

113TH CONGRESS
1ST SESSION

H. R. 1121

To protect cyber privacy, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

MARCH 13, 2013

Mr. CONYERS (for himself, Mr. SCOTT of Virginia, and Mr. JOHNSON of Georgia) introduced the following bill; which was referred to the Committee on the Judiciary

A BILL

To protect cyber privacy, and for other purposes.

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

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Cyber Privacy For-
5 tification Act of 2013”.

TITLE I—DATA BREACH NOTIFICATION

SEC. 101. FAILURE TO PROVIDE NOTICE OF SECURITY BREACHES INVOLVING SENSITIVE PERSON- ALLY IDENTIFIABLE INFORMATION.

(a) IN GENERAL.—Chapter 47 of title 18, United States Code, is amended by adding at the end the following:

“§ 1040. Failure to provide notice of security breaches involving sensitive personally identifiable information

“(a) Whoever, having a covered obligation to provide notice of a security breach involving sensitive personally identifiable information, knowingly fails to do so, shall be fined under this title or imprisoned not more than 5 years, or both.

“(b) As used in this section—

“(1) the term ‘covered obligation’, with respect to providing notice of a security breach, means an obligation under Federal law or, if the breach is in or affects interstate or foreign commerce, under State law;

“(2) the term ‘sensitive personally identifiable information’ means any electronic or digital information that includes—

1 “(A) an individual’s first and last name, or
2 first initial and last name, or address or phone
3 number in combination with any one of the fol-
4 lowing data elements where the data elements
5 are not protected by a technology protection
6 measure that renders the data element indeci-
7 pherable—

8 “(i) a nontruncated social security
9 number, driver’s license number, state resi-
10 dent identification number, passport num-
11 ber, or alien registration number;

12 “(ii) both—

13 “(I) mother’s maiden name, if
14 identified as such; and

15 “(II) month, day, and year of
16 birth; and

17 “(iii) unique biometric data such as a
18 fingerprint, voice print, a retina or iris
19 image; or

20 “(B) a financial account number or credit
21 or debit card number in combination with any
22 security code, access code or password that is
23 required for an individual to obtain credit, with-
24 draw funds, or engage in a financial transaction
25 by means of such number;

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 47 of title 18, United States Code, is amended by adding at the end the following:

11 (c) OBLIGATION TO REPORT.—

(2) PUBLICATION OF LIST OF NOTIFICATIONS.—The Secret Service and the Federal Bureau of Investigation shall annually publish in the Federal Register a list of all notifications submitted the previous calendar year and the identity of each entity

with respect to which the major security breach occurred.

(3) DEFINITION.—In this subsection—

(A) the term “major security breach” means any security breach involving—

(i) means of identification pertaining to 10,000 or more individuals is, or is reasonably believed to have been acquired;

(ii) databases owned by the Federal Government; or

(iii) means of identification of Federal Government employees or contractors involved in national security matters or law enforcement; and

(B) the term “means of identification” has the meaning given that term in section 1028 of title 18, United States Code.

TITLE II—NON-CRIMINAL PRIVACY ENFORCEMENT AND PRIVACY IMPACT STATEMENTS

SEC. 201. ENFORCEMENT BY ATTORNEY GENERAL AND STATE AUTHORITIES.

(a) DEFINITION OF “AUTHORIZED ENTITY”.—As used in this section, the term “authorized entity” means

1 the Attorney General, with respect to any conduct consti-
2 tuting a violation of a Federal law enacted after the date
3 of the enactment of this Act relating to data security and
4 engaged in by a business entity, and a State Attorney
5 General with respect to that conduct to the extent the con-
6 duct adversely affects an interest of the residents of a
7 State.

8 (b) CIVIL PENALTY.—

9 (1) GENERALLY.—An authorized entity may in
10 a civil action obtain a civil penalty of not more than
11 \$500,000 from any business entity that engages in
12 conduct constituting a violation of a Federal law en-
13 acted after the date of the enactment of this Act re-
14 lating to data security.

15 (2) SPECIAL RULE FOR INTENTIONAL VIOLA-
16 TION.—If the violation described in subsection (a) is
17 intentional, the maximum civil penalty is
18 \$1,000,000.

