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[Report No. 110-235]

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

IN THE SENATE OF THE UNITED STATES

APRIL 20, 2007

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

DECEMBER 5, 2007

Reported by Mr. INOUYE, with amendments

[Omit the part struck through 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 Representatives of the United States of America in Congress assembled,*

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

4 (a) **SHORT TITLE.**—This Act may be cited as the
5 “Identity Theft Prevention Act”.

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

- Sec. 1. Short title; table of contents.
- Sec. 2. Protection of sensitive personal information.
- Sec. 3. Notification of security breach risk.
- Sec. 4. Security freeze.
- Sec. 5. Information security and consumer privacy advisory committee.
- Sec. 6. Related crime study.
- Sec. 7. Prohibition on technology mandates.
- Sec. 8. Enforcement.
- Sec. 9. Enforcement by State attorneys general.
- Sec. 10. Preemption of State law.
- See: **11. Definitions.**
- See: **12. Authorization of appropriations.**
- See: **13. Effective dates.**
- Sec. 11. *Social Security number protection.*
- Sec. 12. *Protection of information at Federal agencies.*
- Sec. 13. *Definitions.*
- Sec. 14. *Authorization of appropriations.*
- Sec. 15. *Effective dates.*

3 SEC. 2. PROTECTION OF SENSITIVE PERSONAL INFORMATION.

5 (a) IN GENERAL.—A covered entity shall develop, im-
6 plement, maintain, and enforce a written program for the
7 security of sensitive personal information the entity col-
8 lects, maintains, sells, transfers, or disposes of, containing
9 administrative, technical, and physical safeguards—

1 (b) COMPLIANCE WITH FTC STANDARDS RE-
2 QUIRED.—A covered entity that is in full compliance with
3 the requirements of the Commission's rules on Standards
4 for Safeguarding Customer Information and Disposal of
5 Consumer Report Information and Records is deemed to
6 be in compliance with the requirements of subsection (a).

7 (c) REGULATIONS.—Not later than 1 year after the
8 date of enactment of this Act, the Commission shall pro-
9 mulgate regulations, in accordance with section 553 of
10 title 5, United States Code, that require procedures for
11 authenticating the credentials of any third party to which
12 sensitive personal information is to be transferred or sold
13 by a covered entity.

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

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

17 (1) IN GENERAL.—If a covered entity discovers
18 a breach of security that affects 1,000 or more indi-
19 viduals, then, ~~before conducting the notification re-~~
20 ~~quired by subsection (e), within 5 business days after~~
21 *the discovery of the breach of security*, it shall—

22 (A) report the breach to the Commission
23 (or other appropriate Federal regulator under
24 section 8); 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.

12 (3) CONTENTS OF REPORT.—The report de-
13 scribed in paragraph (2) shall include—

14 (A) the number of individuals impacted by
15 the breach of security; and

16 (B) confirmation that the covered entity
17 has taken action to comply with the require-
18 ments of subsection (c).

19 (b) SECURITY BREACHES AFFECTING FEWER THAN
20 1,000 INDIVIDUALS.—

1 of identity theft, it shall report the breach to the
2 Commission (or other appropriate Federal regulator
3 under section 8).

4 (2) REPORT CONTENTS.—The report shall con-
5 tain the number of individuals affected and the type
6 of information that was exposed because of the
7 breach of security.

8 (3) LIMITATION ON COMMISSION RESPONSE.—
9 With respect to a report under paragraph (1) re-
10 ceived by the Commission, the Commission may
11 not—

12 (A) disclose any sensitive personal informa-
13 tion relating to the individuals (including their
14 names); or
15 (B) publish such a report on its website.

16 (4) DETERMINATION OF REASONABLE RISK OF
17 IDENTITY THEFT.—

18 (A) IN GENERAL.—If a covered entity can-
19 not make a determination as to whether the
20 breach of security creates a reasonable risk of
21 identity theft, it may request guidance from the
22 Commission in writing as to a suggested course
23 of action that may be required under this Act.

24 (B) TIME AND MANNER OF RESPONSE.—
25 The Commission shall respond to a request

1 from a covered entity under subparagraph (A)
2 in writing within 5 business days after the date
3 on which it receives the request.

4 (c) NOTIFICATION OF CONSUMERS.—

5 (1) IN GENERAL.—A covered entity shall use
6 due diligence to investigate any suspected breach of
7 security affecting sensitive personal information
8 maintained by that covered entity. If, after the exer-
9 cise of such due diligence, the covered entity dis-
10 covers a breach of security and determines that the
11 breach of security creates a reasonable risk of iden-
12 tity theft, the covered entity shall notify each such
13 individual. In determining whether a reasonable risk
14 of identity theft exists, a covered entity shall con-
15 sider such factors as whether—

16 (A) data containing sensitive personal in-
17 formation is usable or could be made usable by
18 an unauthorized third party; and

19 (B) the data is in the possession and con-
20 trol of an unauthorized third party.

21 (2) DIRECT RELATIONSHIP WITH CONSUMER
22 REQUIRED.—*The Where the breach involves a situa-
23 tion in which an entity has a direct relationship with
24 consumers, the notice required by paragraph (1)
25 must be provided by the entity which has a direct*

1 relationship with the parties whose information was
2 subject to the breach. Unless there is an agreement
3 to the contrary, the entity providing the notice shall
4 be compensated for the cost of the notice required
5 by the covered entity subject to the breach of secu-
6 rity.

