

Calendar No. 181112TH CONGRESS
1ST SESSION**S. 1151**

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

JUNE 7, 2011

Mr. LEAHY (for himself, Mr. SCHUMER, Mr. CARDIN, Mr. FRANKEN, and Mr. BLUMENTHAL) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

SEPTEMBER 22, 2011

Reported by Mr. LEAHY, with an amendment

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

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,*

1 **SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

2 (a) **SHORT TITLE.**—This Act may be cited as the
3 “Personal Data Privacy and Security Act of 2011”.

4 (b) **TABLE OF CONTENTS.**—The table of contents of
5 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 identi-
fiable information.

Sec. 103. Penalties for fraud and related activity in connection with computers.

TITLE II—DATA BROKERS

Sec. 201. Transparency and accuracy of data collection.

Sec. 202. Enforcement.

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.

Sec. 312. Exemptions.

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.

**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. 403. Privacy impact assessment of government use of commercial information services containing personally identifiable information.

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

Sec. 501. Budget compliance.

1 **SEC. 2. FINDINGS.**

2 Congress finds that—

3 (1) databases of personally identifiable informa-
4 tion are increasingly prime targets of hackers, iden-
5 tity thieves, rogue employees, and other criminals,
6 including organized and sophisticated criminal oper-
7 ations;

8 (2) identity theft is a serious threat to the Na-
9 tion's economic stability, homeland security, the de-
10 velopment of e-commerce, and the privacy rights of
11 Americans;

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

14 (4) security breaches are a serious threat to
15 consumer confidence, homeland security, e-com-
16 merce, and economic stability;

17 (5) it is important for business entities that
18 own, use, or license personally identifiable informa-
19 tion to adopt reasonable procedures to ensure the se-
20 curity, privacy, and confidentiality of that personally
21 identifiable information;

1 (6) individuals whose personal information has
2 been compromised or who have been victims of iden-
3 tity theft should receive the necessary information
4 and assistance to mitigate their damages and to re-
5 store the integrity of their personal information and
6 identities;

7 (7) data brokers have assumed a significant
8 role in providing identification, authentication, and
9 screening services, and related data collection and
10 analyses for commercial, nonprofit, and government
11 operations;

12 (8) data misuse and use of inaccurate data have
13 the potential to cause serious or irreparable harm to
14 an individual's livelihood, privacy, and liberty and
15 undermine efficient and effective business and gov-
16 ernment operations;

17 (9) there is a need to ensure that data brokers
18 conduct their operations in a manner that prioritizes
19 fairness, transparency, accuracy, and respect for the
20 privacy of consumers;

21 (10) government access to commercial data can
22 potentially improve safety, law enforcement, and na-
23 tional security; and

24 (11) because government use of commercial
25 data containing personal information potentially af-

1 fects individual privacy, and law enforcement and
2 national security operations, there is a need for Con-
3 gress to exercise oversight over government use of
4 commercial data.

5 **SEC. 3. DEFINITIONS.**

6 In this Act, the following definitions shall apply:

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

10 (2) **AFFILIATE.**—The term “affiliate” means
11 persons related by common ownership or by cor-
12 porate control.

13 (3) **BUSINESS ENTITY.**—The term “business
14 entity” means any organization, corporation, trust,
15 partnership, sole proprietorship, unincorporated as-
16 sociation, or venture established to make a profit, or
17 nonprofit.

18 (4) **IDENTITY THEFT.**—The term “identity
19 theft” means a violation of section 1028(a)(7) of
20 title 18, United States Code.

21 (5) **DATA BROKER.**—The term “data broker”
22 means a business entity which for monetary fees or
23 dues regularly engages in the practice of collecting,
24 transmitting, or providing access to sensitive person-
25 ally identifiable information on more than 5,000 in-

1 individuals who are not the customers or employees of
2 that business entity or affiliate primarily for the
3 purposes of providing such information to non-
4 affiliated third parties on an interstate basis.

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

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

11 (A) means the protection of data in elec-
12 tronic form, in storage or in transit, using an
13 encryption technology that has been adopted by
14 a widely accepted standards setting body or,
15 has been widely accepted as an effective indus-
16 try practice which renders such data indecipher-
17 able in the absence of associated cryptographic
18 keys necessary to enable decryption of such
19 data; and

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

23 (8) PERSONAL ELECTRONIC RECORD.—

24 (A) IN GENERAL.—The term “personal
25 electronic record” means data associated with

1 an individual contained in a database,
 2 networked or integrated databases, or other
 3 data system that is provided by a data broker
 4 to nonaffiliated third parties and includes per-
 5 sonally identifiable information about that indi-
 6 vidual.

