

1(b)(1) is amended by inserting “, or evidence that the consumer has received notice that the consumer’s financial information has or may have been compromised,” after “identity theft report”.

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

(a) IN GENERAL.—

(1) CIVIL ACTIONS.—In any case in which the attorney general of a State or any State or local law enforcement agency authorized by the State attorney general or by State statute to prosecute violations of consumer protection law, has reason to believe that an interest of the residents of that State has been or is threatened or adversely affected by the engagement of a business entity in a practice that is prohibited under this Act, the State or the State or local law enforcement agency on behalf of the residents of the agency’s jurisdiction, may bring a civil action on behalf of the residents of the State or jurisdiction in a district court of the United States of appropriate jurisdiction or any other court of competent jurisdiction, including a State court, to—

(A) enjoin that practice;

(B) enforce compliance with this Act; or

(C) obtain civil penalties of not more than \$1,000 per day per individual whose sensitive personally identifiable information was, or is reasonably believed to have been, accessed or acquired by an unauthorized person, up to a maximum of \$1,000,000 per violation, unless such conduct is found to be willful or intentional.

(2) NOTICE.—

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

(i) written notice of the action; and

(ii) a copy of the complaint for the action.

(B) EXEMPTION.—

(i) IN GENERAL.—Subparagraph (A) shall not apply with respect to the filing of an action by an attorney general of a State under this Act, if the State attorney general determines that it is not feasible to provide the notice described in such subparagraph before the filing of the action.

(ii) NOTIFICATION.—In an action described in clause (i), the attorney general of a State shall provide notice and a copy of the complaint to the Attorney General at the time the State attorney general files the action.

(b) FEDERAL PROCEEDINGS.—Upon receiving notice under subsection (a)(2), the Attorney General shall have the right to—

(1) move to stay the action, pending the final disposition of a pending Federal proceeding or action;

(2) initiate an action in the appropriate United States district court under section 8 and move to consolidate all pending actions, including State actions, in such court;

(3) intervene in an action brought under subsection (a)(2); and

(4) file petitions for appeal.

(c) PENDING PROCEEDINGS.—If the Attorney General has instituted a proceeding or action for a violation of this Act or any regulations thereunder, no attorney general of a State may, during the pendency of such proceeding or action, bring an action under this Act against any defendant named in such criminal proceeding or civil action for any violation that is alleged in that proceeding or action.

(d) RULE OF CONSTRUCTION.—For purposes of bringing any civil action under subsection (a), nothing in this Act regarding notification shall be construed to prevent an attorney general of a State from exercising the powers conferred on such attorney general by the laws of that State to—

(1) conduct investigations;

(2) administer oaths or affirmations; or

(3) compel the attendance of witnesses or the production of documentary and other evidence.

(e) VENUE; SERVICE OF PROCESS.—

(1) VENUE.—Any action brought under subsection (a) may be brought in—

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

(B) another court of competent jurisdiction.

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

(A) is an inhabitant; or

(B) may be found.

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

**SEC. 10. EFFECT ON FEDERAL AND STATE LAW.**

The provisions of this Act shall supersede any other provision of Federal law or any provision of law of any State relating to notification by a business entity engaged in interstate commerce or an agency of a security breach, except as provided in section 5(b).

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

There are authorized to be appropriated such sums as may be necessary to cover the costs incurred by the United States Secret Service to carry out investigations and risk assessments of security breaches as required under this Act.

**SEC. 12. REPORTING ON RISK ASSESSMENT EXEMPTIONS.**

(a) IN GENERAL.—The United States Secret Service shall report to Congress not later than 18 months after the date of enactment of this Act, and upon the request by Congress thereafter, on—

(1) the number and nature of the security breaches described in the notices filed by those business entities invoking the risk assessment exemption under section 3(b) of this Act and the response of the United States Secret Service to such notices; and

(2) the number and nature of security breaches subject to the national security and law enforcement exemptions under section 3(a) of this Act.

(b) REPORT.—Any report submitted under subsection (a) shall not disclose the contents of any risk assessment provided to the United States Secret Service under this Act.

**SEC. 13. DEFINITIONS.**

In this Act, the following definitions shall apply:

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

(2) AFFILIATE.—The term “affiliate” means persons related by common ownership or by corporate control.