7 (3) *DETERMINATION OF REASONABLE RISK OF*
8 *IDENTITY THEFT.*—

9 (A) *IN GENERAL.*—*If a covered entity can-*
10 *not make a determination as to whether the*
11 *breach of security creates a reasonable risk of*
12 *identity theft, it may request guidance from the*
13 *Commission or relevant enforcement agency in*
14 *writing as to a suggested course of action that*
15 *may be required under this Act.*

16 (B) *TIME AND MANNER OF RESPONSE.*—*The*
17 *Commission or relevant enforcement agency shall*
18 *respond to a request from a covered entity under*
19 *subparagraph (A) in writing within 5 business*
20 *days after the date on which it receives the re-*
21 *quest.*

22 (d) *METHODS OF NOTIFICATION; NOTICE CON-*
23 *TENT.*—

24 (1) *IN GENERAL.*—*A covered entity shall pro-*
25 *vide notice pursuant to subsection (c) by—*

(A) written notice;

(B) electronic notice, if such notice is consistent with the provisions of the Electronic Signatures in Global and National Commerce Act (15 U.S.C. 7001 et seq.); or

(B) electronic notice, if the primary method used by the covered entity to communicate with the individual is by electronic means, or the individual has consented to receive such notice and the notice is consistent with the provisions of the Electronic Signatures in Global and National Commerce Act (15 U.S.C. 7001 et seq.); or

(C) substitute notice, if the covered entity does not have sufficient contact information for the individuals to be notified, consisting of—

(i) notice by electronic mail when the covered entity has an electronic mail address for affected individuals;

(ii) conspicuous posting of the security breach on the Internet website of the covered entity for a reasonable period, if the covered entity maintains a website (except that the information posted may not disclose any sensitive personal information

1 pertaining to the affected individuals (in-
2 cluding their names)); and

3 (iii) notification to major statewide
4 media of the breach of security.

10 (B) the name of the covered entity that
11 was the subject of the breach of security;

12 (C) a description of the categories of sen-
13 sitive personal information of the individual
14 that were the subject of the breach of security;

15 (D) the date of discovery of such breach of
16 security; and

17 (E) the toll-free numbers necessary to con-
18 tact—

23 (iii) the Commission.

12 (2) LAW ENFORCEMENT AND NATIONAL OR
13 HOMELAND SECURITY RELATED DELAYS.—Notwith-
14 standing paragraph (1), the giving of notice as re-
15 quired by that paragraph may be delayed for a rea-
16 sonable period of time if—

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

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

1 (f) CERTAIN SERVICE PROVIDERS.—Section 2 and
2 subsections (a), (b), and (c) of this section do not apply
3 to electronic communication of a third party stored by a
4 cable operator, information service, or telecommunications
5 carrier in the network of such operator, service or carrier
6 in the course of transferring or transmitting such commu-
7 nication. Any term used in this subsection that is defined
8 in the Communications Act of 1934 (47 U.S.C. 151 et
9 seq.) has the meaning given it in that Act.

10 **SEC. 4. SECURITY FREEZE.**

11 (a) IN GENERAL.—

12 (1) EMPLACEMENT.—A consumer may place a
13 security freeze on the consumer's credit report by
14 making a request to a consumer credit reporting
15 agency in writing, by telephone, or through a secure
16 electronic connection if such a connection is made
17 available by the consumer credit reporting agency.

18 (2) CONSUMER DISCLOSURE.—If a consumer
19 requests a security freeze, the consumer credit re-
20 porting agency shall disclose to the consumer the
21 process of placing and removing the security freeze.
22 A consumer credit reporting agency may not imply
23 or inform a consumer that the placement or pres-
24 ence of a security freeze on the consumer's credit re-

1 port may negatively affect the consumer's credit
2 score.

3 (b) EFFECT OF SECURITY FREEZE.—

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

10 (2) INFORMATION PROVIDED TO THIRD PAR-
11 TIES.—Paragraph (1) does not prevent a consumer
12 credit reporting agency from advising a third party
13 that a security freeze is in effect with respect to the
14 consumer's credit report. If a third party, in connec-
15 tion with a request for information in any cir-
16 cumstance under which a consumer credit reporting
17 agency may furnish a consumer report under section
18 604(a) of the Fair Credit Reporting Act (15 U.S.C.
19 1681b), requests access to a consumer credit report
20 on which a security freeze is in place, the third party
21 may treat any application associated with the re-
22 quest as incomplete.

23 (3) CONSUMER CREDIT SCORE NOT AF-
24 FECTED.—The placement of a security freeze on a
25 credit report may not be taken into account for any

1 purpose in determining the credit score of the con-
2 sumer to whom the account relates.

3 (c) REMOVAL; TEMPORARY SUSPENSION.—

4 (1) IN GENERAL.—Except as provided in para-
5 graphs (2)(B) and (4), a security freeze shall remain
6 in place until the consumer requests that the secu-
7 rity freeze be removed. A consumer may remove a
8 security freeze on the consumer's credit report by
9 making a request to a consumer credit reporting
10 agency in writing, by telephone, or through a secure
11 electronic connection made available by the con-
12 sumer credit reporting agency.

13 (2) CONDITIONS.—A consumer credit reporting
14 agency may remove a security freeze placed on a
15 consumer's credit report only—

16 (A) upon the consumer's request, pursuant
17 to paragraph (1); or

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

21 (3) NOTIFICATION TO CONSUMER.—If a con-
22 sumer credit reporting agency intends to remove a
23 freeze upon a consumer's credit report pursuant to
24 paragraph (2)(B) or (4), 2(B) the consumer credit
25 reporting agency shall notify the consumer in writ-

1 ing prior to removing the freeze on the consumer's
2 credit report.

