III

111TH CONGRESS
1ST SESSION

S. 1490

To prevent and mitigate identity theft, to ensure privacy, to provide notice of security breaches, and to enhance criminal penalties, law enforcement assistance, and other protections against security breaches, fraudulent access, and misuse of personally identifiable information.

IN THE SENATE OF THE UNITED STATES

JULY 22, 2009

Mr. LEAHY introduced the following bill; which was read twice and referred to the Committee on the Judiciary

A BILL

To prevent and mitigate identity theft, to ensure privacy, to provide notice of security breaches, and to enhance criminal penalties, law enforcement assistance, and other protections against security breaches, fraudulent access, and misuse of personally identifiable information.

1 Be it enacted by the Senate and House of Representa-
2 tives of the United States of America in Congress assembled,
3 SECTION 1. SHORT TITLE; TABLE OF CONTENTS.
4 (a) Short Title.—This Act may be cited as the
5 “Personal Data Privacy and Security Act of 2009”.
6 (b) Table of Contents.—The table of contents of
7 this Act is as follows:
Sec. 1. Short title; table of contents.
Sec. 2. Findings.
Sec. 3. Definitions.

TITLE I—ENHANCING PUNISHMENT FOR IDENTITY THEFT AND OTHER VIOLATIONS OF DATA PRIVACY AND SECURITY

Sec. 101. Organized criminal activity in connection with unauthorized access to personally identifiable information.
Sec. 102. Concealment of security breaches involving sensitive personally identifiable information.
Sec. 103. Review and amendment of Federal sentencing guidelines related to fraudulent access to or misuse of digitized or electronic personally identifiable information.
Sec. 104. Effects of identity theft on bankruptcy proceedings.

TITLE II—DATA BROKERS

Sec. 201. Transparency and accuracy of data collection.
Sec. 203. Relation to State laws.
Sec. 204. Effective date.

TITLE III—PRIVACY AND SECURITY OF PERSONALLY IDENTIFIABLE INFORMATION

Subtitle A—A Data Privacy and Security Program

Sec. 301. Purpose and applicability of data privacy and security program.
Sec. 302. Requirements for a personal data privacy and security program.
Sec. 303. Enforcement.
Sec. 304. Relation to other laws.

Subtitle B—Security Breach Notification

Sec. 311. Notice to individuals.
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Sec. 313. Methods of notice.
Sec. 314. Content of notification.
Sec. 315. Coordination of notification with credit reporting agencies.
Sec. 316. Notice to law enforcement.
Sec. 317. Enforcement.
Sec. 318. Enforcement by State attorneys general.
Sec. 319. Effect on Federal and State law.
Sec. 320. Authorization of appropriations.
Sec. 321. Reporting on risk assessment exemptions.
Sec. 322. Effective date.

Subtitle C—Office of Federal Identity Protection

Sec. 331. Office of Federal Identity Protection.

TITLE IV—GOVERNMENT ACCESS TO AND USE OF COMMERCIAL DATA

Sec. 401. General services administration review of contracts.
Sec. 402. Requirement to audit information security practices of contractors and third party business entities.
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, homeland security, the development of e-commerce, and the privacy rights of Americans;

(3) over 9,300,000 individuals were victims of identity theft in America last year;

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

(5) 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;

(6) 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 re-

store the integrity of their personal information and

identities;

(7) data brokers have assumed a significant

role in providing identification, authentication, and

screening services, and related data collection and

analyses for commercial, nonprofit, and government

operations;

(8) 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 gov-

ernment operations;

(9) there is a need to ensure that data brokers

conduct their operations in a manner that prioritizes

fairness, transparency, accuracy, and respect for the

privacy of consumers;

(10) government access to commercial data can

potentially improve safety, law enforcement, and na-

tional security; and

(11) because government use of commercial

data containing personal information potentially af-

fects individual privacy, and law enforcement and

national security operations, there is a need for Con-
gress to exercise oversight over government use of commercial data.

SEC. 3. DEFINITIONS.

In this Act, the following definitions shall apply:

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

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

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

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

(5) DATA BROKER.—The term “data broker” means a business entity which for monetary fees or dues regularly engages in the practice of collecting, transmitting, or providing access to sensitive personally identifiable information on more than 5,000 individuals who are not the customers or employees of that business entity or affiliate primarily for the
purposes of providing such information to non-
affiliated third parties on an interstate basis.

(6) DATA FURNISHER.—The term “data fur-
isher” means any agency, organization, corpora-
tion, trust, partnership, sole proprietorship, unincor-
porated association, or nonprofit that serves as a
source of information for a data broker.

(7) ENCRYPTION.—The term “encryption”—

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

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

(8) PERSONAL ELECTRONIC RECORD.—

(A) IN GENERAL.—The term “personal
electronic record” means data associated with
an individual contained in a database,
networked or integrated databases, or other
data system that is provided to nonaffiliated
third parties and includes sensitive personally
identifiable information about that individual.

(B) EXCLUSIONS.—The term “personal
electronic record” does not include—

(i) any data related to an individual’s
past purchases of consumer goods; or

(ii) any proprietary assessment or
evaluation of an individual or any propri-
etary assessment or evaluation of informa-
tion about an individual.

(9) PERSONALLY IDENTIFIABLE INFORMA-
tion.—The term “personally identifiable informa-
tion” means any information, or compilation of in-
formation, in electronic or digital form serving as a
means of identification, as defined by section
1028(d)(7) of title 18, United State Code.