(3) BUSINESS ENTITY.—The term “business entity” means any organization, corporation, trust, partnership, sole proprietorship, unincorporated association, venture established to make a profit, or nonprofit, and any contractor, subcontractor, affiliate, or licensee thereof engaged in interstate commerce.

(4) ENCRYPTED.—The term “encrypted”—

(A) means the protection of data in electronic form, in storage or in transit, using an encryption technology that has been adopted by an established standards setting body which renders such data indecipherable in the absence of associated cryptographic keys necessary to enable decryption of such data; and

(B) includes appropriate management and safeguards of such cryptographic keys so as to protect the integrity of the encryption.

(5) PERSONALLY IDENTIFIABLE INFORMATION.—The term “personally identifiable information” means any information, or compilation of information, in electronic or digital form serving as a means of identification, as defined by section 1028(d)(7) of title 18, United States Code.

(6) SECURITY BREACH.—

(A) IN GENERAL.—The term “security breach” means compromise of the security, confidentiality, or integrity of computerized data through misrepresentation or actions that result in, or there is a reasonable basis to conclude has resulted in, acquisition of or access to sensitive personally identifiable information that is unauthorized or in excess of authorization.

(B) EXCLUSION.—The term “security breach” does not include—

(i) a good faith acquisition of sensitive personally identifiable information by a business entity or agency, or an employee or agent of a business entity or agency, if the sensitive personally identifiable information is not subject to further unauthorized disclosure; or

(ii) the release of a public record not otherwise subject to confidentiality or nondisclosure requirements.

(7) SENSITIVE PERSONALLY IDENTIFIABLE INFORMATION.—The term “sensitive personally identifiable information” means any information or compilation of information, in electronic or digital form that includes—

(A) an individual’s first and last name or first initial and last name in combination with any 1 of the following data elements:

(i) A non-truncated social security number, driver’s license number, passport number, or alien registration number.

(ii) Any 2 of the following:

(I) Home address or telephone number.

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

(III) Month, day, and year of birth.

(iii) Unique biometric data such as a finger print, voice print, a retina or iris image, or any other unique physical representation.

(iv) A unique account identifier, electronic identification number, user name, or routing code in combination with any associated security code, access code, or password that is required for an individual to obtain money, goods, services or any other thing of value; or

(B) a financial account number or credit or debit card number in combination with any security code, access code or password that is required for an individual to obtain credit, withdraw funds, or engage in a financial transaction.

**SEC. 14. EFFECTIVE DATE.**

This Act shall take effect on the expiration of the date which is 90 days after the date of enactment of this Act.

**SUBMITTED RESOLUTIONS**

SENATE RESOLUTION 237—EX-PRESSING THE SENSE OF THE SENATE REGARDING COMING TOGETHER AS A NATION AND CEASING ALL WORK OR OTHER ACTIVITY FOR A MOMENT OF REMEMBRANCE BEGINNING AT 1:00 PM EASTERN DAYLIGHT TIME ON SEPTEMBER 11, 2011, IN HONOR OF THE 10TH ANNIVERSARY OF THE TERRORIST ATTACKS COMMITTED AGAINST THE UNITED STATES ON SEPTEMBER 11, 2001