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

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

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

15 (9) PERSONALLY IDENTIFIABLE INFORMA-
 16 TION.—The term “personally identifiable informa-
 17 tion” means any information, or compilation of in-
 18 formation, in electronic or digital form that is a
 19 means of identification, as defined by section
 20 1028(d)(7) of title 18, United State Code.

21 (10) PUBLIC RECORD SOURCE.—The term
 22 “public record source” means the Congress, any
 23 agency, any State or local government agency, the
 24 government of the District of Columbia and govern-
 25 ments of the territories or possessions of the United

1 States, and Federal, State or local courts, courts
 2 martial and military commissions, that maintain
 3 personally identifiable information in records avail-
 4 able to the public.

5 (H) SECURITY BREACH.—

6 (A) IN GENERAL.—The term “security
 7 breach” means compromise of the security, con-
 8 fidentiality, or integrity of computerized data
 9 through misrepresentation or actions—

10 (i) that result in, or that there is a
 11 reasonable basis to conclude has resulted
 12 in—

13 (I) the unauthorized acquisition
 14 of sensitive personally identifiable in-
 15 formation; and

16 (II) access to sensitive personally
 17 identifiable information that is for an
 18 unauthorized purpose, or in excess of
 19 authorization; and

20 (ii) which present a significant risk of
 21 harm or fraud to any individual.

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

24 (i) a good faith acquisition of sensitive
 25 personally identifiable information by a

1 business entity or agency, or an employee
 2 or agent of a business entity or agency, if
 3 the sensitive personally identifiable infor-
 4 mation is not subject to further unauthor-
 5 ized disclosure;

6 (ii) the release of a public record not
 7 otherwise subject to confidentiality or non-
 8 disclosure requirements; or

9 (iii) any lawfully authorized investiga-
 10 tive, protective, or intelligence activity of a
 11 law enforcement or intelligence agency of
 12 the United States.

13 ~~(12) SENSITIVE PERSONALLY IDENTIFIABLE IN-~~
 14 ~~FORMATION.—~~The term “sensitive personally identi-
 15 fiable information” means any information or com-
 16 pilation of information, in electronic or digital form
 17 that includes—

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

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

24 ~~(ii) Any 2 of the following:~~

1 (I) Home address or telephone
2 number.

3 (II) Mother's maiden name.

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

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

10 (iv) A unique account identifier, elec-
11 tronic identification number, user name, or
12 routing code in combination with any asso-
13 ciated security code, access code, or pass-
14 word if the code or password is required
15 for an individual to obtain money, goods,
16 services, or any other thing of value; or

17 (B) a financial account number or credit
18 or debit card number in combination with any
19 security code, access code, or password that is
20 required for an individual to obtain credit, with-
21 draw funds, or engage in a financial trans-
22 action.

1 **TITLE I—ENHANCING PUNISH-**
 2 **MENT FOR IDENTITY THEFT**
 3 **AND OTHER VIOLATIONS OF**
 4 **DATA PRIVACY AND SECU-**
 5 **RITY**

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

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

13 **SEC. 102. CONCEALMENT OF SECURITY BREACHES INVOLV-**
 14 **ING SENSITIVE PERSONALLY IDENTIFIABLE**
 15 **INFORMATION.**

16 (a) **IN GENERAL.**—Chapter 47 of title 18, United
 17 States Code, is amended by adding at the end the fol-
 18 lowing:

19 **“§ 1041. Concealment of security breaches involving**
 20 **sensitive personally identifiable informa-**
 21 **tion**

22 “(a) Whoever, having knowledge of a security breach
 23 and having the obligation to provide notice of such breach
 24 to individuals under title III of the Personal Data Privacy
 25 and Security Act of 2011, and having not otherwise quali-

1 fined for an exemption from providing notice under section
 2 312 of such Act, intentionally and willfully conceals the
 3 fact of such security breach and which breach causes eco-
 4 nomic damage to 1 or more persons, shall be fined under
 5 this title or imprisoned not more than 5 years, or both.

6 “(b) For purposes of subsection (a), the term ‘person’
 7 has the same meaning as in section 1030(e)(12) of title
 8 18, United States Code.

9 “(c) Any person seeking an exemption under section
 10 312(b) of the Personal Data Privacy and Security Act of
 11 2011 shall be immune from prosecution under this section
 12 if the United States Secret Service does not indicate, in
 13 writing, that such notice be given under section 312(b)(3)
 14 of such Act.”.

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

“1041. Concealment of security breaches involving personally identifiable infor-
 mation.”.