(10) 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 govern-
ments 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 avail-
able to the public.
(11) Security breach.—

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

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

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

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

(12) Sensitive personally identifiable information.—The term “sensitive personally identifiable information” means any information or com-
pilation of information, in electronic or digital form
that includes—

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

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

(ii) Any 2 of the following:

(I) Home address or telephone
number.

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

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

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

(iv) A unique account identifier, elec-
tronic identification number, user name, or
routing code in combination with any asso-
ciated security code, access code, or pass-
word that is required for an individual to
obtain money, goods, services, or any other
thing of value; or
(B) a financial account number or credit
or debit card number in combination with any
security code, access code, or password that is
required for an individual to obtain credit, with-
draw funds, or engage in a financial trans-
action.

TITLE I—ENHANCING PUNISH-
MENT FOR IDENTITY THEFT
AND OTHER VIOLATIONS OF
DATA PRIVACY AND SECU-
RITY

SEC. 101. ORGANIZED CRIMINAL ACTIVITY IN CONNECTION
WITH UNAUTHORIZED ACCESS TO PERSON-
ALLY IDENTIFIABLE INFORMATION.

Section 1961(1) of title 18, United States Code, is
amended by inserting “section 1030(a)(2)(D) (relating to
fraud and related activity in connection with unauthorized
access to sensitive personally identifiable information as
defined in the Personal Data Privacy and Security Act of
2009,” before “section 1084”.

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SEC. 102. 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) Whoever, having knowledge of a security breach and of the obligation to provide notice of such breach to individuals under title III of the Personal Data Privacy and Security Act of 2009, and having not otherwise qualified for an exemption from providing notice under section 312 of such Act, intentionally and willfully conceals the fact of such security breach and which breach causes economic damage to 1 or more persons, shall be fined under this title or imprisoned not more than 5 years, or both.

“(b) 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) Any person seeking an exemption under section 312(b) of the Personal Data Privacy and Security Act of 2009 shall be immune from prosecution under this section if the United States Secret Service does not indicate, in
writing, that such notice be given under section 312(b)(3) 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 personally identifiable information.”.

(c) ENFORCEMENT AUTHORITY.—

(1) IN GENERAL.—The United States Secret Service 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.

SEC. 103. REVIEW AND AMENDMENT OF FEDERAL SENTENCING GUIDELINES RELATED TO FRAUDULENT ACCESS TO OR MISUSE OF DIGITIZED OR ELECTRONIC PERSONALLY IDENTIFIABLE INFORMATION.

(a) REVIEW AND AMENDMENT.—The United States Sentencing Commission, pursuant to its authority under section 994 of title 28, United States Code, and in accordance with this section, shall review and, if appropriate, amend the Federal sentencing guidelines (including its policy statements) applicable to persons convicted of using
fraud to access, or misuse of, digitized or electronic personally identifiable information, including identity theft or any offense under—

(1) sections 1028, 1028A, 1030, 1030A, 2511, and 2701 of title 18, United States Code; and

(2) any other relevant provision.

(b) REQUIREMENTS.—In carrying out the requirements of this section, the United States Sentencing Commission shall—

(1) ensure that the Federal sentencing guidelines (including its policy statements) reflect—

(A) the serious nature of the offenses and penalties referred to in this Act;

(B) the growing incidences of theft and misuse of digitized or electronic personally identifiable information, including identity theft; and

(C) the need to deter, prevent, and punish such offenses;

(2) consider the extent to which the Federal sentencing guidelines (including its policy statements) adequately address violations of the sections amended by this Act to—

(A) sufficiently deter and punish such offenses; and
(B) adequately reflect the enhanced penalties established under this Act;

(3) maintain reasonable consistency with other relevant directives and sentencing guidelines;

(4) account for any additional aggravating or mitigating circumstances that might justify exceptions to the generally applicable sentencing ranges;

(5) consider whether to provide a sentencing enhancement for those convicted of the offenses described in subsection (a), if the conduct involves—

(A) the online sale of fraudulently obtained or stolen personally identifiable information;

(B) the sale of fraudulently obtained or stolen personally identifiable information to an individual who is engaged in terrorist activity or aiding other individuals engaged in terrorist activity; or

(C) the sale of fraudulently obtained or stolen personally identifiable information to finance terrorist activity or other criminal activities;

(6) make any necessary conforming changes to the Federal sentencing guidelines to ensure that such guidelines (including its policy statements) as described in subsection (a) are sufficiently stringent
to deter, and adequately reflect crimes related to fraudulent access to, or misuse of, personally identifiable information; and

(7) ensure that the Federal sentencing guidelines adequately meet the purposes of sentencing under section 3553(a)(2) of title 18, United States Code.

(c) Emergency Authority to Sentencing Commission.—The United States Sentencing Commission may, as soon as practicable, promulgate amendments under this section in accordance with procedures established in section 21(a) of the Sentencing Act of 1987 (28 U.S.C. 994 note) as though the authority under that Act had not expired.

SEC. 104. EFFECTS OF IDENTITY THEFT ON BANKRUPTCY PROCEEDINGS.

(a) Definitions.—Section 101 of title 11, United States Code, is amended—

(1) by redesignating paragraph (27B) as paragraph (27D); and

(2) by inserting after paragraph (27A) the following:

“(27) The term ‘identity theft’ means a fraud committed or attempted using the personally identifiable information of another person."
“(28) The term ‘identity theft victim’ means a debtor who, as a result of an identify theft in any consecutive 12-month period during the 3-year period before the date on which a petition is filed under this title, had claims asserted against such debtor in excess of the least of—

“(A) $20,000;

“(B) 50 percent of all claims asserted against such debtor; or

“(C) 25 percent of the debtor’s gross income for such 12-month period.”.

