to the consumer; and

7 (2) provide to the consumer a unique personal
8 identification number or password to be used by the
9 consumer to authorize access to the private informa-
10 tion file or to remove the security freeze on the file.

11 (d) PROHIBITION ON UNAUTHORIZED ACCESS.—A
12 consumer reporting agency may not grant access to a pri-
13 vate information file on which a security freeze has been
14 placed, or release information contained in a such a pri-
15 vate information file, except in accordance with the provi-
16 sions of this Act or other Federal law.

17 **SEC. 3. LIMITED OR TEMPORARY ACCESS TO FROZEN RE-**
18 **PORT.**

19 (a) IN GENERAL.—Within 3 business days after re-
20 ceiving a request from a consumer upon whose private in-
21 formation file a security freeze has been placed to allow
22 access to that file to a third party, or for a period of time,
23 specified by the consumer, a consumer reporting agency
24 shall make the private information file available in accord-
25 ance with the request notwithstanding the security freeze.

1 Each consumer reporting agency shall develop procedures
2 involving the use of telephone, facsimile machine, or, upon
3 the consent of the consumer in the manner required by
4 the Electronic Signatures in Global and National Com-
5 merce Act (15 U.S.C. 7001 et seq.) for notices legally re-
6 quired to be in writing, by the Internet, e-mail, or other
7 electronic medium, to receive and process a request from
8 a consumer to provide limited or temporary access to the
9 private information file under this section in an expedited
10 manner.

11 (b) REQUEST REQUIREMENTS.—A consumer report-
12 ing agency may not allow access to a private information
13 file under subsection (a) unless—

14 (1) the request was made by the consumer by
15 telephone, certified mail, or security electronic mail
16 (except as provided in accordance with procedures
17 established pursuant to the second sentence of sub-
18 section (a)); and

19 (2) the consumer provides—

20 (A) proper identification,

21 (B) the unique personal identification
22 number or password provided by the consumer
23 reporting agency under this section; and

24 (C) the proper information regarding the
25 third party who is to receive the private infor-

1 mation file or the time period for which the file
2 shall be made available.

3 (c) **TERMINATION NOT PERMITTED.**—A consumer
4 reporting agency may not terminate a security freeze on
5 the basis of a request under subsection (a) for limited ac-
6 cess to a private information file.

7 **SEC. 4. TERMINATION OF SECURITY FREEZE.**

8 (a) **IN GENERAL.**—A consumer reporting agency
9 shall terminate a security freeze on a private information
10 file if—

11 (1) the consumer requests that the security
12 freeze be terminated; or

13 (2) the consumer reporting agency—

14 (A) determines that the security freeze was
15 placed on the private information file due to a
16 material misrepresentation of fact by the con-
17 sumer; and

18 (B) notifies the consumer in writing not
19 less than 5 business days before terminating
20 the security freeze under this paragraph.

21 (b) **TERMINATION REQUESTS.**—Except as provided
22 in subsection (a)(2), a consumer reporting agency may not
23 terminate a security freeze on a private information file
24 unless the consumer provides—

25 (1) proper identification; and

1 (2) the unique personal identification number
2 or password provided by the consumer reporting
3 agency under this Act.

4 (c) TIMING.—A consumer reporting agency shall ter-
5 minate a security freeze on a private information file with-
6 in 3 business days after receiving a request that meets
7 the requirements of this section from the consumer to
8 whom the file relates.

9 **SEC. 5. DENIAL OF THIRD PARTY REQUESTS.**

10 (a) REQUESTS DENIED DUE TO SECURITY
11 FREEZE.—Notwithstanding any other provision of law to
12 the contrary, if a third party's request for access to a pri-
13 vate information file is denied because there is a security
14 freeze on it, that third party may treat any application
15 in connection with which the request is made as incom-
16 plete.

17 (b) NOTIFICATION OF CONSUMER.—If a consumer
18 reporting agency denies a third party's request for access
19 to a private information file on which a security freeze
20 has been placed for any purpose other than account re-
21 view, the consumer reporting agency shall notify the con-
22 sumer that it denied the request within 1 business day
23 thereafter. The notice shall identify the third party mak-
24 ing the request and the stated purpose of the request.

1 **SEC. 6. EXCEPTIONS TO SECURITY FREEZE.**

2 The provisions of this Act do not apply to requests
3 for access to a private information file by any of the fol-
4 lowing:

5 (1) A Federal, State, or local law enforcement
6 agency acting within the scope of its authority or
7 pursuant to a court order, warrant, or subpoena.

8 (2) A Federal, State, or local agency that ad-
9 ministers a program for establishing an enforcing
10 child support obligations.

11 (3) A Federal, State, or local health agency or
12 its agents or assignees acting to investigate fraud.