3 (4) TEMPORARY SUSPENSION.—A consumer
4 may have a security freeze on the consumer's credit
5 report temporarily suspended by making a request
6 to a consumer credit reporting agency in ~~writing~~
7 *writing, by telephone*, or through a secure electronic
8 connection made available by the consumer credit re-
9 porting agency and—

10 (A) specifying beginning and ending dates
11 for the period during which the security freeze
12 is not to apply to that consumer's credit report;

13 or

14 (B) specifying a specific third party to
15 which access to the credit report may be grant-
16 ed notwithstanding the freeze.

17 (d) RESPONSE TIMES; NOTIFICATION OF OTHER EN-
18 TITIES.—

19 (1) IN GENERAL.—A consumer credit reporting
20 agency shall—

21 (A) place a security freeze on a consumer's
22 credit report under subsection (a) no later than
23 3 business days after receiving a request from
24 the consumer under subsection (a)(1);

(B) remove a security freeze within 3 business days after receiving a request for removal from the consumer under subsection (c); and

4 (C) temporarily suspend a security freeze
5 within 1 business day after receiving a request
6 under subsection (c)(4).

5 (B) place, remove, or temporarily suspend
6 the security freeze on that credit report within
7 3 business days after validating the request, in-
8 cluding verifying the identity of the requesting
9 consumer and securing the fee under subsection
10 (h)(1), if applicable.

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

23 (f) ID REQUIRED.—A consumer credit reporting
24 agency may not place, remove, or temporarily suspend a
25 security freeze on a consumer's credit report at the con-

1 sumer's request unless the consumer provides proper iden-
2 tification (within the meaning of section 610(a)(1) of the
3 Fair Credit Reporting Act (15 U.S.C. 1681(h)(a)(1)) and
4 the regulations thereunder.

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

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

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

24 (3) A child support agency or its agents or as-
25 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
4 Services, a similar State agency, or the agents or as-
5 signs of the Federal or State agency acting to inves-
6 tigate 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
10 these Federal, State, or municipal agencies acting to
11 investigate or collect delinquent taxes or unpaid
12 court orders or to fulfill any of their other statutory
13 responsibilities.

14 (6) Any person or entity administering a credit
15 file monitoring subscription to which the consumer
16 has subscribed.

17 (7) Any person or entity for the purpose of pro-
18 viding a consumer with a copy of the consumer's
19 credit report or credit score upon the consumer's re-
20 quest.

21 (8) Except when access is restricted to a spe-
22 cific third party during a temporary suspension of a
23 security freeze under subsection (c)(4)(B), any per-
24 son who seeks access during the time period that a
25 security freeze is temporarily suspended for the pur-

1 pose of facilitating the extension of credit or another
2 permissible use.

3 (h) FEES.—

4 (1) IN GENERAL.—Except as provided in para-
5 graph (2), a consumer credit reporting agency may
6 charge a fee, not in excess of \$10, for placing a se-
7 curity freeze on a consumer's credit report. A con-
8 sumer reporting agency may not charge a consumer
9 for up to 2 requests per year per credit reporting
10 agency for temporary suspension of a security freeze.
11 If the consumer requests more than 2 tem-
12 porary suspensions of a security freeze from a credit
13 reporting agency within a year, then that consumer
14 credit reporting agency may charge the consumer a
15 fee for each such additional request, but that con-
16 sumer credit reporting agency may not charge in ex-
17 cess of \$5 per request. A consumer credit reporting
18 agency may not charge a consumer for removing a
19 security freeze.

20 (2) FEES PROHIBITED.—

21 (A) ID THEFT VICTIMS.—A consumer
22 credit reporting agency may not charge a fee
23 for placing, removing, or temporarily sus-
24 pending a security freeze on a consumer's credit
25 report if—

- (i) the consumer is a victim of identity theft;

(ii) the consumer requests the security freeze in writing;

(iii) the consumer has filed a police report with respect to the theft, or an identity theft report (as defined in section 603(q)(4) of the Fair Credit Reporting Act (15 U.S.C. 1681a(q)(4))), within 180 days after the theft occurred or was discovered by the consumer; and

(iv) the consumer provides a copy of the report to the credit reporting agency.

(B) CATEGORICAL CLASSES.—A consumer it reporting agency may not charge a fee placing, removing, or temporarily suspending a credit freeze on a consumer's credit report if the consumer requesting it—

(i) has attained the age of 65 years;

(ii) is on active duty or in the ready reserve component of an armed force of the United States; or

(iii) is the spouse of an individual described in clause (ii).

1 (i) LIMITATION ON INFORMATION CHANGES IN FRO-
2 ZEN REPORTS.—

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

10 (A) Name.
11 (B) Date of birth.
12 (C) Social security account number.
13 (D) Address.

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

22 (j) CERTAIN ENTITY EXEMPTIONS.—

23 (1) RESELLERS AND OTHER AGENCIES.—

24 (A) IN GENERAL.—Except as provided in
25 subparagraph (B), the provisions of this Act do

1 not apply to a consumer credit reporting agency
2 that acts only as a reseller of credit information
3 by assembling and merging information con-
4 tained in the data base of another consumer
5 credit reporting agency or multiple consumer
6 credit reporting agencies, and does not main-
7 tain a permanent data base of credit informa-
8 tion from which new consumer credit reports
9 are produced.

10 (B) RESELLER TO HONOR FREEZES
11 PLACED BY CONSUMER REPORTING AGEN-
12 CIES.—Section 4(b), and, to the extent applica-
13 ble, ~~section 8~~ *sections 8 and 9* of this Act apply
14 to a consumer credit reporting agency described
15 in subparagraph (A).

