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S. 1408

[Report No. 109–203]

To strengthen data protection and safeguards, require data breach notification, and further prevent identity theft.

IN THE SENATE OF THE UNITED STATES

JULY 14, 2005

Mr. SMITH (for himself, Mr. NELSON of Florida, Mr. STEVENS, Mr. INOUE, Mr. MCCAIN, Mr. PRYOR and Mrs. CLINTON) introduced the following bill; which was read twice and referred to the Committee on Commerce, Science, and Transportation

DECEMBER 8, 2005

Reported under authority of the order of the Senate of November 18, 2005,
by Mr. STEVENS, with an amendment

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

A BILL

To strengthen data protection and safeguards, require data breach notification, and further prevent identity theft.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

1 **SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

2 (a) **SHORT TITLE.**—This Act may be cited as the
3 “Identity Theft Protection Act”.

4 (b) **TABLE OF CONTENTS.**—The table of contents for
5 this Act is as follows:

Sec. 1: Short title; table of contents.
Sec. 2: Protection of sensitive personal information.
Sec. 3: Notification of security breach risk.
Sec. 4: Security freeze.
Sec. 5: Enforcement.
Sec. 6: Enforcement by State attorneys general.
Sec. 7: Preemption of State law.
Sec. 8: Social security and driver’s license number protection.
Sec. 9: Information security working group.
Sec. 10: Definitions.
Sec. 11: Authorization of appropriations.
Sec. 12: Effective dates.

6 **SEC. 2. PROTECTION OF SENSITIVE PERSONAL INFORMA-**
7 **TION.**

8 (a) **IN GENERAL.**—In accordance with regulations
9 prescribed by the Federal Trade Commission under sub-
10 section (b), a covered entity shall take reasonable steps
11 to protect against security breaches and to prevent unau-
12 thorized access to sensitive personal information the cov-
13 ered entity sells, maintains, collects, or transfers.

14 (b) **REGULATIONS.**—Not later than 1 year after the
15 date of enactment of this Act, the Commission shall pro-
16 mulgate regulations to implement subsection (a), including
17 regulations that—

18 (1) require covered entities to develop, imple-
19 ment, and maintain an effective information security
20 program that contains administrative, technical, and

1 physical safeguards for sensitive personal informa-
 2 tion, taking into account the use of technological
 3 safeguards, including encryption, truncation, and
 4 other safeguards available or being developed for
 5 such purposes;

6 (2) require procedures for verifying the creden-
 7 tials of any third party seeking to obtain the sen-
 8 sitive personal information of another person; and

9 (3) require disposal procedures to be followed
 10 by covered entities that—

11 (A) dispose of sensitive personal informa-
 12 tion; or

13 (B) transfer sensitive personal information
 14 to third parties for disposal.

15 **SEC. 3. NOTIFICATION OF SECURITY BREACH RISK.**

16 (a) SECURITY BREACHES AFFECTING 1,000 OR
 17 MORE INDIVIDUALS.—

18 (1) IN GENERAL.—If a covered entity discovers
 19 a breach of security and determines that the breach
 20 of security affects the sensitive personal information
 21 of 1,000 or more individuals, then, before conducting
 22 the notification required by subsection (b), it shall—

23 (A) report the breach to the Commission
 24 (or other appropriate Federal regulator under
 25 section 5); and

1 (B) notify all consumer reporting agencies
 2 described in section 603(p)(1) of the Fair Cred-
 3 it Reporting Act (15 U.S.C. 1681a(p)(1)) of the
 4 breach.

5 (2) FTC WEBSITE PUBLICATIONS.—Whenever
 6 the Commission receives a report under paragraph
 7 (1)(A), it shall post a report of the breach of secu-
 8 rity on its website without disclosing any sensitive
 9 personal information or the names of the individuals
 10 affected.

11 (b) NOTIFICATION OF CONSUMERS.—Whenever a
 12 covered entity discovers a breach of security and deter-
 13 mines that the breach of security has resulted in, or that
 14 there is a basis for concluding that a reasonable risk of
 15 identity theft to 1 or more individuals, the covered entity
 16 shall notify each such individual.

17 (c) METHODS OF NOTIFICATION; NOTICE CON-
 18 TENT.—Within 1 year after the date of enactment of this
 19 Act, the Commission shall promulgate regulations that es-
 20 tablish methods of notification to be followed by covered
 21 entities in complying with the requirements of this section
 22 and the content of the notices required. In promulgating
 23 those regulations, the Commission shall take into consider-
 24 ation the types of sensitive personal information involved,
 25 the nature and scope of the security breach, other appro-

1 priate factors, and the most effective means of notifying
 2 affected individuals.

3 ~~(d) TIMING OF NOTIFICATION.—~~

4 ~~(1) IN GENERAL.—~~Except as provided in para-
 5 graph (2), notice required by subsection (a) shall be
 6 given—

7 ~~(A) in the most expedient manner prac-~~
 8 ~~ticable;~~

9 ~~(B) without unreasonable delay, but not~~
 10 ~~later than 90 days after the date on which the~~
 11 ~~breach of security was discovered by the covered~~
 12 ~~entity; and~~

13 ~~(C) in a manner that is consistent with~~
 14 ~~any measures necessary to determine the scope~~
 15 ~~of the breach and restore the security and in-~~
 16 ~~tegrity of the data system.~~

17 ~~(2) LAW ENFORCEMENT AND HOMELAND SECU-~~
 18 ~~RITY RELATED DELAYS.—~~Notwithstanding para-
 19 graph (1), the giving of notice as required by that
 20 paragraph may be delayed for a reasonable period of
 21 time if—

22 ~~(A) a Federal law enforcement agency de-~~
 23 ~~termines that the timely giving of notice under~~
 24 ~~subsections (a) and (b), as required by para-~~

graph (1), would materially impede a civil or
 eriminal investigation; or

(B) a Federal national security or home-
 land security agency determines that such time-
 ly giving of notice would threaten national or
 homeland security.

SEC. 4. SECURITY FREEZE.

(a) In General.—

(1) EMPLACEMENT.—A consumer may place a
 security freeze on his or her credit report by making
 a request to a consumer credit reporting agency in
 writing or by telephone.

(2) CONSUMER DISCLOSURE.—If a consumer
 requests a security freeze, the consumer credit re-
 porting agency shall disclose to the consumer the
 process of placing and removing the security freeze
 and explain to the consumer the potential con-
 sequences of the security freeze.

(b) EFFECT OF SECURITY FREEZE.—

(1) RELEASE OF INFORMATION BLOCKED.—If a
 security freeze is in place on a consumer's credit re-
 port, a consumer reporting agency may not release
 information from the credit report to a third party
 without prior express authorization from the con-
 sumer.

1 ~~(2) INFORMATION PROVIDED TO THIRD PAR-~~
 2 ~~TIES.—Paragraph (2) does not prevent a consumer~~
 3 ~~credit reporting agency from advising a third party~~
 4 ~~that a security freeze is in effect with respect to the~~
 5 ~~consumer's credit report. If a third party, in connec-~~
 6 ~~tion with an application for credit, requests access to~~
 7 ~~a consumer credit report on which a security freeze~~
 8 ~~is in place, the third party may treat the application~~
 9 ~~as incomplete.~~

10 ~~(c) REMOVAL; TEMPORARY SUSPENSION.—~~

11 ~~(1) IN GENERAL.—Except as provided in para-~~
 12 ~~graph (4), a security freeze shall remain in place~~
 13 ~~until the consumer requests that the security freeze~~
 14 ~~be removed. A consumer may remove a security~~
 15 ~~freeze on his or her credit report by making a re-~~
 16 ~~quest to a consumer credit reporting agency in writ-~~
 17 ~~ing or by telephone.~~

18 ~~(2) CONDITIONS.—A consumer credit reporting~~
 19 ~~agency may remove a security freeze placed on a~~
 20 ~~consumer's credit report only—~~

21 ~~(A) upon the consumer's request, pursuant~~
 22 ~~to paragraph (1); or~~

23 ~~(B) if the agency determines that the con-~~
 24 ~~sumer's credit report was frozen due to a mate-~~
 25 ~~rial misrepresentation of fact by the consumer.~~

1 ~~(3)~~ NOTIFICATION TO CONSUMER.—If a con-
 2 sumer credit reporting agency intends to remove a
 3 freeze upon a consumer's credit report pursuant to
 4 paragraph ~~(2)(B)~~, the consumer credit reporting
 5 agency shall notify the consumer in writing prior to
 6 removing the freeze on the consumer's credit report.

7 ~~(4)~~ TEMPORARY SUSPENSION.—A consumer
 8 may have a security freeze on his or her credit re-
 9 port temporarily suspended by making a request to
 10 a consumer credit reporting agency in writing or by
 11 telephone and specifying beginning and ending dates
 12 for the period during which the security freeze is not
 13 to apply to that consumer's credit report.

14 ~~(d)~~ RESPONSE TIMES; NOTIFICATION OF OTHER EN-
 15 TITIES.—

16 ~~(1)~~ IN GENERAL.—A consumer credit reporting
 17 agency shall—

18 ~~(A)~~ place a security freeze on a consumer's
 19 credit report under subsection ~~(a)~~ no later than
 20 5 business days after receiving a request from
 21 the consumer under subsection ~~(a)(1)~~; and

22 ~~(B)~~ remove, or temporarily suspend, a se-
 23 curity freeze within 3 business days after re-
 24 ceiving a request for removal or temporary sus-

1 pension from the consumer under subsection
 2 (e).

3 ~~(2) NOTIFICATION OF OTHER COVERED ENTI-~~
 4 ~~TIES.—~~If the consumer requests in writing or by
 5 telephone that other covered entities be notified of
 6 the request, the consumer reporting agency shall no-
 7 tify all other consumer reporting agencies described
 8 in section 603(p)(1) of the Fair Credit Reporting
 9 Act ~~(15 U.S.C. 1681a(p)(1))~~ of the request within 3
 10 days after placing, removing, or temporarily sus-
 11 pending a security freeze on the consumer's credit
 12 report under subsection (a), ~~(e)(2)(A)~~, or subsection
 13 ~~(e)(4)~~, respectively.