13 (4) A Federal, State, or local tax agency, or its
14 agents or assignees, acting to investigate or collect
15 delinquent taxes or unpaid court orders or to fulfill
16 any of its other statutory responsibilities.

17 (5) A person, or the person's subsidiary, affil-
18 iate, agent, or assignee with which the consumer has
19 or, prior to assignment, had an account, contract, or
20 debtor-creditor relationship for the purposes of re-
21 viewing the account or collecting the financial obliga-
22 tion owing for the account, contract, or debt.

23 (6) A subsidiary, affiliate, agent, assignee, or
24 prospective assignee of a person to whom access has
25 been granted under paragraph (5) for purposes of

1 facilitating the extension of credit or other permis-
2 sible use.

3 (7) Any person or entity for the purpose of pro-
4 viding a consumer with a copy of his or her private
5 information file upon the consumer's request.

6 **SEC. 7. NOTIFICATION OF VIOLATION.**

7 (a) NOTIFICATION.—If a consumer reporting agency
8 violates the requirements of this Act with respect to access
9 to a private information file, it shall notify the consumer
10 in writing of the violation within 5 business days. The no-
11 tice shall include a description of the information to which
12 access was granted and the name and address of the third
13 party to whom such access was granted.

14 (b) COMPLAINTS TO CONSUMER PROTECTION AGEN-
15 CIES.—If a private information file on which a security
16 freeze under this Act is accessed in violation of this Act,
17 the consumer to whom the file relates may file a complaint
18 with the Federal Trade Commission, the attorney general
19 of the State in which the consumer resides, or any other
20 Federal or State consumer protection agency.

21 **SEC. 8. APPLICATION TO OTHER CONSUMER REPORTING**
22 **AGENCIES.**

23 (a) NOTIFICATION.—Whenever a consumer reporting
24 agency receives a request from a consumer under this Act
25 that meets the requirements of this Act to place a security

1 freeze on his or her private information file under section
2 2, to provide temporary or limited access to such a private
3 information file under section 3, or to terminate a security
4 freeze on such a private information file under section 4,
5 it shall notify (on a secure basis) every other consumer
6 reporting agency in the United States that it knows, or
7 has reason to know, to maintain a private information file
8 on that consumer of the request.

9 (b) COMPLIANCE BY OTHER CONSUMER REPORTING
10 AGENCIES.—A consumer reporting agency that receives a
11 reported request under subsection (a) shall comply with
12 the requirements of this Act with respect to that request
13 to the same extent and in the same manner as if it had
14 received the request from the consumer.

15 (c) LIABILITY.—A consumer reporting agency re-
16 sponding to a notification from another consumer report-
17 ing agency under subsection (a) is liable for any violation
18 of this Act with respect to the request to which the notifi-
19 cation relates to the same extent as if it had received the
20 request from the consumer, except that such an agency
21 shall not be liable for any violation attributable to incor-
22 rect information provided in the request from the notifying
23 agency.

1 **SEC. 9. ENFORCEMENT.**

2 (a) VIOLATION IS UNFAIR OR DECEPTIVE ACT OR
3 PRACTICE.—The violation of any provision of this Act is
4 an unfair or deceptive act or practice proscribed under sec-
5 tion 18(a)(1)(B) of the Federal Trade Commission Act
6 (15 U.S.C. 57a(a)(1)(B)).

7 (b) ENFORCEMENT BY FEDERAL TRADE COMMIS-
8 SION.—Except as provided in subsection (c), this Act shall
9 be enforced by the Federal Trade Commission.

10 (c) ENFORCEMENT BY CERTAIN OTHER AGEN-
11 CIES.—Compliance with this Act shall be enforced
12 under—

13 (1) section 8 of the Federal Deposit Insurance
14 Act (12 U.S.C. 1818), in the case of—

15 (A) national banks, and Federal branches
16 and Federal agencies of foreign banks, by the
17 Office of the Comptroller of the Currency;

18 (B) member banks of the Federal Reserve
19 System (other than national banks), branches
20 and agencies of foreign banks (other than Fed-
21 eral branches, Federal agencies, and insured
22 State branches of foreign banks), commercial
23 lending companies owned or controlled by for-
24 eign banks, and organizations operating under
25 section 25 or 25A of the Federal Reserve Act
26 (12 U.S.C. 601 and 611), by the Board; and

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

7 (2) section 8 of the Federal Deposit Insurance
8 Act (12 U.S.C. 1818), by the Director of the Office
9 of Thrift Supervision, in the case of a savings asso-
10 ciation the deposits of which are insured by the Fed-
11 eral Deposit Insurance Corporation;

