

109TH CONGRESS
1ST SESSION

S. 751

To require Federal agencies, and persons engaged in interstate commerce, in possession of data containing personal information, to disclose any unauthorized acquisition of such information.

IN THE SENATE OF THE UNITED STATES

APRIL 11, 2005

Mrs. FEINSTEIN introduced the following bill; which was read twice and referred to the Committee on the Judiciary

A BILL

To require Federal agencies, and persons engaged in interstate commerce, in possession of data containing personal information, to disclose any unauthorized acquisition of such information.

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

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Notification of Risk
5 to Personal Data Act”.

6 **SEC. 2. DEFINITIONS.**

7 In this Act, the following definitions shall apply:

1 (1) AGENCY.—The term “agency” has the same
2 meaning given such term in section 551(1) of title
3 5, United States Code.

4 (2) BREACH OF SECURITY OF THE SYSTEM.—
5 The term “breach of security of the system”—

6 (A) means the compromise of the security,
7 confidentiality, or integrity of data that results
8 in, or there is a reasonable basis to conclude
9 has resulted in, the unauthorized acquisition of
10 personal information maintained by the person
11 or business; and

12 (B) does not include good faith acquisition
13 of personal information by an employee or
14 agent of the person or business for the purposes
15 of the person or business, if the personal infor-
16 mation is not used or subject to further unau-
17 thorized disclosure.

18 (3) PERSON.—The term “person” has the same
19 meaning given such term in section 551(2) of title
20 5, United States Code.

21 (4) PERSONAL INFORMATION.—The term “per-
22 sonal information” means an individual’s last name
23 in combination with any 1 or more of the following
24 data elements:

25 (A) Social security number.

1 (B) Driver's license number or State iden-
2 tification number.

3 (C) Account number or credit or debit card
4 number, or, if a security code, access code, or
5 password is required for access to an individ-
6 ual's account, the account number or credit or
7 debit card number, in combination with the re-
8 quired code or password.

9 (5) SUBSTITUTE NOTICE.—The term “sub-
10 stitute notice” means—

11 (A) conspicuous posting of the notice on
12 the Internet site of the agency or person, if the
13 agency or person maintains a public Internet
14 site; and

15 (B) notification to major print and broad-
16 cast media, including major media in metropoli-
17 tan and rural areas where the individual whose
18 personal information was, or is reasonably be-
19 lieved to have been, acquired resides. The notice
20 to media shall include a toll-free phone number
21 where an individual can learn whether or not
22 that individual's personal data is included in
23 the security breach.

24 **SEC. 3. DATABASE SECURITY.**

25 (a) DISCLOSURE OF SECURITY BREACH.—

1 (1) IN GENERAL.—Any agency, or person en-
2 gaged in interstate commerce, that owns, licenses, or
3 collects data, whether or not held in electronic form,
4 containing personal information shall, following the
5 discovery of a breach of security of the system main-
6 tained by the agency or person that contains such
7 data, or upon receipt of notice under paragraph (2),
8 notify any individual of the United States whose per-
9 sonal information was, or is reasonably believed to
10 have been, acquired by an unauthorized person.

11 (2) NOTIFICATION OF OWNER OR LICENSEE.—
12 Any agency, or person engaged in interstate com-
13 merce, in possession of data, whether or not held in
14 electronic form, containing personal information that
15 the agency does not own or license shall notify the
16 owner or licensee of the information if the personal
17 information was, or is reasonably believed to have
18 been, acquired by an unauthorized person through a
19 breach of security of the system containing such
20 data.

21 (3) TIMELINESS OF NOTIFICATION.—

22 (A) IN GENERAL.—All notifications re-
23 quired under paragraph (1) or (2) shall be
24 made without unreasonable delay following—

1 (i) the discovery by the agency or per-
2 son of a breach of security of the system;

3 (ii) any measures necessary to deter-
4 mine the scope of the breach, prevent fur-
5 ther disclosures, and restore the reasonable
6 integrity of the data system; and

7 (iii) receipt of written notice that a
8 law enforcement agency has determined
9 that the notification will no longer seri-
10 ously impede its investigation, where notifi-
11 cation is delayed as provided in paragraph
12 (4).