(b) PROHIBITION.—Section 707(b) of title 11, United States Code, is amended by adding at the end the following:

“(8) No judge, United States trustee (or bankruptcy administrator, if any), trustee, or other party in interest may file a motion under paragraph (2) if the debtor is an identity theft victim.”.

**TITLE II—DATA BROKERS**

**SEC. 201. TRANSPARENCY AND ACCURACY OF DATA COLLECTION.**

(a) In General.—Data brokers engaging in interstate commerce are subject to the requirements of this title for any product or service offered to third parties that
allows access or use of sensitive personally identifiable in-
formation.

(b) LIMITATION.—Notwithstanding any other provi-
sion of this title, this section shall not apply to—

(1) any product or service offered by a data
broker engaging in interstate commerce where such
product or service is currently subject to, and in
compliance with, access and accuracy protections
similar to those under subsections (c) through (f) of
this section under the Fair Credit Reporting Act
(Public Law 91–508);

(2) any data broker that is subject to regulation
under the Gramm-Leach-Bliley Act (Public Law
106–102);

(3) any data broker currently subject to and in
compliance with the data security requirements for
such entities under the Health Insurance Portability
and Accountability Act (Public Law 104–191), and
its implementing regulations;

(4) information in a personal electronic record
that—

(A) the data broker has identified as inac-
curate, but maintains for the purpose of aiding
the data broker in preventing inaccurate infor-
mation from entering an individual’s personal
electronic record; and

(B) is not maintained primarily for the
purpose of transmitting or otherwise providing
that information, or assessments based on that
information, to nonaffiliated third parties; and

(5) information concerning proprietary meth-
odologies, techniques, scores, or algorithms relating
to fraud prevention not normally provided to third
parties in the ordinary course of business.

(c) DISCLOSURES TO INDIVIDUALS.—

(1) IN GENERAL.—A data broker shall, upon
the request of an individual, disclose to such indi-
vidual for a reasonable fee all personal electronic
records pertaining to that individual maintained spe-
cifically for disclosure to third parties that request
information on that individual in the ordinary course
of business in the databases or systems of the data
broker at the time of such request.

(2) INFORMATION ON HOW TO CORRECT INAC-
CURACIES.—The disclosures required under para-
graph (1) shall also include guidance to individuals
on procedures for correcting inaccuracies.

(d) DISCLOSURE TO INDIVIDUALS OF ADVERSE AC-
tions Taken by Third Parties.—
(1) IN GENERAL.—In addition to any other rights established under this Act, if a person takes any adverse action with respect to any individual that is based, in whole or in part, on any information contained in a personal electronic record that is maintained, updated, or otherwise owned or possessed by a data broker, such person, at no cost to the affected individual, shall provide—

(A) written or electronic notice of the adverse action to the individual;

(B) to the individual, in writing or electronically, the name, address, and telephone number of the data broker that furnished the information to the person;

(C) a copy of the information such person obtained from the data broker; and

(D) information to the individual on the procedures for correcting any inaccuracies in such information.

(2) ACCEPTED METHODS OF NOTICE.—A person shall be in compliance with the notice requirements under paragraph (1) if such person provides written or electronic notice in the same manner and using the same methods as are required under section 313(1) of this Act.
(c) ACCURACY RESOLUTION PROCESS.—

(1) INFORMATION FROM A PUBLIC RECORD OR LICENSOR.—

(A) IN GENERAL.—If an individual notifies a data broker of a dispute as to the completeness or accuracy of information disclosed to such individual under subsection (c) that is obtained from a public record source or a license agreement, such data broker shall determine within 30 days whether the information in its system accurately and completely records the information available from the licensor or public record source.

(B) DATA BROKER ACTIONS.—If a data broker determines under subparagraph (A) that the information in its systems does not accurately and completely record the information available from a public record source or licensor, the data broker shall—

(i) correct any inaccuracies or incompleteness, and provide to such individual written notice of such changes; and

(ii) provide such individual with the contact information of the public record or licensor.
(2) INFORMATION NOT FROM A PUBLIC RECORD SOURCE OR LICENSOR.—If an individual notifies a data broker of a dispute as to the completeness or accuracy of information not from a public record or licensor that was disclosed to the individual under subsection (c), the data broker shall, within 30 days of receiving notice of such dispute—

(A) review and consider free of charge any information submitted by such individual that is relevant to the completeness or accuracy of the disputed information; and

(B) correct any information found to be incomplete or inaccurate and provide notice to such individual of whether and what information was corrected, if any.

(3) EXTENSION OF REVIEW PERIOD.—The 30-day period described in paragraph (1) may be extended for not more than 30 additional days if a data broker receives information from the individual during the initial 30-day period that is relevant to the completeness or accuracy of any disputed information.

(4) NOTICE IDENTIFYING THE DATA FURNISHER.—If the completeness or accuracy of any information not from a public record source or licensor
that was disclosed to an individual under subsection (e) is disputed by such individual, the data broker shall provide, upon the request of such individual, the contact information of any data furnisher that provided the disputed information.

(5) Determination that dispute is frivolous or irrelevant.—

(A) In general.—Notwithstanding paragraphs (1) through (3), a data broker may decline to investigate or terminate a review of information disputed by an individual under those paragraphs if the data broker reasonably determines that the dispute by the individual is frivolous or intended to perpetrate fraud.

(B) Notice.—A data broker shall notify an individual of a determination under subparagraph (A) within a reasonable time by any means available to such data broker.

SEC. 202. ENFORCEMENT.

