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114TH CONGRESS
2^D SESSION

H. R. 1770

[Report No. 114–908]

To require certain entities who collect and maintain personal information of individuals to secure such information and to provide notice to such individuals in the case of a breach of security involving such information, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

APRIL 14, 2015

Mrs. BLACKBURN (for herself, Mr. WELCH, Mr. BURGESS, and Mr. UPTON) introduced the following bill; which was referred to the Committee on Energy and Commerce

JANUARY 3, 2017

Reported with an amendment, committed to the Committee of the Whole House on the State of the Union, and ordered to be printed

[Strike out all after the enacting clause and insert the part printed in *italie*]

[For text of introduced bill, see copy of bill as introduced on April 14, 2015]

A BILL

To require certain entities who collect and maintain personal information of individuals to secure such information and to provide notice to such individuals in the case of a breach of security involving such information, 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; PURPOSES.**

4 (a) *SHORT TITLE.*—*This Act may be cited as the*
5 *“Data Security and Breach Notification Act of 2015”.*

6 (b) *PURPOSES.*—*The purposes of this Act are to—*

7 (1) *protect consumers from identity theft, eco-*
8 *nomie loss or economic harm, and financial fraud by*
9 *establishing strong and uniform national data secu-*
10 *rity and breach notification standards for electronic*
11 *data in interstate commerce while minimizing State*
12 *law burdens that may substantially affect interstate*
13 *commerce; and*

14 (2) *expressly preempt any related State laws to*
15 *ensure uniformity of this Act’s standards and the con-*
16 *sistency of their application across jurisdictions.*

17 **SEC. 2. REQUIREMENTS FOR INFORMATION SECURITY.**

18 *A covered entity shall implement and maintain rea-*
19 *sonable security measures and practices to protect and se-*
20 *cure personal information in electronic form against unau-*
21 *thorized access and acquisition as appropriate for the size*
22 *and complexity of such covered entity and the nature and*
23 *scope of its activities.*

1 **SEC. 3. NOTIFICATION OF INFORMATION SECURITY**
2 **BREACH.**

3 (a) *IN GENERAL.*—

4 (1) *RESTORING SECURITY.*—*Except as otherwise*
5 *provided by this section, a covered entity that uses,*
6 *accesses, transmits, stores, disposes of, or collects per-*
7 *sonal information shall, following the discovery of a*
8 *breach of security restore the reasonable integrity, se-*
9 *curity, and confidentiality of the data system and*
10 *identify the impact of the breach pursuant to para-*
11 *graph (2).*

12 (2) *INVESTIGATION.*—*A covered entity shall con-*
13 *duct in good faith a reasonable and prompt investiga-*
14 *tion of the breach of security to determine whether*
15 *there is a reasonable risk that the breach of security*
16 *has resulted in, or will result in, identity theft, eco-*
17 *nomical loss or economic harm, or financial fraud to*
18 *the individuals whose personal information was sub-*
19 *ject to the breach of security.*

20 (3) *NOTIFICATION TO INDIVIDUALS REQUIRED.*—

21 (A) *TRIGGER.*—*Unless there is no reason-*
22 *able risk that the breach of security has resulted*
23 *in, or will result in, identity theft, economic loss*
24 *or economic harm, or financial fraud to the indi-*
25 *viduals whose personal information was affected*
26 *by the breach of security, the covered entity shall*

1 *notify any resident of the United States that has*
2 *been affected by the breach of security pursuant*
3 *to this section.*

4 *(B) NOTIFICATION DUTY.—Unless subject to*
5 *a delay authorized under subsection (c)—*

6 *(i) a breached covered entity shall no-*
7 *tify any individual for whom an election*
8 *was not made under paragraph (4)(C) not*
9 *later than 25 days after the non-breached*
10 *covered entity declines or fails to exercise*
11 *the election under paragraph (4)(C);*

12 *(ii) a non-breached covered entity shall*
13 *notify any individual for whom the non-*
14 *breached covered entity provided personal*
15 *information to the breached covered entity,*
16 *and such personal information was affected*
17 *by the breach of security, not later than 25*
18 *days after exercising the election under*
19 *paragraph (4)(C); and*

20 *(iii) any other covered entity shall*
21 *identify the individuals affected by a breach*
22 *of security and make the notification re-*
23 *quired under this subsection as expedi-*
24 *tiously as possible, without unreasonable*
25 *delay, and not later than 30 days after*