19 (c) ENFORCEMENT AUTHORITY.—

20 (1) IN GENERAL.—The United States Secret
 21 Service shall have the authority to investigate of-
 22 fenses under this section.

1 (ii) by striking “in the case of—” and
2 all that follows through “an offense under
3 subsection (a)(5)(B)” and inserting “in the
4 case of an offense, or an attempt or con-
5 spiracy to commit an offense, under sub-
6 section (a)(5)(B)”;

7 (iii) by inserting “or conspiracy” after
8 “if the offense”;

9 (iv) by redesignating subclauses (I)
10 through (VI) as clauses (i) through (vi),
11 respectively, and adjusting the margin ac-
12 cordingly; and

13 (v) in clause (vi), as so redesignated,
14 by striking “; or” and inserting a semi-
15 colon;

16 (B) in subparagraph (B)—

17 (i) by striking clause (ii);

18 (ii) by striking “in the case of—” and
19 all that follows through “an offense under
20 subsection (a)(5)(A)” and inserting “in the
21 case of an offense, or an attempt or con-
22 spiracy to commit an offense, under sub-
23 section (a)(5)(A)”;

24 (iii) by inserting “or conspiracy” after
25 “if the offense”; and

1 (iv) by striking “; or” and inserting a
2 semicolon;

3 (C) in subparagraph (C)—

4 (i) by striking clause (ii);

5 (ii) by striking “in the case of—” and
6 all that follows through “an offense or an
7 attempt to commit an offense” and insert-
8 ing “in the case of an offense, or an at-
9 tempt or conspiracy to commit an of-
10 fense,”; and

11 (iii) by striking “; or” and inserting a
12 semicolon;

13 (D) in subparagraph (D)—

14 (i) by striking clause (ii);

15 (ii) by striking “in the case of—” and
16 all that follows through “an offense or an
17 attempt to commit an offense” and insert-
18 ing “in the case of an offense, or an at-
19 tempt or conspiracy to commit an of-
20 fense,”; and

21 (iii) by striking “; or” and inserting a
22 semicolon;

23 (E) in subparagraph (E), by inserting “or
24 conspires” after “offender attempts”;

1 (F) in subparagraph (F), by inserting “or
2 conspires” after “offender attempts”; and

3 (G) in subparagraph (G)(ii), by inserting
4 “or conspiracy” after “an attempt”.

5 **TITLE II—DATA BROKERS**

6 **SEC. 201. TRANSPARENCY AND ACCURACY OF DATA COL-** 7 **LECTION.**

8 (a) **IN GENERAL.**—Data brokers engaging in inter-
9 state commerce are subject to the requirements of this
10 title for any product or service offered to third parties that
11 allows access or use of personally identifiable information.

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

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

21 (2) any data broker that is subject to regulation
22 under the Gramm-Leach-Bliley Act (Public Law
23 106–102);

24 (3) any data broker currently subject to and in
25 compliance with the data security requirements for

1 such entities under the Health Insurance Portability
2 and Accountability Act (Public Law 104–191), and
3 its implementing regulations;

4 (4) any data broker subject to, and in compli-
5 ance with, the privacy and data security require-
6 ments under sections 13401 and 13404 of division
7 A of the American Reinvestment and Recovery Act
8 of 2009 (42 U.S.C. 17931 and 17934) and imple-
9 menting regulations promulgated under such sec-
10 tions;

11 (5) information in a personal electronic record
12 that—

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

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

22 (6) information concerning proprietary meth-
23 odologies, techniques, scores, or algorithms relating
24 to fraud prevention not normally provided to third
25 parties in the ordinary course of business; and

1 (7) information that is used for legitimate gov-
 2 ernmental or fraud prevention purposes that would
 3 be compromised by disclosure to the individual.

4 (c) DISCLOSURES TO INDIVIDUALS.—

5 (1) IN GENERAL.—A data broker shall, upon
 6 the request of an individual, disclose to such indi-
 7 vidual for a reasonable fee all personal electronic
 8 records pertaining to that individual maintained or
 9 accessed by the data broker specifically for disclo-
 10 sure to third parties that request information on
 11 that individual in the ordinary course of business in
 12 the databases or systems of the data broker at the
 13 time of such request.