13 (B) BURDEN OF PROOF.—The agency or
14 person required to provide notification under
15 this subsection shall have the burden of dem-
16 onstrating that all notifications were made as
17 required under this paragraph, including evi-
18 dence demonstrating the necessity of any delay.

19 (4) DELAY OF NOTIFICATION AUTHORIZED FOR
20 LAW ENFORCEMENT PURPOSES.—If a law enforce-
21 ment agency determines that the notification re-
22 quired under this subsection would seriously impede
23 a criminal investigation, such notification may be de-
24 layed upon the written request of the law enforce-
25 ment agency.

1 (5) EXCEPTION FOR NATIONAL SECURITY AND
2 LAW ENFORCEMENT.—

3 (A) IN GENERAL.—This subsection shall
4 not apply to an agency if the head of the agen-
5 cy certifies, in writing, that notification of the
6 breach as required by this subsection reason-
7 ably could be expected to—

8 (i) cause damage to the national secu-
9 rity; and

10 (ii) hinder a law enforcement inves-
11 tigation or the ability of the agency to con-
12 duct law enforcement investigations.

13 (B) LIMITS ON CERTIFICATIONS.—The
14 head of an agency may not execute a certifi-
15 cation under subparagraph (A) to—

16 (i) conceal violations of law, ineffi-
17 ciency, or administrative error;

18 (ii) prevent embarrassment to a per-
19 son, organization, or agency; or

20 (iii) restrain competition.

21 (C) NOTICE.—In every case in which a
22 head of an agency issues a certification under
23 subparagraph (A), a copy of the certification,
24 accompanied by a concise description of the fac-

1 tual basis for the certification, shall be imme-
2 diately provided to the Congress.

3 (6) METHODS OF NOTICE.—An agency, or per-
4 son engaged in interstate commerce, shall be in com-
5 pliance with this subsection if it provides the indi-
6 vidual, with—

7 (A) written notification;

8 (B) e-mail notice, if the individual has con-
9 sented to receive such notice and the notice is
10 consistent with the provisions permitting elec-
11 tronic transmission of notices under section 101
12 of the Electronic Signatures in Global and Na-
13 tional Commerce Act (15 U.S.C. 7001); or

14 (C) substitute notice, if—

15 (i) the agency or person demonstrates
16 that the cost of providing direct notice
17 would exceed \$500,000;

18 (ii) the number of individuals to be
19 notified exceeds 500,000; or

20 (iii) the agency or person does not
21 have sufficient contact information for
22 those to be notified.

23 (7) CONTENT OF NOTIFICATION.—Regardless
24 of the method by which notice is provided to individ-

1 uals under paragraphs (1) and (2), such notice shall
2 include—

3 (A) to the extent possible, a description of
4 the categories of information that was, or is
5 reasonably believed to have been, acquired by
6 an unauthorized person, including social secu-
7 rity numbers, driver's license or State identi-
8 fication numbers and financial data;

9 (B) a toll-free number—

10 (i) that the individual may use to con-
11 tact the agency or person, or the agent of
12 the agency or person; and

13 (ii) from which the individual may
14 learn—

15 (I) what types of information the
16 agency or person maintained about
17 that individual or about individuals in
18 general; and

19 (II) whether or not the agency or
20 person maintained information about
21 that individual; and

22 (C) the toll-free contact telephone numbers
23 and addresses for the major credit reporting
24 agencies.

1 (8) COORDINATION OF NOTIFICATION WITH
2 CREDIT REPORTING AGENCIES.—If an agency or
3 person is required to provide notification to more
4 than 1,000 individuals under this subsection, the
5 agency or person shall also notify, without unreason-
6 able delay, all consumer reporting agencies that
7 compile and maintain files on consumers on a na-
8 tionwide basis (as defined in section 603(p) of the
9 Fair Credit Reporting Act (15 U.S.C. 1681a(p)) of
10 the timing and distribution of the notices.

11 (b) CIVIL REMEDIES.—

12 (1) PENALTIES.—Any agency, or person en-
13 gaged in interstate commerce, that violates sub-
14 section (a) shall be subject to a fine of—

15 (A) not more than \$1,000 per individual
16 whose personal information was, or is reason-
17 ably believed to have been, acquired by an un-
18 authorized person; or

19 (B) not more than \$50,000 per day while
20 the failure to give notice under subsection (a)
21 persists.