(a) Civil Penalties.—

(1) Penalties.—Any data broker that violates the provisions of section 201 shall be subject to civil penalties of not more than $1,000 per violation per day while such violations persist, up to a maximum of $250,000 per violation.
(2) **Intentional or Willful Violation.**—A data broker that intentionally or willfully violates the provisions of section 201 shall be subject to additional penalties in the amount of $1,000 per violation per day, to a maximum of an additional $250,000 per violation, while such violations persist.

(3) **Equitable Relief.**—A data broker engaged in interstate commerce that violates this section may be enjoined from further violations by a court of competent jurisdiction.

(4) **Other Rights and Remedies.**—The rights and remedies available under this subsection are cumulative and shall not affect any other rights and remedies available under law.

(b) **Federal Trade Commission Authority.**—Any data broker 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 data broker 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, or any other court of competent jurisdiction, to—

(A) enjoin that act or practice;

(B) enforce compliance with this title; or

(C) obtain civil penalties of not more than $1,000 per violation per day while such violations persist, up to a maximum of $250,000 per violation.

(2) 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 subparagraph (A) 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.

(3) Federal Trade Commission authority.—Upon receiving notice under paragraph (2), 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 (4);

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

(C) file petitions for appeal.

(4) Pending proceedings.—If the Federal Trade Commission has instituted a proceeding or civil action for a violation of this title, no attorney general of a State may, during the pendency of such proceeding or civil action, bring an action under this subsection against any defendant named in such civil
action for any violation that is alleged in that civil action.

(5) 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.

(6) 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 data broker for violation of any provision of this title.

SEC. 203. RELATION TO STATE LAWS.

No requirement or prohibition may be imposed under the laws of any State with respect to any subject matter regulated under section 201, relating to individual access to, and correction of, personal electronic records held by data brokers.

SEC. 204. EFFECTIVE DATE.

This title shall take effect 180 days after the date of enactment of this Act.

TITLE III—PRIVACY AND SECURITY OF PERSONALLY IDENTIFIABLE INFORMATION

Subtitle A—A Data Privacy and Security Program

SEC. 301. PURPOSE AND APPLICABILITY OF DATA PRIVACY AND SECURITY PROGRAM.

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

(b) In General.—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 302 for protecting sensitive personally identifiable information.

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

(1) FINANCIAL INSTITUTIONS.—Financial institutions—

(A) subject to the data security requirements and implementing regulations under the Gramm-Leach-Bliley Act (15 U.S.C. 6801 et seq.); and

(B) subject to—

(i) examinations for compliance with the requirements of this Act by a Federal Functional Regulator or State Insurance Authority (as those terms are defined in section 509 of the Gramm-Leach-Bliley Act (15 U.S.C. 6809)); or


(2) HIPPA 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 the privacy and security program requirements under section 302 if the business entity is acting as a “business associate” as that term is defined in the Health Insurance Portability and Accountability Act of 1996 (42 U.S.C. 1301 et seq.) and is in compliance with requirements imposed under that Act and its implementing regulations.

(3) PUBLIC RECORDS.—Public records not otherwise subject to a confidentiality or nondisclosure requirement, or 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 302 if the business entity complies with or provides protection equal to industry standards, as identified by the
Federal Trade Commission, that are applicable to
the type of sensitive personally identifiable informa-
tion 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 per-
mit, the Federal Trade Commission to issue regula-
tions 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. 302. REQUIREMENTS FOR A PERSONAL DATA PRIVACY
AND SECURITY PROGRAM.

(a) PERSONAL DATA PRIVACY AND SECURITY PRO-
GRAM.—A business entity subject to this subtitle shall
comply with the following safeguards and any other ad-
ministrative, 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 infor-
mation:

(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 com-
plexity 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 con-
fidentiality of sensitive personally identifying in-
formation;

(B) protect against any anticipated
vulnerabilities to the privacy, security, or integ-
rity of sensitive personally identifying informa-
tion; and

(C) protect against unauthorized access to
use of sensitive personally identifying informa-
tion that could result in substantial harm or in-
convenience 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 alter-
ation of sensitive personally identifiable inform-
ation or systems containing sensitive person-
ally 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); and

   (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 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.

(b) Training.—Each business entity subject to this subtitle 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 subtitle 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 de-
determined by the risk assessment of the business enti-
ty under subsection (a)(3).

(d) Relationship to Service Providers.—In the
event a business entity subject to this subtitle engages
service providers not subject to this subtitle, such business
entity shall—

(1) exercise appropriate due diligence in select-
ing those service providers for responsibilities related
to sensitive personally identifiable information, and
take reasonable steps to select and retain service
providers that are capable of maintaining appro-
priate safeguards for the security, privacy, and in-
tegrity of the sensitive personally identifiable infor-

(2) require those service providers by contract
to implement and maintain appropriate measures de-
signed to meet the objectives and requirements gov-
erning entities subject to section 301, this section,
and subtitle B.
(c) Periodic Assessment and Personal Data Privacy and Security Modernization.—Each business entity subject to this subtitle 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 Act, a business entity subject to the provisions of this subtitle shall implement a data privacy and security program pursuant to this subtitle.
SEC. 303. ENFORCEMENT.

(a) Civil Penalties.—

(1) In general.—Any business entity that violates the provisions of sections 301 or 302 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 sections 301 or 302 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) Equitable relief.—A business entity engaged in interstate commerce that violates this section may be enjoined from further violations by a court of competent jurisdiction.

(4) 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 data broker shall have the provisions of this subtitle 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 data broker that violate this subtitle, 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, or any other court of competent jurisdiction, to—

(A) enjoin that act or practice;

(B) enforce compliance with this subtitle; 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) **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.