19 (c) INJUNCTIVE RELIEF.—An authorized entity may,
20 in a civil action against a business entity that has engaged,
21 or is engaged, in any conduct constituting a violation of
22 a Federal law enacted after the date of the enactment of
23 this Act relating to data security, obtain an order—

24 (1) enjoining such act or practice; or

25 (2) enforcing compliance with that law.

1 (d) OTHER RIGHTS AND REMEDIES.—The rights and
 2 remedies available under this section do not affect any
 3 other rights and remedies available under Federal or State
 4 law.

5 **SEC. 202. COORDINATION OF STATE AND FEDERAL EF-**
 6 **FORTS.**

7 (a) NOTICE.—

8 (1) IN GENERAL.—A State consumer protection
 9 attorney may not bring an action under section 201,
 10 until the attorney general of the State involved pro-
 11 vides to the Attorney General of the United States—

12 (A) written notice of the action; and

13 (B) a copy of the complaint for the action.

14 (2) EXCEPTION.—Paragraph (1) does not apply
 15 with respect to the filing of an action by an attorney
 16 general of a State under this section if the State at-
 17 torney general determines that it is not feasible to
 18 provide the notice described in such subparagraph
 19 before the filing of the action, in such a case the
 20 State attorney general shall provide notice and a
 21 copy of the complaint to the Attorney General at the
 22 time the State attorney general files the action.

23 (b) FEDERAL PROCEEDINGS.—The Attorney General
 24 may—

1 (1) move to stay any non-Federal action under
2 section 201, pending the final disposition of a pend-
3 ing Federal action under that section;

4 (2) initiate an action in an appropriate United
5 States district court and move to consolidate all
6 pending actions under section 201, including State
7 actions, in that court; and

8 (3) intervene in a State action under section
9 201.

10 (c) PENDING PROCEEDINGS.—If the Attorney Gen-
11 eral institutes a proceeding or action for a violation of a
12 Federal law enacted after the date of the enactment of
13 this Act relating to data security, no authority of a State
14 may, during the pendency of such proceeding or action,
15 bring an action under this section against any defendant
16 named in such criminal proceeding or a civil action against
17 any defendant for any violation that is alleged in that pro-
18 ceeding or action.

19 (d) DEFINITION.—As used in this section, the term
20 “State consumer protection attorney” means the attorney
21 general of a State or any State or local law enforcement
22 agency authorized by the State attorney general or by
23 State statute to prosecute violations of consumer protec-
24 tion law.

1 **SEC. 203. REQUIREMENT THAT AGENCY RULEMAKING**
2 **TAKE INTO CONSIDERATION IMPACTS ON IN-**
3 **DIVIDUAL PRIVACY.**

4 (a) IN GENERAL.—Title 5, United States Code, is
5 amended by adding after section 553 the following new
6 section:

7 **“§ 553a. Privacy impact assessment in rulemaking**

8 **“(a) INITIAL PRIVACY IMPACT ASSESSMENT.—**

9 **“(1) IN GENERAL.—**Whenever an agency is re-
10 quired by section 553 of this title, or any other law,
11 to publish a general notice of proposed rulemaking
12 for a proposed rule, or publishes a notice of pro-
13 posed rulemaking for an interpretative rule involving
14 the internal revenue laws of the United States, and
15 such rule or proposed rulemaking pertains to the
16 collection, maintenance, use, or disclosure of person-
17 ally identifiable information from 10 or more indi-
18 viduals, other than agencies, instrumentalities, or
19 employees of the Federal Government, the agency
20 shall prepare and make available for public comment
21 an initial privacy impact assessment that describes
22 the impact of the proposed rule on the privacy of in-
23 dividuals. Such assessment or a summary thereof
24 shall be signed by the senior agency official with pri-
25 mary responsibility for privacy policy and be pub-
26 lished in the Federal Register at the time of the

1 publication of a general notice of proposed rule-
2 making for the rule.

3 “(2) CONTENTS.—Each initial privacy impact
4 assessment required under this subsection shall con-
5 tain the following:

6 “(A) A description and analysis of the ex-
7 tent to which the proposed rule will impact the
8 privacy interests of individuals, including the
9 extent to which the proposed rule—

10 “(i) provides notice of the collection of
11 personally identifiable information, and
12 specifies what personally identifiable infor-
13 mation is to be collected and how it is to
14 be collected, maintained, used, and dis-
15 closed;

16 “(ii) allows access to such information
17 by the person to whom the personally iden-
18 tifiable information pertains and provides
19 an opportunity to correct inaccuracies;

20 “(iii) prevents such information,
21 which is collected for one purpose, from
22 being used for another purpose; and

23 “(iv) provides security for such infor-
24 mation, including the provision of written
25 notice to any individual, within 14 days of

1 the date of compromise, whose privacy in-
2 terests are compromised by the unauthor-
3 ized release of personally identifiable infor-
4 mation as a result of a breach of security
5 at or by the agency.