14 ~~(3) IMPLEMENTATION BY OTHER COVERED EN-~~
 15 ~~TITIES.—~~A consumer reporting agency that is noti-
 16 fied of a request under paragraph ~~(2)~~ to place, re-
 17 move, or temporarily suspend a security freeze on a
 18 consumer's credit report shall place, remove, or tem-
 19 porarily suspend the security freeze on that credit
 20 report within 3 business days after receiving the no-
 21 tification.

22 ~~(c) CONFIRMATION.—~~Whenever a consumer credit re-
 23 porting agency places, removes, or temporarily suspends
 24 a security freeze on a consumer's credit report at the re-
 25 quest of that consumer under subsection (a) or (e), respec-

1 tively, it shall send a written confirmation thereof to the
 2 consumer within 10 business days after placing, removing,
 3 or temporarily suspending the security freeze on the credit
 4 report. This subsection does not apply to the placement,
 5 removal, or temporary suspension of a security freeze by
 6 a consumer reporting agency because of a notification re-
 7 ceived under subsection (d)(2).

8 (f) ID REQUIRED.—A consumer credit reporting
 9 agency may not place, remove, or temporarily suspend a
 10 security freeze on a consumer's credit report at the con-
 11 sumer's request unless the consumer provides proper iden-
 12 tification (within the meaning of section 610(a)(1) of the
 13 Fair Credit Reporting Act (15 U.S.C. 1681h) and the reg-
 14 ulations thereunder.

15 (g) EXCEPTIONS.—This section does not apply to the
 16 use of a consumer credit report by any of the following:

17 (1) A person or entity, or a subsidiary, affiliate,
 18 or agent of that person or entity, or an assignee of
 19 a financial obligation owing by the consumer to that
 20 person or entity, or a prospective assignee of a fi-
 21 nancial obligation owing by the consumer to that
 22 person or entity in conjunction with the proposed
 23 purchase of the financial obligation, with which the
 24 consumer has or had prior to assignment an account
 25 or contract, including a demand deposit account, or

1 to whom the consumer issued a negotiable instru-
2 ment, for the purposes of reviewing the account or
3 collecting the financial obligation owing for the ac-
4 count, contract, or negotiable instrument.

5 (2) Any Federal, State or local agency, law en-
6 forcement agency, trial court, or private collection
7 agency acting pursuant to a court order, warrant, or
8 subpoena.

9 (3) A child support agency or its agents or as-
10 signs acting pursuant to subtitle D of title IV of the
11 Social Security Act (42 U.S.C. et seq.) or similar
12 State law.

13 (4) The Department of Health and Human
14 Services, a similar State agency, or the agents or as-
15 signs of the Federal or State agency acting to inves-
16 tigate medicare or medicaid fraud.

17 (5) The Internal Revenue Service or a State or
18 municipal taxing authority, or a State department of
19 motor vehicles, or any of the agents or assigns of
20 these Federal, State, or municipal agencies acting to
21 investigate or collect delinquent taxes or unpaid
22 court orders or to fulfill any of their other statutory
23 responsibilities.

24 (6) The use of consumer credit information for
25 the purposes of prescreening as provided for by the

1 Federal Fair Credit Reporting Act (15 U.S.C. 1681
2 et seq.):

3 ~~(7) Any person or entity administering a credit~~
4 ~~file monitoring subscription to which the consumer~~
5 ~~has subscribed.~~

6 ~~(8) Any person or entity for the purpose of pro-~~
7 ~~viding a consumer with a copy of his or her credit~~
8 ~~report or credit score upon the consumer's request.~~

9 ~~(h) FEES.—~~

10 ~~(1) IN GENERAL.—Except as provided in para-~~
11 ~~graph (2), a consumer credit reporting agency may~~
12 ~~charge a reasonable fee, as determined by the Com-~~
13 ~~mission, for placing, removing, or temporarily sus-~~
14 ~~pending a security freeze on a consumer's credit re-~~
15 ~~port.~~

16 ~~(2) ID THEFT VICTIMS.—A consumer credit re-~~
17 ~~porting agency may not charge a fee for placing, re-~~
18 ~~moving, or temporarily suspending a security freeze~~
19 ~~on a consumer's credit report if—~~

20 ~~(A) the consumer is a victim of identity~~
21 ~~theft; and~~

22 ~~(B) the consumer has filed a police report~~
23 ~~with respect to the theft.~~

24 ~~(i) LIMITATION ON INFORMATION CHANGES IN PRO-~~
25 ~~ZEN REPORTS.—~~

1 ~~(1) IN GENERAL.—~~If a security freeze is in
 2 place on a consumer's credit report, a consumer
 3 credit reporting agency may not change any of the
 4 following official information in that credit report
 5 without sending a written confirmation of the
 6 change to the consumer within 30 days after the
 7 change is made:

8 ~~(A) Name.~~

9 ~~(B) Date of birth.~~

10 ~~(C) Social Security number.~~

11 ~~(D) Address.~~

12 ~~(2) CONFIRMATION.—~~Paragraph ~~(1)~~ does not
 13 require written confirmation for technical modifica-
 14 tions of a consumer's official information, including
 15 name and street abbreviations, complete spellings, or
 16 transposition of numbers or letters. In the case of an
 17 address change, the written confirmation shall be
 18 sent to both the new address and to the former ad-
 19 dress.

20 ~~(j) CERTAIN ENTITY EXEMPTIONS.—~~

21 ~~(1) AGGREGATORS AND OTHER AGENCIES.—~~

22 The provisions of subsections ~~(a)~~ through ~~(h)~~ do not
 23 apply to a consumer credit reporting agency that
 24 acts only as a reseller of credit information by as-
 25 sembling and merging information contained in the

1 data base of another consumer credit reporting
2 agency or multiple consumer credit reporting agen-
3 cies, and does not maintain a permanent data base
4 of credit information from which new consumer
5 credit reports are produced.

6 ~~(2) OTHER EXEMPTED ENTITIES.~~—The fol-
7 lowing entities are not required to place a security
8 freeze in a credit report:

9 ~~(A) A check services or fraud prevention~~
10 ~~services company, which issues reports on inci-~~
11 ~~dents of fraud or authorizations for the purpose~~
12 ~~of approving or processing negotiable instru-~~
13 ~~ments, electronic funds transfers, or similar~~
14 ~~methods of payments.~~

15 ~~(B) A deposit account information service~~
16 ~~company, which issues reports regarding ac-~~
17 ~~count closures due to fraud, substantial over-~~
18 ~~drafts, ATM abuse, or similar negative informa-~~
19 ~~tion regarding a consumer, to inquiring banks~~
20 ~~or other financial institutions for use only in re-~~
21 ~~viewing a consumer request for a deposit ac-~~
22 ~~count at the inquiring bank or financial institu-~~
23 ~~tion.~~

1 **SEC. 5. ENFORCEMENT.**

2 (a) **ENFORCEMENT BY COMMISSION.**—Except as pro-
3 vided in subsection (c), this Act shall be enforced by the
4 Commission.

5 (b) **VIOLATION IS UNFAIR OR DECEPTIVE ACT OR**
6 **PRACTICE.**—The violation of any provision of this Act
7 shall be treated as an unfair or deceptive act or practice
8 proscribed under a rule issued under section 18(a)(1)(B)
9 of the Federal Trade Commission Act (15 U.S.C.
10 57a(a)(1)(B)).

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

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

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

19 (B) member banks of the Federal Reserve
20 System (other than national banks), branches
21 and agencies of foreign banks (other than Fed-
22 eral branches, Federal agencies, and insured
23 State branches of foreign banks), commercial
24 lending companies owned or controlled by for-
25 eign banks, and organizations operating under

1 section 25 or 25A of the Federal Reserve Act
2 (12 U.S.C. 601 and 611), by the Board; and

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

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

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

18 ~~(4)~~ the Securities and Exchange Act of 1934
19 (15 U.S.C. 78a et seq.) by the Securities and Ex-
20 change Commission with respect to—

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

22 ~~(B)~~ an investment company subject to the
23 Investment Company Act of 1940 (15 U.S.C.
24 80a—1 et seq.); and

1 (C) an investment advisor subject to the
 2 Investment Advisers Act of 1940 (15 U.S.C.
 3 80b-1 et seq.).

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

14 (e) PENALTIES.—

15 (1) IN GENERAL.—Notwithstanding section
 16 5(m) of the Federal Trade Commission Act (15
 17 U.S.C. 45(m)), the Commission may not obtain a
 18 civil penalty under that section for a violation of this
 19 Act in excess of—

20 (A) \$11,000 for each such individual; and

21 (B) \$11,000,000 in the aggregate for all
 22 such individuals with respect to the same viola-
 23 tion.

24 (2) OTHER AUTHORITY NOT AFFECTED.—Noth-
 25 ing in this Act shall be construed to limit or affect

1 in any way the Commission's authority to bring en-
 2 forcement actions or take any other measure under
 3 the Federal Trade Commission Act (15 U.S.C. 41 et
 4 seq.) or any other provision of law.

5 (f) NO PRIVATE CAUSE OF ACTION.—Nothing in this
 6 Act establishes a private cause of action against a covered
 7 entity for the violation of any provision of this Act.

8 (g) COMPLIANCE WITH GRAMM-LEACH-BLILEY
 9 ACT.—Any person to which title V of the Gramm-Leach-
 10 Bliley Act (15 U.S.C. 6801 et seq.) applies shall be
 11 deemed to be in compliance with the notification require-
 12 ments of this Act with respect to a breach of security if
 13 that person is in compliance with the notification require-
 14 ments of that title with respect to that breach of security.

15 **SEC. 6. ENFORCEMENT BY STATE ATTORNEYS GENERAL.**

16 (a) IN GENERAL.—A State, as parens patriae, may
 17 bring a civil action on behalf of its residents in an appro-
 18 priate district court of the United States to enforce the
 19 provisions of this Act, or to impose the civil penalties au-
 20 thorized by section 5, whenever the attorney general of
 21 the State has reason to believe that the interests of the
 22 residents of the State have been or are being threatened
 23 or adversely affected by a covered entity that violates this
 24 Act or a regulation under this Act.