(3) FEDERAL TRADE COMMISSION AUTHORITY.—Upon receiving notice under paragraph (2), 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 (4);

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

(C) file petitions for appeal.
(4) Pending proceedings.—If the Federal Trade Commission has instituted a proceeding or action for a violation of this subtitle or any regulations thereunder, no attorney general of a State may, during the pendency of such proceeding or action, bring an action under this subsection against any defendant named in such criminal proceeding or civil action for any violation that is alleged in that proceeding or action.

(5) Rule of construction.—For purposes of bringing any civil action under paragraph (1) nothing in this subtitle 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.

(6) 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 subtitle establishes a private cause of action against a business entity for violation of any provision of this subtitle.

SEC. 304. RELATION TO OTHER LAWS.

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

(b) LIMITATIONS.—Nothing in this subtitle 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.
Subtitle B—Security Breach

Notification

SEC. 311. NOTICE TO INDIVIDUALS.

(a) In General.—Any agency, or business entity engaged in interstate commerce, 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 subtitle shall prevent or abrogate an agreement between an agency or business entity required to give notice under this section and a designated third party, in-
cluding an owner or licensee of the sensitive person-
ally 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 obliga-
tion if an owner or licensee of the sensitive person-
ally identifiable information subject to the security
breach, or other designated third party, provides
such notification.

(c) Timeliness of Notification.—

(1) In general.—All notifications required
under this section shall be made without unreason-
able delay following the discovery by the agency or
business entity of a security breach.

(2) Reasonable delay.—Reasonable delay
under this subsection may include any time nec-
essary to determine the scope of the security breach,
prevent further disclosures, and restore the reason-
able integrity of the data system and provide notice
to law enforcement when required.

(3) Burden of proof.—The agency, business
entity, owner, or licensee required to provide notifi-
cation under this section shall have the burden of
demonstrating that all notifications were made as re-
quired under this subtitle, including evidence dem-
onstrating the reasons for any delay.

(d) Delay of Notification Authorized for Law
Enforcement Purposes.—

(1) In general.—If a Federal law enforce-
ment agency determines that the notification re-
quired under this section would impede a criminal
investigation, such notification shall be delayed upon
written notice from such Federal law enforcement
agency to the agency or business entity that experi-
enced the breach.

(2) Extended delay of notification.—If
the notification required under subsection (a) is de-
layed pursuant to paragraph (1), an agency or busi-
ness entity shall give notice 30 days after the day
such law enforcement delay was invoked unless a
Federal law enforcement agency provides written no-
tification that further delay is necessary.

(3) Law enforcement immunity.—No cause
of action shall lie in any court against any law en-
forcement agency for acts relating to the delay of
notification for law enforcement purposes under this
subtitle.
SEC. 312. EXEMPTIONS.

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

(1) IN GENERAL.—Section 311 shall not apply to an agency or business entity if the agency or business entity certifies, in writing, that notification of the security breach as required by section 311 reasonably could be expected to—

(A) cause damage to the national security;

or

(B) hinder a law enforcement investigation or the ability of the agency to conduct law enforcement investigations.

(2) LIMITS ON CERTIFICATIONS.—An agency or business entity may not execute a certification under paragraph (1) to—

(A) conceal violations of law, inefficiency, or administrative error;

(B) prevent embarrassment to a business entity, organization, or agency; or

(C) restrain competition.

(3) NOTICE.—In every case in which an agency or business agency issues a certification under paragraph (1), the certification, accompanied by a description of the factual basis for the certification,
shall be immediately provided to the United States Secret Service.

(4) SECRET SERVICE REVIEW OF CERTIFICATIONS.—

(A) IN GENERAL.—The United States Secret Service may review a certification provided by an agency under paragraph (3), and shall review a certification provided by a business entity under paragraph (3), to determine whether an exemption under paragraph (1) is merited. Such review shall be completed not later than 10 business days after the date of receipt of the certification, except as provided in paragraph (5)(C).

(B) NOTICE.—Upon completing a review under subparagraph (A) the United States Secret Service shall immediately notify the agency or business entity, in writing, of its determination of whether an exemption under paragraph (1) is merited.

(C) EXEMPTION.—The exemption under paragraph (1) shall not apply if the United States Secret Service determines under this paragraph that the exemption is not merited.
(5) ADDITIONAL AUTHORITY OF THE SECRET SERVICE.—

(A) IN GENERAL.—In determining under paragraph (4) whether an exemption under paragraph (1) is merited, the United States Secret Service may request additional information from the agency or business entity regarding the basis for the claimed exemption, if such additional information is necessary to determine whether the exemption is merited.

(B) REQUIRED COMPLIANCE.—Any agency or business entity that receives a request for additional information under subparagraph (A) shall cooperate with any such request.

(C) TIMING.—If the United States Secret Service requests additional information under subparagraph (A), the United States Secret Service shall notify the agency or business entity not later than 10 business days after the date of receipt of the additional information whether an exemption under paragraph (1) is merited.

(b) SAFE HARBOR.—An agency or business entity will be exempt from the notice requirements under section 311, if—
(1) a risk assessment concludes that—

(A) there is no significant risk that a security breach has resulted in, or will result in, harm to the individuals whose sensitive personally identifiable information was subject to the security breach, with the encryption of such information establishing a presumption that no significant risk exists; or

(B) there is no significant risk that a security breach has resulted in, or will result in, harm to the individuals whose sensitive personally identifiable information was subject to the security breach, with the rendering of such sensitive personally identifiable information indecipherable through the use of best practices or methods, such as redaction, access controls, or other such mechanisms, which are widely accepted as an effective industry practice, or an effective industry standard, establishing a presumption that no significant risk exists;

(2) without unreasonable delay, but not later than 45 days after the discovery of a security breach, unless extended by the United States Secret Service, the agency or business entity notifies the United States Secret Service, in writing, of—
(A) the results of the risk assessment; and
(B) its decision to invoke the risk assessment exemption; and
(3) the United States Secret Service does not indicate, in writing, within 10 business days from receipt of the decision, that notice should be given.