12 (3) the Federal Credit Union Act (12 U.S.C.
13 1751 et seq.) by the National Credit Union Adminis-
14 tration Board with respect to any Federal credit
15 union;

16 (4) part A of subtitle VII of title 49, United
17 States Code, by the Secretary of Transportation
18 with respect to any air carrier or foreign air carrier
19 subject to that part;

20 (5) the Packers and Stockyards Act, 1921 (7
21 U.S.C. 181 et seq.) (except as provided in section
22 406 of that Act (7 U.S.C. 226, 227)), by the Sec-
23 retary of Agriculture with respect to any activities
24 subject to that Act;

1 (6) the Farm Credit Act of 1971 (12 U.S.C.
2 2001 et seq.) by the Farm Credit Administration
3 with respect to any Federal land bank, Federal land
4 bank association, Federal intermediate credit bank,
5 or production credit association;

6 (7) the Securities and Exchange Act of 1934
7 (15 U.S.C. 78a et seq.) by the Securities and Ex-
8 change Commission with respect to—

9 (A) a broker or dealer subject to that Act;

10 (B) an investment company subject to the
11 Investment Company Act of 1940 (15 U.S.C.
12 80a–1 et seq.); and

13 (C) an investment advisor subject to the
14 Investment Advisers Act of 1940 (15 U.S.C.
15 80b–1 et seq.);

16 (8) the Communications Act of 1934 (47
17 U.S.C. 151 et seq.) by the Federal Communications
18 Commission with respect to common carriers subject
19 to the Communications Act of 1934 and excluded
20 from the jurisdiction of the Federal Trade Commis-
21 sion by section 5(a)(2) of the Federal Trade Com-
22 mission Act (15 U.S.C. 45(a)(2)); and

23 (9) the State insurance law (applying the insur-
24 ance law of that State subject to section 104 of the
25 Gramm-Bliley-Leach Act (15 U.S.C. 6701)) of a

1 State in which a covered entity engaged in providing
2 insurance is domiciled, by the State insurance au-
3 thority of that State with respect to such an entity,
4 except that in any State in which the State insur-
5 ance authority elects not to exercise this power, com-
6 pliance with this Act shall be enforced by the Fed-
7 eral Trade Commission.

8 (d) EXERCISE OF CERTAIN POWERS.—For the pur-
9 pose of the exercise by any agency referred to in sub-
10 section (c) of its powers under any Act referred to in that
11 subsection, a violation of this Act is deemed to be a viola-
12 tion of a requirement imposed under that Act. In addition
13 to its powers under any provision of law specifically re-
14 ferred to in subsection (c), each of the agencies referred
15 to in that subsection may exercise, for the purpose of en-
16 forcing compliance with any requirement imposed under
17 this Act, any other authority conferred on it by law.

18 (e) ACTIONS BY THE COMMISSION.—The Commission
19 shall prevent any person from violating this Act in the
20 same manner, by the same means, and with the same ju-
21 risdiction, powers, and duties as though all applicable
22 terms and provisions of the Federal Trade Commission
23 Act (15 U.S.C. 41 et seq.) were incorporated into and
24 made a part of this Act. A consumer reporting agency that
25 violates a provision of this Act is subject to the penalties

1 and entitled to the privileges and immunities provided in
2 the Federal Trade Commission Act in the same manner,
3 by the same means, and with the same jurisdiction, power,
4 and duties as though all applicable terms and provisions
5 of the Federal Trade Commission Act were incorporated
6 into and made a part of this Act.

7 **SEC. 10. PRIVATE RIGHT OF ACTION.**

8 (a) IN GENERAL.—If a consumer reporting agency
9 violates the requirements of this Act with respect to access
10 to a private information file, the consumer may file a civil
11 action in any court of competent jurisdiction.

12 (b) REMEDIES.—A court in which such a civil action
13 has been brought may—

14 (1) impose a civil penalty of not more than
15 \$10,000 for each violation of this Act with respect
16 to the plaintiff's private information file; and

17 (2) provide such additional relief as the court
18 deems appropriate, including the award of court
19 costs, investigative costs, and reasonable attorney's
20 fees.

21 **SEC. 11. SERVICE FEES AND CHARGES.**

22 (a) FEES PROHIBITED.—A consumer reporting agen-
23 cy may not impose a charge or fee for placing a security
24 freeze on a private information file under section 2, for
25 providing limited access to a private information file under

1 section 3, or for terminating a security freeze on a private
2 information file under section 4.

3 (b) REPLACEMENT IDENTIFICATION CODES AND
4 PASSWORDS.—A consumer reporting agency—

5 (1) may not impose a fee for the replacement
6 or reissue of a lost or forgotten personal identifica-
7 tion number or password the first time the replace-
8 ment or reissue is provided to the consumer; but

9 (2) may impose a fee of not more than \$5 for
10 a second or subsequent replacement or reissue of
11 such a personal identification number or password.