1 (b) NOTICE.—The State shall serve written notice to
 2 the Commission (or other appropriate Federal regulator
 3 under section 5) of any civil action under subsection (a)
 4 prior to initiating such civil action. The notice shall in-
 5 clude a copy of the complaint to be filed to initiate such
 6 civil action, except that if it is not feasible for the State
 7 to provide such prior notice, the State shall provide such
 8 notice immediately upon instituting such civil action.

9 (c) AUTHORITY TO INTERVENE.—Upon receiving the
 10 notice required by subsection (b), the Commission (or
 11 other appropriate Federal regulator under section 5) may
 12 intervene in such civil action and upon intervening—

13 (1) be heard on all matters arising in such civil
 14 action; and

15 (2) file petitions for appeal of a decision in such
 16 civil action.

17 (d) CONSTRUCTION.—For purposes of bringing any
 18 civil action under subsection (a), nothing in this section
 19 shall prevent the attorney general of a State from exer-
 20 cising the powers conferred on the attorney general by the
 21 laws of such State to conduct investigations or to admin-
 22 ister oaths or affirmations or to compel the attendance
 23 of witnesses or the production of documentary and other
 24 evidence.

1 (e) ~~VENUE; SERVICE OF PROCESS.~~—In a civil action
 2 brought under subsection (a)—

3 ~~(1) the venue shall be a judicial district in~~
 4 ~~which—~~

5 ~~(A) the covered entity operates;~~

6 ~~(B) the covered entity was authorized to do~~
 7 ~~business; or~~

8 ~~(C) where the defendant in the civil action~~
 9 ~~is found;~~

10 ~~(2) process may be served without regard to the~~
 11 ~~territorial limits of the district or of the State in~~
 12 ~~which the civil action is instituted; and~~

13 ~~(3) a person who participated with a covered~~
 14 ~~entity in an alleged violation that is being litigated~~
 15 ~~in the civil action may be joined in the civil action~~
 16 ~~without regard to the residence of the person.~~

17 (f) ~~LIMITATION ON STATE ACTION WHILE FEDERAL~~
 18 ~~ACTION IS PENDING.~~—If the Commission (or other appro-
 19 ~~priate Federal agency under section 5) has instituted a~~
 20 ~~civil action or an administrative action for violation of this~~
 21 ~~Act, no State attorney general, or official or agency of a~~
 22 ~~State, may bring an action under this subsection during~~
 23 ~~the pendency of that action against any defendant named~~
 24 ~~in the complaint of the Commission or the other agency~~
 25 ~~for any violation of this Act alleged in the complaint.~~

1 (g) **ENFORCEMENT OF STATE LAW.**—Nothing con-
 2 tained in this section shall prohibit an authorized State
 3 official from proceeding in State court to enforce a civil
 4 or criminal statute of such State.

5 **SEC. 7. PREEMPTION OF STATE LAW.**

6 (a) **IN GENERAL.**—This Act preempts any State or
 7 local law, regulation, or rule that requires a covered enti-
 8 ty—

9 (1) to develop, implement, or maintain informa-
 10 tion security programs to which this Act applies; or

11 (2) to notify individuals of breaches of security
 12 regarding their sensitive personal information.

13 (b) **LIABILITY.**—This Act preempts any State or local
 14 law, regulation, rule, administrative procedure, or judicial
 15 precedent under which liability is imposed on a covered
 16 entity for failure—

17 (1) to implement and maintain an adequate in-
 18 formation security program; or

19 (2) to notify an individual of any breach of se-
 20 curity pertaining to any sensitive personal informa-
 21 tion about that individual.

22 (c) **SECURITY FREEZE.**—This Act preempts any
 23 State or local law, regulation, or rule that requires con-
 24 sumer reporting agencies to impose a security freeze on
 25 consumer credit reports at the request of a consumer.

1 **SEC. 8. SOCIAL SECURITY NUMBER PROTECTION.**

2 (a) PROHIBITION OF UNNECESSARY SOLICITATION
3 OF SOCIAL SECURITY NUMBERS.—No covered entity may
4 solicit any social security number from an individual un-
5 less there is a specific use of the social security number
6 for which no other identifier reasonably can be used.

7 (b) PROHIBITION OF THE DISPLAY OF SOCIAL SECU-
8 RITY NUMBERS ON EMPLOYEE IDENTIFICATION CARDS,
9 ETC.—

10 (1) IN GENERAL.—No covered entity may dis-
11 play the social security number (or any derivative of
12 such number) of an individual on any card or tag
13 that is commonly provided to employees (or to their
14 family members), faculty, staff, or students for pur-
15 poses of identification.

16 (2) DRIVER'S LICENSES.—A State may not dis-
17 play the social security number of an individual on
18 driver's licenses issued by that State.

19 (c) PROHIBITION OF INMATE ACCESS TO SOCIAL SE-
20 CURITY ACCOUNT NUMBERS.—

21 (1) IN GENERAL.—Section 205(c)(2)(C) of the
22 Social Security Act (42 U.S.C. 405(c)(2)(C)), as
23 amended by subsection (b), is amended by adding at
24 the end the following new clause:

25 “(xi) No executive, legislative, or judicial agency or
26 instrumentality of the Federal Government or of a State

1 or political subdivision thereof (or person acting as an
 2 agent of such an agency or instrumentality) may employ,
 3 or enter into a contract for the use or employment of, pris-
 4 oners in any capacity that would allow such prisoners ac-
 5 cess to the social security account numbers of other indi-
 6 viduals. For purposes of this clause, the term ‘prisoner’
 7 means an individual confined in a jail, prison, or other
 8 penal institution or correctional facility.”.

9 (2) TREATMENT OF CURRENT ARRANGE-
 10 MENTS.—In the case of—

11 (i) prisoners employed as described in
 12 clause (xi) of section 205(e)(2)(C) of the
 13 Social Security Act (42 U.S.C.
 14 405(e)(2)(C)), as added by paragraph (1),
 15 on the date of enactment of this Act, and

16 (ii) contracts described in such clause
 17 in effect on such date,

18 the amendment made by this section shall take
 19 effect 90 days after the date of enactment of
 20 this Act.

21 **SEC. 9. INFORMATION SECURITY WORKING GROUP.**

22 (a) INFORMATION SECURITY WORKING GROUP.—
 23 The Chairman of the Commission shall establish an Infor-
 24 mation Security Working Group to develop best practices
 25 to protect sensitive personal information stored and trans-

1 ferred. The Working Group shall be composed of industry
 2 participants, consumer groups, and other interested par-
 3 ties.

4 (b) REPORT.—Not later than 12 months after the
 5 date on which the Working Group is established under
 6 subsection (a), the Working Group shall submit to Con-
 7 gress a report on their findings.

8 **SEC. 10. DEFINITIONS.**

9 In this Act:

10 (1) BREACH OF SECURITY.—The term “breach
 11 of security” means unauthorized access to and ac-
 12 quisition of data in any form or format containing
 13 sensitive personal information that compromises the
 14 security or confidentiality of such information and
 15 establishes a basis to conclude that a reasonable risk
 16 of identity theft to an individual exists.

17 (2) COMMISSION.—The term “Commission”
 18 means the Federal Trade Commission.

19 (3) CONSUMER CREDIT REPORTING AGENCY.—
 20 The term “consumer credit reporting agency” means
 21 any person which, for monetary fees, dues, or on a
 22 cooperative nonprofit basis, regularly engages in
 23 whole or in part in the practice of assembling or
 24 evaluating consumer credit information or other in-
 25 formation on consumers for the purpose of fur-

1 nishing credit reports to third parties, and which
2 uses any means or facility of interstate commerce
3 for the purpose of preparing or furnishing credit re-
4 ports.

5 (4) COVERED ENTITY.—The term “covered en-
6 tity” means a sole proprietorship, partnership, cor-
7 poration, trust, estate, cooperative, association, or
8 other commercial entity, and any charitable, edu-
9 cational, or nonprofit organization, that acquires,
10 maintains, or utilizes sensitive personal information.

11 (5) CREDIT REPORT.—The term “credit report”
12 means a consumer report, as defined in section
13 603(d) of the Federal Fair Credit Reporting Act (15
14 U.S.C. 1681a(p)), that is used or expected to be
15 used or collected in whole or in part for the purpose
16 of serving as a factor in establishing a consumer’s
17 eligibility for credit for personal, family or household
18 purposes.

19 (6) IDENTITY THEFT.—The term “identity
20 theft” means the unauthorized acquisition, purchase,
21 sale, or use by any person of an individual’s sensitive
22 personal information that—

23 (A) violates section 1028 of title 18,
24 United States Code, or any provision of State
25 law in pari materia; or

1 (B) results in economic loss to the indi-
 2 vidual whose sensitive personal information was
 3 used.

4 (7) REVIEWING THE ACCOUNT.—The term “re-
 5 viewing the account” includes activities related to
 6 account maintenance, monitoring, credit line in-
 7 creases, and account upgrades and enhancements.

8 (8) SENSITIVE PERSONAL INFORMATION.—

9 (A) IN GENERAL.—Except as provided in
 10 subparagraphs (B) and (C), the term “sensitive
 11 personal information” means an individual’s
 12 name, address, or telephone number combined
 13 with 1 or more of the following data elements
 14 related to that individual:

15 (i) Social security number, taxpayer
 16 identification number, or employer identi-
 17 fication number.

18 (ii) Financial account number, or
 19 credit card or debit card number of such
 20 individual, combined with any required se-
 21 curity code, access code, or password that
 22 would permit access to such individual’s
 23 account.

1 (iii) State driver's license identifica-
2 tion number or State resident identifica-
3 tion number.

4 (iv) Consumer credit report.

5 (v) Employee, faculty, student, or
6 United States armed forces serial number.