Mr. LAUTENBERG (for himself, Mr. TOOMEY, Mr. MENENDEZ, Mr. SCHUMER,

Mrs. GILLIBRAND, Mr. CASEY, Mr. LIEBERMAN, Mr. BLUMENTHAL, Mr. WEBB, Mr. WARNER, Mr. REID of Nevada, Mr. MCCONNELL, Mr. AKAKA, Mr. ALEXANDER, Ms. AYOTTE, Mr. BARRASSO, Mr. BAUCUS, Mr. BEGICH, Mr. BENNET, Mr. BINGAMAN, Mr. BLUNT, Mr. BOOZMAN, Mrs. BOXER, Mr. BROWN of Massachusetts, Mr. BROWN of Ohio, Mr. BURR, Ms. CANTWELL, Mr. CARDIN, Mr. CARPER, Mr. CHAMBLISS, Mr. COATS, Mr. COBURN, Mr. COCHRAN, Ms. COLLINS, Mr. CONRAD, Mr. COONS, Mr. CORKER, Mr. CORNYN, Mr. CRAPO, Mr. DEMINT, Mr. DURBIN, Mr. ENZI, Mrs. FEINSTEIN, Mr. FRANKEN, Mr. GRAHAM, Mr. GRASSLEY, Mrs. HAGAN, Mr. HARKIN, Mr. HATCH, Mr. HELLER, Mr. HOEVEN, Mrs. HUTCHISON, Mr. INHOFE, Mr. INOUE, Mr. ISAKSON, Mr. JOHANNIS, Mr. JOHNSON of Wisconsin, Mr. JOHNSON of South Dakota, Mr. KERRY, Mr. KIRK, Ms. KLOBUCHAR, Mr. KOHL, Mr. KYL, Ms. LANDRIEU, Mr. LEAHY, Mr. LEE, Mr. LEVIN, Mr. LUGAR, Mr. MANCHIN, Mr. MCCAIN, Mrs. MCCASKILL, Mr. MERKLEY, Ms. MIKULSKI, Mr. MORAN, Ms. MURKOWSKI, Mrs. MURRAY, Mr. NELSON of Nebraska, Mr. NELSON of Florida, Mr. PAUL, Mr. PORTMAN, Mr. PRYOR, Mr. REED of Rhode Island, Mr. RISCH, Mr. ROBERTS, Mr. ROCKEFELLER, Mr. RUBIO, Mr. SANDERS, Mr. SESSIONS, Mrs. SHAHEEN, Mr. SHELBY, Ms. SNOWE, Ms. STABENOW, Mr. TESTER, Mr. THUNE, Mr. UDALL of Colorado, Mr. UDALL of New Mexico, Mr. VITTER, Mr. WHITEHOUSE, Mr. WICKER, and Mr. WYDEN) submitted the following resolution; which was considered and agreed to:

S. RES. 237

Whereas at 8:46 AM, on September 11, 2001, hijacked American Airlines Flight 11 crashed into the upper portion of the North Tower of the World Trade Center in New York City, New York;

Whereas 17 minutes later, at 9:03 AM, hijacked United Airlines Flight 175 crashed into the South Tower of the World Trade Center;

Whereas at 9:37 AM, the west wall of the Pentagon was hit by hijacked American Airlines Flight 77, the impact of which caused immediate and catastrophic damage to the headquarters of the Department of Defense;

Whereas at approximately 10:00 AM, the passengers and crew of hijacked United Airlines Flight 93 acted heroically to retake control of the airplane and thwart the taking of additional American lives by crashing the airliner in Shanksville, Pennsylvania, and, in doing so, gave their lives to save countless others;

Whereas nearly 3,000 innocent civilians were killed in the heinous attacks of September 11, 2001;

Whereas tens of thousands of individuals narrowly escaped the attacks at the Pentagon and World Trade Center and, as witnesses to this tragedy, are forever changed;

Whereas countless fire departments, police departments, first responders, governmental officials, workers, emergency medical personnel, and volunteers responded immediately and heroically to those horrific events;

Whereas the Fire Department of New York suffered 343 fatalities on September 11, 2001, the largest loss of life of any emergency response agency in United States history;

Whereas the Port Authority Police Department suffered 37 fatalities in the attacks, the

largest loss of life of any police force in United States history in a single day;

Whereas the New York Police Department suffered 23 fatalities as a result of the terrorist attacks;

Whereas the impact of that day on public health continues through 2011, as nearly 90,000 people are at risk of or suffering from negative health effects as a result of the events of September 11, 2001, including 14,000 workers and 2,400 community residents who are sick, and tens of thousands of others whose health is being monitored;

Whereas 10 years later, the people of the United States and people around the world continue to mourn the tremendous loss of innocent life on that fateful day;

Whereas 10 years later, thousands of men and women in the United States Armed Forces remain in harm's way defending the United States against those who seek to threaten the United States;

Whereas on the 10th anniversary of this tragic day, the thoughts of the people of the United States are with all of the victims of the events of September 11, 2001, and their families;

Whereas the lives of Americans were changed forever on September 11, 2001, when events threatened the American way of life;

Whereas in December 2001, Congress and the President joined together to designate September 11 as Patriot Day (Public Law 107-89);