16 (2) OTHER EXEMPTED ENTITIES.—The fol-
17 lowing entities are not required to place a security
18 freeze in a credit report:

19 (A) A check services or fraud prevention
20 services company, which issues reports on inci-
21 dents of fraud or authorizations for the purpose
22 of approving or processing negotiable instru-
23 ments, electronic funds transfers, or similar
24 methods of payments.

1 (B) A deposit account information service
2 company, which issues reports regarding ac-
3 count closures due to fraud, substantial over-
4 drafts, ATM abuse, or similar negative informa-
5 tion regarding a consumer, to inquiring banks
6 or other financial institutions for use only in re-
7 viewing a consumer request for a deposit ac-
8 count at the inquiring bank or financial institu-
9 tion.

10 SEC. 5. INFORMATION SECURITY AND CONSUMER PRIVACY
11 ADVISORY COMMITTEE.

12 (a) ESTABLISHMENT.—Not later than 90 days after
13 the date of enactment of this Act, the Chairman of the
14 Commission shall establish the Information Security and
15 Consumer Privacy Advisory Committee.

16 (b) MEMBERSHIP.—The Advisory Committee shall
17 consist of 5 members appointed by the Chairman after ap-
18 propriate consultations with relevant interested parties.
19 *parties, including representatives of the small business com-*
20 *munity.* Of the 5 members, the Advisory Committee shall
21 contain at least 1 member from each of the following
22 groups:

23 (1) A non-profit consumer advocacy group.
24 (2) A business organization that collects per-
25 sonally identifiable information.

(c) CHAIRPERSON.—The Advisory Committee members shall elect 1 member to serve as chairperson of the Advisory Committee.

5 (d) FUNCTIONS.—The Advisory Committee shall col-
6 lect, review, disseminate, and advise on ~~best practices~~
7 *guidance* for covered entities to protect sensitive personal
8 information stored and transferred.

9 (e) REPORT.—Not later than 12 months after the
10 date on which the Advisory Committee is established
11 under subsection (a) and annually thereafter, the Advisory
12 Committee shall submit to Congress a report on its find-
13 ings.

14 (f) No TERMINATION.—Section 14(a)(2) of the Fed-
15 eral Advisory Committee Act (5 U.S.C. App 14(a)(2))
16 shall not apply to the Advisory Committee.

17 SEC. 6. RELATED CRIME STUDY.

18 (a) IN GENERAL.—The Federal Trade Commission,
19 in conjunction with the Department of Justice and other
20 Federal agencies, shall undertake a study of—

21 (1) the correlation between methamphetamine
22 use and identity theft crimes;

23 (2) the needs of law enforcement to address
24 methamphetamine crimes related to identity theft,

1 including production, trafficking, and the purchase
2 of precursor chemicals; and

3 (3) the Federal Government's role in addressing
4 and deterring identity theft crimes.

5 (b) REPORT.—Not later than ~~18 months~~ *9 months*
6 after the date of enactment of this Act, the Commission
7 shall submit a report of its findings and recommendations
8 to the Congress that includes—

9 (1) a detailed analysis of the correlation be-
10 tween methamphetamine use and identity theft
11 crimes;

12 (2) the needs of law enforcement to address
13 methamphetamine crimes related to identity theft in-
14 cluding production, trafficking, and the purchase of
15 precursor chemicals related to methamphetamine;

16 (3) the Federal Government's role in addressing
17 and deterring identity theft crimes; and

18 (4) specific recommendations for means of re-
19 ducing and preventing crimes involving methamphet-
20 amine and identity theft, including recommendations
21 for best practices for local law enforcement agencies.

22 **SEC. 7. PROHIBITION ON TECHNOLOGY MANDATES.**

23 Nothing in this Act shall be construed to permit the
24 Commission to issue regulations that require or impose a

1 specific technology, product, technological standards, or
2 solution, or technological standards.

3 **SEC. 8. ENFORCEMENT.**

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

7 (b) VIOLATION IS UNFAIR OR DECEPTIVE ACT OR
8 PRACTICE.—The violation of any provision of this Act
9 shall be treated as an unfair or deceptive act or practice
10 proscribed under a rule issued under section 18(a)(1)(B)
11 of the Federal Trade Commission Act (15 U.S.C.
12 57a(a)(1)(B)).

13 (c) ENFORCEMENT BY CERTAIN OTHER AGEN-
14 CIES.—Compliance with this Act shall be enforced exclu-
15 sively under—

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

18 (A) national banks, and Federal branches
19 and Federal agencies of foreign banks, and any
20 subsidiaries of such entities (except brokers,
21 dealers, persons providing insurance, invest-
22 ment companies, and investment advisers), by
23 the Office of the Comptroller of the Currency;

24 (B) member banks of the Federal Reserve
25 System (other than national banks), branches

1 and agencies of foreign banks (other than Federal
2 branches, Federal agencies, and insured
3 State branches of foreign banks), commercial
4 lending companies owned or controlled by foreign
5 banks, organizations operating under section 25 or 25A of the Federal Reserve Act (12
6 U.S.C. 601 and 611), ~~and bank holding companies and their nonbank subsidiaries or affiliates (except brokers, dealers, persons providing insurance, investment companies and investment advisers)~~, by the Board of Governors of the
7 Federal Reserve System;