22 (2) EQUITABLE RELIEF.—Any agency or person
23 that violates, proposes to violate, or has violated this
24 section may be enjoined from further violations by a
25 court of competent jurisdiction.

1 (3) OTHER RIGHTS AND REMEDIES.—The
2 rights and remedies available under this subsection
3 are cumulative and shall not affect any other rights
4 and remedies available under law.

5 (c) ENFORCEMENT.—The Federal Trade Commission
6 or other appropriate regulator, is authorized to enforce
7 compliance with this section, including the assessment of
8 fines under subsection (b)(1).

9 (d) FRAUD ALERT.—Section 605A(b)(1) of the Fair
10 Credit Reporting Act (15 U.S.C. 1681c–1(b)(1)) is
11 amended by inserting “, or evidence that the consumer
12 has received notice that the consumer’s personal financial
13 information has or may have been compromised,” after
14 “identity theft report”.

15 **SEC. 4. ENFORCEMENT BY STATE ATTORNEYS GENERAL.**

16 (a) IN GENERAL.—

17 (1) CIVIL ACTIONS.—In any case in which the
18 attorney general of a State has reason to believe
19 that an interest of the residents of that State has
20 been or is threatened or adversely affected by the
21 engagement of any person in a practice that is pro-
22 hibited under this Act, the State, as *parens patriae*,
23 may bring a civil action on behalf of the residents
24 of the State in a district court of the United States

1 of appropriate jurisdiction or any other court of
2 competent jurisdiction, including a State court, to—

3 (A) enjoin that practice;

4 (B) enforce compliance with this Act;

5 (C) obtain damages, restitution, or other
6 compensation on behalf of residents of the
7 State; or

8 (D) obtain such other relief as the court
9 may consider to be appropriate.

10 (2) NOTICE.—

11 (A) IN GENERAL.—Before filing an action
12 under paragraph (1), the attorney general of
13 the State involved shall provide to the Attorney
14 General of the United States—

15 (i) written notice of the action; and

16 (ii) a copy of the complaint for the ac-
17 tion.

18 (B) EXEMPTION.—

19 (i) IN GENERAL.—Subparagraph (A)
20 shall not apply with respect to the filing of
21 an action by an attorney general of a State
22 under this subsection, if the State attorney
23 general determines that it is not feasible to
24 provide the notice described in such sub-
25 paragraph before the filing of the action.

1 (ii) NOTIFICATION.—In an action de-
2 scribed in clause (i), the attorney general
3 of a State shall provide notice and a copy
4 of the complaint to the Attorney General
5 at the time the State attorney general files
6 the action.

7 (b) CONSTRUCTION.—For purposes of bringing any
8 civil action under subsection (a), nothing in this Act shall
9 be construed to prevent an attorney general of a State
10 from exercising the powers conferred on such attorney
11 general by the laws of that State to—

- 12 (1) conduct investigations;
13 (2) administer oaths or affirmations; or
14 (3) compel the attendance of witnesses or the
15 production of documentary and other evidence.

16 (c) VENUE; SERVICE OF PROCESS.—

17 (1) VENUE.—Any action brought under sub-
18 section (a) may be brought in—

19 (A) the district court of the United States
20 that meets applicable requirements relating to
21 venue under section 1391 of title 28, United
22 States Code; or

23 (B) another court of competent jurisdic-
24 tion.

1 (2) SERVICE OF PROCESS.—In an action
2 brought under subsection (a), process may be served
3 in any district in which the defendant—

4 (A) is an inhabitant; or

5 (B) may be found.

6 **SEC. 5. EFFECT ON STATE LAW.**

7 The provisions of this Act shall supersede any incon-
8 sistent provisions of law of any State or unit of local gov-
9 ernment with respect to the conduct required by the spe-
10 cific provisions of this Act.

11 **SEC. 6. EFFECTIVE DATE.**

12 This Act shall take effect on the expiration of the
13 date which is 6 months after the date of enactment of
14 this Act.

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