1 *completing the requirements of paragraph*
2 *(1).*

3 *(C) NOTIFICATION REQUIRED UPON DIS-*
4 *COVERY OF ADDITIONAL INDIVIDUALS AF-*
5 *FECTED.—If a covered entity, breached covered*
6 *entity, or non-breached covered entity has pro-*
7 *vided the notification to individuals required*
8 *under this subsection and after such notification*
9 *discovers additional individuals to whom notifi-*
10 *cation is required under this subsection with re-*
11 *spect to the same breach of security, the covered*
12 *entity, breached covered entity, or non-breached*
13 *covered entity shall make such notification to*
14 *such individuals as expeditiously as possible and*
15 *without unreasonable delay.*

16 *(4) NON-BREACHED COVERED ENTITY ELECTION*
17 *NOTICE.—*

18 *(A) NOTICE TO NON-BREACHED COVERED*
19 *ENTITY REQUIRED.—Subject to the requirements*
20 *of this paragraph, unless there is no reasonable*
21 *risk that the breach of security has resulted in,*
22 *or will result in, identity theft, economic loss or*
23 *economic harm, or financial fraud related to the*
24 *personal information provided by the non-*
25 *breached covered entity to the breached covered*

1 *entity, the breached covered entity shall, as expediently as possible and without unreasonable*
2 *delay within 10 days after fulfilling the requirements described in paragraph (1), notify in*
3 *writing each non-breached covered entity of the*
4 *breach of security.*

7 *(B) CONTENTS OF NOTICE.—The breached*
8 *covered entity shall include in the notice described in subparagraph (A) the elements of personal*
9 *information received from the non-breached*
10 *covered entity pursuant to the contract described*
11 *in subparagraph (C) reasonably believed to be*
12 *affected by the breach of security.*

14 *(C) ELECTION BY NON-BREACHED COVERED*
15 *ENTITY AFTER RECEIVING NOTICE FROM A*
16 *BREACHED COVERED ENTITY.—In the case of a*
17 *breached covered entity that is a party to a written*
18 *contract with a non-breached covered entity*
19 *in which the breached covered entity maintains,*
20 *stores, transmits, or processes data in electronic*
21 *form containing personal information, not later*
22 *than 10 days after receipt of the notice described*
23 *in subparagraph (A), the non-breached covered*
24 *entity may elect, in writing to the breached covered*
25 *entity, to provide notification required by*

1 *paragraph (3) all individuals whose personal in-*
2 *formation was provided by the non-breached cov-*
3 *ered entity to the breached covered entity and*
4 *was affected by the breach of security. Such elec-*
5 *tion relieves the breached covered entity of the re-*
6 *quirements under paragraph (3) with respect to*
7 *such individuals.*

8 *(D) OBLIGATION AFTER ELECTION.—*

9 *(i) BREACHED COVERED ENTITY CO-*
10 *OPERATION.—If a non-breached covered en-*
11 *tity elects under subparagraph (C) to pro-*
12 *vide notice under paragraph (3), the*
13 *breached covered entity shall cooperate in*
14 *all reasonable respects with the non-*
15 *breached covered entity and provide any of*
16 *the information the breached covered entity*
17 *possesses that is described under subsection*
18 *(d)(1)(B) and provide all personal informa-*
19 *tion received from the non-breached covered*
20 *entity that was affected by the breach of se-*
21 *curity so that the notification to such indi-*
22 *viduals is made as required under this sec-*
23 *tion. Not later than 10 business days after*
24 *the non-breached covered entity submits a*
25 *written request for information requested*

1 *under this subsection to the breached cov-*
2 *ered entity, the breached covered entity shall*
3 *provide such information.*

4 *(ii) NON-BREACHED COVERED ENTITY*
5 *COOPERATION.—If a non-breached covered*
6 *entity does not elect to provide notice to in-*
7 *dividuals under subparagraph (C), the non-*
8 *breached covered entity shall provide any of*
9 *the information the non-breached covered*
10 *entity possesses that is described under sub-*
11 *section (d)(1)(B) for any individual whose*
12 *personal information was received from the*
13 *non-breached covered entity that was af-*
14 *ected by the breach of security, and cooper-*
15 *ate in all reasonable respects with, the*
16 *breached covered entity so that the notifica-*
17 *tion to such individuals is made as required*
18 *under this section. Not later than 10 busi-*
19 *ness days after the breached covered entity*
20 *submits a written request for information*
21 *requested under this subsection to the non-*
22 *breached covered entity, the non-breached*
23 *covered entity shall provide such informa-*
24 *tion.*

1 (5) *LAW ENFORCEMENT.*—*A covered entity shall*
2 *as expeditiously as possible notify the Commission*
3 *and the Secret Service or the Federal Bureau of In-*
4 *vestigation of the fact that a breach of security has oc-*
5 *curred if the number of individuals whose personal*
6 *information was, or there is a reasonable basis to con-*
7 *clude was, accessed and acquired by an unauthorized*
8 *person exceeds 10,000. Any notification provided to*
9 *the Secret Service or the Federal Bureau of Investiga-*
10 *tion pursuant to this paragraph shall be provided not*
11 *less than 10 days before notification is provided to in-*
12 *dividuals pursuant to paragraph (3).*