(c) Financial Fraud Prevention Exemption.—
(1) In general.—A business entity will be exempt from the notice requirement under section 311 if the business entity utilizes or participates in a security program that—
(A) is designed to block 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 by this subsection does not apply if—
(A) the information subject to the security breach includes sensitive personally identifiable information, other than a credit card or credit card security code, of any type of the sensitive
personally identifiable information identified in section 3; or

(B) the security breach includes both the individual’s credit card number and the individual’s first and last name.

SEC. 313. METHODS OF NOTICE.

An agency or business entity shall be in compliance with section 311 if it provides both:

(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 be-
lieved to have been, acquired by an unauthorized person exceeds 5,000.

SEC. 314. CONTENT OF NOTIFICATION.

(a) In General.—Regardless of the method by which notice is provided to individuals under section 313, 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, 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 319, a State may require that a notice under subsection (a) shall also include information regarding victim protection assistance provided for by that State.
SEC. 315. 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 311(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. 316. NOTICE TO LAW ENFORCEMENT.

(a) SECRET SERVICE.—Any business entity or agency shall notify the United States Secret Service 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 acquired by an unauthorized person exceeds 10,000;

(2) the security breach involves a database, networked or integrated databases, or other data system containing the sensitive personally identifiable information of more than 1,000,000 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.

(b) NOTICE TO OTHER LAW ENFORCEMENT AGENCIES.—The United States Secret Service shall be responsible for notifying—

(1) the Federal Bureau of Investigation, if the security breach involves espionage, foreign counterintelligence, information protected against unauthorized disclosure for reasons of national defense or foreign relations, or Restricted Data (as that term is defined in section 11y of the Atomic Energy Act of 1954 (42 U.S.C. 2014(y)), except for offenses affecting the duties of the United States Secret Service under section 3056(a) of title 18, United States Code;

(2) the United States Postal Inspection Service, if the security breach involves mail fraud; and

(3) the attorney general of each State affected by the security breach.
(c) Timing of Notices.—The notices required under this section shall be delivered as follows:

(1) Notice under subsection (a) shall be delivered as promptly as possible, but not later than 14 days after discovery of the events requiring notice.

(2) Notice under subsection (b) shall be delivered not later than 14 days after the Service receives notice of a security breach from an agency or business entity.

SEC. 317. ENFORCEMENT.

(a) Civil Actions by the Attorney 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 subtitle 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 $1,000 per day per individual whose sensitive personally identifiable information was, or is reasonably believed to have been, accessed or acquired by an unauthorized person, up to a maximum of $1,000,000 per violation, unless such conduct is found to be willful or intentional.

(b) 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 subtitle, 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 subtitle.

(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 subtitle.

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

(d) 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. 318. 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 engage-
ment of a business entity in a practice that is pro-
hibited under this subtitle, the State or the State or
local law enforcement agency on behalf of the resi-
dents of the agency’s jurisdiction, may bring a civil
action on behalf of the residents of the State or ju-
risdiction in a district court of the United States of
appropriate jurisdiction or any other court of com-
petent jurisdiction, including a State court, to—
(A) enjoin that practice;
(B) enforce compliance with this subtitle;
or
(C) civil penalties of not more than $1,000
per day per individual whose sensitive person-
ally identifiable information was, or is reason-
ably believed to have been, accessed or acquired
by an unauthorized person, up to a maximum
of $1,000,000 per violation, unless such con-
duct is found to be willful or intentional.
(2) NOTICE.—
(A) IN GENERAL.—Before filing an action under paragraph (1), the attorney general of the State involved shall provide to the Attorney General of the United States—

(i) written notice of the action; and

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

(B) EXEMPTION.—

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

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

(b) FEDERAL PROCEEDINGS.—Upon receiving notice under subsection (a)(2), the Attorney General shall have the right to—
(1) move to stay the action, pending the final
disposition of a pending Federal proceeding or ac-
tion;

(2) initiate an action in the appropriate United
States district court under section 317 and move to
consolidate all pending actions, including State ac-
tions, in such court;

(3) intervene in an action brought under sub-
section (a)(2); and

(4) file petitions for appeal.

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

(d) CONSTRUCTION.—For purposes of bringing any
civil action under subsection (a), nothing in this subtitle
regarding notification shall be construed to prevent an at-
torney general of a State from exercising the powers con-
ferred 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 subtitle establishes a private cause of action against a business entity for violation of any provision of this subtitle.

SEC. 319. EFFECT ON FEDERAL AND STATE LAW.

The provisions of this subtitle shall supersede any other provision of Federal law or any provision of law of any State relating to notification by a business entity en-
gaged in interstate commerce or an agency of a security
breach, except as provided in section 314(b).

SEC. 320. AUTHORIZATION OF APPROPRIATIONS.

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

SEC. 321. REPORTING ON RISK ASSESSMENT EXEMPTIONS.