12 **SEC. 12. DEFINITIONS.**

13 In this Act:

14 (1) ACCOUNT REVIEW.—The term “account re-
15 view” means any activity related to account mainte-
16 nance, monitoring, credit line increases, or account
17 upgrades and enhancements.

18 (2) CONSUMER REPORTING AGENCY.—The term
19 “consumer reporting agency” means any person
20 that, for fees, dues, or on a cooperative nonprofit
21 basis, regularly engages in the practice of assem-
22 bling or evaluating information on consumers for the
23 purpose of providing consumer credit reports, or in-
24 formation contained in such reports, to third parties.

25 (3) PRIVATE INFORMATION FILE.—

1 (A) IN GENERAL.—The term “private in-
2 formation file” means any written, oral, or
3 other communication of any information by a
4 consumer reporting agency bearing on a con-
5 sumer’s character, general reputation, personal
6 characteristics, mode of living, employment, or
7 personal financial information to be used in
8 whole or in part for political campaign, chari-
9 table solicitation, commercial marketing pur-
10 poses or as a factor in establishing the con-
11 sumer’s eligibility for—

12 (i) credit or insurance to be used pri-
13 marily for personal, family, or household
14 purposes; or

15 (ii) employment purposes.

16 (B) EXCLUSIONS.—Except as provided in
17 subparagraph (C), the term “private informa-
18 tion file” does not include—

19 (i) any report containing information
20 solely as to transactions or experiences be-
21 tween the consumer and the person mak-
22 ing the report;

23 (ii) the communication of that infor-
24 mation among persons related by common

1 ownership or affiliated by corporate con-
2 trol; or

3 (iii) the communication of other infor-
4 mation among persons related by common
5 ownership or affiliated by corporate con-
6 trol, if it is clearly and conspicuously dis-
7 closed to the consumer that the informa-
8 tion may be communicated among such
9 persons and the consumer is given the op-
10 portunity, before the time that the infor-
11 mation is initially communicated, to direct
12 that such information not be commu-
13 nicated among such persons;

14 (iv) any authorization or approval of a
15 specific extension of credit directly or indi-
16 rectly by the issuer of a credit card or
17 similar device; or

18 (v) any report in which a person who
19 has been requested by a third party to
20 make a specific extension of credit directly
21 or indirectly to a consumer conveys his or
22 her decision with respect to such request,
23 if the third party advises the consumer of
24 the name and address of the person to
25 whom the request was made, and such per-

1 son makes the required disclosures to the
2 consumer under Federal law.

3 (C) RESTRICTION ON SHARING OF MED-
4 ICAL INFORMATION.—Except for information or
5 any communication of information disclosed as
6 provided in Federal law, the exclusions in sub-
7 paragraph (B) do not apply with respect to in-
8 formation disclosed to any person related by
9 common ownership or affiliated by corporate
10 control, if the information is—

11 (i) medical information;

12 (ii) an individualized list or descrip-
13 tion based on the payment transactions of
14 the consumer for medical products or serv-
15 ices; or

16 (iii) an aggregate list of identified
17 consumers based on payment transactions
18 for medical products or services.

19 **SEC. 13. REGULATIONS.**

20 (a) RULEMAKING PROCEEDING.—Within 90 days
21 after the date of enactment of this Act, the Federal Trade
22 Commission shall initiate a rulemaking proceeding to pro-
23 vide rules, guidelines, and criteria for compliance with the
24 requirements of this Act, including—

1 (1) rules necessary to implement the provisions
2 of this Act that include required contents for a re-
3 quest for a security freeze, criteria for identification
4 verification of the requesting party, and consumer
5 notification requirements to ensure that consumers
6 are aware of their rights under this Act;

7 (2) rules to ensure that a request, under section
8 2 of this Act, for a security freeze on a private infor-
9 mation file, a request from a consumer for limited
10 or temporary access to a private information file
11 under section 3 of this Act, or a requested termi-
12 nation of such a freeze under section 4 of this Act,
13 will be communicated by the consumer reporting
14 agency receiving the request to other consumer re-
15 porting agencies as required by section 8 of this Act
16 and implemented by those agencies in a timely man-
17 ner; and

18 (3) rules to provide for the application of this
19 Act in a manner that does not conflict with any
20 other provision of Federal law governing the acquisi-
21 tion, maintenance, disposition, or access to informa-
22 tion contained in a private information file.

23 (b) FINAL RULE.—The Commission shall issue final
24 rules pursuant to the proceeding initiated under para-

1 graph (a) within 1 year after the date of enactment of
2 this Act.

○