13 **(b) SPECIAL NOTIFICATION REQUIREMENTS.**—

14 (1) *NON-PROFIT ORGANIZATIONS.*—*In the event*
15 *of a breach of security involving personal information*
16 *that would trigger notification under subsection (a),*
17 *a non-profit organization may complete such notifica-*
18 *tion according to the procedures set forth in sub-*
19 *section (d)(2).*

20 (2) *COORDINATION OF NOTIFICATION WITH CON-*
21 *SUMER REPORTING AGENCIES.*—*If a covered entity is*
22 *required to provide notification to more than 10,000*
23 *individuals under subsection (a), such covered entity*
24 *shall also notify a consumer reporting agency that*
25 *compiles and maintains files on consumers on a na-*

1 *tionwide basis, of the timing and distribution of the*
2 *notices. Such notice shall be given to such consumer*
3 *reporting agencies without unreasonable delay and, if*
4 *it will not delay notice to the affected individuals,*
5 *prior to the distribution of notices to the affected in-*
6 *dividuals.*

7 *(c) DELAY OF NOTIFICATION AUTHORIZED FOR LAW*
8 *ENFORCEMENT OR NATIONAL SECURITY PURPOSES.—Not-*
9 *withstanding paragraph (1), if a Federal, State, or local*
10 *law enforcement agency determines that the notification to*
11 *individuals required under this section would impede a*
12 *civil or criminal investigation or a Federal agency deter-*
13 *mines that such notification would threaten national secu-*
14 *rity, such notification shall be delayed upon written request*
15 *of the law enforcement agency or Federal agency which the*
16 *law enforcement agency or Federal agency determines is*
17 *reasonably necessary and requests in writing. A law en-*
18 *forcement agency or Federal agency may, by a subsequent*
19 *written request, revoke such delay or extend the period of*
20 *time set forth in the original request made under this para-*
21 *graph if further delay is necessary. If a law enforcement*
22 *agency or Federal agency requests a delay of notification*
23 *to individuals under this paragraph, the Commission shall,*
24 *upon written request of the law enforcement agency or Fed-*
25 *eral agency, delay any public disclosure of a notification*

1 *received by the Commission under this section relating to*
2 *the same breach of security until the delay of notification*
3 *to individuals is no longer in effect.*

4 *(d) METHOD AND CONTENT OF NOTIFICATION.—*

5 *(1) DIRECT NOTIFICATION.—*

6 *(A) METHOD OF NOTIFICATION.—A covered*
7 *entity required to provide notification to an in-*
8 *dividual under subsection (a) shall be in compli-*
9 *ance with such requirement if the covered entity*
10 *provides such notice by one of the following*
11 *methods (if the selected method can reasonably be*
12 *expected to reach the intended individual):*

13 *(i) Written notification by postal mail.*

14 *(ii) Notification by email or other elec-*
15 *tronic means, if the covered entity's pri-*
16 *mary method of communication with the*
17 *individual is by email or such other elec-*
18 *tronic means or the individual has con-*
19 *sent to receive such notification.*

20 *(B) CONTENT OF NOTIFICATION.—Regard-*
21 *less of the method by which notification is pro-*
22 *vided to an individual under subparagraph (A)*
23 *with respect to a breach of security, such notifi-*
24 *cation shall include each of the following:*

1 (i) *The identity of the covered entity*
2 *that suffered the breach and, if such covered*
3 *entity is also a breached covered entity pro-*
4 *viding notice under section 3(b)(1), the*
5 *identity of each non-breached covered entity*
6 *that did not elect to notify affected individ-*
7 *uals pursuant to section 3(b)(1)(B) suffi-*
8 *cient to show the breached covered entity's*
9 *commercial relationship to the individual*
10 *receiving notice.*

11 (ii) *A description of the personal infor-*
12 *mation that was, or there is a reasonable*
13 *basis to conclude was, acquired and accessed*
14 *by an unauthorized person.*

15 (iii) *The date range of the breach of se-*
16 *curity, or an approximate date range of the*
17 *breach of security if a specific date range is*
18 *unknown based on the information avail-*
19 *able at the time of the notification.*

20 (iv) *A telephone number, or toll-free*
21 *telephone number for any covered entity*
22 *that does not meet the definition of a small*
23 *business concern or non-profit organization,*
24 *that the individual may use to contact the*
25 *covered entity to inquire about the breach of*