7 (vi) Genetic or biometric information.

8 (vii) Mother's maiden name.

9 (B) FTC MODIFICATIONS.—The Commis-
10 sion may, through a rulemaking proceeding,
11 designate other identifying information that
12 may be used to effectuate identity theft as sen-
13 sitive personal information for purposes of this
14 Act and limit or exclude any information de-
15 scribed in subparagraph (A) from the definition
16 of sensitive personal information for purposes of
17 this Act.

18 (C) PUBLIC RECORDS.—Nothing in this
19 Act prohibits a covered entity from obtaining,
20 aggregating, or using sensitive personal infor-
21 mation it lawfully obtains from public records
22 in a manner that does not violate this Act.

1 **SEC. 11. AUTHORIZATION OF APPROPRIATIONS.**

2 There are authorized to be appropriated to the Com-
3 mission \$1,000,000 for each of fiscal years 2006 through
4 2010 to carry out this Act.

5 **SEC. 12. EFFECTIVE DATES.**

6 (a) **IN GENERAL.**—Except as provided in subsection
7 (b), the provisions of this Act take effect upon its enact-
8 ment.

9 (b) **PROVISIONS REQUIRING RULEMAKING.**—The
10 Commission shall initiate 1 or more rulemaking pro-
11 ceedings under sections 2, 3, and 4 within 45 days after
12 the date of enactment of this Act. The Commission shall
13 promulgate all final rules pursuant to those rulemaking
14 proceedings within 1 year after the date of enactment of
15 this Act. The provisions of sections 2, 3, and 4 shall take
16 effect on the same date 6 months after the date on which
17 the Commission promulgates the last final rule under the
18 proceeding or proceedings commenced under the preceding
19 sentence.

20 (c) **PREEMPTION.**—Section 7 shall take effect at the
21 same time as sections 2, 3, and 4 take effect.

22 **SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

23 (a) **SHORT TITLE.**—*This Act may be cited as the*
24 *“Identity Theft Protection Act”.*

25 (b) **TABLE OF CONTENTS.**—*The table of contents for*
26 *this Act is as follows:*

- Sec. 1. Short title; table of contents.*
- Sec. 2. Protection of sensitive personal information.*
- Sec. 3. Notification of security breach risk.*
- Sec. 4. Security freeze.*
- Sec. 5. Enforcement.*
- Sec. 6. Enforcement by State attorneys general.*
- Sec. 7. Preemption of State law.*
- Sec. 8. Social security and driver's license number protection.*
- Sec. 9. Information security working group.*
- Sec. 10. Definitions.*
- Sec. 11. Authorization of appropriations.*
- Sec. 12. Related crime study.*
- Sec. 13. Prohibition on technology mandates.*
- Sec. 14. Effective dates.*

1 **SEC. 2. PROTECTION OF SENSITIVE PERSONAL INFORMA-**
 2 **TION.**

3 (a) *IN GENERAL.*—A covered entity shall develop, im-
 4 plement, maintain, and enforce a written program for the
 5 security of sensitive personal information the entity collects,
 6 maintains, sells, transfers, or disposes of, containing ad-
 7 ministrative, technical, and physical safeguards—

8 (1) *to ensure the security and confidentiality of*
 9 *such data;*

10 (2) *to protect against any anticipated threats or*
 11 *hazards to the security or integrity of such data; and*

12 (3) *to protect against unauthorized access to, or*
 13 *use of, such data that could result in substantial*
 14 *harm to any individual.*

15 (b) *COMPLIANCE WITH FTC STANDARDS REQUIRED.*—
 16 *A covered entity that is in full compliance with the require-*
 17 *ments of the Commission's rules on Standards for Safe-*
 18 *guarding Customer Information and Disposal of Consumer*

1 *Report Information and Records is deemed to be in compli-*
 2 *ance with the requirements of subsection (a).*

3 (c) *REGULATIONS.*—*Not later than 1 year after the*
 4 *date of enactment of this Act, the Commission shall promul-*
 5 *gate regulations, in accordance with section 553 of title 5,*
 6 *United States Code, that require procedures for authen-*
 7 *ticating the credentials of any third party to which sen-*
 8 *sitive personal information is to be transferred or sold by*
 9 *a covered entity.*

10 **SEC. 3. NOTIFICATION OF SECURITY BREACH RISK.**

11 (a) *SECURITY BREACHES AFFECTING 1,000 OR MORE*
 12 *INDIVIDUALS.*—

13 (1) *IN GENERAL.*—*If a covered entity discovers a*
 14 *breach of security that affects 1,000 or more individ-*
 15 *uals, then, before conducting the notification required*
 16 *by subsection (c), it shall—*

17 (A) *report the breach to the Commission (or*
 18 *other appropriate Federal regulator under sec-*
 19 *tion 5); and*

20 (B) *notify all consumer reporting agencies*
 21 *described in section 603(p)(1) of the Fair Credit*
 22 *Reporting Act (15 U.S.C. 1681a(p)(1)) of the*
 23 *breach.*

24 (2) *FTC WEBSITE PUBLICATION.*—*Whenever the*
 25 *Commission receives a report under paragraph*

1 (1)(A), after the notification required by subsection
 2 (c) it shall post a report of the breach of security on
 3 its website without disclosing any sensitive personal
 4 information pertaining to the individuals affected
 5 (including their names).

6 (3) CONTENTS OF REPORT.—The report described
 7 in paragraph (2) shall include—

8 (A) the number of individuals impacted by
 9 the breach of security; and

10 (B) the fact that all impacted individuals
 11 were notified directly in accordance with this
 12 Act.

13 (b) SECURITY BREACHES AFFECTING FEWER THAN
 14 1,000 INDIVIDUALS.—

15 (1) IN GENERAL.—If a covered entity discovers
 16 breach of security that affects the sensitive personal
 17 information of fewer than 1,000 individuals and de-
 18 termines that the breach of security does not create a
 19 reasonable risk of identity theft, it shall report the
 20 breach to the Commission (or other appropriate Fed-
 21 eral regulator under section 5).

22 (2) REPORT CONTENTS.—The report shall con-
 23 tain the number of individuals affected and the type
 24 of information that was exposed because of the breach
 25 of security.

1 (3) *LIMITATION ON COMMISSION RESPONSE.*—

2 *With respect to a report under paragraph (1) received*
 3 *by the Commission, the Commission may not—*

4 (A) *disclose any sensitive personal informa-*
 5 *tion relating to the individuals (including their*
 6 *names); or*

7 (B) *publish such a report on its website.*

8 (c) *NOTIFICATION OF CONSUMERS.*—*A covered entity*
 9 *shall use due diligence to investigate any suspected breach*
 10 *of security affecting sensitive personal information main-*
 11 *tained by that covered entity. If, after the exercise of such*
 12 *due diligence, the covered entity discovers a breach of secu-*
 13 *rity and determines that the breach of security creates a*
 14 *reasonable risk of identity theft, the covered entity shall no-*
 15 *tify each such individual. In determining whether a reason-*
 16 *able risk of identity theft exists, the covered entity shall con-*
 17 *sider such factors as whether the data containing sensitive*
 18 *personal information is usable by an unauthorized third*
 19 *party and whether the data is in the possession and control*
 20 *of an unauthorized third party who is likely to commit*
 21 *identity theft.*

22 (d) *METHODS OF NOTIFICATION; NOTICE CONTENT.*—

23 (1) *IN GENERAL.*—*A covered entity shall provide*
 24 *notice pursuant to subsection (c) by—*

25 (A) *written notice;*

1 (B) *electronic notice, if such notice is con-*
2 *sistent with the provisions of the Electronic Sig-*
3 *natures in Global and National Commerce Act*
4 *(15 U.S.C. 7001 et seq.);*

5 (C) *substitute notice—*

6 (i) *if the covered entity demonstrates*
7 *that—*

8 (I) *the cost of providing such no-*
9 *tice would exceed \$250,000;*

10 (II) *the individuals to be notified*
11 *exceed 500,000; or*

12 (III) *the covered entity does not*
13 *have sufficient contact information for*
14 *the individuals to be notified; and*

15 (ii) *consisting of—*

16 (I) *notice by electronic mail when*
17 *the covered entity has an electronic*
18 *mail address for affected individuals;*

19 (II) *conspicuous posting of such*
20 *notice on the Internet website of the*
21 *covered entity, if the covered entity*
22 *maintains a website; and*

23 (III) *notification to major State-*
24 *wide media of the breach of security.*

1 (2) *CONTENT OF NOTICE.*—*The notice required*
 2 *under subsection (c) shall consist of—*

3 (A) *the name of the individual whose infor-*
 4 *mation was the subject of the breach of security;*

5 (B) *the name of the covered entity that was*
 6 *the subject of the breach of security;*

7 (C) *a description of the categories of sen-*
 8 *sitive personal information of the individual*
 9 *that were the subject of the breach of security;*

10 (D) *the specific dates between the breach of*
 11 *security of the sensitive personal information of*
 12 *the individual and the date of discovery of such*
 13 *breach of security; and*

14 (E) *the toll-free numbers necessary to con-*
 15 *tact—*

16 (i) *each covered entity that was the*
 17 *subject of the breach of security;*

18 (ii) *each nationwide credit reporting*
 19 *agency; and*

20 (iii) *the Commission.*

21 (e) *TIMING OF NOTIFICATION.*—

22 (1) *IN GENERAL.*—*Except as provided in para-*
 23 *graph (2), notice required by subsection (c) shall be*
 24 *given—*

1 (A) in the most expedient manner prac-
 2 ticable, but not later than 45 days after the date
 3 on which the breach of security was discovered
 4 by the covered entity; and

5 (B) in a manner that is consistent with any
 6 measures necessary to determine the scope of the
 7 breach and restore the security and integrity of
 8 the data system.