The United States Secret Service shall report to Con-
gress not later than 18 months after the date of enactment
of this Act, and upon the request by Congress thereafter,
on—

(1) the number and nature of the security
breaches described in the notices filed by those busi-
ness entities invoking the risk assessment exemption
under section 312(b) and the response of the United
States Secret Service to such notices; and

(2) the number and nature of security breaches
subject to the national security and law enforcement
exemptions under section 312(a), provided that such
report may not disclose the contents of any risk as-
seessment provided to the United States Secret Serv-
iece pursuant to this subtitle.
SEC. 322. EFFECTIVE DATE.

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

Subtitle C—Office of Federal Identity Protection

SEC. 331. OFFICE OF FEDERAL IDENTITY PROTECTION.

(a) Establishment.—There is established in the Federal Trade Commission an Office of Federal Identity Protection.

(b) Duties.—The Office of Federal Identity Protection shall be responsible for assisting each consumer with—

(1) addressing the consequences of the theft or compromise of the personally identifiable information of that consumer;

(2) accessing remedies provided under Federal law and providing information about remedies available under State law;

(3) restoring the accuracy of—

(A) the personally identifiable information of that consumer; and

(B) records containing the personally identifiable information of that consumer that were stolen or compromised; and
(4) retrieving any stolen or compromised personally identifiable information of that consumer.

(c) Activities.—In order to perform the duties required under subsection (b), the Office of Federal Identity Protection shall carry out the following activities:

(1) Establish a website, easily and conspicuously accessible from ftc.gov, dedicated to assisting consumers with the retrieval of the stolen or compromised personally identifiable information of the consumer.

(2) Maintain a toll-free phone number to help answer questions concerning identity theft from consumers.

(3) Establish online and offline consumer-service teams to assist consumers seeking the retrieval of the personally identifiable information of the consumer.

(4) Provide guidance and information to service organizations or pro bono legal services programs that offer individualized assistance or counseling to victims of identity theft.

(5) Establish a reasonable standard for determining when an individual becomes a victim of identity theft.
(6) Issue certifications to individuals who, under the standard described in paragraph (5), are identity theft victims.

(7) Permit an individual to use the Office of Federal Identity Protection certification—

(A) in all Federal, State, and local jurisdictions, in lieu of a police report or any other document required by State or local law, as a prerequisite to accessing business records of transactions done by someone claiming to be the individual; and

(B) to establish the eligibility of that individual for—

(i) the fraud alert protections under section 605A of the Fair Credit Reporting Act (15 U.S.C. 1681c–1); and

(ii) the reporting protections under section 605B(a) of the Fair Credit Reporting Act (15 U.S.C. 1681c–2(a)).

(8) Coordinate, as the Office determines necessary, with the designated Chief Privacy Officer of each Federal agency, or any other designated senior official in such agency in charge of privacy, in order to meet the duties of assisting consumers as required under subsection (b).
(9) In addition to the requirements in paragraphs (1) through (7), the Federal Trade Commission shall promulgate regulations that enable the Office of Federal Identity Protection to help consumers restore their stolen or otherwise compromised personally identifiable information quickly and inexpensively.

(d) Authorization of Appropriations.—There are authorized to be appropriated for the Office of Federal Identity Protection such sums as are necessary for fiscal year 2010 and each of the 4 succeeding fiscal years.

TITLE IV—GOVERNMENT ACCESS TO AND USE OF COMMERCIAL DATA

SEC. 401. GENERAL SERVICES ADMINISTRATION REVIEW OF CONTRACTS.

(a) In General.—In considering contract awards totaling more than $500,000 and entered into after the date of enactment of this Act with data brokers, the Administrator of the General Services Administration shall evaluate—

(1) the data privacy and security program of a data broker to ensure the privacy and security of data containing personally identifiable information, including whether such program adequately address-
es privacy and security threats created by malicious
software or code, or the use of peer-to-peer file shar-
ing software;

(2) the compliance of a data broker with such
program;

(3) the extent to which the databases and sys-
tems containing personally identifiable information
of a data broker have been compromised by security
breaches; and

(4) the response by a data broker to such
breaches, including the efforts by such data broker
to mitigate the impact of such security breaches.

(b) Compliance Safe Harbor.—The data privacy
and security program of a data broker shall be deemed
sufficient for the purposes of subsection (a), if the data
broker complies with or provides protection equal to indus-
try standards, as identified by the Federal Trade Commis-
sion, that are applicable to the type of personally identifi-
able information involved in the ordinary course of busi-
ness of such data broker.

(c) Penalties.—In awarding contracts with data
brokers for products or services related to access, use,
compilation, distribution, processing, analyzing, or evalu-
ating personally identifiable information, the Adminis-

trator of the General Services Administration shall—
(1) include monetary or other penalties—
   (A) for failure to comply with subtitles A and B of title III; or
   (B) if a contractor knows or has reason to know that the personally identifiable information being provided is inaccurate, and provides such inaccurate information; and

(2) require a data broker that engages service providers not subject to subtitle A of title III for responsibilities related to sensitive personally identifiable information to—
   (A) exercise appropriate due diligence in selecting those service providers for responsibilities related to personally identifiable information;
   (B) take reasonable steps to select and retain service providers that are capable of maintaining appropriate safeguards for the security, privacy, and integrity of the personally identifiable information at issue; and
   (C) require such service providers, by contract, to implement and maintain appropriate measures designed to meet the objectives and requirements in title III.
(d) LIMITATION.—The penalties under subsection (c) shall not apply to a data broker providing information that is accurately and completely recorded from a public record source or licensor.

SEC. 402. REQUIREMENT TO AUDIT INFORMATION SECURITY PRACTICES OF CONTRACTORS AND THIRD PARTY BUSINESS ENTITIES.