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

18 (d) DISCLOSURE TO INDIVIDUALS OF ADVERSE AC-
 19 TIONS TAKEN BY THIRD PARTIES.—

20 (1) IN GENERAL.—If a person takes any ad-
 21 verse action with respect to any individual that is
 22 based, in whole or in part, on any information con-
 23 tained in a personal electronic record, the person, at
 24 no cost to the affected individual, shall provide—

1 (A) written or electronic notice of the ad-
2 verse action to the individual;

3 (B) to the individual, in writing or elec-
4 tronically, the name, address, and telephone
5 number of the data broker (including a toll-free
6 telephone number established by the data
7 broker, if the data broker complies and main-
8 tains data on individuals on a nationwide basis)
9 that furnished the information to the person;

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

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

15 (2) ACCEPTED METHODS OF NOTICE.—A per-
16 son shall be in compliance with the notice require-
17 ments under paragraph (1) if such person provides
18 written or electronic notice in the same manner and
19 using the same methods as are required under sec-
20 tion 313(1) of this Act.

21 (c) ACCURACY RESOLUTION PROCESS.—

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

24 (A) IN GENERAL.—If an individual notifies
25 a data broker of a dispute as to the complete-

1 ness or accuracy of information disclosed to
2 such individual under subsection (c) that is ob-
3 tained from a public record source or a license
4 agreement, such data broker shall determine
5 within 30 days whether the information in its
6 system accurately and completely records the
7 information available from the licensor or public
8 record source.

9 (B) DATA BROKER ACTIONS.—If a data
10 broker determines under subparagraph (A) that
11 the information in its systems does not accu-
12 rately and completely record the information
13 available from a public record source or licen-
14 sor, the data broker shall—

15 (i) correct any inaccuracies or incom-
16 pleteness, and provide to such individual
17 written notice of such changes; and

18 (ii) provide such individual with the
19 contact information of the public record or
20 licensor.

21 (2) INFORMATION NOT FROM A PUBLIC RECORD
22 SOURCE OR LICENSOR.—If an individual notifies a
23 data broker of a dispute as to the completeness or
24 accuracy of information not from a public record or
25 licensor that was disclosed to the individual under

1 subsection (c), the data broker shall, within 30 days
2 of receiving notice of such dispute—

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

7 (B) correct any information found to be in-
8 complete or inaccurate and provide notice to
9 such individual of whether and what informa-
10 tion was corrected, if any.

11 (3) EXTENSION OF REVIEW PERIOD.—The 30-
12 day period described in paragraph (1) may be ex-
13 tended for not more than 30 additional days if a
14 data broker receives information from the individual
15 during the initial 30-day period that is relevant to
16 the completeness or accuracy of any disputed infor-
17 mation.

18 (4) NOTICE IDENTIFYING THE DATA FUR-
19 NISHER.—If the completeness or accuracy of any in-
20 formation not from a public record source or licensor
21 that was disclosed to an individual under subsection
22 (c) is disputed by such individual, the data broker
23 shall provide, upon the request of such individual,
24 the contact information of any data furnisher that
25 provided the disputed information.

1 (5) DETERMINATION THAT DISPUTE IS FRIVO-
2 LOUS OR IRRELEVANT.—

3 (A) IN GENERAL.—Notwithstanding para-
4 graphs (1) through (3), a data broker may de-
5 cline to investigate or terminate a review of in-
6 formation disputed by an individual under those
7 paragraphs if the data broker reasonably deter-
8 mines that the dispute by the individual is friv-
9 ous or intended to perpetrate fraud.

10 (B) NOTICE.—A data broker shall notify
11 an individual of a determination under subpara-
12 graph (A) within a reasonable time by any
13 means available to such data broker.

14 **SEC. 202. ENFORCEMENT.**

15 (a) CIVIL PENALTIES.—

16 (1) PENALTIES.—Any data broker that violates
17 the provisions of section 201 shall be subject to civil
18 penalties of not more than \$1,000 per violation per
19 day while such violations persist, up to a maximum
20 of \$250,000 per violation.

21 (2) INTENTIONAL OR WILLFUL VIOLATION.—A
22 data broker that intentionally or willfully violates the
23 provisions of section 201 shall be subject to addi-
24 tional penalties in the amount of \$1,000 per viola-

1 tion per day, to a maximum of an additional
2 \$250,000 per violation, while such violations persist.

3 (3) **EQUITABLE RELIEF.**—A data broker en-
4 gaged in interstate commerce that violates this sec-
5 tion may be enjoined from further violations by a
6 court of competent jurisdiction.

7 (4) **OTHER RIGHTS AND REMEDIES.**—The
8 rights and remedies available under this subsection
9 are cumulative and shall not affect any other rights
10 and remedies available under law.

11 (b) **FEDERAL TRADE COMMISSION AUTHORITY.**—
12 Any data broker shall have the provisions of this title en-
13 forced against it by the Federal Trade Commission.