6 “(B) A description of any significant alter-
7 natives to the proposed rule which accomplish
8 the stated objectives of applicable statutes and
9 which minimize any significant privacy impact
10 of the proposed rule on individuals.

11 “(b) FINAL PRIVACY IMPACT ASSESSMENT.—

12 “(1) IN GENERAL.—Whenever an agency pro-
13 mulgates a final rule under section 553 of this title,
14 after being required by that section or any other law
15 to publish a general notice of proposed rulemaking,
16 or promulgates a final interpretative rule involving
17 the internal revenue laws of the United States, and
18 such rule or proposed rulemaking pertains to the
19 collection, maintenance, use, or disclosure of person-
20 ally identifiable information from 10 or more indi-
21 viduals, other than agencies, instrumentalities, or
22 employees of the Federal Government, the agency
23 shall prepare a final privacy impact assessment,
24 signed by the senior agency official with primary re-
25 sponsibility for privacy policy.

1 “(2) CONTENTS.—Each final privacy impact as-
2 sessment required under this subsection shall con-
3 tain the following:

4 “(A) A description and analysis of the ex-
5 tent to which the final rule will impact the pri-
6 vacy interests of individuals, including the ex-
7 tent to which such rule—

8 “(i) provides notice of the collection of
9 personally identifiable information, and
10 specifies what personally identifiable infor-
11 mation is to be collected and how it is to
12 be collected, maintained, used, and dis-
13 closed;

14 “(ii) allows access to such information
15 by the person to whom the personally iden-
16 tifiable information pertains and provides
17 an opportunity to correct inaccuracies;

18 “(iii) prevents such information,
19 which is collected for one purpose, from
20 being used for another purpose; and

21 “(iv) provides security for such infor-
22 mation, including the provision of written
23 notice to any individual, within 14 days of
24 the date of compromise, whose privacy in-
25 terests are compromised by the unauthor-

1 ized release of personally identifiable infor-
2 mation as a result of a breach of security
3 at or by the agency.

4 “(B) A summary of any significant issues
5 raised by the public comments in response to
6 the initial privacy impact assessment, a sum-
7 mary of the analysis of the agency of such
8 issues, and a statement of any changes made in
9 such rule as a result of such issues.

10 “(C) A description of the steps the agency
11 has taken to minimize the significant privacy
12 impact on individuals consistent with the stated
13 objectives of applicable statutes, including a
14 statement of the factual, policy, and legal rea-
15 sons for selecting the alternative adopted in the
16 final rule and why each one of the other signifi-
17 cant alternatives to the rule considered by the
18 agency which affect the privacy interests of in-
19 dividuals was rejected.

20 “(3) AVAILABILITY TO PUBLIC.—The agency
21 shall make copies of the final privacy impact assess-
22 ment available to members of the public and shall
23 publish in the Federal Register such assessment or
24 a summary thereof.

25 “(c) WAIVERS.—

1 “(1) EMERGENCIES.—An agency head may
2 waive or delay the completion of some or all of the
3 requirements of subsections (a) and (b) to the same
4 extent as the agency head may, under section 608,
5 waive or delay the completion of some or all of the
6 requirements of sections 603 and 604, respectively.

7 “(2) NATIONAL SECURITY.—An agency head
8 may, for national security reasons, or to protect
9 from disclosure classified information, confidential
10 commercial information, or information the disclo-
11 sure of which may adversely affect a law enforce-
12 ment effort, waive or delay the completion of some
13 or all of the following requirements:

14 “(A) The requirement of subsection (a)(1)
15 to make an assessment available for public com-
16 ment, provided that such assessment is made
17 available, in classified form, to the Committees
18 on the Judiciary of the House of Representa-
19 tives and the Senate, in lieu of making such as-
20 sessment available to the public.