9 (2) *LAW ENFORCEMENT AND HOMELAND SECU-*
 10 *RITY RELATED DELAYS.*—Notwithstanding paragraph
 11 (1), the giving of notice as required by that para-
 12 graph may be delayed for a reasonable period of time
 13 if—

14 (A) a Federal or State law enforcement
 15 agency determines that the timely giving of no-
 16 tice under subsections (a) and (c), as required by
 17 paragraph (1), would materially impede a civil
 18 or criminal investigation; or

19 (B) a Federal national security or home-
 20 land security agency determines that such timely
 21 giving of notice would threaten national or
 22 homeland security.

23 (f) *CERTAIN SERVICE PROVIDERS.*—Section 2 and
 24 subsections (a), (b), and (c) of this section do not apply
 25 to electronic communication of a third party stored by a

1 *cable operator, information service, or telecommunications*
 2 *carrier in the network of such operator, service or carrier*
 3 *in the course of transferring or transmitting such commu-*
 4 *nication. Any term used in this subsection that is defined*
 5 *in the Communications Act of 1934 (47 U.S.C. 151 et seq.)*
 6 *has the meaning given it in that Act.*

7 **SEC. 4. SECURITY FREEZE.**

8 (a) *IN GENERAL.*—

9 (1) *EMPLACEMENT.*—*A consumer may place a*
 10 *security freeze on his or her credit report by making*
 11 *a request to a consumer credit reporting agency in*
 12 *writing, by telephone, or through a secure electronic*
 13 *connection made available by the consumer credit re-*
 14 *porting agency.*

15 (2) *CONSUMER DISCLOSURE.*—*If a consumer re-*
 16 *quests a security freeze, the consumer credit reporting*
 17 *agency shall disclose to the consumer the process of*
 18 *placing and removing the security freeze and explain*
 19 *to the consumer the potential consequences of the secu-*
 20 *rity freeze. A consumer credit reporting agency may*
 21 *not imply or inform a consumer that the placement*
 22 *or presence of a security freeze on the consumer's*
 23 *credit report may negatively affect the consumer's*
 24 *credit score.*

25 (b) *EFFECT OF SECURITY FREEZE.*—

1 (1) *RELEASE OF INFORMATION BLOCKED.*—If a
 2 security freeze is in place on a consumer's credit re-
 3 port, a consumer reporting agency may not release
 4 the credit report for consumer credit purposes to a
 5 third party without prior express authorization from
 6 the consumer.

7 (2) *INFORMATION PROVIDED TO THIRD PAR-*
 8 *TIES.*—Paragraph (2) does not prevent a consumer
 9 credit reporting agency from advising a third party
 10 that a security freeze is in effect with respect to the
 11 consumer's credit report. If a third party, in connec-
 12 tion with an application for credit, requests access to
 13 a consumer credit report on which a security freeze
 14 is in place, the third party may treat the application
 15 as incomplete.

16 (3) *CONSUMER CREDIT SCORE NOT AFFECTED.*—
 17 The placement of a security freeze on a credit report
 18 may not be taken into account for any purpose in de-
 19 termining the credit score of the consumer to whom
 20 the account relates.

21 (c) *REMOVAL; TEMPORARY SUSPENSION.*—

22 (1) *IN GENERAL.*—Except as provided in para-
 23 graph (4), a security freeze shall remain in place
 24 until the consumer requests that the security freeze be
 25 removed. A consumer may remove a security freeze on

1 *his or her credit report by making a request to a con-*
 2 *sumer credit reporting agency in writing, by tele-*
 3 *phone, or through a secure electronic connection made*
 4 *available by the consumer reporting agency.*

5 (2) *CONDITIONS.—A consumer credit reporting*
 6 *agency may remove a security freeze placed on a con-*
 7 *sumer’s credit report only—*

8 (A) *upon the consumer’s request, pursuant*
 9 *to paragraph (1); or*

10 (B) *if the agency determines that the con-*
 11 *sumer’s credit report was frozen due to a mate-*
 12 *rial misrepresentation of fact by the consumer.*

13 (3) *NOTIFICATION TO CONSUMER.—If a con-*
 14 *sumer credit reporting agency intends to remove a*
 15 *freeze upon a consumer’s credit report pursuant to*
 16 *paragraph (2)(B), the consumer credit reporting*
 17 *agency shall notify the consumer in writing prior to*
 18 *removing the freeze on the consumer’s credit report.*

19 (4) *TEMPORARY SUSPENSION.—A consumer may*
 20 *have a security freeze on his or her credit report tem-*
 21 *porarily suspended by making a request to a con-*
 22 *sumer credit reporting agency in writing or by tele-*
 23 *phone and specifying beginning and ending dates for*
 24 *the period during which the security freeze is not to*
 25 *apply to that consumer’s credit report.*

1 (d) *RESPONSE TIMES; NOTIFICATION OF OTHER ENTI-*
 2 *TIES.*—

3 (1) *IN GENERAL.*—A consumer credit reporting
 4 agency shall—

5 (A) place a security freeze on a consumer's
 6 credit report under subsection (a) no later than
 7 5 business days after receiving a request from the
 8 consumer under subsection (a)(1); and

9 (B) remove, or temporarily suspend, a secu-
 10 rity freeze within 3 business days after receiving
 11 a request for removal or temporary suspension
 12 from the consumer under subsection (c).

13 (2) *NOTIFICATION OF OTHER COVERED ENTI-*
 14 *TIES.*—If the consumer requests in writing or by tele-
 15 phone that other covered entities be notified of the re-
 16 quest, the consumer reporting agency shall notify all
 17 other consumer reporting agencies described in section
 18 603(p)(1) of the Fair Credit Reporting Act (15 U.S.C.
 19 1681a(p)(1)) of the request within 3 days after plac-
 20 ing, removing, or temporarily suspending a security
 21 freeze on the consumer's credit report under subsection
 22 (a), (c)(2)(A), or subsection (c)(4), respectively.

23 (3) *IMPLEMENTATION BY OTHER COVERED ENTI-*
 24 *TIES.*—A consumer reporting agency that is notified
 25 of a request under paragraph (2) to place, remove, or

1 *temporarily suspend a security freeze on a consumer's*
2 *credit report shall—*

3 *(A) request proper identification from the*
4 *consumer, in accordance with subsection (f),*
5 *within 3 business days after receiving the notifi-*
6 *cation; and*

7 *(B) place, remove, or temporarily suspend*
8 *the security freeze on that credit report within 3*
9 *business days after receiving proper identifica-*
10 *tion.*

11 *(e) CONFIRMATION.—Except as provided in subsection*
12 *(c)(3), whenever a consumer credit reporting agency places,*
13 *removes, or temporarily suspends a security freeze on a con-*
14 *sumer's credit report at the request of that consumer under*
15 *subsection (a) or (c), respectively, it shall send a written*
16 *confirmation thereof to the consumer within 10 business*
17 *days after placing, removing, or temporarily suspending the*
18 *security freeze on the credit report. This subsection does not*
19 *apply to the placement, removal, or temporary suspension*
20 *of a security freeze by a consumer reporting agency because*
21 *of a notification received under subsection (d)(2).*

22 *(f) ID REQUIRED.—A consumer credit reporting agen-*
23 *cy may not place, remove, or temporarily suspend a secu-*
24 *rity freeze on a consumer's credit report at the consumer's*
25 *request unless the consumer provides proper identification*

1 *(within the meaning of section 610(a)(1) of the Fair Credit*
 2 *Reporting Act (15 U.S.C. 1681h) and the regulations there-*
 3 *under.*

4 *(g) EXCEPTIONS.—This section does not apply to the*
 5 *use of a consumer credit report by any of the following:*

6 *(1) A person or entity, or a subsidiary, affiliate,*
 7 *or agent of that person or entity, or an assignee of*
 8 *a financial obligation owing by the consumer to that*
 9 *person or entity, or a prospective assignee of a finan-*
 10 *cial obligation owing by the consumer to that person*
 11 *or entity in conjunction with the proposed purchase*
 12 *of the financial obligation, with which the consumer*
 13 *has or had prior to assignment an account or con-*
 14 *tract, including a demand deposit account, or to*
 15 *whom the consumer issued a negotiable instrument,*
 16 *for the purposes of reviewing the account or collecting*
 17 *the financial obligation owing for the account, con-*
 18 *tract, or negotiable instrument.*

19 *(2) Any Federal, State or local agency, law en-*
 20 *forcement agency, trial court, or private collection*
 21 *agency acting pursuant to a court order, warrant,*
 22 *subpoena, or other compulsory process.*

23 *(3) A child support agency or its agents or as-*
 24 *signs acting pursuant to subtitle D of title IV of the*

1 *Social Security Act (42 U.S.C. et seq.) or similar*
2 *State law.*

3 *(4) The Department of Health and Human Serv-*
4 *ices, a similar State agency, or the agents or assigns*
5 *of the Federal or State agency acting to investigate*
6 *medicare or medicaid fraud.*

7 *(5) The Internal Revenue Service or a State or*
8 *municipal taxing authority, or a State department of*
9 *motor vehicles, or any of the agents or assigns of these*
10 *Federal, State, or municipal agencies acting to inves-*
11 *tigate or collect delinquent taxes or unpaid court or-*
12 *ders or to fulfill any of their other statutory respon-*
13 *sibilities.*

14 *(6) The use of consumer credit information for*
15 *the purposes of prescreening as provided for by the*
16 *Federal Fair Credit Reporting Act (15 U.S.C. 1681*
17 *et seq.).*

18 *(7) Any person or entity administering a credit*
19 *file monitoring subscription to which the consumer*
20 *has subscribed.*

21 *(8) Any person or entity for the purpose of pro-*
22 *viding a consumer with a copy of his or her credit*
23 *report or credit score upon the consumer's request.*

24 *(h) FEES.—*

1 (1) *IN GENERAL.*—*Except as provided in para-*
 2 *graph (2), a consumer credit reporting agency may*
 3 *charge a reasonable fee, as determined by the Com-*
 4 *mission by rule, promulgated in accordance with sec-*
 5 *tion 553 of title 5, United States Code, for placing,*
 6 *removing, or temporarily suspending a security freeze*
 7 *on a consumer’s credit report.*