Section 3544(b) of title 44, United States Code, is amended—

(1) in paragraph (7)(C)(iii), by striking “and” after the semicolon;

(2) in paragraph (8), by striking the period and inserting “; and”; and

(3) by adding at the end the following:

“(9) procedures for evaluating and auditing the information security practices of contractors or third party business entities supporting the information systems or operations of the agency involving personally identifiable information (as that term is defined in section 3 of the Personal Data Privacy and Security Act of 2009) and ensuring remedial action to address any significant deficiencies.”.
SEC. 403. PRIVACY IMPACT ASSESSMENT OF GOVERNMENT USE OF COMMERCIAL INFORMATION SERVICES CONTAINING PERSONALLY IDENTIFIABLE INFORMATION.

(a) In General.—Section 208(b)(1) of the E-Government Act of 2002 (44 U.S.C. 3501 note) is amended—

(1) in subparagraph (A)(i), by striking “or”;

and

(2) in subparagraph (A)(ii), by striking the period and inserting “; or”; and

(3) by inserting after clause (ii) the following:

“(iii) purchasing or subscribing for a fee to personally identifiable information from a data broker (as such terms are defined in section 3 of the Personal Data Privacy and Security Act of 2009).”.

(b) Limitation.—Notwithstanding any other provision of law, commencing 1 year after the date of enactment of this Act, no Federal agency may enter into a contract with a data broker to access for a fee any database consisting primarily of personally identifiable information concerning United States persons (other than news reporting or telephone directories) unless the head of such department or agency—

(1) completes a privacy impact assessment under section 208 of the E-Government Act of 2002
(44 U.S.C. 3501 note), which shall subject to the provision in that Act pertaining to sensitive information, include a description of—

(A) such database;

(B) the name of the data broker from whom it is obtained; and

(C) the amount of the contract for use;

(2) adopts regulations that specify—

(A) the personnel permitted to access, analyze, or otherwise use such databases;

(B) standards governing the access, analysis, or use of such databases;

(C) any standards used to ensure that the personally identifiable information accessed, analyzed, or used is the minimum necessary to accomplish the intended legitimate purpose of the Federal agency;

(D) standards limiting the retention and redisclosure of personally identifiable information obtained from such databases;

(E) procedures ensuring that such data meet standards of accuracy, relevance, completeness, and timeliness;
(F) the auditing and security measures to
protect against unauthorized access, analysis,
use, or modification of data in such databases;

(G) applicable mechanisms by which indi-
viduals may secure timely redress for any ad-
verse consequences wrongly incurred due to the
access, analysis, or use of such databases;

(H) mechanisms, if any, for the enforce-
ment and independent oversight of existing or
planned procedures, policies, or guidelines; and

(I) an outline of enforcement mechanisms
for accountability to protect individuals and the
public against unlawful or illegitimate access or
use of databases; and

(3) incorporates into the contract or other
agreement totaling more than $500,000, provi-
sions—

(A) providing for penalties—

(i) for failure to comply with title III
of this Act; or

(ii) if the entity knows or has reason
to know that the personally identifiable in-
formation being provided to the Federal
department or agency is inaccurate, and
provides such inaccurate information; and
(B) requiring a data broker that engages service providers not subject to subtitle A of title III for responsibilities related to sensitive personally identifiable information to—

(i) exercise appropriate due diligence in selecting those service providers for responsibilities related to personally identifiable information;

(ii) take reasonable steps to select and retain service providers that are capable of maintaining appropriate safeguards for the security, privacy, and integrity of the personally identifiable information at issue; and

(iii) require such service providers, by contract, to implement and maintain appropriate measures designed to meet the objectives and requirements in title III.

(c) LIMITATION ON PENALTIES.—The penalties under subsection (b)(3)(A) shall not apply to a data broker providing information that is accurately and completely recorded from a public record source.

(d) STUDY OF GOVERNMENT USE.—

(1) SCOPE OF STUDY.—Not later than 180 days after the date of enactment of this Act, the
Comptroller General of the United States shall con-
duct a study and audit and prepare a report on Fed-
eral agency actions to address the recommendations
in the Government Accountability Office’s April
2006 report on agency adherence to key privacy
principles in using data brokers or commercial data-
bases containing personally identifiable information.

(2) REPORT.—A copy of the report required
under paragraph (1) shall be submitted to Congress.

SEC. 404. IMPLEMENTATION OF CHIEF PRIVACY OFFICER

REQUIREMENTS.

(a) DESIGNATION OF THE CHIEF PRIVACY OFFI-
CER.—Pursuant to the requirements under section 522 of
the Transportation, Treasury, Independent Agencies, and
General Government Appropriations Act, 2005 (division II
of Public Law 108–447; 118 Stat. 3199) that each agency
designate a Chief Privacy Officer, the Department of Just-
tice shall implement such requirements by designating a
department-wide Chief Privacy Officer, whose primary
role shall be to fulfill the duties and responsibilities of
Chief Privacy Officer and who shall report directly to the
Deputy Attorney General.

(b) DUTIES AND RESPONSIBILITIES OF CHIEF PRI-
VACY OFFICER.—In addition to the duties and responsibil-
ities outlined under section 522 of the Transportation,
Treasury, Independent Agencies, and General Government Appropriations Act, 2005 (division H of Public Law 108–447; 118 Stat. 3199), the Department of Justice Chief Privacy Officer shall—

(1) oversee the Department of Justice’s implementation of the requirements under section 403 to conduct privacy impact assessments of the use of commercial data containing personally identifiable information by the Department; and

(2) coordinate with the Privacy and Civil Liberties Oversight Board, established in the Intelligence Reform and Terrorism Prevention Act of 2004 (Public Law 108–458), in implementing this section.