21 “(B) The requirement of subsection (a)(1)
22 to have an assessment or summary thereof pub-
23 lished in the Federal Register, provided that
24 such assessment or summary is made available,
25 in classified form, to the Committees on the Ju-

1 diciary of the House of Representatives and the
2 Senate, in lieu of publishing such assessment or
3 summary in the Federal Register.

4 “(C) The requirements of subsection
5 (b)(3), provided that the final privacy impact
6 assessment is made available, in classified form,
7 to the Committees on the Judiciary of the
8 House of Representatives and the Senate, in
9 lieu of making such assessment available to the
10 public and publishing such assessment in the
11 Federal Register.

12 “(d) PROCEDURES FOR GATHERING COMMENTS.—
13 When any rule is promulgated which may have a signifi-
14 cant privacy impact on individuals, or a privacy impact
15 on a substantial number of individuals, the head of the
16 agency promulgating the rule or the official of the agency
17 with statutory responsibility for the promulgation of the
18 rule shall assure that individuals have been given an op-
19 portunity to participate in the rulemaking for the rule
20 through techniques such as—

21 “(1) the inclusion in an advance notice of pro-
22 posed rulemaking, if issued, of a statement that the
23 proposed rule may have a significant privacy impact
24 on individuals, or a privacy impact on a substantial
25 number of individuals;

1 “(2) the publication of a general notice of pro-
2 posed rulemaking in publications of national circula-
3 tion likely to be obtained by individuals;

4 “(3) the direct notification of interested individ-
5 uals;

6 “(4) the conduct of open conferences or public
7 hearings concerning the rule for individuals, includ-
8 ing soliciting and receiving comments over computer
9 networks; and

10 “(5) the adoption or modification of agency
11 procedural rules to reduce the cost or complexity of
12 participation in the rulemaking by individuals.

13 “(e) PERIODIC REVIEW OF RULES.—

14 “(1) IN GENERAL.—Each agency shall carry
15 out a periodic review of the rules promulgated by the
16 agency that have a significant privacy impact on in-
17 dividuals, or a privacy impact on a substantial num-
18 ber of individuals. Under such periodic review, the
19 agency shall determine, for each such rule, whether
20 the rule can be amended or rescinded in a manner
21 that minimizes any such impact while remaining in
22 accordance with applicable statutes. For each such
23 determination, the agency shall consider the fol-
24 lowing factors:

25 “(A) The continued need for the rule.

1 “(B) The nature of complaints or com-
2 ments received from the public concerning the
3 rule.

4 “(C) The complexity of the rule.

5 “(D) The extent to which the rule over-
6 laps, duplicates, or conflicts with other Federal
7 rules, and, to the extent feasible, with State and
8 local governmental rules.

9 “(E) The length of time since the rule was
10 last reviewed under this subsection.

11 “(F) The degree to which technology, eco-
12 nomic conditions, or other factors have changed
13 in the area affected by the rule since the rule
14 was last reviewed under this subsection.

15 “(2) PLAN REQUIRED.—Each agency shall
16 carry out the periodic review required by paragraph
17 (1) in accordance with a plan published by such
18 agency in the Federal Register. Each such plan shall
19 provide for the review under this subsection of each
20 rule promulgated by the agency not later than 10
21 years after the date on which such rule was pub-
22 lished as the final rule and, thereafter, not later
23 than 10 years after the date on which such rule was
24 last reviewed under this subsection. The agency may

1 amend such plan at any time by publishing the revision in the Federal Register.

3 “(3) ANNUAL PUBLICATION.—Each year, each
4 agency shall publish in the Federal Register a list of
5 the rules to be reviewed by such agency under this
6 subsection during the following year. The list shall
7 include a brief description of each such rule and the
8 need for and legal basis of such rule and shall invite
9 public comment upon the determination to be made
10 under this subsection with respect to such rule.

11 “(f) JUDICIAL REVIEW.—

12 “(1) IN GENERAL.—For any rule subject to this
13 section, an individual who is adversely affected or
14 aggrieved by final agency action is entitled to judicial
15 review of agency compliance with the requirements of
16 subsections (b) and (c) in accordance with
17 chapter 7. Agency compliance with subsection (d)
18 shall be judicially reviewable in connection with judicial
19 review of subsection (b).

20 “(2) JURISDICTION.—Each court having jurisdiction
21 to review such rule for compliance with section 553,
22 or under any other provision of law, shall have jurisdiction
23 to review any claims of noncompliance with subsections
24 (b) and (c) in accordance with chapter 7. Agency compliance
25 with subsection (d)

1 shall be judicially reviewable in connection with judi-
2 cial review of subsection (b).