14 (c) **STATE ENFORCEMENT.**—

15 (1) **CIVIL ACTIONS.**—In any case in which the
16 attorney general of a State or any State or local law
17 enforcement agency authorized by the State attorney
18 general or by State statute to prosecute violations of
19 consumer protection law, has reason to believe that
20 an interest of the residents of that State has been
21 or is threatened or adversely affected by the acts or
22 practices of a data broker that violate this title, the
23 State may bring a civil action on behalf of the resi-
24 dents of that State in a district court of the United

1 States of appropriate jurisdiction, or any other court
2 of competent jurisdiction, to—

3 (A) enjoin that act or practice;

4 (B) enforce compliance with this title; or

5 (C) obtain civil penalties of not more than
6 \$1,000 per violation per day while such viola-
7 tions persist, up to a maximum of \$250,000 per
8 violation.

9 (2) NOTICE.—

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

14 (i) a written notice of that action; and

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

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

24 (C) NOTIFICATION WHEN PRACTICABLE.—

25 In an action described under subparagraph (B),

1 the attorney general of a State shall provide the
2 written notice and the copy of the complaint to
3 the Federal Trade Commission as soon after
4 the filing of the complaint as practicable.

5 ~~(3) FEDERAL TRADE COMMISSION AUTHOR-~~
6 ~~ITY.—~~Upon receiving notice under paragraph ~~(2)~~,
7 the Federal Trade Commission shall have the right
8 to—

9 (A) move to stay the action, pending the
10 final disposition of a pending Federal pro-
11 ceeding or action as described in paragraph ~~(4)~~;

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

14 (C) file petitions for appeal.

15 ~~(4) PENDING PROCEEDINGS.—~~If the Federal
16 Trade Commission has instituted a proceeding or
17 civil action for a violation of this title, no attorney
18 general of a State may, during the pendency of such
19 proceeding or civil action, bring an action under this
20 subsection against any defendant named in such civil
21 action for any violation that is alleged in that civil
22 action.

23 ~~(5) RULE OF CONSTRUCTION.—~~For purposes of
24 bringing any civil action under paragraph ~~(1)~~, noth-
25 ing in this title shall be construed to prevent an at-

1 torney general of a State from exercising the powers
2 conferred on the attorney general by the laws of that
3 State to—

4 (A) conduct investigations;

5 (B) administer oaths and affirmations; or

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

9 (6) VENUE; SERVICE OF PROCESS.—

10 (A) VENUE.—Any action brought under
11 this subsection may be brought in the district
12 court of the United States that meets applicable
13 requirements relating to venue under section
14 1391 of title 28, United States Code.

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

18 (i) is an inhabitant; or

19 (ii) may be found.

20 (d) NO PRIVATE CAUSE OF ACTION.—Nothing in
21 this title establishes a private cause of action against a
22 data broker for violation of any provision of this title.

23 **SEC. 203. RELATION TO STATE LAWS.**

24 No requirement or prohibition may be imposed under
25 the laws of any State with respect to any subject matter

1 regulated under section 201, relating to individual access
 2 to, and correction of, personal electronic records held by
 3 data brokers.

4 **SEC. 204. EFFECTIVE DATE.**

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

7 **TITLE III—PRIVACY AND SECU-**
 8 **RITY OF PERSONALLY IDEN-**
 9 **TIFIABLE INFORMATION**

10 **Subtitle A—A Data Privacy and**
 11 **Security Program**

12 **SEC. 301. PURPOSE AND APPLICABILITY OF DATA PRIVACY**
 13 **AND SECURITY PROGRAM.**

14 (a) **PURPOSE.**—The purpose of this subtitle is to en-
 15 sure standards for developing and implementing adminis-
 16 trative, technical, and physical safeguards to protect the
 17 security of sensitive personally identifiable information.

18 (b) **IN GENERAL.**—A business entity engaging in
 19 interstate commerce that involves collecting, accessing,
 20 transmitting, using, storing, or disposing of sensitive per-
 21 sonally identifiable information in electronic or digital
 22 form on 10,000 or more United States persons is subject
 23 to the requirements for a data privacy and security pro-
 24 gram under section 302 for protecting sensitive personally
 25 identifiable information.

1 (e) LIMITATIONS.—Notwithstanding any other obli-
2 gation under this subtitle, this subtitle does not apply to:

3 (1) FINANCIAL INSTITUTIONS.—Financial insti-
4 tutions—

5 (A) subject to the data security require-
6 ments and implementing regulations under the
7 Gramm-Leach-Bliley Act (15 U.S.C. 6801 et
8 seq.); and

9 (B) subject to—

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

16 (ii) compliance with part 314 of title
17 16, Code of Federal Regulations.