8 (2) *ID THEFT VICTIMS.*—*A consumer credit re-*
 9 *porting agency may not charge a fee for placing, re-*
 10 *moving, or temporarily suspending a security freeze*
 11 *on a consumer’s credit report if—*

12 (A) *the consumer is a victim of identity*
 13 *theft;*

14 (B) *the consumer requests the security freeze*
 15 *in writing;*

16 (C) *the consumer has filed a police report*
 17 *with respect to the theft, or an identity theft re-*
 18 *port (as defined in section 603(q)(4) of the Fair*
 19 *Credit Reporting Act (15 U.S.C. 1681a(q)(4))),*
 20 *within 90 days after the theft occurred or was dis-*
 21 *covered by the consumer; and*

22 (D) *the consumer provides a copy of the re-*
 23 *port to the credit reporting agency.*

24 (i) *LIMITATION ON INFORMATION CHANGES IN FRO-*
 25 *ZEN REPORTS.*—

1 (1) *IN GENERAL.*—*If a security freeze is in place*
 2 *on a consumer's credit report, a consumer credit re-*
 3 *porting agency may not change any of the following*
 4 *official information in that credit report without*
 5 *sending a written confirmation of the change to the*
 6 *consumer within 30 days after the change is made:*

7 (A) *Name.*

8 (B) *Date of birth.*

9 (C) *Social Security number.*

10 (D) *Address.*

11 (2) *CONFIRMATION.*—*Paragraph (1) does not re-*
 12 *quire written confirmation for technical modifications*
 13 *of a consumer's official information, including name*
 14 *and street abbreviations, complete spellings, or trans-*
 15 *position of numbers or letters. In the case of an ad-*
 16 *dress change, the written confirmation shall be sent to*
 17 *both the new address and to the former address.*

18 (j) *CERTAIN ENTITY EXEMPTIONS.*—

19 (1) *AGGREGATORS AND OTHER AGENCIES.*—*The*
 20 *provisions of subsections (a) through (h) do not apply*
 21 *to a consumer credit reporting agency that acts only*
 22 *as a reseller of credit information by assembling and*
 23 *merging information contained in the data base of*
 24 *another consumer credit reporting agency or multiple*
 25 *consumer credit reporting agencies, and does not*

1 *maintain a permanent data base of credit informa-*
2 *tion from which new consumer credit reports are pro-*
3 *duced.*

4 (2) *OTHER EXEMPTED ENTITIES.—The following*
5 *entities are not required to place a security freeze in*
6 *a credit report:*

7 (A) *A check services or fraud prevention*
8 *services company, which issues reports on inci-*
9 *dents of fraud or authorizations for the purpose*
10 *of approving or processing negotiable instru-*
11 *ments, electronic funds transfers, or similar*
12 *methods of payments.*

13 (B) *A deposit account information service*
14 *company, which issues reports regarding account*
15 *closures due to fraud, substantial overdrafts,*
16 *ATM abuse, or similar negative information re-*
17 *garding a consumer, to inquiring banks or other*
18 *financial institutions for use only in reviewing*
19 *a consumer request for a deposit account at the*
20 *inquiring bank or financial institution.*

21 **SEC. 5. ENFORCEMENT.**

22 (a) *ENFORCEMENT BY COMMISSION.—Except as pro-*
23 *vided in subsection (c), this Act shall be enforced by the*
24 *Commission.*

1 (b) *VIOLATION IS UNFAIR OR DECEPTIVE ACT OR*
 2 *PRACTICE.*—*The violation of any provision of this Act shall*
 3 *be treated as an unfair or deceptive act or practice pro-*
 4 *scribed under a rule issued under section 18(a)(1)(B) of the*
 5 *Federal Trade Commission Act (15 U.S.C. 57a(a)(1)(B)).*

6 (c) *ENFORCEMENT BY CERTAIN OTHER AGENCIES.*—
 7 *Compliance with this Act shall be enforced exclusively*
 8 *under—*

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

11 (A) *national banks, and Federal branches*
 12 *and Federal agencies of foreign banks, and any*
 13 *subsidiaries of such entities (except brokers, deal-*
 14 *ers, persons providing insurance, investment*
 15 *companies, and investment advisers), by the Of-*
 16 *fice of the Comptroller of the Currency;*

17 (B) *member banks of the Federal Reserve*
 18 *System (other than national banks), branches*
 19 *and agencies of foreign banks (other than Fed-*
 20 *eral branches, Federal agencies, and insured*
 21 *State branches of foreign banks), commercial*
 22 *lending companies owned or controlled by for-*
 23 *oreign banks, organizations operating under sec-*
 24 *tion 25 or 25A of the Federal Reserve Act (12*
 25 *U.S.C. 601 and 611), and bank holding compa-*

1 *nies and their nonbank subsidiaries or affiliates*
2 *(except brokers, dealers, persons providing insur-*
3 *ance, investment companies and investment ad-*
4 *visers), by the Board of Governors of the Federal*
5 *Reserve System;*

6 *(C) banks insured by the Federal Deposit*
7 *Insurance Corporation (other than members of*
8 *the Federal Reserve System), insured State*
9 *branches of foreign banks, and any subsidiaries*
10 *of such entities (except brokers, dealers, persons*
11 *providing insurance, investment companies and*
12 *investment advisers), by the Board of Directors*
13 *of the Federal Deposit Insurance Corporation;*
14 *and*

15 *(D) savings associations the deposits of*
16 *which are insured by the Federal Deposit Insur-*
17 *ance Corporation, and any subsidiaries of such*
18 *savings associations (except brokers, dealers, per-*
19 *sons providing insurance, investment companies*
20 *and investment advisers), by the Director of the*
21 *Office of Thrift Supervision;*

22 *(2) the Federal Credit Union Act (12 U.S.C.*
23 *1751 et seq.) by the Board of the National Credit*
24 *Union Administration Board with respect to any*

1 *Federal credit union and any subsidiaries of such a*
 2 *credit union;*

3 *(3) the Securities and Exchange Act of 1934 (15*
 4 *U.S.C. 78a et seq.) by the Securities and Exchange*
 5 *Commission with respect to—*

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

7 *(B) an investment company subject to the*
 8 *Investment Company Act of 1940 (15 U.S.C.*
 9 *80a-1 et seq.); and*

10 *(C) an investment advisor subject to the In-*
 11 *vestment Advisers Act of 1940 (15 U.S.C. 80b-1*
 12 *et seq.); and*

13 *(4) State insurance law, in the case of any per-*
 14 *son engaged in providing insurance, by the applicable*
 15 *State insurance authority of the State in which the*
 16 *person is domiciled.*

17 *(d) EXERCISE OF CERTAIN POWERS.—For the purpose*
 18 *of the exercise by any agency referred to in subsection (c)*
 19 *of its powers under any Act referred to in that subsection,*
 20 *a violation of this Act is deemed to be a violation of a re-*
 21 *quirement imposed under that Act. In addition to its pow-*
 22 *ers under any provision of law specifically referred to in*
 23 *subsection (c), each of the agencies referred to in that sub-*
 24 *section may exercise, for the purpose of enforcing compli-*

1 *ance with any requirement imposed under this Act, any*
 2 *other authority conferred on it by law.*

3 *(e) PENALTIES.—*

4 *(1) IN GENERAL.—Notwithstanding section 5(m)*
 5 *of the Federal Trade Commission Act (15 U.S.C.*
 6 *45(m)), the Commission may not obtain a civil pen-*
 7 *alty under that section for a violation of section 3 of*
 8 *this Act by a covered entity in excess of—*

9 *(A) \$11,000 for each such individual; and*

10 *(B) \$11,000,000 in the aggregate for all*
 11 *such individuals with respect to the same viola-*
 12 *tion by that covered entity.*

13 *(2) OTHER AUTHORITY NOT AFFECTED.—Noth-*
 14 *ing in this Act shall be construed to limit or affect*
 15 *in any way the Commission’s authority to bring en-*
 16 *forcement actions or take any other measure under*
 17 *the Federal Trade Commission Act (15 U.S.C. 41 et*
 18 *seq.) or any other provision of law.*

19 *(f) NO PRIVATE CAUSE OF ACTION.—*

20 *(1) IN GENERAL.—No private right of action or*
 21 *class action shall be brought under this Act.*

22 *(2) STATE ATTORNEY GENERAL AUTHORITY.—No*
 23 *person other than the attorney general of a State may*
 24 *bring a civil action under the law of any State is*

1 *such action is premised upon the defendant violating*
 2 *any provision of this Act.*

3 *(g) COMPLIANCE WITH GRAMM-LEACH-BLILEY ACT.—*

4 *Any covered entity is deemed to be in compliance with the*
 5 *notification requirements of this Act with respect to any*
 6 *breach of security for which it complies with requirements*
 7 *regarding notification established for such entities under*
 8 *title V of the Gramm-Leach-Bliley Act (15 U.S.C. 6801 et*
 9 *seq.). Any covered entity is deemed to be in compliance with*
 10 *the requirements of this Act to protect sensitive personal*
 11 *information with respect to any such information for which*
 12 *it complies with the information protection requirements es-*
 13 *tablished for such entities under title V of that Act and*
 14 *under section 607(a) of the Fair Credit Reporting Act (15*
 15 *U.S.C. 1681e(a)).*

16 **SEC. 6. ENFORCEMENT BY STATE ATTORNEYS GENERAL.**

17 *(a) IN GENERAL.—Except as provided in section 5(c),*
 18 *a State, as parens patriae, may bring a civil action on*
 19 *behalf of its residents in an appropriate district court of*
 20 *the United States to enforce the provisions of this Act, to*
 21 *obtain damages, restitution, or other compensation on be-*
 22 *half of such residents, or to obtain such further and other*
 23 *relief as the court may deem appropriate, whenever the at-*
 24 *torney general of the State has reason to believe that the*
 25 *interests of the residents of the State have been or are being*

1 *threatened or adversely affected by a covered entity that vio-*
 2 *lates this Act or a regulation under this Act.*

3 (b) *NOTICE.*—*The State shall serve written notice to*
 4 *the Commission (or other appropriate Federal regulator*
 5 *under section 5) of any civil action under subsection (a)*
 6 *at least 60 days prior to initiating such civil action. The*
 7 *notice shall include a copy of the complaint to be filed to*
 8 *initiate such civil action, except that if it is not feasible*
 9 *for the State to provide such prior notice, the State shall*
 10 *provide such notice immediately upon instituting such civil*
 11 *action.*

12 (c) *AUTHORITY TO INTERVENE.*—*Upon receiving the*
 13 *notice required by subsection (b), the Commission (or other*
 14 *appropriate Federal regulator under section 5) may inter-*
 15 *vene in such civil action and upon intervening—*

16 (1) *be heard on all matters arising in such civil*
 17 *action; and*

18 (2) *file petitions for appeal of a decision in such*
 19 *civil action.*

20 (d) *CONSTRUCTION.*—*For purposes of bringing any*
 21 *civil action under subsection (a), nothing in this section*
 22 *shall prevent the attorney general of a State from exercising*
 23 *the powers conferred on the attorney general by the laws*
 24 *of such State to conduct investigations or to administer*

1 oaths or affirmations or to compel the attendance of wit-
 2 nesses or the production of documentary and other evidence.