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13 (C) banks insured by the Federal Deposit
14 Insurance Corporation (other than members of
15 the Federal Reserve System), insured State
16 branches of foreign banks, ~~and any subsidiaries of such entities (except brokers, dealers, persons providing insurance, investment companies and investment advisers)~~, by the Board of Directors of the Federal Deposit Insurance Corporation; and

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22 (D) savings associations the deposits of
23 which are insured by the Federal Deposit In-
24 surance Corporation, ~~and any subsidiaries of such savings associations (except brokers, deal-~~

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1 ers, persons providing insurance, investment
2 companies and investment advisers), by the Di-
3 rector of the Office of Thrift Supervision;

4 (2) the Federal Credit Union Act (12 U.S.C.
5 1751 et seq.) by the Board of the National Credit
6 Union Administration Board with respect to any
7 Federal credit ~~union and any subsidiaries of such a~~
8 ~~credit~~ union;

9 (3) the Securities and Exchange Act of 1934
10 (15 U.S.C. 78a et seq.) by the Securities and Ex-
11 change Commission with respect to—

12 (A) a broker or dealer subject to that Act;
13 (B) an investment company subject to the
14 Investment Company Act of 1940 (15 U.S.C.
15 80a-1 et seq.); and

16 (C) an investment advisor subject to the
17 Investment Advisers Act of 1940 (15 U.S.C.
18 80b-1 et seq.); and

19 (4) State insurance law, in the case of any per-
20 son engaged in providing insurance, by the applica-
21 ble State insurance authority of the State in which
22 the person is domiciled.

23 (d) EXERCISE OF CERTAIN POWERS.—For the pur-
24 pose of the exercise by any agency referred to in sub-
25 section (c) of its powers under any Act referred to in that

1 subsection, a violation of this Act is deemed to be a viola-
2 tion of a requirement imposed under that Act. In addition
3 to its powers under any provision of law specifically re-
4 ferred to in subsection (c), each of the agencies referred
5 to in that subsection may exercise, for the purpose of en-
6 forcing compliance with any requirement imposed under
7 this Act, any other authority conferred on it by law.

8 (e) OTHER AUTHORITY NOT AFFECTED.—Nothing
9 in this Act shall be construed to limit or affect in any
10 way the Commission's authority to bring enforcement ac-
11 tions or take any other measure under the Federal Trade
12 Commission Act (15 U.S.C. 41 et seq.) or any other provi-
13 sion of law.

14 (f) COMPLIANCE WITH GRAMM-LEACH-BLILEY
15 ACT.—

16 (1) NOTICE.—Any covered entity that is subject
17 to the Gramm-Leach-Bliley Act (15 U.S.C. 6801 et
18 seq.), and gives notice in compliance with the notifi-
19 cation requirements established for such covered en-
20 tities under title V of that Act is deemed to be in
21 compliance with section 3 of this Act.

22 (2) SAFEGUARDS.—Any covered entity that is
23 subject to the Gramm-Leach-Bliley Act (15 U.S.C.
24 6801 et seq.), and fulfills the information protection
25 requirements established for such entities under title

1 V of the Act and under section 607(a) of the Fair
2 Credit Reporting Act (15 U.S.C. 1681e(a)) to pro-
3 tect sensitive personal information shall be deemed
4 to be in compliance with section 2 of this Act.

5 **SEC. 9. ENFORCEMENT BY STATE ATTORNEYS GENERAL.**

6 (a) IN GENERAL.—Except as provided in section
7 8(c), a State, as parens patriae, may bring a civil action
8 on behalf of its residents in an appropriate state or district
9 court of the United States to enforce the provisions of this
10 Act, to obtain damages, restitution, or other compensation
11 on behalf of such residents, or to obtain such further and
12 other relief as the court may deem appropriate, whenever
13 the attorney general of the State has reason to believe that
14 the interests of the residents of the State have been or
15 are being threatened or adversely affected by a covered
16 entity that violates this Act or a regulation under this Act.

17 (b) NOTICE.—The State shall serve written notice to
18 the Commission (or other appropriate Federal regulator
19 under section 8) of any civil action under subsection (a)
20 at least 60 days prior to initiating such civil action. The
21 notice shall include a copy of the complaint to be filed
22 to initiate such civil action, except that if it is not feasible
23 for the State to provide such prior notice, the State shall
24 provide such notice immediately upon instituting such civil
25 action.

1 (c) AUTHORITY TO INTERVENE.—Upon receiving the
2 notice required by subsection (b), the Commission (or
3 other appropriate Federal regulator under section 8) may
4 intervene in such civil action and upon intervening—

5 (1) be heard on all matters arising in such civil
6 action; and

7 (2) file petitions for appeal of a decision in such
8 civil action.

9 (d) CONSTRUCTION.—For purposes of bringing any
10 civil action under subsection (a), nothing in this section
11 shall prevent the attorney general of a State from exer-
12 cising the powers conferred on the attorney general by the
13 laws of such State to conduct investigations or to admin-
14 ister oaths or affirmations or to compel the attendance
15 of witnesses or the production of documentary and other
16 evidence.

17 (e) VENUE; SERVICE OF PROCESS.—In a civil action
18 brought under subsection (a)—

19 (1) the venue shall be a judicial district in
20 which—

21 (A) the covered entity operates; or

22 (B) the covered entity was authorized to do
23 business;

4 (3) a person who participated with a covered
5 entity in an alleged violation that is being litigated
6 in the civil action may be joined in the civil action
7 without regard to the residence of the person.