18 (2) HIPPA REGULATED ENTITIES.—

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

1 (B) BUSINESS ENTITIES.—A Business en-
2 tity shall be deemed in compliance with this Act
3 if the business entity—

4 (i) is acting as a business associate,
5 as that term is defined under the Health
6 Insurance Portability and Accountability
7 Act of 1996 (42 U.S.C. 1301 et seq.) and
8 is in compliance with the requirements im-
9 posed under that Act and implementing
10 regulations promulgated under that Act;
11 and

12 (ii) is subject to, and currently in
13 compliance, with the privacy and data se-
14 curity requirements under sections 13401
15 and 13404 of division A of the American
16 Reinvestment and Recovery Act of 2009
17 (42 U.S.C. 17931 and 17934) and imple-
18 menting regulations promulgated under
19 such sections.

20 (3) PUBLIC RECORDS.—Public records not oth-
21 erwise subject to a confidentiality or nondisclosure
22 requirement, or information obtained from a news
23 report or periodical.

24 (d) SAFE HARBORS.—

1 (1) ~~IN GENERAL.~~—A business entity shall be
2 deemed in compliance with the privacy and security
3 program requirements under section 302 if the busi-
4 ness entity complies with or provides protection
5 equal to industry standards or standards widely ac-
6 cepted as an effective industry practice, as identified
7 by the Federal Trade Commission, that are applica-
8 ble to the type of sensitive personally identifiable in-
9 formation involved in the ordinary course of business
10 of such business entity.

11 (2) ~~LIMITATION.~~—Nothing in this subsection
12 shall be construed to permit, and nothing does per-
13 mit, the Federal Trade Commission to issue regula-
14 tions requiring, or according greater legal status to,
15 the implementation of or application of a specific
16 technology or technological specifications for meeting
17 the requirements of this title.

18 **SEC. 302. REQUIREMENTS FOR A PERSONAL DATA PRIVACY**

19 **AND SECURITY PROGRAM.**

20 (a) ~~PERSONAL DATA PRIVACY AND SECURITY PRO-~~
21 ~~GRAM.~~—A business entity subject to this subtitle shall
22 comply with the following safeguards and any other ad-
23 ministrative, technical, or physical safeguards identified by
24 the Federal Trade Commission in a rulemaking process
25 pursuant to section 553 of title 5, United States Code,

1 for the protection of sensitive personally identifiable infor-
2 mation:

3 (1) SCOPE.—A business entity shall implement
4 a comprehensive personal data privacy and security
5 program that includes administrative, technical, and
6 physical safeguards appropriate to the size and com-
7 plexity of the business entity and the nature and
8 scope of its activities.

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

11 (A) ensure the privacy, security, and con-
12 fidentiality of sensitive personally identifying in-
13 formation;

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

18 (C) protect against unauthorized access to
19 use of sensitive personally identifying informa-
20 tion that could create a significant risk of harm
21 or fraud to any individual.

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

24 (A) identify reasonably foreseeable internal
25 and external vulnerabilities that could result in

1 unauthorized access, disclosure, use, or alter-
2 ation of sensitive personally identifiable infor-
3 mation or systems containing sensitive person-
4 ally identifiable information;

5 (B) assess the likelihood of and potential
6 damage from unauthorized access, disclosure,
7 use, or alteration of sensitive personally identifi-
8 able information;

9 (C) assess the sufficiency of its policies,
10 technologies, and safeguards in place to control
11 and minimize risks from unauthorized access,
12 disclosure, use, or alteration of sensitive person-
13 ally identifiable information; and

14 (D) assess the vulnerability of sensitive
15 personally identifiable information during de-
16 struction and disposal of such information, in-
17 cluding through the disposal or retirement of
18 hardware.

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

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

24 (B) adopt measures commensurate with
25 the sensitivity of the data as well as the size,

1 complexity, and scope of the activities of the
2 business entity that—

3 (i) control access to systems and fa-
4 cilities containing sensitive personally iden-
5 tifiable information, including controls to
6 authenticate and permit access only to au-
7 thorized individuals;

8 (ii) detect, record, and preserve infor-
9 mation relevant to actual and attempted
10 fraudulent, unlawful, or unauthorized ac-
11 cess, disclosure, use, or alteration of sen-
12 sitive personally identifiable information,
13 including by employees and other individ-
14 uals otherwise authorized to have access;