3 “(3) LIMITATIONS.—

4 “(A) An individual may seek such review
5 during the period beginning on the date of final
6 agency action and ending 1 year later, except
7 that where a provision of law requires that an
8 action challenging a final agency action be com-
9 menced before the expiration of 1 year, such
10 lesser period shall apply to an action for judicial
11 review under this subsection.

12 “(B) In the case where an agency delays
13 the issuance of a final privacy impact assess-
14 ment pursuant to subsection (c), an action for
15 judicial review under this section shall be filed
16 not later than—

17 “(i) 1 year after the date the assess-
18 ment is made available to the public; or

19 “(ii) where a provision of law requires
20 that an action challenging a final agency
21 regulation be commenced before the expi-
22 ration of the 1-year period, the number of
23 days specified in such provision of law that
24 is after the date the assessment is made
25 available to the public.

1 “(4) RELIEF.—In granting any relief in an ac-
2 tion under this subsection, the court shall order the
3 agency to take corrective action consistent with this
4 section and chapter 7, and may—

5 “(A) remand the rule to the agency; and

6 “(B) defer the enforcement of the rule
7 against individuals, unless the court finds that
8 continued enforcement of the rule is in the pub-
9 lic interest.

10 “(5) RULE OF CONSTRUCTION.—Nothing in
11 this subsection limits the authority of any court to
12 stay the effective date of any rule or provision there-
13 of under any other provision of law or to grant any
14 other relief in addition to the requirements of this
15 subsection.

16 “(6) RECORD OF AGENCY ACTION.—In an ac-
17 tion for the judicial review of a rule, the privacy im-
18 pact assessment for such rule, including an assess-
19 ment prepared or corrected pursuant to paragraph
20 (4), shall constitute part of the entire record of
21 agency action in connection with such review.

22 “(7) EXCLUSIVITY.—Compliance or noncompli-
23 ance by an agency with the provisions of this section
24 shall be subject to judicial review only in accordance
25 with this subsection.

1 “(8) SAVINGS CLAUSE.—Nothing in this sub-
2 section bars judicial review of any other impact
3 statement or similar assessment required by any
4 other law if judicial review of such statement or as-
5 sessment is otherwise permitted by law.

6 “(g) DEFINITION.—For purposes of this section, the
7 term ‘personally identifiable information’ means informa-
8 tion that can be used to identify an individual, including
9 such individual’s name, address, telephone number, photo-
10 graph, social security number or other identifying infor-
11 mation. It includes information about such individual’s
12 medical or financial condition.”.

13 (b) PERIODIC REVIEW TRANSITION PROVISIONS.—

14 (1) INITIAL PLAN.—For each agency, the plan
15 required by subsection (e) of section 553a of title 5,
16 United States Code (as added by subsection (a)),
17 shall be published not later than 180 days after the
18 date of the enactment of this Act.

19 (2) REVIEW PERIOD.—In the case of a rule pro-
20 mulgated by an agency before the date of the enact-
21 ment of this Act, such plan shall provide for the
22 periodic review of such rule before the expiration of
23 the 10-year period beginning on the date of the en-
24 actment of this Act. For any such rule, the head of
25 the agency may provide for a 1-year extension of

1 such period if the head of the agency, before the ex-
2 piration of the period, certifies in a statement pub-
3 lished in the Federal Register that reviewing such
4 rule before the expiration of the period is not fea-
5 sible. The head of the agency may provide for addi-
6 tional 1-year extensions of the period pursuant to
7 the preceding sentence, but in no event may the pe-
8 riod exceed 15 years.

9 (c) CONGRESSIONAL REVIEW.—Section 801(a)(1)(B)
10 of title 5, United States Code, is amended—

11 (1) by redesignating clauses (iii) and (iv) as
12 clauses (iv) and (v), respectively; and

13 (2) by inserting after clause (ii) the following
14 new clause:

15 “(iii) the agency’s actions relevant to section
16 553a;”.

17 (d) CLERICAL AMENDMENT.—The table of sections
18 at the beginning of chapter 5 of title 5, United States
19 Code, is amended by adding after the item relating to sec-
20 tion 553 the following new item:

“553a. Privacy impact assessment in rulemaking.”.

○