1 *security or the information the covered enti-*
2 *ty maintained about that individual.*

3 *(v) The toll-free contact telephone num-*
4 *bers and addresses for a consumer reporting*
5 *agency that compiles and maintains files on*
6 *consumers on a nationwide basis.*

7 *(vi) The toll-free telephone number and*
8 *Internet website address for the Commission*
9 *whereby the individual may obtain infor-*
10 *mation regarding identity theft.*

11 (2) *SUBSTITUTE NOTIFICATION.—*

12 *(A) IN GENERAL.—If, after making reason-*
13 *able efforts to contact all individuals to whom*
14 *notice is required under subsection (a), the cov-*
15 *ered entity finds that contact information for*
16 *500 or more individuals is insufficient or out-of-*
17 *date, the covered entity shall also provide sub-*
18 *stitute notice to those individuals, which shall be*
19 *reasonably calculated to reach the individuals af-*
20 *ected by the breach of security.*

21 *(B) FORM OF SUBSTITUTE NOTIFICATION.—*

22 *A covered entity may provide substitute notifica-*
23 *tion by—*

24 *(i) email or other electronic notifica-*
25 *tion to the extent that the covered entity has*

1 *contact information for individuals to*
2 *whom it is required to provide notification*
3 *under subsection (a); and*

4 *(ii) a conspicuous notice on the covered*
5 *entity's Internet website (if such covered en-*
6 *tity maintains such a website) for at least*
7 *90 days.*

8 (C) *CONTENT OF SUBSTITUTE NOTICE.—*

9 *Each form of substitute notice under clauses (i)*
10 *and (ii) of subparagraph (B) shall include the*
11 *information required under paragraph (1)(B).*

12 (3) *DIRECT NOTIFICATION BY A THIRD PARTY.—*

13 *Nothing in this Act shall be construed to prevent a*
14 *covered entity from contracting with a third party to*
15 *provide the notification required under this section,*
16 *provided such third party issues such notification*
17 *without unreasonable delay, in accordance with the*
18 *requirements of this section, and indicates to all indi-*
19 *viduals in such notification that such third party is*
20 *sending such notification on behalf of the covered en-*
21 *tity.*

22 (e) *REQUIREMENTS OF SERVICE PROVIDERS.—*

23 (1) *IN GENERAL.—If a service provider becomes*
24 *aware of a breach of security involving data in elec-*
25 *tronic form containing personal information that is*

1 *owned or licensed by a covered entity that connects to*
2 *or uses a system or network provided by the service*
3 *provider for the purpose of transmitting, routing, or*
4 *providing intermediate or transient storage of such*
5 *data, such service provider shall notify the covered en-*
6 *tity who initiated such connection, transmission,*
7 *routing, or storage of the data containing personal in-*
8 *formation breached, if such covered entity can be rea-*
9 *sonably identified. If a service provider is acting sole-*
10 *ly as a service provider for purposes of this sub-*
11 *section, the service provider has no other notification*
12 *obligations under this section.*

13 (2) *COVERED ENTITIES WHO RECEIVE NOTICE*
14 *FROM SERVICE PROVIDERS.—Upon receiving notifica-*
15 *tion from a service provider under paragraph (1), a*
16 *covered entity shall provide notification as required*
17 *under this section.*

18 **SEC. 4. ENFORCEMENT.**

19 (a) *ENFORCEMENT BY THE FEDERAL TRADE COMMIS-*
20 *SION.—*

21 (1) *UNFAIR OR DECEPTIVE ACTS OR PRAC-*
22 *TICES.—A violation of section 2 or 3 shall be treated*
23 *as an unfair and deceptive act or practice in viola-*
24 *tion of a regulation under section 18(a)(1)(B) of the*
25 *Federal Trade Commission Act (15 U.S.C.*

1 57a(a)(1)(B)) regarding unfair or deceptive acts or
2 practices.

3 (2) *POWERS OF COMMISSION.*—The Commission
4 shall enforce this Act in the same manner, by the
5 same means, and with the same jurisdiction, powers,
6 and duties as though all applicable terms and provi-
7 sions of the Federal Trade Commission Act (15
8 U.S.C. 41 et seq.) were incorporated into and made
9 a part of this Act, and any covered entity who vio-
10 lates this Act shall be subject to the penalties and en-
11 titled to the privileges and immunities provided in
12 the Federal Trade Commission Act (15 U.S.C. 41 et
13 seq.), and as provided in clauses (ii) and (iii) of sec-
14 tion 5(5)(A). Notwithstanding section 5(m) of the
15 Federal Trade Commission Act, the Commission may
16 impose civil penalties for violations of section 3 in an
17 amount not greater than \$1,000 per violation. Each
18 failure to send notification as required under section
19 3 to a resident of the United States shall be treated
20 as a separate violation.