15 (iii) protect sensitive personally identi-
16 fiable information during use, trans-
17 mission, storage, and disposal by
18 encryption, redaction, or access controls
19 that are widely accepted as an effective in-
20 dustry practice or industry standard, or
21 other reasonable means (including as di-
22 rected for disposal of records under section
23 628 of the Fair Credit Reporting Act (15
24 U.S.C. 1681w) and the implementing regu-
25 lations of such Act as set forth in section

1 682 of title 16, Code of Federal Regula-
2 tions);

3 (iv) ensure that sensitive personally
4 identifiable information is properly de-
5 stroyed and disposed of, including during
6 the destruction of computers, diskettes,
7 and other electronic media that contain
8 sensitive personally identifiable informa-
9 tion;

10 (v) trace access to records containing
11 sensitive personally identifiable information
12 so that the business entity can determine
13 who accessed or acquired such sensitive
14 personally identifiable information per-
15 taining to specific individuals; and

16 (vi) ensure that no third party or cus-
17 tomer of the business entity is authorized
18 to access or acquire sensitive personally
19 identifiable information without the busi-
20 ness entity first performing sufficient due
21 diligence to ascertain, with reasonable cer-
22 tainty, that such information is being
23 sought for a valid legal purpose.

24 (b) TRAINING.—Each business entity subject to this
25 subtitle shall take steps to ensure employee training and

1 supervision for implementation of the data security pro-
2 gram of the business entity.

3 (c) VULNERABILITY TESTING.—

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

10 (2) FREQUENCY.—The frequency and nature of
11 the tests required under paragraph (1) shall be de-
12 termined by the risk assessment of the business enti-
13 ty under subsection (a)(3).

14 (d) RELATIONSHIP TO SERVICE PROVIDERS.—In the
15 event a business entity subject to this subtitle engages
16 service providers not subject to this subtitle, such business
17 entity shall—

18 (1) exercise appropriate due diligence in select-
19 ing those service providers for responsibilities related
20 to sensitive personally identifiable information, and
21 take reasonable steps to select and retain service
22 providers that are capable of maintaining appro-
23 priate safeguards for the security, privacy, and in-
24 tegrity of the sensitive personally identifiable infor-
25 mation at issue; and

1 (2) require those service providers by contract
2 to implement and maintain appropriate measures de-
3 signed to meet the objectives and requirements gov-
4 erning entities subject to section 301, this section,
5 and subtitle B.

6 (c) PERIODIC ASSESSMENT AND PERSONAL DATA
7 PRIVACY AND SECURITY MODERNIZATION.—Each busi-
8 ness entity subject to this subtitle shall on a regular basis
9 monitor, evaluate, and adjust, as appropriate its data pri-
10 vacy and security program in light of any relevant changes
11 in—

12 (1) technology;

13 (2) the sensitivity of personally identifiable in-
14 formation;

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

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

19 (A) mergers and acquisitions;

20 (B) alliances and joint ventures;

21 (C) outsourcing arrangements;

22 (D) bankruptcy; and

23 (E) changes to sensitive personally identifi-
24 able information systems.

1 (f) IMPLEMENTATION TIMELINE.—Not later than 1
2 year after the date of enactment of this Act, a business
3 entity subject to the provisions of this subtitle shall imple-
4 ment a data privacy and security program pursuant to this
5 subtitle.

6 **SEC. 303. ENFORCEMENT.**

7 (a) CIVIL PENALTIES.—

8 (1) IN GENERAL.—Any business entity that vio-
9 lates the provisions of sections 301 or 302 shall be
10 subject to civil penalties of not more than \$5,000
11 per violation per day while such a violation exists,
12 with a maximum of \$500,000 per violation.

13 (2) INTENTIONAL OR WILLFUL VIOLATION.—A
14 business entity that intentionally or willfully violates
15 the provisions of sections 301 or 302 shall be subject
16 to additional penalties in the amount of \$5,000 per
17 violation per day while such a violation exists, with
18 a maximum of an additional \$500,000 per violation.

19 (3) EQUITABLE RELIEF.—A business entity en-
20 gaged in interstate commerce that violates this sec-
21 tion may be enjoined from further violations by a
22 court of competent jurisdiction.

23 (4) OTHER RIGHTS AND REMEDIES.—The
24 rights and remedies available under this section are

1 cumulative and shall not affect any other rights and
2 remedies available under law.

3 (b) FEDERAL TRADE COMMISSION AUTHORITY.—

4 Any business entity shall have the provisions of this sub-
5 title enforced against it by the Federal Trade Commission.