3 (e) *VENUE; SERVICE OF PROCESS.*—In a civil action
 4 brought under subsection (a)—

5 (1) the venue shall be a judicial district in
 6 which—

7 (A) the covered entity operates;

8 (B) the covered entity was authorized to do
 9 business; or

10 (C) where the defendant in the civil action
 11 is found;

12 (2) process may be served without regard to the
 13 territorial limits of the district or of the State in
 14 which the civil action is instituted; and

15 (3) a person who participated with a covered en-
 16 tity in an alleged violation that is being litigated in
 17 the civil action may be joined in the civil action
 18 without regard to the residence of the person.

19 (f) *LIMITATION ON STATE ACTION WHILE FEDERAL*
 20 *ACTION IS PENDING.*—If the Commission (or other appro-
 21 priate Federal agency under section 5) has instituted a civil
 22 action or an administrative action for violation of this Act,
 23 no State attorney general, or official or agency of a State,
 24 may bring an action under this subsection during the pend-
 25 ency of that action against any defendant named in the

1 *complaint of the Commission or the other agency for any*
 2 *violation of this Act alleged in the complaint.*

3 **SEC. 7. PREEMPTION OF STATE LAW.**

4 (a) *IN GENERAL.*—*This Act preempts any State or*
 5 *local law, regulation, or rule that requires a covered enti-*
 6 *ty—*

7 (1) *to develop, implement, maintain, or enforce*
 8 *information security programs to which this Act ap-*
 9 *plies; or*

10 (2) *to notify individuals of breaches of security*
 11 *pertaining to them.*

12 (b) *LIABILITY.*—*This Act preempts any State or local*
 13 *law, regulation, rule, administrative procedure, or judicial*
 14 *precedent under which liability is imposed on a covered en-*
 15 *tity for failure—*

16 (1) *to implement and maintain an adequate in-*
 17 *formation security program; or*

18 (2) *to notify an individual of any breach of secu-*
 19 *rity pertaining to any sensitive personal information*
 20 *about that individual.*

21 (c) *SECURITY FREEZE.*—*This Act preempts any State*
 22 *or local law, regulation, or rule that requires consumer re-*
 23 *porting agencies to comply with a consumer's request to*
 24 *place, remove, or temporarily suspend a prohibition on the*

1 *release by a consumer reporting agency of information from*
 2 *its files on that consumer.*

3 (d) *SOCIAL SECURITY NUMBERS.*—Section 8 of this
 4 Act, and the amendments made by that section, preempt
 5 any State or local law, regulation, or rule prohibiting or
 6 limiting the solicitation or display of Social Security ac-
 7 count numbers.

8 (e) *LIMITATION OF PREEMPTION.*—Federal preemp-
 9 tion under this Act shall only apply to matters expressly
 10 described in subsections (a) through (d) of this section, and
 11 shall have no effect on other State or local jurisdiction over
 12 covered entities.

13 **SEC. 8. SOCIAL SECURITY NUMBER PROTECTION.**

14 (a) *PROHIBITION OF UNNECESSARY SOLICITATION OF*
 15 *SOCIAL SECURITY NUMBERS.*—

16 (1) *IN GENERAL.*—No covered entity may solicit
 17 a social security number from an individual unless
 18 there is a specific use of the social security number
 19 for which no other identifier reasonably can be used.

20 (2) *EXCEPTIONS.*—Paragraph (1) does not apply
 21 to the solicitation of a social security number—

22 (A) for the purpose of obtaining a consumer
 23 report for any purpose permitted under the Fair
 24 Credit Reporting Act (15 U.S.C. 1681 et seq.),

1 (B) by a consumer reporting agency for the
 2 purpose of authenticating or obtaining appro-
 3 priate proof of a consumer's identity, as required
 4 under that Act;

5 (C) for any purpose permitted under section
 6 502(e) of the Gramm-Leach-Bliley Act (15
 7 U.S.C. 6802(e)); or

8 (D) to identify or locate missing or ab-
 9 ducted children, witnesses, criminals and fugi-
 10 tives, parties to lawsuits, parents delinquent in
 11 child support payments, organ and bone marrow
 12 donors, pension fund beneficiaries, and missing
 13 heirs.

14 (b) *PROHIBITION OF THE DISPLAY OF SOCIAL SECU-*
 15 *RITY NUMBERS ON EMPLOYEE IDENTIFICATION CARDS,*
 16 *ETC..—*

17 (1) *IN GENERAL.*—No covered entity may display the
 18 social security number (or any derivative of such number)
 19 of an individual on any card or tag that is commonly pro-
 20 vided to employees (or to their family members), faculty,
 21 staff, or students for purposes of identification.

22 (2) *DRIVER'S LICENSES.*—A State may not display
 23 the social security number of an individual on driver's li-
 24 censes issued by that State.

1 (c) *PROHIBITION OF PRISONER ACCESS TO SOCIAL*
 2 *SECURITY ACCOUNT NUMBERS.*—

3 (1) *IN GENERAL.*—Section 205(c)(2)(C) of the
 4 *Social Security Act* (42 U.S.C. 405(c)(2)(C)) is
 5 amended by adding at the end the following new
 6 clause:

7 “(x) No executive, legislative, or judicial agency or in-
 8 strumentality of the Federal Government or of a State or
 9 political subdivision thereof (or person acting as an agent
 10 of such an agency or instrumentality) may employ, or enter
 11 into a contract for the use or employment of, prisoners in
 12 any capacity that would allow such prisoners access to the
 13 social security account numbers of other individuals. For
 14 purposes of this clause, the term ‘prisoner’ means an indi-
 15 vidual who is confined in a jail, prison, or other penal in-
 16 stitution or correctional facility, serving community service
 17 as a term of probation or parole, or serving a sentence
 18 through a work-furlough program.”.

19 (2) *TREATMENT OF CURRENT ARRANGEMENTS.*—
 20 *In the case of—*

21 (A) prisoners employed as described in
 22 clause (xi) of section 205(c)(2)(C) of the *Social*
 23 *Security Act* (42 U.S.C. 405(c)(2)(C)), as added
 24 by paragraph (1), on the date of enactment of
 25 this Act, and

1 (B) contracts described in such clause in ef-
 2 fect on such date,
 3 the amendment made by paragraph (1) shall take ef-
 4 fect 90 days after the date of enactment of this Act.

5 (d) *PROHIBITION OF SALE, PURCHASE, AND DISPLAY*
 6 *OF SOCIAL SECURITY NUMBERS TO THE GENERAL PUB-*
 7 *LIC.—*

8 (1) *IN GENERAL.—*Except as provided in para-
 9 graph (2), it shall be unlawful for any person to—

10 (A) sell or purchase a social security ac-
 11 count number or display to the general public a
 12 social security account number, or

13 (B) obtain or use any individual's social se-
 14 curity account number for the purpose of locat-
 15 ing or identifying such individual with the in-
 16 tent to physically injure or harm such indi-
 17 vidual or using the identity of such individual
 18 for any illegal purpose.

19 (2) *EXCEPTIONS.—*Notwithstanding paragraph
 20 (1), and subject to paragraph (3), a social security
 21 account number may be sold or purchased by any
 22 person to the extent provided in this subsection (and
 23 for no other purpose)—

24 (A) to the extent necessary for national se-
 25 curity purposes;

1 (B) to the extent necessary for public health
2 purposes;

3 (C) to the extent necessary in emergency sit-
4 uations to protect the health or safety of 1 or
5 more individuals;

6 (D) to the extent that the sale or purchase
7 is required to comply with a tax law of the
8 United States or of any State (or political sub-
9 division thereof);

10 (E) to the extent that the sale or purchase
11 is to or by a consumer reporting agency (as de-
12 fined in section 603(f) of the Fair Credit Report-
13 ing Act (15 U.S.C. 1681a(f))) for use or disclo-
14 sure solely for permissible purposes described in
15 section 604(a) of such Act (15 U.S.C. 1681b(a));
16 and

17 (F) to the extent necessary for research
18 (other than market research) conducted by an
19 agency or instrumentality of the United States
20 or of a State or political subdivision thereof (or
21 an agent of such an agency or instrumentality)
22 for the purpose of advancing the public good, on
23 the condition that the researcher provides ade-
24 quate assurances that—

1 (i) the social security account numbers
2 will not be used to harass, target, or pub-
3 licly reveal information concerning any
4 identifiable individuals;

5 (ii) information about identifiable in-
6 dividuals obtained from the research will
7 not be used to make decisions that directly
8 affect the rights, benefits, or privileges of
9 specific individuals; and

10 (iii) the researcher has in place appro-
11 priate safeguards to protect the privacy and
12 confidentiality of any information about
13 identifiable individuals, including proce-
14 dures to ensure that the social security ac-
15 count numbers will be encrypted or other-
16 wise appropriately secured from unauthor-
17 ized disclosure.