21 (3) *MAXIMUM TOTAL LIABILITY FOR FIRST-TIME*
22 *VIOLATION OF SECTION 2.*—The maximum total civil
23 penalty for which any covered entity is liable under
24 this subsection for all violations of section 2 resulting
25 from the same related act or omission may not exceed

1 \$8,760,000, if such act or omission constitutes the
2 covered entity's first violation of section 2.

3 (4) *MAXIMUM TOTAL LIABILITY FOR FIRST-TIME*
4 *VIOLATION OF SECTION 3.*—The maximum total civil
5 penalty for which any covered entity is liable under
6 this subsection for all violations of section 3 resulting
7 from the same related act or omission may not exceed
8 \$17,520,000, if such act or omission constitutes the
9 covered entity's first violation of section 3.

10 (b) *ENFORCEMENT BY STATE ATTORNEYS GENERAL.*—

11 (1) *CIVIL ACTION.*—In any case in which the at-
12 torney general of a State has reason to believe that an
13 interest of the residents of that State has been or is
14 threatened or adversely affected by any covered entity
15 who violates section 2 or 3 of this Act, the attorney
16 general of the State, as *parens patriae*, may bring a
17 civil action on behalf of the residents of the State in
18 a district court of the United States of appropriate
19 jurisdiction to—

20 (A) *enjoin further violation of such section*
21 *by the defendant;*

22 (B) *compel compliance with such section; or*

23 (C) *obtain civil penalties in the amount de-*
24 *termined under paragraph (2).*

25 (2) *CIVIL PENALTIES.*—

1 (A) *CALCULATION.*—

2 (i) *TREATMENT OF VIOLATIONS OF*
3 *SECTION 2.*—*For purposes of paragraph*
4 *(1)(C) with regard to all violations of sec-*
5 *tion 2 resulting from the same related act or*
6 *omission, the amount determined under this*
7 *paragraph is the amount calculated by mul-*
8 *tiplying the number of days that a covered*
9 *entity is not in compliance with such sec-*
10 *tion by an amount not greater than*
11 *\$11,000.*

12 (ii) *TREATMENT OF VIOLATIONS OF*
13 *SECTION 3.*—*For purposes of paragraph*
14 *(1)(C) with regard to a violation of section*
15 *3, the amount determined under this para-*
16 *graph is the amount calculated by multi-*
17 *plying the number of violations of such sec-*
18 *tion by an amount not greater than \$1,000.*
19 *Each failure to send notification as re-*
20 *quired under section 3 to a resident of the*
21 *State shall be treated as a separate viola-*
22 *tion.*

23 (B) *MAXIMUM TOTAL LIABILITY.*—*Notwith-*
24 *standing the number of actions which may be*
25 *brought against a covered entity under this sub-*

1 *section, the maximum civil penalty for which*
2 *any covered entity may be liable under this sub-*
3 *section shall not exceed—*

4 *(i) \$2,500,000 for each violation of sec-*
5 *tion 2; and*

6 *(ii) \$2,500,000 for all violations of sec-*
7 *tion 3 resulting from a single breach of se-*
8 *curity.*

9 *(C) ADJUSTMENT FOR INFLATION.—Begin-*
10 *ning on the date that the Consumer Price Index*
11 *is first published by the Bureau of Labor Statis-*
12 *tics that is after one year after the date of enact-*
13 *ment of this Act, and each year thereafter, the*
14 *amounts specified in clauses (i) and (ii) of sub-*
15 *paragraph (A) and clauses (i) and (ii) of sub-*
16 *paragraph (B) shall be increased by the percent-*
17 *age increase in the Consumer Price Index pub-*
18 *lished on that date from the Consumer Price*
19 *Index published the previous year.*

20 *(D) PENALTY FACTORS.—In determining*
21 *the amount of such a civil penalty, the degree of*
22 *culpability, any history of prior such conduct,*
23 *ability to pay, effect on ability to continue to do*
24 *business, and such other matters as justice may*
25 *require shall be taken into account.*

1 (3) *INTERVENTION BY THE FEDERAL TRADE*
2 *COMMISSION.—*

3 (A) *NOTICE AND INTERVENTION.—In all*
4 *cases, the State shall provide prior written notice*
5 *of any action under paragraph (1) to the Com-*
6 *mission and provide the Commission with a*
7 *copy of its complaint, except in any case in*
8 *which such prior notice is not feasible, in which*
9 *case the State shall serve such notice imme-*
10 *diately upon instituting such action. The Com-*
11 *mission shall have the right—*

12 *(i) to intervene in the action;*

13 *(ii) upon so intervening, to be heard*
14 *on all matters arising therein; and*

15 *(iii) to file petitions for appeal.*

16 (B) *PENDING PROCEEDINGS.—If the Fed-*
17 *eral Trade Commission initiates a Federal civil*
18 *action for a violation of this Act, no State attor-*
19 *ney general may bring an action for a violation*
20 *of this Act that resulted from the same or related*
21 *acts or omissions against a defendant named in*
22 *the civil action initiated by the Federal Trade*
23 *Commission.*

24 (4) *CONSTRUCTION.—For purposes of bringing*
25 *any civil action under paragraph (1), nothing in this*

1 *Act shall be construed to prevent an attorney general*
2 *of a State from exercising the powers conferred on the*
3 *attorney general by the laws of that State to—*

4 *(A) conduct investigations;*

5 *(B) administer oaths or affirmations; or*

6 *(C) compel the attendance of witnesses or*
7 *the production of documentary and other evi-*
8 *dence.*

9 *(c) NO PRIVATE CAUSE OF ACTION.—Nothing in this*
10 *Act shall be construed to establish a private cause of action*
11 *against a person for a violation of this Act.*

12 **SEC. 5. DEFINITIONS.**

13 *In this Act:*

14 *(1) BREACH OF SECURITY.—The term “breach of*
15 *security”—*

16 *(A) means a compromise of the security,*
17 *confidentiality, or integrity of, or loss of, data in*
18 *electronic form that results in, or there is a rea-*
19 *sonable basis to conclude has resulted in, unau-*
20 *thorized access to and acquisition of personal in-*
21 *formation from a covered entity; and*

22 *(B) does not include the good faith acquisi-*
23 *tion of personal information by an employee or*
24 *agent of the covered entity for the purposes of the*
25 *covered entity, if the personal information is not*

1 *used or subject to further unauthorized disclo-*
2 *sure.*

3 (2) *BREACHED COVERED ENTITY.*—*The term*
4 *“breached covered entity” means a covered entity that*
5 *has incurred a breach of security affecting data in*
6 *electronic form containing personal information of a*
7 *non-breached covered entity that has directly con-*
8 *tracted the breached covered entity to maintain, store,*
9 *or process data in electronic form containing personal*
10 *information on behalf of such non-breached covered*
11 *entity. For purposes of this definition, the term*
12 *“breached covered entity” shall not include a service*
13 *provider that is subject to section 3(e).*

14 (3) *COMMISSION.*—*The term “Commission”*
15 *means the Federal Trade Commission.*

16 (4) *CONSUMER REPORTING AGENCY THAT COM-*
17 *PILES AND MAINTAINS FILES ON CONSUMERS ON A NA-*
18 *TIONWIDE BASIS.*—*The term “consumer reporting*
19 *agency that compiles and maintains files on con-*
20 *sumers on a nationwide basis” has the meaning given*
21 *that term in section 603(p) of the Fair Credit Report-*
22 *ing Act (15 U.S.C. 1681a(p)).*

23 (5) *COVERED ENTITY.*—

24 (A) *IN GENERAL.*—*The term “covered enti-*
25 *ty” means—*

1 (i) a sole proprietorship, partnership,
2 corporation, trust, estate, cooperative, asso-
3 ciation, or other entity in or affecting com-
4 merce that acquires, maintains, stores, sells,
5 or otherwise uses data in electronic form
6 that includes personal information, over
7 which the Commission has authority pursu-
8 ant to section 5(a)(2) of the Federal Trade
9 Commission Act (15 U.S.C. 45(a)(2));

10 (ii) notwithstanding section 5(a)(2) of
11 the Federal Trade Commission Act (15
12 U.S.C. 45(a)(2)), common carriers subject
13 to the Communications Act of 1934 (47
14 U.S.C. 151 et seq.); and

15 (iii) notwithstanding any jurisdic-
16 tional limitation of the Federal Trade Com-
17 mission Act (15 U.S.C. 41 et seq.), any non-
18 profit organization.

19 (B) *EXCEPTIONS.*—The term “covered enti-
20 ty” does not include—

21 (i) a covered entity, as defined in sec-
22 tion 160.103 of title 45, Code of Federal
23 Regulations;

24 (ii) a business associate, as defined in
25 section 160.103 of title 45, Code of Federal

1 *Regulations, acting in its capacity as a*
2 *business associate;*

3 (iii) *if a covered entity, as defined in*
4 *section 160.103 of title 45, Code of Federal*
5 *Regulations, is a hybrid entity, as defined*
6 *in section 164.105 of title 45, Code of Fed-*
7 *eral Regulations, then the health care com-*
8 *ponent of such hybrid entity;*

9 (iv) *a broker, dealer, investment ad-*
10 *viser, futures commission merchant, special*
11 *purpose vehicle, finance company, or person*
12 *engaged in providing insurance that is sub-*
13 *ject to title V of Public Law 106-102 (15*
14 *U.S.C. 6801 et seq.);*

15 (v) *a State-chartered credit union, as*
16 *defined in section 101(6) of the Federal*
17 *Credit Union Act (12 U.S.C. 1752(6)), that*
18 *is not an insured credit union as defined in*
19 *section 101(7) of such Act (12 U.S.C.*
20 *1752(7)); or*

21 (vi) *a credit union service organization*
22 *as outlined in section 106(7)(I) of the Fed-*
23 *eral Credit Union Act (12 U.S.C.*
24 *1757(7)(I)).*

1 (6) *DATA IN ELECTRONIC FORM.*—*The term*
2 *“data in electronic form” means any data stored elec-*
3 *tronically or digitally on any computer system or*
4 *other database and includes recordable tapes and*
5 *other mass storage devices.*

6 (7) *ENCRYPTED.*—*The term “encrypted”, used*
7 *with respect to data in electronic form, in storage or*
8 *in transit—*

9 (A) *means the data is protected using an*
10 *encryption technology that has been generally ac-*
11 *cepted by experts in the field of information se-*
12 *curity at the time the breach of security occurred*
13 *that renders such data indecipherable in the ab-*
14 *sence of associated cryptographic keys necessary*
15 *to enable decryption of such data; and*

16 (B) *includes appropriate management and*
17 *safeguards of such cryptographic keys in order to*
18 *protect the integrity of the encryption.*

19 (8) *NON-BREACHED COVERED ENTITY.*—*The*
20 *term “non-breached covered entity” means a covered*
21 *entity that has not incurred the breach of security in-*
22 *volving data in electronic form containing personal*
23 *information that it owns or licenses but whose data*
24 *has been affected by the breach of security incurred by*
25 *a breached covered entity it directly contracts to*

1 *maintain, store, or process data in electronic form*
2 *containing personal information on behalf of the non-*
3 *breached covered entity.*

4 (9) *NON-PROFIT ORGANIZATION.*—*The term*
5 *“non-profit organization” means an organization*
6 *that is described in section 501(c)(3) of the Internal*
7 *Revenue Code of 1986 and exempt from tax under sec-*
8 *tion 501(a) of such Code.*

9 (10) *PERSONAL INFORMATION.*—

10 (A) *IN GENERAL.*—*The term “personal in-*
11 *formation” means any information or compila-*
12 *tion of information in electronic form that in-*
13 *cludes the following:*

14 (i) *An individual’s first and last name*
15 *or first initial and last name in combina-*
16 *tion with all of the following:*

17 (I) *Home address or telephone*
18 *number.*

19 (II) *Mother’s maiden name, if*
20 *identified as such.*

21 (III) *Month, day, and year of*
22 *birth.*

23 (ii) *A financial account number or*
24 *credit or debit card number or other identi-*
25 *fier, in combination with any security code,*

1 *access code, or password that is required for*
2 *an individual to obtain credit, withdraw*
3 *funds, or engage in a financial transaction.*

4 *(iii) A unique account identifier (other*
5 *than for an account described in clause*
6 *(ii)), electronic identification number, bio-*
7 *metric data unique to an individual, user*
8 *name, or routing code in combination with*
9 *any associated security code, access code, bi-*
10 *ometric data unique to an individual, or*
11 *password that is required for an individual*
12 *to obtain money, or purchase goods, serv-*
13 *ices, or any other thing of value.*

14 *(iv) A non-truncated social security*
15 *number.*

16 *(v) Any information that pertains to*
17 *the transmission of specific calls, including,*
18 *for outbound calls, the number called, and*
19 *the time, location, or duration of any call*
20 *and, for inbound calls, the number from*
21 *which the call was placed, and the time, lo-*
22 *cation, or duration of any call.*

23 *(vi) A user name or email address, in*
24 *combination with a password or security*

1 question and answer that would permit ac-
2 cess to an online account.

3 (vii) A driver's license number, pass-
4 port number, or alien registration number
5 or other government-issued unique identi-
6 fication number.

7 (B) *EXCEPTIONS.*—The term “personal in-
8 formation” does not include—

9 (i) information that is encrypted or
10 rendered unusable, unreadable, or indeci-
11 pherable through data security technology or
12 methodology that is generally accepted by
13 experts in the field of information security
14 at the time the breach of security occurred,
15 such as redaction or access controls; or

16 (ii) information available in a pub-
17 licly available source, including informa-
18 tion obtained from a news report, peri-
19 odical, or other widely distributed media, or
20 from Federal, State, or local government
21 records.