Whereas in September 2002, and each September thereafter through September 2008, President Bush issued Proclamations 7590, 7702, 7812, 7929, 8047, 8174, and 8286 (67 Fed. Reg. 57125; 68 Fed. Reg. 53013; 69 Fed. Reg. 55717; 70 Fed. Reg. 54467; 71 Fed. Reg. 53959; 72 Fed. Reg. 51553; 73 Fed. Reg. 52773) proclaiming September 11 of that year, respectively, as Patriot Day;

Whereas in 2009, Congress and the President joined together to designate September 11 as a National Day of Service and Remembrance under the Serve America Act (Public Law 111-13; 123 Stat. 1460);

Whereas in September 2009 and 2010, President Obama issued Proclamation 8413 (74 Fed. Reg. 47045) and Proclamation 8559 (75 Fed. Reg. 56463) proclaiming September 11, 2009, and September 11, 2010, respectively, as Patriot Day and National Day of Service and Remembrance; and

Whereas September 11 will never, and should never, be just another day in the hearts and minds of all people of the United States; Now, therefore, be it

*Resolved*, That the Senate—

(1) recognizes September 11, 2011, as a day of solemn commemoration of the events of September 11, 2001, and a day to come together as a Nation;

(2) offers its deepest and most sincere condolences to the families, friends, and loved ones of the innocent victims of the September 11, 2001, terrorist attacks;

(3) honors the heroic service, actions, and sacrifices of first responders, law enforcement personnel, State and local officials, volunteers, and countless others who aided the innocent victims of those attacks and, in doing so, bravely risked and often gave their own lives;

(4) recognizes the valiant service, actions, and sacrifices of United States personnel, including members of the United States Armed Forces, the United States intelligence agencies, the United States diplomatic service, homeland security and law enforcement personnel, and their families, who have given so much, including their lives and well-being, to support the cause of freedom and defend the security of the United States;

(5) reaffirms that the people of the United States will never forget the challenges our country endured on and since September 11,

2001, and will work tirelessly to defeat those who attacked the United States; and

(6) on the 10th anniversary of this tragic day in United States history—

(A) calls upon all of the people and institutions of the United States to observe a moment of remembrance on September 11, 2011, including—

- (i) media outlets;
- (ii) houses of worship;
- (iii) military organizations;
- (iv) veterans organizations;
- (v) airlines;
- (vi) airports;
- (vii) railroads;
- (viii) sports teams;
- (ix) the Federal Government;
- (x) State and local governments;
- (xi) police, fire, and other public institutions;
- (xii) educational institutions;
- (xiii) businesses; and
- (xiv) other public and private institutions;

and

(B) encourages the observance of the moment of remembrance or prayer to last for 1 minute beginning at 1:00 PM Eastern Daylight Time by, to the maximum extent practicable—

- (i) ceasing all work or other activity; and
- (ii) marking the moment in an appropriate manner, including by ringing bells, blowing whistles, or sounding sirens.

#### PRIVILEGES OF THE FLOOR

Mr. REID. Mr. President, I ask unanimous consent that two fellows in Senator BINGAMAN's office, Charlayne Hayling and Sandra Wilkniss, be granted floor privileges during consideration of H.R. 2560.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

#### GOVERNMENT CHARGE CARD ABUSE PREVENTION ACT OF 2011

Mr. DURBIN. Mr. President, I ask unanimous consent that the Senate proceed to the consideration of Calendar No. 104, S. 300.

The PRESIDING OFFICER. The clerk will report the bill by title.

The legislative clerk read as follows:

A bill (S. 300) to prevent abuse of Government charge cards.

There being no objection, the Senate proceeded to consider the bill, which had been reported from the Committee on Homeland Security and Governmental Affairs, with amendments; as follows:

(The parts of the bill intended to be stricken are shown in boldface brackets and the parts of the bill intended to be inserted are shown in italic.)

S. 300

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

#### SECTION 1. SHORT TITLE.

This Act may be cited as the "Government Charge Card Abuse Prevention Act of 2011".

#### SEC. 2. MANAGEMENT OF PURCHASE CARDS.

(a) REQUIRED SAFEGUARDS AND INTERNAL CONTROLS.—The head of each executive agency that issues and uses purchase cards and convenience checks shall establish and maintain safeguards and internal controls to ensure the following: