(3) PERIOD OF APPOINTMENT.—Members of the Executive Committee shall be appointed for a term of 1 year.

(4) VACANCIES.—A vacancy in the Executive Committee shall be filled in the same manner as the original appointment, not later than 30 days after the date on which the vacancy occurs.

(c) MEETINGS.—

(1) IN GENERAL.—The Executive Committee shall meet at the call of the chairperson of the Executive Committee.

(2) QUORUM.—A majority of the members of the Executive Committee shall constitute a quorum.

(3) FIRST MEETING.—The first meeting of the Executive Committee shall take place not later than 30 days after the date of enactment of this subtitle.

(4) PUBLIC MEETING.—The Executive Committee shall hold at least 1 public meeting before the date described in subsection (d)(1) to receive comments from small business concerns and other interested parties.

(d) DUTIES.—

(1) RECOMMENDATIONS.—Not later than 270 days after the date of enactment of this Act, upon a vote of the majority of members of the Executive Committee then serving, the Executive Committee shall submit to the Administrator recommendations relating to the feasibility of establishing a small business common application and web portal in order to meet the goals described in section 612.

(2) TRANSMISSION TO EXECUTIVE AGENCIES.—The Executive Committee shall transmit to each Executive agency a complete copy of the recommendations submitted under paragraph (1).

(3) TRANSMISSION TO CONGRESS.—The Executive Committee shall transmit to each relevant committee of Congress a complete copy of the recommendations submitted under paragraph (1).

(4) RECOMMENDATIONS BY EXECUTIVE AGENCIES.—Not later than 30 days after the date on which the Executive Committee transmits recommendations to the Executive agency under paragraph (2), each Executive agency that provides Federal assistance to small business concerns shall submit to Congress recommendations, if any, for legislative changes necessary for the Executive agency to carry out the recommendations under paragraph (1).

(e) PERSONNEL MATTERS.—

(1) COMPENSATION OF MEMBERS.—The members of the Executive Committee shall serve without compensation in addition to that received for their services as officers or employees of the United States.

(2) DETAIL OF EMPLOYEES.—The Administrator may detail to the Executive Committee any employee of the Economic Development Administration, and such detail shall be without interruption or loss of civil service status or privilege.

(f) FEDERAL ADVISORY COMMITTEE ACT.—Section 14 of the Federal Advisory Committee Act (5 U.S.C. App.) shall not apply with respect to the Executive Committee.

SEC. 614. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated to the Administrator such sums as may be necessary to carry out this subtitle.

Subtitle B—Government Accountability Office Review

SEC. 621. GOVERNMENT ACCOUNTABILITY OFFICE REVIEW.

Not later than 2 years after the date of enactment of this Act, the Comptroller General of the United States shall submit a report to the Committee on Small Business and Entrepreneurship of the Senate and the Committee on Small Business of the House of Representatives that evaluates the status of the programs authorized under this Act and the amendments made by this Act, including the extent to which such programs have been funded and implemented and have contributed to promoting job creation among small business concerns.

SUBMITTED RESOLUTIONS

SENATE CONCURRENT RESOLUTION 54—STATING THAT IT IS THE POLICY OF THE UNITED STATES TO OPPOSE THE SALE, SHIPMENT, PERFORMANCE OF MAINTENANCE, REFURBISHMENT, MODIFICATION, REPAIR, AND UPGRADE OF ANY MILITARY EQUIPMENT FROM OR BY THE RUSSIAN FEDERATION TO OR FOR THE SYRIAN ARAB REPUBLIC

Mr. HATCH (for himself and Mr. CORNYN) submitted the following concurrent resolution; which was referred to the Committee on Foreign Relations:

S. CON. RES. 54

Whereas the General Director of Rosoboronexport, the largest Russian arms exporter, recently announced that his company was transferring anti-aircraft and antiship missile systems to Syria;

Whereas the Government of the Russian Federation has announced the deployment of 11 warships, including amphibious ships designed to carry naval infantry, to the eastern Mediterranean, and it is expected that some of those ships will dock at the Syrian port of Tartus;

Whereas Secretary of State Hillary Clinton recently stated, ''What can every nation and group represented here do? . . . I ask you to reach out to Russia and China, and to not only urge but demand that they get off the sidelines and begin to support the legitimate aspirations of the Syrian people.'';

Whereas Secretary of State Clinton further stated on July 17, 2012, ''[O]ur commitment is to try to get Russia to cooperate. So we want the rest of the world to put pressure on Russia . . . as long as he [Bashar al-Assad] has Russia uncertain about whether or not to side against him in any more dramatic way that it already has, he [Assad] feels like he can keep going.'';

Whereas the Government of the Russian Federation recently refurbished at least three Syrian Mi–25 helicopters; and

Whereas the Government of the Russian Federation has taken a tentative positive step of expounding a new policy that it will not enter into new arms agreements with the Government of the Syrian Arab Republic: Now, therefore, be it

Resolved by the Senate (the House of Representatives concurring), That it is the policy of the United States—

(1) to oppose the sale, shipment, performance of maintenance, refurbishment, modification, repair, or upgrade of any military equipment, including parts that can be used in military equipment, from or by the Government of the Russian Federation to or for the Government of the Syrian Arab Republic; and

(2) to oppose any effort by the Government of the Russian Federation to increase, maintain, or sustain the military readiness and or military capabilities of the Government of the Syrian Arab Republic.

AMENDMENTS SUBMITTED AND PROPOSED

SA 2573. Mr. HATCH (for himself, Mr. MCCONNELL, Mr. JOHANNS, Mr. ROBERTS, Mr. BURR, Mr. THUNE, Mr. CORNYN, Mr. KYL, Mr. BOOZMAN, Mr. BLUNT, Mr. RUBIO, Mr. MCCAIN, Mr. GRASSLEY, Mr. BARRASSO, Mr. KIRK, Mrs. HUTCHISON, Mr. HOEVEN, Mr. SHELBY, and Mr. ISAKSON) proposed an amendment to the bill S. 3412, to amend the Internal Revenue Code of 1986 to provide tax relief to middle-class families.

SA 2574. Mrs. HUTCHISON submitted an amendment intended to be proposed by her to the bill S. 3414, to enhance the security and resiliency of the cyber and communications infrastructure of the United States; which was ordered to lie on the table.

SA 2575. Mr. LAUTENBERG (for himself, Mrs. BOXER, Mr. REED, Mr. MENENDEZ, Mrs. GILLIBRAND, Mr. SCHUMER, and Mrs. FEINSTEIN) submitted an amendment intended to be proposed by him to the bill S. 3414, supra; which was ordered to lie on the table.

SA 2576. Mr. LEAHY submitted an amendment intended to be proposed by him to the bill S. 3414, supra; which was ordered to lie on the table.

SA 2577. Mr. LEAHY submitted an amendment intended to be proposed by him to the bill S. 3414, supra; which was ordered to lie on the table.

SA 2578. Mr. LEAHY submitted an amendment intended to be proposed by him to the bill S. 3414, supra; which was ordered to lie on the table.

SA 2579. Mr. LEAHY submitted an amendment intended to be proposed by him to the bill S. 3414, supra; which was ordered to lie on the table.

SA 2580. Mr. LEAHY submitted an amendment intended to be proposed by him to the bill S. 3414, supra; which was ordered to lie on the table.

TEXT OF AMENDMENTS

SA 2573. Mr. HATCH (for himself, Mr. MCCONNELL, Mr. JOHANNS, Mr. ROBERTS, Mr. BURR, Mr. THUNE, Mr. CORNYN, Mr. KYL, Mr. BOOZMAN, Mr. BLUNT, Mr. RUBIO, Mr. MCCAIN, Mr. GRASSLEY, Mr. BARRASSO, Mr. KIRK, Mrs. HUTCHISON, Mr. HOEVEN, Mr. SHELBY, and Mr. ISAKSON) proposed an amendment to the bill S. 3412, to amend the Internal Revenue Code of 1986 to provide tax relief to middle-class families; as follows:

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Tax Hike Prevention Act of 2012''.

SEC. 2. TEMPORARY EXTENSION OF 2001 TAX RELIEF.

(a) IN GENERAL.—Section 901 of the Economic Growth and Tax Relief Reconciliation Act of 2001 is amended by striking ''December 31, 2012'' both places it appears and inserting ''December 31, 2013''.

(b) EFFECTIVE DATE.—The amendment made by this section shall take effect as if included in the enactment of the Economic Growth and Tax Relief Reconciliation Act of 2001.

SEC. 3. TEMPORARY EXTENSION OF 2003 TAX RELIEF.

(a) IN GENERAL.—Section 303 of the Jobs and Growth Tax Relief Reconciliation Act of 2003 is amended by striking ''December 31, 2012'' and inserting ''December 31, 2013''.

(b) EFFECTIVE DATE.—The amendment made by this section shall take effect as if

included in the enactment of the Jobs and Growth Tax Relief Reconciliation Act of 2003.

SEC. 4. ALTERNATIVE MINIMUM TAX RELIEF.

(a) TEMPORARY EXTENSION OF INCREASED ALTERNATIVE MINIMUM TAX EXEMPTION AMOUNT.—

(1) IN GENERAL.—Paragraph (1) of section 55(d) of the Internal Revenue Code of 1986 is amended—

(A) by striking ''$72,450'' and all that follows through ''2011'' in subparagraph (A) and inserting ''$78,750 in the case of taxable years beginning in 2012 and $79,850 in the case of taxable years beginning in 2013'', and

(B) by striking ''$47,450'' and all that follows through ''2011'' in subparagraph (B) and inserting ''$50,600 in the case of taxable years beginning in 2012 and $51,150 in the case of taxable years beginning in 2013''.

(b) TEMPORARY EXTENSION OF ALTERNATIVE MINIMUM TAX RELIEF FOR NONREFUNDABLE PERSONAL CREDITS.—

(1) IN GENERAL.—Paragraph (2) of section 26(a) of the Internal Revenue Code of 1986 is amended—

(A) by striking ''or 2011'' and inserting ''2011, 2012, or 2013'', and

(B) by striking ''2011'' in the heading thereof and inserting ''2013''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 2011.

SEC. 5. EXTENSION OF INCREASED EXPENSING LIMITATIONS AND TREATMENT OF CERTAIN REAL PROPERTY AS SECTION 179 PROPERTY.

(a) IN GENERAL.—

(1) DOLLAR LIMITATION.—Section 179(b)(1) of the Internal Revenue Code of 1986 is amended—

(A) by striking ''2010 or 2011,'' in subparagraph (B) and inserting ''2010, 2011, 2012, or 2013, and'',

(B) by striking subparagraph (C),

(C) by redesignating subparagraph (D) as subparagraph (C), and

(D) in subparagraph (C), as so redesignated, by striking ''2012'' and inserting ''2013''.

(2) REDUCTION IN LIMITATION.—Section 179(b)(2) of such Code is amended—

(A) by striking ''2010 or 2011,'' in subparagraph (B) and inserting ''2010, 2011, 2012, or 2013, and'',

(B) by striking subparagraph (C),

(C) by redesignating subparagraph (D) as subparagraph (C), and

(D) in subparagraph (C), as so redesignated, by striking ''2012'' and inserting ''2013''.

(3) CONFORMING AMENDMENT.—Subsection (b) of section 179 of such Code is amended by striking paragraph (6).

(b) COMPUTER SOFTWARE.—Section 179(d)(1)(A)(ii) of the Internal Revenue Code of 1986 is amended by striking ''2013'' and inserting ''2014''.

(c) ELECTION.—Section 179(c)(2) of the Internal Revenue Code of 1986 is amended by striking ''2013'' and inserting ''2014''.

(d) SPECIAL RULES FOR TREATMENT OF QUALIFIED REAL PROPERTY.—

(1) IN GENERAL.—Section 179(f)(1) of the Internal Revenue Code of 1986 is amended by striking ''2010 or 2011'' and inserting ''2010, 2011, 2012, or 2013''.

(2) CARRYOVER LIMITATION.—

(A) IN GENERAL.—Section 179(f)(4) of such Code is amended by striking ''2011'' each place it appears and inserting ''2013''.

(B) CONFORMING AMENDMENT.—The heading for subparagraph (C) of section 179(f)(4) of such Code is amended by striking ''2010'' and inserting ''2010, 2011 AND 2012''.

(e) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 2011.

SEC. 6. INSTRUCTIONS FOR TAX REFORM.

(a) IN GENERAL.—The Senate Committee on Finance shall report legislation not later than 12 months after the date of the enactment of this Act that consists of changes in laws within its jurisdiction which meet the requirements of subsection (b).

(b) REQUIREMENTS.—Legislation meets the requirements of this subsection if the legislation—

(1) simplifies the Internal Revenue Code of 1986 by reducing the number of tax preferences and reducing individual tax rates proportionally, with the highest individual tax rate significantly below 35 percent;

(2) permanently repeals the alternative minimum tax;

(3) is projected, when compared to the current tax policy baseline, to be revenue neutral or result in revenue losses;

(4) has a dynamic effect which is projected to stimulate economic growth and lead to increased revenue;

(5) applies any increased revenue from stimulated economic growth to additional rate reductions and does not permit any such increased revenue to be used for additional Federal spending;

(6) retains a progressive tax code; and

(7) provides for revenue-neutral reform of the taxation of corporations and businesses by—

(A) providing a top tax rate on corporations of no more than 25 percent; and

(B) implementing a competitive territorial tax system.

SA 2574. Mrs. HUTCHISON submitted an amendment intended to be proposed by her to the bill S. 3414, to enhance the security and resiliency of the cyber and communications infrastructure of the United States; which was ordered to lie on the table; as follows:

At the end of the bill, add the following:

TITLE VIII—MISCELLANEOUS

SEC. 801. COMPLIANCE WITH OR VIOLATION OF ENVIRONMENTAL LAWS WHILE UNDER EMERGENCY ORDER.

(a) IN GENERAL.—Section 202(c) of the Federal Power Act (16 U.S.C. 824a(c)) is amended—

(1) by striking ''(c) During'' and inserting the following:

''(c) TEMPORARY CONNECTION AND EXCHANGE OF FACILITIES DURING EMERGENCY.—

''(1) IN GENERAL.—During''; and

(2) by adding at the end the following:

''(2) COMPLIANCE WITH OR VIOLATION OF ENVIRONMENTAL LAWS WHILE UNDER EMERGENCY ORDER.—

''(A) IN GENERAL.—If an order issued under this subsection may result in a conflict with a requirement of any Federal, State, or local environmental law or regulation, the Commission shall ensure that the order—

''(i) requires generation, delivery, interchange, or transmission of electric energy only during hours necessary to meet the emergency and serve the public interest; and

''(ii) to the maximum extent practicable, is consistent with any applicable Federal, State, or local environmental law or regulation and minimizes any adverse environmental impacts.

''(B) EFFECT OF COMPLIANCE WITH EMERGENCY ORDERS.—To the extent any omission or action taken by a party that is necessary to comply with an order issued under this subsection (including any omission or action taken to voluntarily comply with the order) results in noncompliance with, or causes the party to not comply with, any Federal, State, or local environmental law or regulation, the omission or action shall not be considered a violation of the environmental law or regulation, or subject the party to any requirement, civil or criminal liability, or a citizen suit under the environmental law or regulation.

''(C) TERM OF EMERGENCY ORDERS.—Subject to subparagraph (D), an order issued under this subsection that may result in a conflict with a requirement of any Federal, State, or local environmental law or regulation shall expire not later than 90 days after the order is issued.

''(D) RENEWAL OR REISSUANCE OF EMERGENCY ORDERS.—

''(i) IN GENERAL.—The Commission may renew or reissue the order pursuant to this subsection for subsequent periods, not to exceed 90 days for each period, as the Commission determines necessary to meet the emergency and serve the public interest.

''(ii) ADMINISTRATION.—In renewing or reissuing an order under clause (i), the Commission shall—

''(I) consult with the primary Federal agency with expertise in the environmental interest protected by the law or regulation; and

''(II) include in the renewed or reissued order such conditions as the Federal agency determines necessary to minimize any adverse environmental impacts to the maximum extent practicable.

''(iii) PUBLIC AVAILABILITY OF CONDITIONS.—The conditions, if any, submitted by the Federal agency shall be made available to the public.

''(iv) EXCLUSION OF CONDITIONS.—The Commission may exclude a condition from the renewed or reissued order if the Commission—

''(I) determines that the condition would prevent the order from adequately addressing the emergency necessitating the order; and

''(II) provides in the order, or otherwise makes publicly available, an explanation of the determination.''.

(b) TEMPORARY CONNECTION OR CONSTRUCTION BY MUNICIPALITIES.—Section 202(d) of the Federal Power Act (16 U.S.C. 824a(d)) is amended by inserting ''or municipality'' before ''engaged in the transmission or sale of electric energy''.

SA 2575. Mr. LAUTENBERG (for himself, Mrs. BOXER, Mr. REED, Mr. MENENDEZ, Mrs. GILLIBRAND, Mr. SCHUMER, and Mrs. FEINSTEIN) submitted an amendment intended to be proposed by him to the bill S. 3414, to enhance the security and resiliency of the cyber and communications infrastructure of the United States; which was ordered to lie on the table; as follows:

At the appropriate place, insert the following

SEC. ___. PROHIBITION ON TRANSFER OR POSSESSION OF LARGE CAPACITY AMMUNITION FEEDING DEVICES.

(a) DEFINITION.—Section 921(a) of title 18, United States Code, is amended by inserting after paragraph (29) the following:

''(30) The term 'large capacity ammunition feeding device'—

''(A) means a magazine, belt, drum, feed strip, or similar device that has a capacity of, or that can be readily restored or converted to accept, more than 10 rounds of ammunition; but

''(B) does not include an attached tubular device designed to accept, and capable of operating only with, .22 caliber rimfire ammunition.''.

(b) PROHIBITIONS.—Section 922 of such title is amended by inserting after subsection (u) the following:

''(v)(1)(A)(i) Except as provided in clause (ii), it shall be unlawful for a person to transfer or possess a large capacity ammunition feeding device.

''(ii) Clause (i) shall not apply to the possession of a large capacity ammunition feeding device otherwise lawfully possessed within the United States on or before the date of the enactment of this subsection.

''(B) It shall be unlawful for any person to import or bring into the United States a large capacity ammunition feeding device.

''(2) Paragraph (1) shall not apply to—

''(A) a manufacture for, transfer to, or possession by the United States or a department or agency of the United States or a State or a department, agency, or political subdivision of a State, or a transfer to or possession by a law enforcement officer employed by such an entity for purposes of law enforcement (whether on or off duty);

''(B) a transfer to a licensee under title I of the Atomic Energy Act of 1954 for purposes of establishing and maintaining an on-site physical protection system and security organization required by Federal law, or possession by an employee or contractor of such a licensee on-site for such purposes or off-site for purposes of licensee-authorized training or transportation of nuclear materials;

''(C) the possession, by an individual who is retired from service with a law enforcement agency and is not otherwise prohibited from receiving ammunition, of a large capacity ammunition feeding device transferred to the individual by the agency upon that retirement; or

''(D) a manufacture, transfer, or possession of a large capacity ammunition feeding device by a licensed manufacturer or licensed importer for the purposes of testing or experimentation authorized by the Attorney General.''.

(c) PENALTIES.—Section 924(a) of such title is amended by adding at the end the following:

''(8) Whoever knowingly violates section 922(v) shall be fined under this title, imprisoned not more than 10 years, or both.''.

(d) IDENTIFICATION MARKINGS.—Section 923(i) of such title is amended by adding at the end the following: ''A large capacity ammunition feeding device manufactured after the date of the enactment of this sentence shall be identified by a serial number that clearly shows that the device was manufactured after such date of enactment, and such other identification as the Attorney General may by regulation prescribe.''.

SA 2576. Mr. LEAHY submitted an amendment intended to be proposed by him to the bill S. 3414, to enhance the security and resiliency of the cyber and communications infrastructure of the United States; which was ordered to lie on the table; as follows:

Beginning on page 109, strike line 4 and all that follows through page 110, line 6, and insert the following:

(d) CYBERSECURITY MODELING AND TEST BEDS.—

(1) REVIEW.—Not later than 1 year after the date of enactment of this Act, the Director shall conduct a review of cybersecurity test beds in existence on the date of enactment of this Act to inform the program established under paragraph (2).

(2) ESTABLISHMENT OF PROGRAM.—

(A) IN GENERAL.—The Director of the National Science Foundation, the Secretary, and the Secretary of Commerce shall establish a program for the appropriate Federal agencies to award grants to institutions of higher education or research and development non-profit institutions to establish cybersecurity test beds capable of realistic modeling of real-time cyber attacks and defenses. The test beds shall work to enhance the security of public systems and focus on enhancing the security of critical private sector systems such as those in the finance, energy, and other sectors.

(B) REQUIREMENTS.—

(i) SIZE OF TEST BEDS.—The test beds established under the program established under subparagraph (A) shall be sufficiently large in order to model the scale and complexity of real world networks and environments.

(ii) USE OF EXISTING TEST BEDS.—The test bed program established under subparagraph (A) shall build upon and expand test beds and cyber attack simulation, experiment, and distributed gaming tools developed by the Under Secretary of Homeland Security for Science and Technology prior to the date of enactment of this Act.

(3) PURPOSES.—The purposes of the program established under paragraph (2) shall be to—

(A) support the rapid development of new cybersecurity defenses, techniques, and processes by improving understanding and assessing the latest technologies in a real-world environment; and

(B) to improve understanding among private sector partners of the risk, magnitude, and consequences of cyber attacks.

SA 2577. Mr. LEAHY submitted an amendment intended to be proposed by him to the bill S. 3414, to enhance the security and resiliency of the cyber and communications infrastructure of the United States; which was ordered to lie on the table; as follows:

At the end, add the following:

TITLE VIII—DATA SECURITY

SEC. 801. DEFINITIONS.

In this title, the following definitions shall apply:

(1) BUSINESS ENTITY.—The term ''business entity'' means any organization, corporation, trust, partnership, sole proprietorship, unincorporated association, or venture established to make a profit, or nonprofit.

(2) PERSONALLY IDENTIFIABLE INFORMATION.—The term ''personally identifiable information'' means any information, or compilation of information, in electronic or digital form that is a means of identification, as defined by section 1028(d)(7) of title 18, United State Code.

(3) SENSITIVE PERSONALLY IDENTIFIABLE INFORMATION.—The term ''sensitive personally identifiable information'' means any information or compilation of information, in electronic or digital form that includes the following:

(A) An individual's first and last name or first initial and last name in combination with any 2 of the following data elements:

(i) Home address or telephone number.

(ii) Mother's maiden name.

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

(B) A non-truncated social security number, driver's license number, passport number, or alien registration number or other government-issued unique identification number.

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

(D) A unique account identifier, including a financial account number or credit or debit card number, electronic identification number, user name, or routing code.

(E) Any combination of the following data elements:

(i) An individual's first and last name or first initial and last name.

(ii) A unique account identifier, including a financial account number or credit or debit card number, electronic identification number, user name, or routing code.

(iii) Any security code, access code, or password, or source code that could be used to generate such codes or passwords.

(4) SERVICE PROVIDER.—The term ''service provider'' means a business entity that provides electronic data transmission, routing, intermediate and transient storage, or connections to its system or network, where the business entity providing such services does not select or modify the content of the electronic data, is not the sender or the intended recipient of the data, and the business entity transmits, routes, stores, or provides connections for personal information in a manner that personal information is undifferentiated from other types of data that such business entity transmits, routes, stores, or provides connections. Any such business entity shall be treated as a service provider under this title only to the extent that it is engaged in the provision of such transmission, routing, intermediate and transient storage or connections.

SEC. 802. PURPOSE AND APPLICABILITY OF DATA PRIVACY AND SECURITY PROGRAM.

(a) PURPOSE.—The purpose of this title is to ensure standards for developing and implementing administrative, technical, and physical safeguards to protect the security of sensitive personally identifiable information.

(b) APPLICABILITY.—A business entity engaging in interstate commerce that involves collecting, accessing, transmitting, using, storing, or disposing of sensitive personally identifiable information in electronic or digital form on 10,000 or more United States persons is subject to the requirements for a data privacy and security program under section 803 for protecting sensitive personally identifiable information.

(c) LIMITATIONS.—Notwithstanding any other obligation under this title, this title does not apply to the following:

(1) FINANCIAL INSTITUTIONS.—Financial institutions—

(A) subject to the data security requirements and standards under section 501(b) of the Gramm-Leach-Bliley Act (15 U.S.C. 6801(b)); and

(B) subject to the jurisdiction of an agency or authority described in section 505(a) of the Gramm-Leach-Bliley Act (15 U.S.C. 6805(a)).

(2) HIPAA REGULATED ENTITIES.—

(A) COVERED ENTITIES.—Covered entities subject to the Health Insurance Portability and Accountability Act of 1996 (42 U.S.C. 1301 et seq.), including the data security requirements and implementing regulations of that Act.

(B) BUSINESS ENTITIES.—A Business entity shall be deemed in compliance with this title if the business entity—

(i) is acting as a business associate, as that term is defined under the Health Insurance Portability and Accountability Act of 1996 (42 U.S.C. 1301 et seq.) and is in compliance with the requirements imposed under that Act and implementing regulations promulgated under that Act; and

(ii) is subject to, and currently in compliance, with the privacy and data security requirements under sections 13401 and 13404 of division A of the American Reinvestment and Recovery Act of 2009 (42 U.S.C. 17931 and 17934) and implementing regulations promulgated under such sections.

(3) SERVICE PROVIDERS.—A service provider for any electronic communication by a third-party, to the extent that the service provider is exclusively engaged in the transmission, routing, or temporary, intermediate, or transient storage of that communication.

(4) PUBLIC RECORDS.—Public records not otherwise subject to a confidentiality or nondisclosure requirement, or information

obtained from a public record, including information obtained from a news report or periodical.

(d) SAFE HARBORS.—

(1) IN GENERAL.—A business entity shall be deemed in compliance with the privacy and security program requirements under section 803 if the business entity complies with or provides protection equal to industry standards or standards widely accepted as an effective industry practice, as identified by the Federal Trade Commission, that are applicable to the type of sensitive personally identifiable information involved in the ordinary course of business of such business entity.

(2) LIMITATION.—Nothing in this subsection shall be construed to permit, and nothing does permit, the Federal Trade Commission to issue regulations requiring, or according greater legal status to, the implementation of or application of a specific technology or technological specifications for meeting the requirements of this title.

SEC. 803. REQUIREMENTS FOR A PERSONAL DATA PRIVACY AND SECURITY PROGRAM.

(a) PERSONAL DATA PRIVACY AND SECURITY PROGRAM.—A business entity subject to this title shall comply with the following safeguards and any other administrative, technical, or physical safeguards identified by the Federal Trade Commission in a rulemaking process pursuant to section 553 of title 5, United States Code, for the protection of sensitive personally identifiable information:

(1) SCOPE.—A business entity shall implement a comprehensive personal data privacy and security program that includes administrative, technical, and physical safeguards appropriate to the size and complexity of the business entity and the nature and scope of its activities.

(2) DESIGN.—The personal data privacy and security program shall be designed to—

(A) ensure the privacy, security, and confidentiality of sensitive personally identifying information;

(B) protect against any anticipated vulnerabilities to the privacy, security, or integrity of sensitive personally identifying information; and

(C) protect against unauthorized access to use of sensitive personally identifying information that could create a significant risk of harm or fraud to any individual.

(3) RISK ASSESSMENT.—A business entity shall—

(A) identify reasonably foreseeable internal and external vulnerabilities that could result in unauthorized access, disclosure, use, or alteration of sensitive personally identifiable information or systems containing sensitive personally identifiable information;

(B) assess the likelihood of and potential damage from unauthorized access, disclosure, use, or alteration of sensitive personally identifiable information;

(C) assess the sufficiency of its policies, technologies, and safeguards in place to control and minimize risks from unauthorized access, disclosure, use, or alteration of sensitive personally identifiable information; and

(D) assess the vulnerability of sensitive personally identifiable information during destruction and disposal of such information, including through the disposal or retirement of hardware.

(4) RISK MANAGEMENT AND CONTROL.—Each business entity shall—

(A) design its personal data privacy and security program to control the risks identified under paragraph (3);

(B) adopt measures commensurate with the sensitivity of the data as well as the size, complexity, and scope of the activities of the business entity that—

(i) control access to systems and facilities containing sensitive personally identifiable information, including controls to authenticate and permit access only to authorized individuals;

(ii) detect, record, and preserve information relevant to actual and attempted fraudulent, unlawful, or unauthorized access, disclosure, use, or alteration of sensitive personally identifiable information, including by employees and other individuals otherwise authorized to have access;

(iii) protect sensitive personally identifiable information during use, transmission, storage, and disposal by encryption, redaction, or access controls that are widely accepted as an effective industry practice or industry standard, or other reasonable means (including as directed for disposal of records under section 628 of the Fair Credit Reporting Act (15 U.S.C. 1681w) and the implementing regulations of such Act as set forth in section 682 of title 16, Code of Federal Regulations);

(iv) ensure that sensitive personally identifiable information is properly destroyed and disposed of, including during the destruction of computers, diskettes, and other electronic media that contain sensitive personally identifiable information;

(v) trace access to records containing sensitive personally identifiable information so that the business entity can determine who accessed or acquired such sensitive personally identifiable information pertaining to specific individuals; and

(vi) ensure that no third party or customer of the business entity is authorized to access or acquire sensitive personally identifiable information without the business entity first performing sufficient due diligence to ascertain, with reasonable certainty, that such information is being sought for a valid legal purpose; and

(C) establish a plan and procedures for minimizing the amount of sensitive personally identifiable information maintained by such business entity, which shall provide for the retention of sensitive personally identifiable information only as reasonably needed for the business purposes of such business entity or as necessary to comply with any legal obligation.

(b) TRAINING.—Each business entity subject to this title shall take steps to ensure employee training and supervision for implementation of the data security program of the business entity.

(c) VULNERABILITY TESTING.—

(1) IN GENERAL.—Each business entity subject to this title shall take steps to ensure regular testing of key controls, systems, and procedures of the personal data privacy and security program to detect, prevent, and respond to attacks or intrusions, or other system failures.

(2) FREQUENCY.—The frequency and nature of the tests required under paragraph (1) shall be determined by the risk assessment of the business entity under subsection (a)(3).

(d) RELATIONSHIP TO CERTAIN PROVIDERS OF SERVICES.—In the event a business entity subject to this title engages a person or entity not subject to this title (other than a service provider) to receive sensitive personally identifiable information in performing services or functions (other than the services or functions provided by a service provider) on behalf of and under the instruction of such business entity, such business entity shall—

(1) exercise appropriate due diligence in selecting the person or entity for responsibilities related to sensitive personally identifiable information, and take reasonable steps to select and retain a person or entity that is capable of maintaining appropriate safeguards for the security, privacy, and integrity of the sensitive personally identifiable information at issue; and

(2) require the person or entity by contract to implement and maintain appropriate measures designed to meet the objectives and requirements governing entities subject to this section.

(e) PERIODIC ASSESSMENT AND PERSONAL DATA PRIVACY AND SECURITY MODERNIZATION.—Each business entity subject to this title shall on a regular basis monitor, evaluate, and adjust, as appropriate its data privacy and security program in light of any relevant changes in—

(1) technology;

(2) the sensitivity of personally identifiable information;

(3) internal or external threats to personally identifiable information; and

(4) the changing business arrangements of the business entity, such as—

(A) mergers and acquisitions;

(B) alliances and joint ventures;

(C) outsourcing arrangements;

(D) bankruptcy; and

(E) changes to sensitive personally identifiable information systems.

(f) IMPLEMENTATION TIMELINE.—Not later than 1 year after the date of enactment of this title, a business entity subject to the provisions of this title shall implement a data privacy and security program pursuant to this title.

SEC. 804. ENFORCEMENT.

(a) CIVIL PENALTIES.—

(1) IN GENERAL.—Any business entity that violates the provisions of section 803 shall be subject to civil penalties of not more than $5,000 per violation per day while such a violation exists, with a maximum of $500,000 per violation.

(2) INTENTIONAL OR WILLFUL VIOLATION.—A business entity that intentionally or willfully violates the provisions of section 803 shall be subject to additional penalties in the amount of $5,000 per violation per day while such a violation exists, with a maximum of an additional $500,000 per violation.

(3) PENALTY LIMITS.—

(A) IN GENERAL.—Notwithstanding any other provision of law, the total sum of civil penalties assessed against a business entity for all violations of the provisions of this title resulting from the same or related acts or omissions shall not exceed $500,000, unless such conduct is found to be willful or intentional.

(B) DETERMINATIONS.—The determination of whether a violation of a provision of this title has occurred, and if so, the amount of the penalty to be imposed, if any, shall be made by the court sitting as the finder of fact. The determination of whether a violation of a provision of this title was willful or intentional, and if so, the amount of the additional penalty to be imposed, if any, shall be made by the court sitting as the finder of fact.

(C) ADDITIONAL PENALTY LIMIT.—If a court determines under subparagraph (B) that a violation of a provision of this title was willful or intentional and imposes an additional penalty, the court may not impose an additional penalty in an amount that exceeds $500,000.

(4) EQUITABLE RELIEF.—A business entity engaged in interstate commerce that violates a provision of this title may be enjoined from further violations by a United States district court.

(5) OTHER RIGHTS AND REMEDIES.—The rights and remedies available under this section are cumulative and shall not affect any other rights and remedies available under law.

(b) FEDERAL TRADE COMMISSION AUTHORITY.—Any business entity shall have the provisions of this title enforced against it by the Federal Trade Commission.

(c) STATE ENFORCEMENT.—

(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 acts or practices of a business entity that violate this title, the State may bring a civil action on behalf of the residents of that State in a district court of the United States of appropriate jurisdiction to—

(A) enjoin that act or practice;

(B) enforce compliance with this title; or

(C) obtain civil penalties of not more than $5,000 per violation per day while such violations persist, up to a maximum of $500,000 per violation.

(2) PENALTY LIMITS.—

(A) IN GENERAL.—Notwithstanding any other provision of law, the total sum of civil penalties assessed against a business entity for all violations of the provisions of this title resulting from the same or related acts or omissions shall not exceed $500,000, unless such conduct is found to be willful or intentional.

(B) DETERMINATIONS.—The determination of whether a violation of a provision of this title has occurred, and if so, the amount of the penalty to be imposed, if any, shall be made by the court sitting as the finder of fact. The determination of whether a violation of a provision of this title was willful or intentional, and if so, the amount of the additional penalty to be imposed, if any, shall be made by the court sitting as the finder of fact.

(C) ADDITIONAL PENALTY LIMIT.—If a court determines under subparagraph (B) that a violation of a provision of this title was willful or intentional and imposes an additional penalty, the court may not impose an additional penalty in an amount that exceeds $500,000.

(3) NOTICE.—

(A) IN GENERAL.—Before filing an action under this subsection, the attorney general of the State involved shall provide to the Federal Trade Commission—

(i) a written notice of that action; and

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

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

(C) NOTIFICATION WHEN PRACTICABLE.—In an action described under subparagraph (B), the attorney general of a State shall provide the written notice and the copy of the complaint to the Federal Trade Commission as soon after the filing of the complaint as practicable.

(4) FEDERAL TRADE COMMISSION AUTHORITY.—Upon receiving notice under paragraph (3), the Federal Trade Commission shall have the right to—

(A) move to stay the action, pending the final disposition of a pending Federal proceeding or action as described in paragraph (5);

(B) intervene in an action brought under paragraph (1); and

(C) file petitions for appeal.

(5) PENDING PROCEEDINGS.—If the Federal Trade Commission initiates a Federal civil action for a violation of this title, or any regulations thereunder, no attorney general of a State may bring an action for a violation of this title that resulted from the same or related acts or omissions against a defendant named in the Federal civil action initiated by the Federal Trade Commission.

(6) RULE OF CONSTRUCTION.—For purposes of bringing any civil action under paragraph (1) nothing in this title shall be construed to prevent an attorney general of a State from exercising the powers conferred on the attorney general by the laws of that State to—

(A) conduct investigations;

(B) administer oaths and affirmations; or

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

(7) VENUE; SERVICE OF PROCESS.—

(A) VENUE.—Any action brought under this subsection may be brought in the district court of the United States that meets applicable requirements relating to venue under section 1391 of title 28, United States Code.

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

(i) is an inhabitant; or

(ii) may be found.

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

SEC. 805. RELATION TO OTHER LAWS.

(a) IN GENERAL.—No State may require any business entity subject to this title to comply with any requirements with respect to administrative, technical, and physical safeguards for the protection of personal information.

(b) LIMITATIONS.—Nothing in this title shall be construed to modify, limit, or supersede the operation of the Gramm-Leach-Bliley Act or its implementing regulations, including those adopted or enforced by States.

SA 2578. Mr. LEAHY submitted an amendment intended to be proposed by him to the bill S. 3414, to enhance the security and resiliency of the cyber and communications infrastructure of the United States; which was ordered to lie on the table; as follows:

At the end, add the following:

DIVISION ___—DATA BREACHES

SECTION 1. SHORT TITLE.

This division may be cited as the ''Personal Data Privacy and Security Act of 2012''.

SEC. 2. FINDINGS.

Congress finds that—

(1) databases of personally identifiable information are increasingly prime targets of hackers, identity thieves, rogue employees, and other criminals, including organized and sophisticated criminal operations;

(2) identity theft is a serious threat to the Nation's economic stability, national security, homeland security, cybersecurity, the development of e-commerce, and the privacy rights of Americans;

(3) security breaches are a serious threat to consumer confidence, homeland security, national security, e-commerce, and economic stability;

(4) it is important for business entities that own, use, or license personally identifiable information to adopt reasonable procedures to ensure the security, privacy, and confidentiality of that personally identifiable information;

(5) individuals whose personal information has been compromised or who have been victims of identity theft should receive the necessary information and assistance to mitigate their damages and to restore the integrity of their personal information and identities;

(6) data misuse and use of inaccurate data have the potential to cause serious or irreparable harm to an individual's livelihood, privacy, and liberty and undermine efficient and effective business and government operations;

(7) government access to commercial data can potentially improve safety, law enforcement, and national security; and

(8) because government use of commercial data containing personal information potentially affects individual privacy, and law enforcement and national security operations, there is a need for Congress to exercise oversight over government use of commercial data.

SEC. 3. DEFINITIONS.

In this division, the following definitions shall apply:

(1) AFFILIATE.—The term ''affiliate'' means persons related by common ownership or by corporate control.

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

(3) BUSINESS ENTITY.—The term ''business entity'' means any organization, corporation, trust, partnership, sole proprietorship, unincorporated association, or venture established to make a profit, or nonprofit.

(4) DATA SYSTEM COMMUNICATION INFORMATION.—The term ''data system communication information'' means dialing, routing, addressing, or signaling information that identifies the origin, direction, destination, processing, transmission, or termination of each communication initiated, attempted, or received.

(5) DESIGNATED ENTITY.—The term ''designated entity'' means the Federal Government entity designated by the Secretary of Homeland Security under section 206(a).

(6) ENCRYPTION.—The term ''encryption''—

(A) means the protection of data in electronic form, in storage or in transit, using an encryption technology that has been generally accepted by experts in the field of information security that 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.

(7) IDENTITY THEFT.—The term ''identity theft'' means a violation of section 1028(a)(7) of title 18, United States Code.

(8) PERSONALLY IDENTIFIABLE INFORMATION.—The term ''personally identifiable information'' means any information, or compilation of information, in electronic or digital form that is a means of identification, as defined by section 1028(d)(7) of title 18, United State Code.

(9) PUBLIC RECORD SOURCE.—The term ''public record source'' means the Congress, any agency, any State or local government agency, the government of the District of Columbia and governments of the territories or possessions of the United States, and Federal, State or local courts, courts martial and military commissions, that maintain personally identifiable information in records available to the public.

(10) SECURITY BREACH.—

(A) IN GENERAL.—The term ''security breach'' means compromise of the security, confidentiality, or integrity of, or the loss of, computerized data that result in, or that there is a reasonable basis to conclude has resulted in—

(i) the unauthorized acquisition of sensitive personally identifiable information; and

(ii) access to sensitive personally identifiable information that is for an unauthorized purpose, 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;

(ii) the release of a public record not otherwise subject to confidentiality or nondisclosure requirements or the release of information obtained from a public record, including information obtained from a news report or periodical; or

(iii) any lawfully authorized investigative, protective, or intelligence activity of a law enforcement or intelligence agency of the United States, a State, or a political subdivision of a State.

(11) SENSITIVE PERSONALLY IDENTIFIABLE INFORMATION.—The term ''sensitive personally identifiable information'' means any information or compilation of information, in electronic or digital form that includes the following:

(A) An individual's first and last name or first initial and last name in combination with any two of the following data elements:

(i) Home address or telephone number.

(ii) Mother's maiden name.

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

(B) A non-truncated social security number, driver's license number, passport number, or alien registration number or other government-issued unique identification number.

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

(D) A unique account identifier, including a financial account number or credit or debit card number, electronic identification number, user name, or routing code.

(E) Any combination of the following data elements:

(i) An individual's first and last name or first initial and last name.

(ii) A unique account identifier, including a financial account number or credit or debit card number, electronic identification number, user name, or routing code.

(iii) Any security code, access code, or password, or source code that could be used to generate such codes or passwords.

(12) SERVICE PROVIDER.—The term ''service provider'' means a business entity that provides electronic data transmission, routing, intermediate and transient storage, or connections to its system or network, where the business entity providing such services does not select or modify the content of the electronic data, is not the sender or the intended recipient of the data, and the business entity transmits, routes, stores, or provides connections for personal information in a manner that personal information is undifferentiated from other types of data that such business entity transmits, routes, stores, or provides connections. Any such business entity shall be treated as a service provider under this division only to the extent that it is engaged in the provision of such transmission, routing, intermediate and transient storage or connections.

TITLE I—CONCEALMENT OF SECURITY BREACHES

SEC. 101. CONCEALMENT OF SECURITY BREACHES INVOLVING SENSITIVE PERSONALLY IDENTIFIABLE INFORMATION.

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

''§ 1041. Concealment of security breaches involving sensitive personally identifiable information

''(a) IN GENERAL.—Whoever, having knowledge of a security breach and of the fact that notice of such security breach is required under title II of the Personal Data Privacy and Security Act of 2012, intentionally and willfully conceals the fact of such security breach, shall, in the event that such security breach results in economic harm to any individual in the amount of $1,000 or more, be fined under this title or imprisoned for not more than 5 years, or both.

''(b) PERSON DEFINED.—For purposes of subsection (a), the term 'person' has the same meaning as in section 1030(e)(12) of title 18, United States Code.

''(c) NOTICE REQUIREMENT.—Any person seeking an exemption under section 202(b) of the Personal Data Privacy and Security Act of 2012 shall be immune from prosecution under this section if the Federal Trade Commission does not indicate, in writing, that such notice be given under section 202(b)(1)(C) of such Act.''.

(b) CONFORMING AND TECHNICAL AMENDMENTS.—The table of sections for chapter 47 of title 18, United States Code, is amended by adding at the end the following:

''1041. Concealment of security breaches involving sensitive personally identifiable information.''.

(c) ENFORCEMENT AUTHORITY.—

(1) IN GENERAL.—The United States Secret Service and Federal Bureau of Investigation shall have the authority to investigate offenses under this section.

(2) NONEXCLUSIVITY.—The authority granted in paragraph (1) shall not be exclusive of any existing authority held by any other Federal agency.

TITLE II—SECURITY BREACH NOTIFICATION

SEC. 201. NOTICE TO INDIVIDUALS.

(a) IN GENERAL.—Any agency, or business entity engaged in interstate commerce, other than a service provider, that uses, accesses, transmits, stores, disposes of or collects sensitive personally identifiable information shall, following the discovery of a security breach of such information, notify any resident of the United States whose sensitive personally identifiable information has been, or is reasonably believed to have been, accessed, or acquired.

(b) OBLIGATION OF OWNER OR LICENSEE.—

(1) NOTICE TO OWNER OR LICENSEE.—Any agency, or business entity engaged in interstate commerce, that uses, accesses, transmits, stores, disposes of, or collects sensitive personally identifiable information that the agency or business entity does not own or license shall notify the owner or licensee of the information following the discovery of a security breach involving such information.

(2) NOTICE BY OWNER, LICENSEE, OR OTHER DESIGNATED THIRD PARTY.—Nothing in this title shall prevent or abrogate an agreement between an agency or business entity required to give notice under this section and a designated third party, including an owner or licensee of the sensitive personally identifiable information subject to the security breach, to provide the notifications required under subsection (a).

(3) BUSINESS ENTITY RELIEVED FROM GIVING NOTICE.—A business entity obligated to give notice under subsection (a) shall be relieved of such obligation if an owner or licensee of the sensitive personally identifiable information subject to the security breach, or other designated third party, provides such notification.

(4) SERVICE PROVIDERS.—If a service provider becomes aware of a security breach of data in electronic form containing sensitive personal information that is owned or possessed by another business entity that connects to or uses a system or network provided by the service provider for the purpose of transmitting, routing, or providing intermediate or transient storage of such data, the service provider shall be required to notify the business entity who initiated such connection, transmission, routing, or storage of the security breach if the business entity can be reasonably identified. Upon receiving such notification from a service provider, the business entity shall be required to provide the notification required under subsection (a).

(c) TIMELINESS OF NOTIFICATION.—

(1) IN GENERAL.—All notifications required under this section shall be made without unreasonable delay following the discovery by the agency or business entity of a security breach.

(2) REASONABLE DELAY.—

(A) IN GENERAL.—Reasonable delay under this subsection may include any time necessary to determine the scope of the security breach, prevent further disclosures, conduct the risk assessment described in section 202(b)(1)(A), and restore the reasonable integrity of the data system and provide notice to law enforcement when required.

(B) EXTENSION.—

(i) IN GENERAL.—Except as provided in section 202, delay of notification shall not exceed 60 days following the discovery of the security breach, unless the business entity or agency request an extension of time and the Federal Trade Commission determines in writing that additional time is reasonably necessary to determine the scope of the security breach, prevent further disclosures, conduct the risk assessment, restore the reasonable integrity of the data system, or to provide notice to the entity designated by the Secretary of Homeland Security pursuant to section 206.

(ii) APPROVAL OF REQUEST.—If the Federal Trade Commission approves the request for delay, the agency or business entity may delay the time period for notification for additional periods of up to 30 days.

(3) BURDEN OF PRODUCTION.—The agency, business entity, owner, or licensee required to provide notice under this title shall, upon the request of the Attorney General or the Federal Trade Commission provide records or other evidence of the notifications required under this title, including to the extent applicable, the reasons for any delay of notification.

(d) DELAY OF NOTIFICATION AUTHORIZED FOR LAW ENFORCEMENT OR NATIONAL SECURITY PURPOSES.—

(1) IN GENERAL.—If the United States Secret Service or the Federal Bureau of Investigation determines that the notification required under this section would impede a criminal investigation, or national security activity, such notification shall be delayed upon written notice from the United States Secret Service or the Federal Bureau of Investigation to the agency or business entity that experienced the breach. The notification from the United States Secret Service or the Federal Bureau of Investigation shall specify in writing the period of delay requested for law enforcement or national security purposes.

(2) EXTENDED DELAY OF NOTIFICATION.—If the notification required under subsection (a) is delayed pursuant to paragraph (1), an agency or business entity shall give notice 30 days after the day such law enforcement or national security delay was invoked unless a Federal law enforcement or intelligence agency provides written notification that further delay is necessary.

(3) LAW ENFORCEMENT IMMUNITY.—No nonconstitutional cause of action shall lie in any court against any agency for acts relating to the delay of notification for law enforcement or national security purposes under this title.

(e) LIMITATIONS.—Notwithstanding any other obligation under this title, this title does not apply to the following:

(1) FINANCIAL INSTITUTIONS.—Financial institutions—

(A) subject to the data security requirements and standards under section 501(b) of the Gramm-Leach-Bliley Act (15 U.S.C. 6801(b)); and

(B) subject to the jurisdiction of an agency or authority described in section 505(a) of the Gramm-Leach-Bliley Act (15 U.S.C. 6805(a)).

(2) HIPAA REGULATED ENTITIES.—

(A) COVERED ENTITIES.—Covered entities subject to the Health Insurance Portability and Accountability Act of 1996 (42 U.S.C. 1301 et seq.), including the data security requirements and implementing regulations of that Act.

(B) BUSINESS ENTITIES.—A business entity shall be deemed in compliance with this division if the business entity—

(i)(I) is acting as a covered entity and as a business associate, as those terms are defined under the Health Insurance Portability and Accountability Act of 1996 (42 U.S.C. 1301 et seq.) and is in compliance with the requirements imposed under that Act and implementing regulations promulgated under that Act; and

(II) is subject to, and currently in compliance, with the data breach notification, privacy and data security requirements under the Health Information Technology for Economic and Clinical Health (HITECH) Act, (42 U.S.C. 17932) and implementing regulations promulgated thereunder; or

(ii) is acting as a vendor of personal health records and third party service provider, subject to the Health Information Technology for Economic and Clinical Health (HITECH) Act (42 U.S.C. 17937), including the data breach notification requirements and implementing regulations of that Act.

SEC. 202. EXEMPTIONS.

(a) EXEMPTION FOR NATIONAL SECURITY AND LAW ENFORCEMENT.—

(1) IN GENERAL.—Section 201 shall not apply to an agency or business entity if—

(A) the United States Secret Service or the Federal Bureau of Investigation determines that notification of the security breach could be expected to reveal sensitive sources and methods or similarly impede the ability of the Government to conduct law enforcement investigations; or

(B) the Federal Bureau of Investigation determines that notification of the security breach could be expected to cause damage to the national security.

(2) IMMUNITY.—No nonconstitutional cause of action shall lie in any court against any Federal agency for acts relating to the exemption from notification for law enforcement or national security purposes under this title.

(b) SAFE HARBOR.—

(1) IN GENERAL.—An agency or business entity shall be exempt from the notice requirements under section 201, if—

(A) a risk assessment conducted by the agency or business entity concludes that, based upon the information available, there is no significant risk that a security breach has resulted in, or will result in, identity theft, economic loss or harm, or physical harm to the individuals whose sensitive personally identifiable information was subject to the security breach;

(B) without unreasonable delay, but not later than 45 days after the discovery of a security breach, unless extended by the Federal Trade Commission, the agency or business entity notifies the Federal Trade Commission, in writing, of—

(i) the results of the risk assessment; and

(ii) its decision to invoke the risk assessment exemption; and

(C) the Federal Trade Commission does not indicate, in writing, within 10 business days from receipt of the decision, that notice should be given.

(2) REBUTTABLE PRESUMPTIONS.—For purposes of paragraph (1)—

(A) the encryption of sensitive personally identifiable information described in paragraph (1)(A) shall establish a rebuttable presumption that no significant risk exists; and

(B) the rendering of sensitive personally identifiable information described in paragraph (1)(A) unusable, unreadable, or indecipherable through data security technology or methodology that is generally accepted by experts in the field of information security, such as redaction or access controls shall establish a rebuttable presumption that no significant risk exists.

(3) VIOLATION.—It shall be a violation of this section to—

(A) fail to conduct the risk assessment in a reasonable manner, or according to standards generally accepted by experts in the field of information security; or

(B) submit the results of a risk assessment that contains fraudulent or deliberately misleading information.

(c) FINANCIAL FRAUD PREVENTION EXEMPTION.—

(1) IN GENERAL.—A business entity will be exempt from the notice requirement under section 201 if the business entity utilizes or participates in a security program that—

(A) effectively blocks the use of the sensitive personally identifiable information to initiate unauthorized financial transactions before they are charged to the account of the individual; and

(B) provides for notice to affected individuals after a security breach that has resulted in fraud or unauthorized transactions.

(2) LIMITATION.—The exemption in paragraph (1) does not apply if the information subject to the security breach includes an individual's first and last name, or any other type of sensitive personally identifiable information as defined in section 3, unless that information is only a credit card number or credit card security code.

SEC. 203. METHODS OF NOTICE.

An agency or business entity shall be in compliance with section 201 if it provides the following:

(1) INDIVIDUAL NOTICE.—Notice to individuals by 1 of the following means:

(A) Written notification to the last known home mailing address of the individual in the records of the agency or business entity.

(B) Telephone notice to the individual personally.

(C) E-mail notice, if the individual has consented to receive such notice and the notice is consistent with the provisions permitting electronic transmission of notices under section 101 of the Electronic Signatures in Global and National Commerce Act (15 U.S.C. 7001).

(2) MEDIA NOTICE.—Notice to major media outlets serving a State or jurisdiction, if the number of residents of such State whose sensitive personally identifiable information was, or is reasonably believed to have been, accessed or acquired by an unauthorized person exceeds 5,000.

SEC. 204. CONTENT OF NOTIFICATION.

(a) IN GENERAL.—Regardless of the method by which notice is provided to individuals under section 203, such notice shall include, to the extent possible—

(1) a description of the categories of sensitive personally identifiable information that was, or is reasonably believed to have been, accessed or acquired by an unauthorized person;

(2) a toll-free number—

(A) that the individual may use to contact the agency or business entity, or the agent of the agency or business entity; and

(B) from which the individual may learn what types of sensitive personally identifiable information the agency or business entity maintained about that individual; and

(3) the toll-free contact telephone numbers and addresses for the major credit reporting agencies.

(b) ADDITIONAL CONTENT.—Notwithstanding section 209, a State may require that a notice under subsection (a) shall also include information regarding victim protection assistance provided for by that State.

(c) DIRECT BUSINESS RELATIONSHIP.—Regardless of whether a business entity, agency, or a designated third party provides the notice required pursuant to section 201(b), such notice shall include the name of the business entity or agency that has a direct relationship with the individual being notified.

SEC. 205. COORDINATION OF NOTIFICATION WITH CREDIT REPORTING AGENCIES.

If an agency or business entity is required to provide notification to more than 5,000 individuals under section 201(a), the agency or business entity shall also notify all consumer reporting agencies that compile and maintain files on consumers on a nationwide basis (as defined in section 603(p) of the Fair Credit Reporting Act (15 U.S.C. 1681a(p)) of the timing and distribution of the notices. Such notice shall be given to the consumer credit reporting agencies without unreasonable delay and, if it will not delay notice to the affected individuals, prior to the distribution of notices to the affected individuals.

SEC. 206. NOTICE TO LAW ENFORCEMENT.

(a) DESIGNATION OF GOVERNMENT ENTITY TO RECEIVE NOTICE.—

(1) IN GENERAL.—Not later than 60 days after the date of enactment of this Act, the Secretary of Homeland Security shall designate a Federal Government entity to receive the notices required under section 201 and this section, and any other reports and information about information security incidents, threats, and vulnerabilities.

(2) RESPONSIBILITIES OF THE DESIGNATED ENTITY.—The designated entity shall—

(A) be responsible for promptly providing the information that it receives to the United States Secret Service and the Federal Bureau of Investigation, and to the Federal Trade Commission for civil law enforcement purposes; and

(B) provide the information described in subparagraph (A) as appropriate to other Federal agencies for law enforcement, national security, or data security purposes.

(b) NOTICE.—Any business entity or agency shall notify the designated entity of the fact that a security breach has occurred if—

(1) the number of individuals whose sensitive personally identifying information was, or is reasonably believed to have been accessed or acquired by an unauthorized person exceeds 5,000;

(2) the security breach involves a database, networked or integrated databases, or other data system containing the sensitive personally identifiable information of more than 500,000 individuals nationwide;

(3) the security breach involves databases owned by the Federal Government; or

(4) the security breach involves primarily sensitive personally identifiable information

of individuals known to the agency or business entity to be employees and contractors of the Federal Government involved in national security or law enforcement.

(c) FTC RULEMAKING AND REVIEW OF THRESHOLDS.—Not later 1 year after the date of the enactment of this Act, the Federal Trade Commission, in consultation with the Attorney General of the United States and the Secretary of Homeland Security, shall promulgate regulations regarding the reports required under subsection (a). The Federal Trade Commission, in consultation with the Attorney General and the Secretary of Homeland Security, after notice and the opportunity for public comment, and in a manner consistent with this section, shall promulgate regulations, as necessary, under section 553 of title 5, United States Code, to adjust the thresholds for notice to law enforcement and national security authorities under subsection (a) and to facilitate the purposes of this section.

(d) TIMING.—The notice required under subsection (a) shall be provided as promptly as possible, but such notice must be provided either 72 hours before notice is provided to an individual pursuant to section 201, or not later than 10 days after the business entity or agency discovers the security breach or discovers that the nature of the security breach requires notice to law enforcement under this section, whichever occurs first.

SEC. 207. ENFORCEMENT.

(a) IN GENERAL.—The Attorney General of the United States and the Federal Trade Commission may enforce civil violations of section 201.

(b) CIVIL ACTIONS BY THE ATTORNEY GENERAL OF THE UNITED STATES.—

(1) IN GENERAL.—The Attorney General may bring a civil action in the appropriate United States district court against any business entity that engages in conduct constituting a violation of this title and, upon proof of such conduct by a preponderance of the evidence, such business entity shall be subject to a civil penalty of not more than $11,000 per day per security breach.

(2) PENALTY LIMITATION.—Notwithstanding any other provision of law, the total amount of the civil penalty assessed against a business entity for conduct involving the same or related acts or omissions that results in a violation of this title may not exceed $1,000,000.

(3) DETERMINATIONS.—The determination of whether a violation of a provision of this title has occurred, and if so, the amount of the penalty to be imposed, if any, shall be made by the court sitting as the finder of fact. The determination of whether a violation of a provision of this title was willful or intentional, and if so, the amount of the additional penalty to be imposed, if any, shall be made by the court sitting as the finder of fact.

(4) ADDITIONAL PENALTY LIMIT.—If a court determines under paragraph (3) that a violation of a provision of this title was willful or intentional and imposes an additional penalty, the court may not impose an additional penalty in an amount that exceeds $1,000,000.

(c) INJUNCTIVE ACTIONS BY THE ATTORNEY GENERAL.—

(1) IN GENERAL.—If it appears that a business entity has engaged, or is engaged, in any act or practice constituting a violation of this title, the Attorney General may petition an appropriate district court of the United States for an order—

(A) enjoining such act or practice; or

(B) enforcing compliance with this title.

(2) ISSUANCE OF ORDER.—A court may issue an order under paragraph (1), if the court finds that the conduct in question constitutes a violation of this title.

(d) CIVIL ACTIONS BY THE FEDERAL TRADE COMMISSION.—

(1) IN GENERAL.—Compliance with the requirements imposed under this title may be enforced under the Federal Trade Commission Act (15 U.S.C. 41 et seq.) by the Federal Trade Commission with respect to business entities subject to this division. All of the functions and powers of the Federal Trade Commission under the Federal Trade Commission Act are available to the Federal Trade Commission to enforce compliance by any person with the requirements imposed under this title.

(2) PENALTY LIMITATION.—

(A) IN GENERAL.—Notwithstanding any other provision of law, the total sum of civil penalties assessed against a business entity for all violations of the provisions of this title resulting from the same or related acts or omissions may not exceed $1,000,000, unless such conduct is found to be willful or intentional.

(B) DETERMINATIONS.—The determination of whether a violation of a provision of this title has occurred, and if so, the amount of the penalty to be imposed, if any, shall be made by the court sitting as the finder of fact. The determination of whether a violation of a provision of this title was willful or intentional, and if so, the amount of the additional penalty to be imposed, if any, shall be made by the court sitting as the finder of fact.

(C) ADDITIONAL PENALTY LIMIT.—If a court determines under subparagraph (B) that a violation of a provision of this title was willful or intentional and imposes an additional penalty, the court may not impose an additional penalty in an amount that exceeds $1,000,000.

(3) UNFAIR OR DECEPTIVE ACTS OR PRACTICES.—For the purpose of the exercise by the Federal Trade Commission of its functions and powers under the Federal Trade Commission Act, a violation of any requirement or prohibition imposed under this title shall constitute an unfair or deceptive act or practice in commerce in violation of a regulation under section 18(a)(1)(B) of the Federal Trade Commission Act (15 U.S.C. 57a(a)(I)(B)) regarding unfair or deceptive acts or practices and shall be subject to enforcement by the Federal Trade Commission under that Act with respect to any business entity, irrespective of whether that business entity is engaged in commerce or meets any other jurisdictional tests in the Federal Trade Commission Act.

(e) COORDINATION OF ENFORCEMENT.—

(1) IN GENERAL.—Before opening an investigation, the Federal Trade Commission shall consult with the Attorney General.

(2) LIMITATION.—The Federal Trade Commission may initiate investigations under this subsection unless the Attorney General determines that such an investigation would impede an ongoing criminal investigation or national security activity.

(3) COORDINATION AGREEMENT.—

(A) IN GENERAL.—In order to avoid conflicts and promote consistency regarding the enforcement and litigation of matters under this division, not later than 180 days after the enactment of this Act, the Attorney General and the Commission shall enter into an agreement for coordination regarding the enforcement of this division

(B) REQUIREMENT.—The coordination agreement entered into under subparagraph (A) shall include provisions to ensure that parallel investigations and proceedings under this section are conducted in a matter that avoids conflicts and does not impede the ability of the Attorney General to prosecute violations of Federal criminal laws.

(4) COORDINATION WITH THE FCC.—If an enforcement action under this division relates to customer proprietary network information, the Federal Trade Commission shall coordinate the enforcement action with the Federal Communications Commission.

(f) RULEMAKING.—The Federal Trade Commission may, in consultation with the Attorney General, issue such other regulations as it determines to be necessary to carry out this title. All regulations promulgated under this division shall be issued in accordance with section 553 of title 5, United States Code. Where regulations relate to customer proprietary network information, the promulgation of such regulations will be coordinated with the Federal Communications Commission.

(g) OTHER RIGHTS AND REMEDIES.—The rights and remedies available under this title are cumulative and shall not affect any other rights and remedies available under law.

(h) FRAUD ALERT.—Section 605A(b)(1) of the Fair Credit Reporting Act (15 U.S.C. 1681c–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. 208. 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 title, 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 to—

(A) enjoin that practice;

(B) enforce compliance with this title; or

(C) civil penalties of not more than $11,000 per day per security breach up to a maximum of $1,000,000 per violation, unless such conduct is found to be willful or intentional.

(2) PENALTY LIMITATION.—

(A) IN GENERAL.—Notwithstanding any other provision of law, the total sum of civil penalties assessed against a business entity for all violations of the provisions of this title resulting from the same or related acts or omissions may not exceed $1,000,000, unless such conduct is found to be willful or intentional.

(B) DETERMINATIONS.—The determination of whether a violation of a provision of this title has occurred, and if so, the amount of the penalty to be imposed, if any, shall be made by the court sitting as the finder of fact. The determination of whether a violation of a provision of this title was willful or intentional, and if so, the amount of the additional penalty to be imposed, if any, shall be made by the court sitting as the finder of fact.

(C) ADDITIONAL PENALTY LIMIT.—If a court determines under subparagraph (B) that a violation of a provision of this title was willful or intentional and imposes an additional penalty, the court may not impose an additional penalty in an amount that exceeds $1,000,000.

(3) 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 title, 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)(3), 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 207 and move to consolidate all pending actions, including State actions, in such court;

(3) intervene in an action brought under subsection (a)(1); and

(4) file petitions for appeal.

(c) PENDING PROCEEDINGS.—If the Attorney General or the Federal Trade Commission initiate a criminal proceeding or civil action for a violation of a provision of this title, or any regulations thereunder, no attorney general of a State may bring an action for a violation of a provision of this title against a defendant named in the Federal criminal proceeding or civil action.

(d) CONSTRUCTION.—For purposes of bringing any civil action under subsection (a), nothing in this title 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 title establishes a private cause of action against a business entity for violation of any provision of this title.

SEC. 209. EFFECT ON FEDERAL AND STATE LAW.

For any entity, or agency that is subject to this title, the provisions of this title shall supersede any other provision of Federal law, or any provisions of the law of any State, relating to notification of a security breach, except as provided in section 204(b). Nothing in this title shall be construed to modify, limit, or supersede the operation of the Gramm-Leach-Bliley Act (15 U.S.C. 6801 et seq.) or its implementing regulations, including those regulations adopted or enforced by States, the Health Insurance Portability and Accountability Act of 1996 (42 U.S.C. 1301 et seq.) or its implementing regulations, or the Health Information Technology for Economic and Clinical Health Act (42 U.S.C. 17937) or its implementing regulations.

SEC. 210. REPORTING ON EXEMPTIONS.

(a) FTC REPORT.—Not later than 18 months after the date of enactment of this Act, and upon request by Congress thereafter, the Federal Trade Commission shall submit a report to Congress on the number and nature of the security breaches described in the notices filed by those business entities invoking the risk assessment exemption under section 202(b) and their response to such notices.

(b) LAW ENFORCEMENT REPORT.—

(1) IN GENERAL.—Not later than 18 months after the date of enactment of this Act, and upon the request by Congress thereafter, the United States Secret Service and Federal Bureau of Investigation shall submit a report to Congress on the number and nature of security breaches subject to the national security and law enforcement exemptions under section 202(a).

(2) REQUIREMENT.—The report required under paragraph (1) shall not include the contents of any risk assessment provided to the United States Secret Service and the Federal Bureau of Investigation under this title.

SEC. 211. EFFECTIVE DATE.

This title shall take effect 90 days after the date of enactment of this Act.

TITLE III—COMPLIANCE WITH STATUTORY PAY-AS-YOU-GO ACT

SEC. 301. BUDGET COMPLIANCE.

The budgetary effects of this division, for the purpose of complying with the Statutory Pay-As-You-Go Act of 2010, shall be determined by reference to the latest statement titled ''Budgetary Effects of PAYGO Legislation'' for this division, submitted for printing in the Congressional Record by the Chairman of the Senate Budget Committee, provided that such statement has been submitted prior to the vote on passage.

SA 2579. Mr. LEAHY submitted an amendment intended to be proposed by him to the bill S. 3414, to enhance the security and resiliency of the cyber and communications infrastructure of the United States; which was ordered to lie on the table; as follows:

At the end, insert the following:

TITLE ____—CYBER CRIME PROTECTION SECURITY ACT

SEC. __01. SHORT TITLE.

This title may be cited as the ''Cyber Crime Protection Security Act''.

SEC. __02. ORGANIZED CRIMINAL ACTIVITY IN CONNECTION WITH UNAUTHORIZED ACCESS TO PERSONALLY IDENTIFIABLE INFORMATION.

Section 1961(1) of title 18, United States Code, is amended by inserting ''section 1030 (relating to fraud and related activity in connection with computers) if the act is a felony,'' before ''section 1084''.

SEC. __03. PENALTIES FOR FRAUD AND RELATED ACTIVITY IN CONNECTION WITH COMPUTERS.

Section 1030(c) of title 18, United States Code, is amended to read as follows:

''(c) The punishment for an offense under subsection (a) or (b) of this section is—

''(1) a fine under this title or imprisonment for not more than 20 years, or both, in the case of an offense under subsection (a)(1) of this section;

''(2)(A) except as provided in subparagraph (B), a fine under this title or imprisonment for not more than 3 years, or both, in the case of an offense under subsection (a)(2); or

''(B) a fine under this title or imprisonment for not more than ten years, or both, in the case of an offense under paragraph (a)(2) of this section, if—

''(i) the offense was committed for purposes of commercial advantage or private financial gain;

''(ii) the offense was committed in the furtherance of any criminal or tortious act in violation of the Constitution or laws of the United States, or of any State; or

''(iii) the value of the information obtained, or that would have been obtained if the offense was completed, exceeds $5,000;

''(3) a fine under this title or imprisonment for not more than 1 year, or both, in the case of an offense under subsection (a)(3) of this section;

''(4) a fine under this title or imprisonment of not more than 20 years, or both, in the case of an offense under subsection (a)(4) of this section;

''(5)(A) except as provided in subparagraph (D), a fine under this title, imprisonment for not more than 20 years, or both, in the case of an offense under subsection (a)(5)(A) of this section, if the offense caused—

''(i) loss to 1 or more persons during any 1-year period (and, for purposes of an investigation, prosecution, or other proceeding brought by the United States only, loss resulting from a related course of conduct affecting 1 or more other protected computers) aggregating at least $5,000 in value;

''(ii) the modification or impairment, or potential modification or impairment, of the medical examination, diagnosis, treatment, or care of 1 or more individuals;

''(iii) physical injury to any person;

''(iv) a threat to public health or safety;

''(v) damage affecting a computer used by, or on behalf of, an entity of the United States Government in furtherance of the administration of justice, national defense, or national security; or

''(vi) damage affecting 10 or more protected computers during any 1-year period;

''(B) a fine under this title, imprisonment for not more than 10 years, or both, in the case of an offense under subsection (a)(5)(B), if the offense caused a harm provided in clause (i) through (vi) of subparagraph (A) of this subsection;

''(C) if the offender attempts to cause or knowingly or recklessly causes death from conduct in violation of subsection (a)(5)(A), a fine under this title, imprisonment for any term of years or for life, or both; or

''(D) a fine under this title, imprisonment for not more than 1 year, or both, for any other offense under subsection (a)(5);

''(6) a fine under this title or imprisonment for not more than 10 years, or both, in the case of an offense under subsection (a)(6) of this section; or

''(7) a fine under this title or imprisonment for not more than 10 years, or both, in the case of an offense under subsection (a)(7) of this section.''.

SEC. __04. TRAFFICKING IN PASSWORDS.

Section 1030(a) of title 18, United States Code, is amended by striking paragraph (6) and inserting the following:

''(6) knowingly and with intent to defraud traffics (as defined in section 1029) in—

''(A) any password or similar information or means of access through which a protected computer as defined in subparagraphs (A) and (B) of subsection (e)(2) may be accessed without authorization; or

''(B) any means of access through which a protected computer as defined in subsection (e)(2)(A) may be accessed without authorization.''.

SEC. __05. CONSPIRACY AND ATTEMPTED COMPUTER FRAUD OFFENSES.

Section 1030(b) of title 18, United States Code, is amended by inserting ''for the completed offense'' after ''punished as provided''.

SEC. __06. CRIMINAL AND CIVIL FORFEITURE FOR FRAUD AND RELATED ACTIVITY IN CONNECTION WITH COMPUTERS.

Section 1030 of title 18, United States Code, is amended by striking subsections (i) and (j) and inserting the following:

''(i) CRIMINAL FORFEITURE.—

''(1) The court, in imposing sentence on any person convicted of a violation of this section, or convicted of conspiracy to violate this section, shall order, in addition to any other sentence imposed and irrespective of any provision of State law, that such person forfeit to the United States—

''(A) such person's interest in any property, real or personal, that was used, or intended to be used, to commit or facilitate the commission of such violation; and

''(B) any property, real or personal, constituting or derived from any gross proceeds, or any property traceable to such property, that such person obtained, directly or indirectly, as a result of such violation.

''(2) The criminal forfeiture of property under this subsection, including any seizure and disposition of the property, and any related judicial or administrative proceeding, shall be governed by the provisions of section 413 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. 853), except subsection (d) of that section.

''(j) CIVIL FORFEITURE.—

''(1) The following shall be subject to forfeiture to the United States and no property right, real or personal, shall exist in them:

''(A) Any property, real or personal, that was used, or intended to be used, to commit or facilitate the commission of any violation of this section, or a conspiracy to violate this section.

''(B) Any property, real or personal, constituting or derived from any gross proceeds obtained directly or indirectly, or any property traceable to such property, as a result of the commission of any violation of this section, or a conspiracy to violate this section.

''(2) Seizures and forfeitures under this subsection shall be governed by the provisions in chapter 46 of title 18, United States Code, relating to civil forfeitures, except that such duties as are imposed on the Secretary of the Treasury under the customs laws described in section 981(d) of title 18, United States Code, shall be performed by such officers, agents and other persons as may be designated for that purpose by the Secretary of Homeland Security or the Attorney General.''.

SEC. __07. DAMAGE TO CRITICAL INFRASTRUCTURE COMPUTERS.

(a) IN GENERAL.—Chapter 47 of title 18, United States Code, is amended by inserting after section 1030 the following:

''SEC. 1030A. AGGRAVATED DAMAGE TO A CRITICAL INFRASTRUCTURE COMPUTER.

''(a) DEFINITIONS.—In this section—

''(1) the terms 'computer' and 'damage' have the meanings given such terms in section 1030; and

''(2) the term 'critical infrastructure computer' means a computer that manages or controls systems or assets vital to national defense, national security, national economic security, public health or safety, or any combination of those matters, whether publicly or privately owned or operated, including—

''(A) gas and oil production, storage, and delivery systems;

''(B) water supply systems;

''(C) telecommunication networks;

''(D) electrical power delivery systems;

''(E) finance and banking systems;

''(F) emergency services;

''(G) transportation systems and services; and

''(H) government operations that provide essential services to the public.

''(b) OFFENSE.—It shall be unlawful to, during and in relation to a felony violation of section 1030, intentionally cause or attempt to cause damage to a critical infrastructure computer, and such damage results in (or, in the case of an attempt, would, if completed have resulted in) the substantial impairment—

''(1) of the operation of the critical infrastructure computer; or

''(2) of the critical infrastructure associated with the computer.

''(c) PENALTY.—Any person who violates subsection (b) shall be fined under this title, imprisoned for not less than 3 years nor more than 20 years, or both.

''(d) CONSECUTIVE SENTENCE.—Notwithstanding any other provision of law—

''(1) a court shall not place on probation any person convicted of a violation of this section;

''(2) except as provided in paragraph (4), no term of imprisonment imposed on a person under this section shall run concurrently with any other term of imprisonment, including any term of imprisonment imposed on the person under any other provision of law, including any term of imprisonment imposed for the felony violation section 1030;

''(3) in determining any term of imprisonment to be imposed for a felony violation of section 1030, a court shall not in any way reduce the term to be imposed for such crime so as to compensate for, or otherwise take into account, any separate term of imprisonment imposed or to be imposed for a violation of this section; and

''(4) a term of imprisonment imposed on a person for a violation of this section may, in the discretion of the court, run concurrently, in whole or in part, only with another term of imprisonment that is imposed by the court at the same time on that person for an additional violation of this section, provided that such discretion shall be exercised in accordance with any applicable guidelines and policy statements issued by the United States Sentencing Commission pursuant to section 994 of title 28.''.

(b) TECHNICAL AND CONFORMING AMENDMENT.—The table of sections for chapter 47 of title 18, United States Code, is amended by inserting after the item relating to section 1030 the following:

''Sec. 1030A. Aggravated damage to a critical infrastructure computer.''.

SEC. __08. LIMITATION ON ACTIONS INVOLVING UNAUTHORIZED USE.

Section 1030(e)(6) of title 18, United States Code, is amended by striking ''alter;'' and inserting ''alter, but does not include access in violation of a contractual obligation or agreement, such as an acceptable use policy or terms of service agreement, with an Internet service provider, Internet website, or non-government employer, if such violation constitutes the sole basis for determining that access to a protected computer is unauthorized;''.

SA 2580. Mr. LEAHY submitted an amendment intended to be proposed by him to the bill S. 3414, to enhance the security and resiliency of the cyber and communications infrastructure of the United States; which was ordered to lie on the table; as follows:

At the end, add the following:

TITLE VIII—PRIVACY PROTECTIONS

Subtitle A—Video Privacy Protection

SEC. 821. SHORT TITLE.

This subtitle may be cited as the ''Video Privacy Protection Act Amendments Act of 2012''.

SEC. 822. VIDEO PRIVACY PROTECTION ACT AMENDMENT.

Section 2710(b)(2) of title 18, United States Code, is amended by striking subparagraph (B) and inserting the following:

''(B) to any person with the informed, written consent (including through an electronic means using the Internet) of the consumer that—

''(i) is in a form distinct and separate from any form setting forth other legal or financial obligations of the consumer;

''(ii)(I) is given at time the disclosure is sought; or

''(II) is given in advance for a set period of time or until consent is withdrawn by the consumer; and

''(iii) the video tape service provider has provided an opportunity, in a clear and conspicuous manner, for the consumer to withdraw on a case-by-case basis or to withdraw for ongoing disclosures;''.

Subtitle B—Electronic Communications Privacy

SEC. 841. SHORT TITLE.

This subtitle may be cited as the ''Electronic Communications Privacy Act Amendments Act of 2012''.

SEC. 842. CONFIDENTIALITY OF ELECTRONIC COMMUNICATIONS.

Section 2702(a)(3) of title 18, United States Code, is amended to read as follows:

''(3) a provider of electronic communication service, or remote computing service to the public shall not knowingly divulge to any governmental entity the contents of any communication described in section 2703(a), or any record or other information pertaining to a subscriber or customer of such service.''.

SEC. 843. ELIMINATION OF 180-DAY RULE; SEARCH WARRANT REQUIREMENT; REQUIRED DISCLOSURE OF CUSTOMER RECORDS.

(a) IN GENERAL.—Section 2703 of title 18, United States Code, is amended by striking subsections (a), (b), and (c) and inserting the following:

''(a) CONTENTS OF WIRE OR ELECTRONIC COMMUNICATIONS.—A governmental entity may require the disclosure by a provider of electronic communication service, or remote computing service of the contents of a wire or electronic communication that is in electronic storage with or otherwise stored, held, or maintained by the provider if the governmental entity obtains a warrant issued using the procedures described in the Federal Rules of Criminal Procedure (or, in the case of a State court, issued using State warrant procedures) that is issued by a court of competent jurisdiction directing the disclosure.

''(b) NOTICE.—Except as provided in section 2705, not later than 3 days after a governmental entity receives the contents of a wire or electronic communication of a subscriber or customer from a provider of electronic communication service, or remote computing service under subsection (a), the governmental entity shall serve upon, or deliver to by registered or first-class mail, electronic mail, or other means reasonably calculated to be effective, as specified by the court issuing the warrant, the subscriber or customer—

''(1) a copy of the warrant; and

''(2) a notice that includes the information referred to in section 2705(a)(5)(B)(i).

''(c) RECORDS CONCERNING ELECTRONIC COMMUNICATION SERVICE, OR REMOTE COMPUTING SERVICE.—

''(1) IN GENERAL.—Subject to paragraph (2), a governmental entity may require a provider of electronic communication service, or remote computing service to disclose a record or other information pertaining to a subscriber or customer of the provider or service (not including the contents of communications), only if the governmental entity—

''(A) obtains a warrant issued using the procedures described in the Federal Rules of Criminal Procedure (or, in the case of a State court, issued using State warrant procedures) that is issued by a court of competent jurisdiction directing the disclosure;

''(B) obtains a court order directing the disclosure under subsection (d);

''(C) has the consent of the subscriber or customer to the disclosure; or

''(D) submits a formal written request relevant to a law enforcement investigation concerning telemarketing fraud for the name, address, and place of business of a subscriber or customer of the provider or service that is engaged in telemarketing (as defined in section 2325).

''(2) SUBPOENAS.—A provider of electronic communication service, or remote computing service shall, in response to an administrative subpoena authorized by Federal or State statute or a Federal or State grand jury or trial subpoena, disclose to a governmental entity the—

''(A) name;

''(B) address;

''(C) local and long distance telephone connection records, or records of session times and durations;

''(D) length of service (including start date) and types of service used;

''(E) telephone or instrument number or other subscriber number or identity, including any temporarily assigned network address; and

''(F) means and source of payment for such service (including any credit card or bank account number), of a subscriber or customer of such service.

''(3) NOTICE NOT REQUIRED.—A governmental entity that receives records or information under this subsection is not required to provide notice to a subscriber or customer.''.

(b) TECHNICAL AND CONFORMING AMENDMENTS.—Section 2703(d) of title 18, United States Code, is amended—

(1) by striking ''A court order for disclosure under subsection (b) or (c)'' and inserting ''A court order for disclosure under subsection (c)''; and

(2) by striking ''the contents of a wire or electronic communication, or''.

SEC. 844. DELAYED NOTICE.

Section 2705 of title 18, United States Code, is amended to read as follows:

''§ 2705. Delayed notice

''(a) DELAY OF NOTIFICATION.—

''(1) IN GENERAL.—A governmental entity that is seeking a warrant under section 2703(a) may include in the application for the warrant a request for an order delaying the notification required under section 2703(a) for a period of not more than 90 days.

''(2) DETERMINATION.—A court shall grant a request for delayed notification made under paragraph (1) if the court determines that there is reason to believe that notification of the existence of the warrant may result in—

''(A) endangering the life or physical safety of an individual;

''(B) flight from prosecution;

''(C) destruction of or tampering with evidence;

''(D) intimidation of potential witnesses; or

''(E) otherwise seriously jeopardizing an investigation or unduly delaying a trial.

''(3) EXTENSION.—Upon request by a governmental entity, a court may grant 1 or more extensions of the delay of notification granted under paragraph (2) of not more than 90 days.

''(4) EXPIRATION OF THE DELAY OF NOTIFICATION.—Upon expiration of the period of delay of notification under paragraph (2) or (3), the governmental entity shall serve upon, or deliver to by registered or first-class mail, electronic mail or other means reasonably calculated to be effective as specified by the court approving the search warrant, the customer or subscriber—

''(A) a copy of the warrant; and

''(B) notice that informs the customer or subscriber—

''(i) that information maintained for the customer or subscriber by the provider of electronic communication service, or remote computing service named in the process or request was supplied to, or requested by, the governmental entity;

''(ii) of the date on which the warrant was served on the provider and the date on which the information was provided by the provider to the governmental entity;

''(iii) that notification of the customer or subscriber was delayed;

''(iv) the identity of the court authorizing the delay; and

''(v) of the provision of this chapter under which the delay was authorized.

''(b) PRECLUSION OF NOTICE TO SUBJECT OF GOVERNMENTAL ACCESS.—

''(1) IN GENERAL.—A governmental entity that is obtaining the contents of a communication or information or records under section 2703 may apply to a court for an order directing a provider of electronic communication service, or remote computing service to which a warrant, order, subpoena, or other directive under section 2703 is directed not to notify any other person of the existence of the warrant, order, subpoena, or other directive for a period of not more than 90 days.

''(2) DETERMINATION.—A court shall grant a request for an order made under paragraph (1) if the court determines that there is reason to believe that notification of the existence of the warrant, order, subpoena, or other directive may result in—

''(A) endangering the life or physical safety of an individual;

''(B) flight from prosecution;

''(C) destruction of or tampering with evidence;

''(D) intimidation of potential witnesses;

''(E) otherwise seriously jeopardizing an investigation or unduly delaying a trial; or

''(F) endangering national security.

''(3) EXTENSION.—Upon request by a governmental entity, a court may grant 1 or more extensions of an order granted under paragraph (2) of not more than 90 days.''.

NOTICES OF HEARINGS

COMMITTEE ON HEALTH, EDUCATION, LABOR, AND PENSIONS

Mr. HARKIN. Mr. President, I wish to announce that the Committee on Health, Education, Labor, and Pensions will meet in open session on Thursday, July 26, 2012, at 10 a.m. in room SD–430 in the Dirksen Senate Office Building to conduct a hearing entitled ''CCDBG Reauthorization: Helping to Meet the Child Care Needs of American Families.''

For further information regarding this meeting, please contact Jessica McNiece of the committee staff at (202) 224–9243.

COMMITTEE ON ENERGY AND NATURAL RESOURCES

Mr. BINGAMAN. Mr. President, I would like to announce for the information of the Senate and the public that a hearing has been scheduled before the Senate Committee on Energy and Natural Resources. The hearing will be held on Monday, August 6, 2012, at 2 p.m., in Contois Auditorium in the Burlington City Hall, 149 Church Street, Burlington, VT 05401.

The purpose of the hearing is to examine gasoline price and margin dynamics within the State of Vermont.

Because of the limited time available for the hearing, witnesses may testify by invitation only. However, those wishing to submit written testimony for the hearing record may do so by sending it to the Committee on Energy and Natural Resources, United States Senate, Washington, DC 20510–6150, or by e-mail to Symone_Green@energy.senate.gov.

For further information, please contact Hannah Breul at (202) 224–4756 or Symone Green at (202) 224–1219, or Abigail Campbell at (202) 224–4905.

AUTHORITY FOR COMMITTEES TO MEET

COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

Mr. BEGICH. Mr. President, I ask unanimous consent that the Committee on Commerce, Science, and Transportation be authorized to meet during the session of the Senate on July 25, 2012, at 10 a.m., in room 253 of the Russell Senate Office Building.

The Committee will hold a hearing entitled, ''The International Space Station: a Platform for Research, Collaboration, and Discovery.''

The PRESIDING OFFICER. Without objection, it is so ordered.

COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

Mr. BEGICH. Mr. President, I ask unanimous consent that the Committee on Commerce, Science, and Transportation be authorized to meet during the session of the Senate on July 25, 2012, at 2:30 p.m., in room 253 of the Russell Senate Office Building.

The Committee will hold a hearing entitled, ''Short-Supply Prescription Drugs: Shining a Light on the Gray Market.''

The PRESIDING OFFICER. Without objection, it is so ordered.

COMMITTEE ON ENERGY AND NATURAL RESOURCES

Mr. BEGICH. Mr. President, I ask unanimous consent that the Committee on Energy and Natural Resources be authorized to meet during the session of the Senate on July 25, 2012, at 2:30 p.m., in room SD–366 of the Dirksen Senate Office Building.

The PRESIDING OFFICER. Without objection, it is so ordered.

COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS

Mr. BEGICH. Mr. President, I ask unanimous consent that the Committee on Environment and Public Works be authorized to meet during the session of the Senate on July 25, 2012, at 10 a.m. in room SD–406 of the Dirksen Senate Office Building.

The PRESIDING OFFICER. Without objection, it is so ordered.

COMMITTEE ON FINANCE

Mr. BEGICH. Mr. President, I ask unanimous consent that the Committee on Finance be authorized to