22 (11) *SERVICE PROVIDER.*—The term “service
23 provider” means a covered entity subject to the Com-
24 munications Act of 1934 (47 U.S.C. 151 et seq.) that
25 provides electronic data transmission, routing, inter-

1 mediate and transient storage, or connection to its
2 system or network, where such entity providing such
3 service does not select or modify the content of the
4 electronic data, is not the sender or the intended re-
5 cipient of the data, and does not differentiate personal
6 information from other information that such entity
7 transmits, routes, stores, or for which such entity pro-
8 vides connections. Any such entity shall be treated as
9 a service provider under this Act only to the extent
10 that it is engaged in the provision of such trans-
11 mission, routing, intermediate and transient storage,
12 or connections.

13 (12) *SMALL BUSINESS CONCERN.*—The term
14 “small business concern” has the meaning given such
15 term under section 3 of the Small Business Act (15
16 U.S.C. 632).

17 (13) *STATE.*—The term “State” means each of
18 the several States, the District of Columbia, the Com-
19 monwealth of Puerto Rico, Guam, American Samoa,
20 the Virgin Islands of the United States, the Common-
21 wealth of the Northern Mariana Islands, any other
22 territory or possession of the United States, and each
23 federally recognized Indian tribe.

1 **SEC. 6. EFFECT ON OTHER LAWS.**

2 (a) *PREEMPTION OF STATE INFORMATION SECURITY*
3 *LAWS.*—No State or political subdivision of a State shall,
4 with respect to a covered entity subject to this Act, adopt,
5 maintain, enforce, or impose or continue in effect any law,
6 rule, regulation, duty, requirement, standard, or other pro-
7 vision having the force and effect of law relating to or with
8 respect to the security of data in electronic form or notifica-
9 tion following a security breach of such data.

10 (b) *COMMON LAW.*—This section shall not exempt a
11 covered entity from liability under common law.

12 (c) *CERTAIN FTC ENFORCEMENT LIMITED TO DATA*
13 *SECURITY AND BREACH NOTIFICATION.*—

14 (1) *DATA SECURITY AND BREACH NOTIFICA-*
15 *TION.*—Insofar as sections 201, 202, 222, 338, and
16 631 of the Communications Act of 1934 (47 U.S.C.
17 201, 202, 222, 338, and 551), and any regulations
18 promulgated thereunder, apply to covered entities
19 with respect to securing information in electronic
20 form from unauthorized access and acquisition, in-
21 cluding notification of unauthorized access and acqui-
22 sition to data in electronic form containing personal
23 information, such sections and regulations promul-
24 gated thereunder shall have no force or effect, unless
25 such regulations pertain solely to 9–1–1 calls.

1 (2) *RULE OF CONSTRUCTION.*—*Nothing in this*
2 *subsection otherwise limits the Federal Communica-*
3 *tions Commission’s authority with respect to sections*
4 *201, 202, 222, 338, and 631 of the Communications*
5 *Act of 1934 (47 U.S.C. 201, 202, 222, 338, and 551).*

6 (d) *PRESERVATION OF COMMISSION AUTHORITY.*—
7 *Nothing in this Act may be construed in any way to limit*
8 *or affect the Commission’s authority under any other provi-*
9 *sion of law.*

10 **SEC. 7. EDUCATION AND OUTREACH FOR SMALL BUSI-**
11 **NESSES.**

12 *The Commission shall conduct education and outreach*
13 *for small business concerns on data security practices and*
14 *how to prevent hacking and other unauthorized access to,*
15 *acquisition of, or use of data maintained by such small*
16 *business concerns.*

17 **SEC. 8. WEBSITE ON DATA SECURITY BEST PRACTICES.**

18 *The Commission shall establish and maintain an*
19 *Internet website containing non-binding best practices for*
20 *businesses regarding data security and how to prevent hack-*
21 *ing and other unauthorized access to, acquisition of, or use*
22 *of data maintained by such businesses.*

23 **SEC. 9. EFFECTIVE DATE.**

24 *This Act shall take effect 1 year after the date of enact-*
25 *ment of this Act.*

Union Calendar No. 719

114TH CONGRESS
2^D SESSION

H. R. 1770

[Report No. 114-908]

A BILL

To require certain entities who collect and maintain personal information of individuals to secure such information and to provide notice to such individuals in the case of a breach of security involving such information, and for other purposes.

JANUARY 3, 2017

Reported with an amendment, committed to the Committee of the Whole House on the State of the Union, and ordered to be printed