8 (f) LIMITATION ON STATE ACTION WHILE FEDERAL
9 ACTION IS PENDING.—If the Commission (or other appro-
10 priate Federal agency under section 8) has instituted a
11 civil action or an administrative action for violation of this
12 Act, no State attorney general, or official or agency of a
13 State, may bring an action under this subsection during
14 the pendency of that action against any defendant named
15 in the complaint of the Commission or the other agency
16 for any violation of this Act alleged in the complaint.

17 (g) RECOVERY OF REASONABLE COSTS AND FEES.—
18 *If the attorney general of the State prevails in any civil
19 action under subsection (a), it can recover reasonable costs
20 and attorney fees from the covered entity.*

21 SEC. 10. PREEMPTION OF STATE LAW.

22 (a) NOTICE.—This Act preempts any State or local
23 law, regulation, or rule that requires a covered entity to
24 notify individuals of breaches of security pertaining to
25 them.

1 (b) INFORMATION SECURITY PROGRAMS.—This Act
2 preempts any State or local law, regulation, or rule that
3 requires a covered entity to develop, implement, maintain,
4 or enforce information security programs to which this Act
5 applies.

6 (c) SECURITY FREEZE.—

7 (1) IN GENERAL.—This Act shall not be con-
8 strued as superseding, altering, or affecting any
9 statute, regulation, order, or interpretation in effect
10 in any State with regards to consumer credit report-
11 ing agencies compliance with a consumer's request
12 to place, remove, or temporarily suspend the prohibi-
13 tion on the release by a credit reporting agency of
14 information from its files on that consumer, except
15 to the extent that such statute, regulation, order, or
16 interpretation is inconsistent with the provisions of
17 this Act, and then only to the extent of the incon-
18 sistency.

19 (2) GREATER PROTECTION UNDER STATE
20 LAW.—For purposes of this section, a State statute,
21 regulation, order, or interpretation is not incon-
22 sistent with the provisions of this subtitle if the pro-
23 tection ~~of~~ *afforded by* such statute, regulation, order,
24 or interpretation ~~affords~~ any person is greater than
25 the protection provided under this Act in regards to

1 credit reporting agencies compliance with a con-
2 sumer's request to place, remove, or temporarily sus-
3 pend the prohibition on the release by a consumer
4 credit reporting agency of information from its files
5 on that consumer.

6 (d) *SOCIAL SECURITY ACCOUNT NUMBERS.*—Section
7 11 of this Act, and the amendments made by that section,
8 preempt any State or local law, regulation, or rule prohib-
9 iting or limiting the collection, solicitation, sale, provision,
10 or display of social security account numbers of the types
11 described in section 11.

12 (d) (e) *LIMITATION OF PREEMPTION.*—Federal pre-
13 emption under this Act shall only apply to matters ex-
14 pressly described in subsection (a) or (b) (a), (b), or (d)
15 of this section, and shall have no effect on other State
16 or local laws, regulations, or rules over covered entities.

17 **SEC. 11. SOCIAL SECURITY NUMBER PROTECTION.**

18 (a) *PROHIBITION OF UNNECESSARY SOLICITATION OF*
19 *SOCIAL SECURITY NUMBERS.*—

20 (1) *IN GENERAL.*—Unless there is a specific use
21 of a social security account number for which no
22 other identifier reasonably can be used, a covered en-
23 tity may not solicit a social security account number
24 from an individual except for the following purposes:

1 (A) For use in an identification,
2 verification, accuracy, or identity proofing proc-
3 ess.

(B) by a consumer reporting agency for the purpose of authenticating or obtaining appropriate proof of a consumer's identity, as required under that Act;

23 (D) to the extent necessary for verifying the
24 accuracy of information submitted by an indi-
25 vidual to a covered entity, its agents, contractors,

1 *or employees or for the purpose of authenticating*
2 *or obtaining appropriate proof of an individ-*
3 *ual's identity;*

4 *(E) to identify or locate missing or ab-*
5 *ducted children, witnesses, criminals, fugitives,*
6 *parties to lawsuits, parents delinquent in child*
7 *support payments, organ and bone marrow do-*
8 *nors, pension fund beneficiaries, and missing*
9 *heirs;*

10 *(F) to the extent necessary to prevent, de-*
11 *tect, or investigate fraud, unauthorized trans-*
12 *actions, or other financial liability or to facili-*
13 *tate the enforcement of an obligation of, or collec-*
14 *tion of a debt from, a consumer, provided that*
15 *the person selling, providing, displaying, or ob-*
16 *taining the social security account number does*
17 *not do so for marketing purposes.*

18 *(b) PROHIBITION OF THE DISPLAY OF SOCIAL SECU-*
19 *RITY NUMBERS ON EMPLOYEE IDENTIFICATION CARDS,*
20 *ETC.—*

21 *(1) IN GENERAL.—A covered entity may not dis-*
22 *play an individual's security account number (or any*
23 *derivative of such number) on any card or tag that*
24 *is commonly provided to employees (or to their family*

1 members), faculty, staff, or students for purposes of
2 identification.

3 (2) *DRIVER'S LICENSES.*—A State may not dis-
4 play the social security account number of an indi-
5 vidual on driver's licenses issued by that State.

6 (c) *PROHIBITION OF PRISONER ACCESS TO SOCIAL*
7 *SECURITY NUMBERS.*—

8 (1) *IN GENERAL.*—Section 205(c)(2)(C) of the
9 *Social Security Act* (42 U.S.C. 405(c)(2)(C)) is
10 amended by adding at the end the following:

11 “(x) *No executive, legislative, or judi-*
12 *cial agency or instrumentality of the Fed-*
13 *eral Government or of a State or political*
14 *subdivision thereof (or person acting as an*
15 *agent of such an agency or instrumentality)*
16 *may employ, or enter into a contract for the*
17 *use or employment of, prisoners in any ca-*
18 *pacity that would allow such prisoners ac-*
19 *cess to the social security account numbers*
20 *of other individuals. For purposes of this*
21 *clause, the term 'prisoner' means an indi-*
22 *vidual who is confined in a jail, prison, or*
23 *other penal institution or correctional facil-*
24 *ity, serving community service as a term of*

3 (2) TREATMENT OF CURRENT ARRANGEMENTS.—

4 *In the case of—*

12 *the amendment made by paragraph (1) shall take ef-*
13 *fect 90 days after the date of enactment of this Act.*

14 (d) *PROHIBITION OF SALE AND DISPLAY OF SOCIAL*
15 *SECURITY NUMBERS TO THE GENERAL PUBLIC.*—

17 *graph (2), it shall be unlawful for any person—*

22 (B) to obtain or use any individual's social
23 security account number for the purpose of locat-
24 ing or identifying such individual with the in-
25 tent to physically injure or harm such indi-

1 *vidual or using the identity of such individual*
2 *for any illegal purpose.*

3 *(2) EXCEPTIONS.—Notwithstanding paragraph*
4 *(1), and subject to paragraph (3), a social security*
5 *account number may be sold, provided, displayed, or*
6 *obtained by any person—*

7 *(A) to the extent necessary for law enforce-*
8 *ment or national security purposes;*

9 *(B) to the extent necessary for public health*
10 *purposes;*

11 *(C) to the extent necessary in emergency sit-*
12 *uations to protect the health or safety of 1 or*
13 *more individuals;*

14 *(D) to the extent that the sale or display is*
15 *required, authorized, or permitted under any law*
16 *of the United States or of any State, county, or*
17 *municipality;*

18 *(E) for any purposes allowed under the*
19 *Fair Credit Reporting Act (15 U.S.C. 1681 et*
20 *seq.) or the Gramm-Leach-Bliley Act (15 U.S.C.*
21 *6802(e));*

22 *(F) to the extent necessary for verifying the*
23 *accuracy of information submitted by an indi-*
24 *vidual to a covered entity, its agents, contractors,*
25 *or employees or for the purpose of authenticating*

1 *or obtaining appropriate proof of the individual's identity;*

3 *(G) to the extent necessary to identify or locate missing or abducted children, witnesses to an ongoing or potential civil or criminal lawsuit, criminals, criminal suspects, parties to lawsuits, parents delinquent in child support payments, organ and bone marrow donors, pension fund beneficiaries, missing heirs, and for similar legal, medical, or family related purposes, if the person selling, providing, displaying, or obtaining the social security account number does not do so for marketing purposes;*

14 *(H) to the extent necessary to prevent, detect, or investigate fraud, unauthorized transactions, or other financial liability or to facilitate the enforcement of an obligation of, or collection of a debt from, a consumer, if the person selling, providing, displaying, or obtaining the social security account number does not do so for marketing purposes;*

22 *(I) to the extent the transmission of the number is incidental to, and in the course of, the sale, lease, franchising, or merger of all, or a portion of, a business; or*

(J) to the extent necessary for research (other than market research) conducted by an agency or instrumentality of the United States or of a State or political subdivision thereof (or an agent of such an agency or instrumentality) for the purpose of advancing the public good, on the condition that the researcher provides adequate assurances that—

5 (i) the Federal Government or a State
6 or local government, that the document has
7 been made available to the general public;
8 or

24 (A) the terms of the consent and the right
25 to refuse consent are presented to the individual

1 *in a clear, conspicuous, and understandable*
2 *manner;*

3 *(B) the individual is placed under no obli-*
4 *gation to provide consent to any such sale or dis-*
5 *play; and*

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

11 **SEC. 12. PROTECTION OF INFORMATION AT FEDERAL AGEN-**
12 **CIES.**

13 *(a) DATA SECURITY STANDARDS.—Each agency shall*
14 *develop, implement, maintain, and enforce a written pro-*
15 *gram for the security of sensitive personal information the*
16 *agency collects, maintains, sells, transfers, or disposes of,*
17 *containing administrative, technical and physical safe-*
18 *guards—*

19 *(1) to insure the security and confidentiality of*
20 *such data;*

21 *(2) to protect against any anticipated threats or*
22 *hazards to the security of such data; and*

23 *(3) to protect against unauthorized access to, or*
24 *use of, such data that could result in substantial*
25 *harm to any individual misuse of such information,*

1 *which could result in substantial harm or inconven-*
2 *ience to a consumer.*

3 *(b) SECURITY BREACH NOTIFICATION STANDARDS.—*
4 *Each agency shall use due diligence to investigate any sus-*
5 *pected breach of security affecting sensitive personal infor-*
6 *mation maintained by the agency. If, after the exercise of*
7 *such due diligence, the agency discovers a breach and deter-*
8 *mines that the breach of security creates a reasonable risk*
9 *of identity theft, the agency shall notify each such indi-*
10 *vidual as prescribed in section 3(d) and (e).*

11 *(c) AGENCY.—The term ‘agency’ has the same meaning*
12 *given such term in section 551(1) of title 5, United States*
13 *Code.*

14 *(d) ENFORCEMENT.—The Inspector General of each*
15 *Federal agency will be responsible for enforcing the provi-*
16 *sions of this Act in accordance with the Inspector General*
17 *Act.*

18 **SEC. 11. DEFINITIONS.**

19 **SEC. 13. DEFINITIONS.**

20 In this Act:

21 (1) BREACH OF SECURITY.—The term “breach

22 of security” means unauthorized access to and ac-

23 quisition of data in any form or format containing

24 sensitive personal information that compromises the

25 security or confidentiality of such information.

1 factor in establishing a consumer's eligibility for
2 credit for personal, family or household purposes.

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

7 (A) violates section 1028 of title 18,
8 United States Code, or any provision of State
9 law in pari materia; or

10 (B) results in harm to the individual whose
11 sensitive personal information was used.

12 (7) REASONABLE RISK OF IDENTITY THEFT.—
13 The term “reasonable risk of identity theft” means
14 that the preponderance of the evidence available to
15 the covered entity that has experienced a breach of
16 security establishes that identity theft for 1 or more
17 individuals from the breach of security is foreseeable.

18 (8) REVIEWING THE ACCOUNT.—The term “re-
19 viewing the account” includes activities related to
20 account maintenance, monitoring, credit line in-
21 creases, and account upgrades and enhancements.

22 (9) SENSITIVE PERSONAL INFORMATION.—

23 (A) IN GENERAL.—Except as provided in
24 subparagraphs (B), (C), and (D), the term
25 “sensitive personal information” means an indi-

vidual's name, address, or telephone number combined with 1 or more of the following data elements related to that individual:

(i) Social security account number or an employer identification number that is the same as or is derived from the social security account number of that individual.

(ii) Financial account number, or credit card or debit card number of such individual, combined with any required security code, access code, or password that would permit access to such individual's account, account number or card number.

(iii) State driver's license identification number or State resident identification number.

(B) PASSWORD ACCOUNTS.—~~An~~ *The term “sensitive personal information” also includes an account identifier combined with a password, PIN, or security code to access the account, for any consumer account from which any of the following can occur without further authentication after login:*

(i) A financial transaction.

(ii) A purchase of goods or services.

1 (iii) A charge to a payment card or
2 account.

3 (iv) A charge to a credit card or ac-
4 count.

5 (v) Access to the account that reveals
6 sufficient information to engage in any ac-
7 tivity described in clause (i), (ii), (iii), or
8 (iv).

9 (C) FTC MODIFICATIONS.—The Commis-
10 sion may, through a rulemaking proceeding in
11 accordance with section 553 of title 5, United
12 States Code, designate other identifying infor-
13 mation that may be used to effectuate identity
14 theft as sensitive personal information for pur-
15 poses of this Act and limit or exclude any infor-
16 mation described in subparagraph (A) from the
17 definition of sensitive personal information for
18 purposes of this Act.

19 (D) EXCEPTION.—The term “sensitive
20 personal information” does not include informa-
21 tion that is obtained from—

22 (i) Federal, State, or local govern-
23 ments that has been made available to the
24 general public; or
25 (ii) widely distributed media

1 The exception provided by this subparagraph
2 does not apply if the information obtained from
3 Federal, State, or local government records or
4 widely distributed media is combined with infor-
5 mation obtained from non-public sources.

6 (E) PUBLIC RECORDS.—Nothing in this
7 Act prohibits a covered entity from obtaining,
8 aggregating, or using sensitive personal infor-
9 mation it lawfully obtains from public records
10 in a manner that does not violate this Act.

11 (E) BURDEN OF PROOF.—In an enforce-
12 ment action brought pursuant to section 8 or 9
13 of this Act, the covered entity shall have the bur-
14 den of demonstrating that it has obtained the in-
15 formation from a source permitted as an excep-
16 tion in this paragraph.

17 (11) SOCIAL SECURITY ACCOUNT NUMBER.—The
18 term “social security account number” means a social
19 security account number that contains more than 5
20 digits of the full 9-digit number assigned by the So-
21 cial Security Administration but does not include so-
22 cial security account numbers to the extent that they
23 are included in a publicly available information
24 source, such as news reports, books, periodicals, or di-

1 *rectories or Federal, State, or local government*
2 *records.*

3 **SEC. 12. AUTHORIZATION OF APPROPRIATIONS.**

4 **SEC. 14. AUTHORIZATION OF APPROPRIATIONS.**

5 There are authorized to be appropriated to the Com-
6 mission \$2,000,000 for each of fiscal years 2007 through
7 2011 to carry out this Act.

8 **SEC. 13. EFFECTIVE DATES.**

9 **SEC. 15. EFFECTIVE DATES.**

10 (a) IN GENERAL.—Except as provided in subsections
11 (b) and (c), the provisions of this Act take effect upon
12 its enactment.

13 (b) IMPLEMENTATION OF SECURITY PROGRAM.—A
14 covered entity shall implement the program required by
15 section 2(a) within 6 months after the date of enactment
16 of this Act.

17 (c) PROVISIONS REQUIRING RULEMAKING.—The
18 Commission shall initiate 1 or more rulemaking pro-
19 ceedings under sections 2(c), 3, and 4 (including a rule-
20 making proceeding to determine what constitutes proper
21 identification within the meaning of section 610(a)(1) of
22 the Fair Credit Reporting Act (15 U.S.C. 1681(h)(a)(1)))
23 within 45 days after the date of enactment of this Act.
24 The Commission shall promulgate all final rules pursuant
25 to those rulemaking proceedings within 1 year after the

1 date of enactment of this Act. The provisions of sections
2 2(c), 3, and 4 shall take effect on the same date 6 months
3 after the date on which the Commission promulgates the
4 last final rule under the proceeding or proceedings com-
5 menced under the preceding sentence.

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

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[Report No. 110-235]

A BILL

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

DECEMBER 5, 2007

Reported with amendments