18 (3) *CONSENSUAL SALE.*—Notwithstanding para-
19 graph (1), a social security account number assigned
20 to an individual may be sold, purchased, or displayed
21 to the general public by any person to the extent con-
22 sistent with such individual’s voluntary and affirma-
23 tive written consent to the sale, purchase, or display
24 of the social security account number, but only if—

1 (A) the terms of the consent and the right
 2 to refuse consent are presented to the individual
 3 in a clear, conspicuous, and understandable
 4 manner;

5 (B) the individual is placed under no obli-
 6 gation to provide consent to any such sale, pur-
 7 chase, or display; and

8 (C) the terms of the consent authorize the
 9 individual to limit the sale, purchase, or display
 10 to purposes directly associated with the trans-
 11 action with respect to which the consent is
 12 sought.

13 (4) *REGULATIONS.*—Within 1 year after the date
 14 of enactment of this Act the Commission shall pro-
 15 mulgate regulations under this subsection after con-
 16 sultation with the Attorney General, the Commis-
 17 sioner of Social Security, the Secretary of Homeland
 18 Security, State attorneys general, and such other gov-
 19 ernmental agencies and instrumentalities as the At-
 20 torney General considers appropriate.

21 **SEC. 9. INFORMATION SECURITY WORKING GROUP.**

22 (a) *INFORMATION SECURITY WORKING GROUP.*—The
 23 Chairman of the Commission shall establish an Information
 24 Security Working Group to collect, review, disseminate, and
 25 advise on best practices for covered entities to protect sen-

1 *sitive personal information stored and transferred. The*
 2 *Working Group shall be composed of industry participants,*
 3 *consumer groups, and other interested parties.*

4 (b) *REPORT.*—*Not later than 12 months after the date*
 5 *on which the Working Group is established under subsection*
 6 *(a) and annually thereafter, the Working Group shall sub-*
 7 *mit to Congress a report on its findings.*

8 (c) *TERMINATION.*—*The Commission, after notifying*
 9 *the Congress in writing of its intent to terminate the Work-*
 10 *ing Group, may terminate it after the Commission deter-*
 11 *mines that the work and annual reports are no longer nec-*
 12 *essary.*

13 **SEC. 10. DEFINITIONS.**

14 *In this Act:*

15 (1) *BREACH OF SECURITY.*—*The term “breach of*
 16 *security” means unauthorized access to and acquisi-*
 17 *tion of data in any form or format containing sen-*
 18 *sitive personal information that compromises the se-*
 19 *curity or confidentiality of such information and cre-*
 20 *ates a reasonable risk of identity theft.*

21 (2) *COMMISSION.*—*The term “Commission”*
 22 *means the Federal Trade Commission.*

23 (3) *CONSUMER CREDIT REPORTING AGENCY.*—
 24 *The term “consumer credit reporting agency” means*
 25 *any person which, for monetary fees, dues, or on a co-*

1 *operative nonprofit basis, regularly engages in whole*
 2 *or in part in the practice of assembling or evaluating*
 3 *consumer credit information or other information on*
 4 *consumers for the purpose of furnishing credit reports*
 5 *to third parties, and which uses any means or facility*
 6 *of interstate commerce for the purpose of preparing or*
 7 *furnishing credit reports.*

8 (4) *COVERED ENTITY.*—*The term “covered enti-*
 9 *ty” means a sole proprietorship, partnership, cor-*
 10 *poration, trust, estate, cooperative, association, or*
 11 *other commercial entity, and any charitable, edu-*
 12 *cational, or nonprofit organization, that acquires,*
 13 *maintains, or utilizes sensitive personal information.*

14 (5) *CREDIT REPORT.*—*The term “credit report”*
 15 *means a consumer report, as defined in section 603(d)*
 16 *of the Federal Fair Credit Reporting Act (15 U.S.C.*
 17 *1681a(p)), that is used or expected to be used or col-*
 18 *lected in whole or in part for the purpose of serving*
 19 *as a factor in establishing a consumer’s eligibility for*
 20 *credit for personal, family or household purposes.*

21 (6) *IDENTITY THEFT.*—*The term “identity theft”*
 22 *means the unauthorized acquisition, purchase, sale, or*
 23 *use by any person of an individual’s sensitive per-*
 24 *sonal information that—*

1 (A) violates section 1028 of title 18, United
 2 States Code, or any provision of State law in
 3 *pari materia*; or

4 (B) results in economic loss to the indi-
 5 vidual whose sensitive personal information was
 6 used.

7 (7) *REASONABLE RISK OF IDENTITY THEFT.*—
 8 The term “reasonable risk of identity theft” means
 9 that the preponderance of the evidence available to the
 10 covered entity that has experienced a breach of secu-
 11 rity establishes that identity theft for 1 or more indi-
 12 viduals from the breach of security is foreseeable.

13 (8) *REVIEWING THE ACCOUNT.*—The term “re-
 14 viewing the account” includes activities related to ac-
 15 count maintenance, monitoring, credit line increases,
 16 and account upgrades and enhancements.

17 (9) *SENSITIVE PERSONAL INFORMATION.*—

18 (A) *IN GENERAL.*—Except as provided in
 19 subparagraphs (B) and (C), the term “sensitive
 20 personal information” means an individual’s
 21 name, address, or telephone number combined
 22 with 1 or more of the following data elements re-
 23 lated to that individual:

24 (i) Social security number, taxpayer
 25 identification number, or an employer iden-

1 *tification number that is the same as or is*
 2 *derived from the social security number of*
 3 *that individual.*

4 *(ii) Financial account number, or*
 5 *credit card or debit card number of such in-*
 6 *dividual, combined with any required secu-*
 7 *rity code, access code, or password that*
 8 *would permit access to such individual's ac-*
 9 *count.*

10 *(iii) State driver's license identifica-*
 11 *tion number or State resident identification*
 12 *number.*

13 *(B) FTC MODIFICATIONS.—The Commission*
 14 *may, through a rulemaking proceeding in ac-*
 15 *cordance with section 553 of title 5, United*
 16 *States Code, designate other identifying informa-*
 17 *tion that may be used to effectuate identity theft*
 18 *as sensitive personal information for purposes of*
 19 *this Act and limit or exclude any information*
 20 *described in subparagraph (A) from the defini-*
 21 *tion of sensitive personal information for pur-*
 22 *poses of this Act.*

23 *(C) PUBLIC RECORDS.—Nothing in this Act*
 24 *prohibits a covered entity from obtaining, aggre-*
 25 *gating, or using sensitive personal information it*

1 *lawfully obtains from public records in a man-*
 2 *ner that does not violate this Act.*

3 **SEC. 11. AUTHORIZATION OF APPROPRIATIONS.**

4 *There are authorized to be appropriated to the Com-*
 5 *mission \$1,000,000 for each of fiscal years 2006 through*
 6 *2010 to carry out this Act.*

7 **SEC. 12. RELATED CRIME STUDY.**

8 *(a) IN GENERAL.—The Federal Trade Commission, in*
 9 *conjunction with the Department of Justice and other Fed-*
 10 *eral agencies, shall undertake a study of—*

11 *(1) the correlation between methamphetamine*
 12 *use and identity theft crimes;*

13 *(2) the needs of law enforcement to address meth-*
 14 *amphetamine crimes related to identity theft, includ-*
 15 *ing production, trafficking, and the purchase of pre-*
 16 *cursor chemicals; and*

17 *(3) the Federal Government’s role in addressing*
 18 *and deterring identity theft crimes.*

19 *(b) REPORT.—Not later than 18 months after the date*
 20 *of enactment of this Act, the Federal Trade Commission*
 21 *shall submit a report of its findings and recommendations*
 22 *to the Congress that includes—*

23 *(1) a detailed analysis of the correlation between*
 24 *methamphetamine use and identity theft crimes;*

1 (2) *the needs of law enforcement to address meth-*
 2 *amphetamine crimes related to identity theft: includ-*
 3 *ing production, trafficking, and the purchase of pre-*
 4 *cursor chemicals related to methamphetamine;*

5 (3) *the Federal Government's role in addressing*
 6 *and deterring identity theft crimes; and*

7 (4) *specific recommendations for means of reduc-*
 8 *ing and preventing crimes involving methamphet-*
 9 *amine and identity theft, including recommendations*
 10 *for best practices for local law enforcement agencies.*

11 **SEC. 13. PROHIBITION ON TECHNOLOGY MANDATES.**

12 *Nothing in this Act shall be construed to permit the*
 13 *Commission to issue regulations that require or impose a*
 14 *specific technology, product, technological standards, or so-*
 15 *lution.*

16 **SEC. 14. EFFECTIVE DATES.**

17 (a) *IN GENERAL.*—*Except as provided in subsections*
 18 *(b) and (c), the provisions of this Act take effect upon its*
 19 *enactment.*

20 (b) *IMPLEMENTATION OF SECURITY PROGRAM.*—*A*
 21 *covered entity shall implement the program required by sec-*
 22 *tion 2(a) within 6 months after the date of enactment of*
 23 *this Act.*

24 (c) *PROVISIONS REQUIRING RULEMAKING.*—*The Com-*
 25 *mission shall initiate 1 or more rulemaking proceedings*

1 *under sections 2(c), 3, and 4 within 45 days after the date*
2 *of enactment of this Act. The Commission shall promulgate*
3 *all final rules pursuant to those rulemaking proceedings*
4 *within 1 year after the date of enactment of this Act. The*
5 *provisions of sections 2(c), 3, and 4 shall take effect on the*
6 *same date 6 months after the date on which the Commission*
7 *promulgates the last final rule under the proceeding or pro-*
8 *ceedings commenced under the preceding sentence.*

9 (d) *PREEMPTION.—Section 7 shall take effect at the*
10 *same time as sections 2(c), 3, and 4 take effect.*

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109TH CONGRESS
1ST Session

S. 1408

[Report No. 109–203]

A BILL

To strengthen data protection and safeguards, require data breach notification, and further prevent identity theft.

DECEMBER 8, 2005

Reported with an amendment