6 (c) STATE ENFORCEMENT.—

7 (1) CIVIL ACTIONS.—In any case in which the
8 attorney general of a State or any State or local law
9 enforcement agency authorized by the State attorney
10 general or by State statute to prosecute violations of
11 consumer protection law, has reason to believe that
12 an interest of the residents of that State has been
13 or is threatened or adversely affected by the acts or
14 practices of a business entity that violate this sub-
15 title, the State may bring a civil action on behalf of
16 the residents of that State in a district court of the
17 United States of appropriate jurisdiction, or any
18 other court of competent jurisdiction, to—

19 (A) enjoin that act or practice;

20 (B) enforce compliance with this subtitle;

21 or

22 (C) obtain civil penalties of not more than
23 \$5,000 per violation per day while such viola-
24 tions persist, up to a maximum of \$500,000 per
25 violation.

1 (2) NOTICE.—

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

6 (i) a written notice of that action; and

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

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

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

22 (3) FEDERAL TRADE COMMISSION AUTHOR-
23 ITY.—Upon receiving notice under paragraph (2),
24 the Federal Trade Commission shall have the right
25 to—

1 (A) move to stay the action, pending the
2 final disposition of a pending Federal pro-
3 ceeding or action as described in paragraph (4);

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

6 (C) file petitions for appeal.

7 (4) PENDING PROCEEDINGS.—If the Federal
8 Trade Commission has instituted a proceeding or ac-
9 tion for a violation of this subtitle or any regulations
10 thereunder, no attorney general of a State may, dur-
11 ing the pendency of such proceeding or action, bring
12 an action under this subsection against any defend-
13 ant named in such criminal proceeding or civil ac-
14 tion for any violation that is alleged in that pro-
15 ceeding or action.

16 (5) RULE OF CONSTRUCTION.—For purposes of
17 bringing any civil action under paragraph (1) noth-
18 ing in this subtitle shall be construed to prevent an
19 attorney general of a State from exercising the pow-
20 ers conferred on the attorney general by the laws of
21 that State to—

22 (A) conduct investigations;

23 (B) administer oaths and affirmations; or

1 (C) compel the attendance of witnesses or
2 the production of documentary and other evi-
3 dence.

4 (6) VENUE; SERVICE OF PROCESS.—

5 (A) VENUE.—Any action brought under
6 this subsection may be brought in the district
7 court of the United States that meets applicable
8 requirements relating to venue under section
9 1391 of title 28, United States Code.

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

13 (i) is an inhabitant; or

14 (ii) may be found.

15 (d) NO PRIVATE CAUSE OF ACTION.—Nothing in
16 this subtitle establishes a private cause of action against
17 a business entity for violation of any provision of this sub-
18 title.

19 **SEC. 304. RELATION TO OTHER LAWS.**

20 (a) IN GENERAL.—No State may require any busi-
21 ness entity subject to this subtitle to comply with any re-
22 quirements with respect to administrative, technical, and
23 physical safeguards for the protection of sensitive person-
24 ally identifying information.

1 (b) LIMITATIONS.—Nothing in this subtitle shall be
2 construed to modify, limit, or supersede the operation of
3 the Gramm-Leach-Bliley Act or its implementing regula-
4 tions, including those adopted or enforced by States.

5 **Subtitle B—Security Breach**
6 **Notification**

7 **SEC. 311. NOTICE TO INDIVIDUALS.**

8 (a) IN GENERAL.—Any agency, or business entity en-
9 gaged in interstate commerce, that uses, accesses, trans-
10 mits, stores, disposes of or collects sensitive personally
11 identifiable information shall, following the discovery of a
12 security breach of such information, notify any resident
13 of the United States whose sensitive personally identifiable
14 information has been, or is reasonably believed to have
15 been, accessed, or acquired.

16 (b) OBLIGATION OF OWNER OR LICENSEE.—

17 (1) NOTICE TO OWNER OR LICENSEE.—Any
18 agency, or business entity engaged in interstate com-
19 merce, that uses, accesses, transmits, stores, dis-
20 poses of, or collects sensitive personally identifiable
21 information that the agency or business entity does
22 not own or license shall notify the owner or licensee
23 of the information following the discovery of a secu-
24 rity breach involving such information.

1 (2) NOTICE BY OWNER, LICENSEE OR OTHER
2 DESIGNATED THIRD PARTY.—Nothing in this sub-
3 title shall prevent or abrogate an agreement between
4 an agency or business entity required to give notice
5 under this section and a designated third party, in-
6 cluding an owner or licensee of the sensitive person-
7 ally identifiable information subject to the security
8 breach, to provide the notifications required under
9 subsection (a).

10 (3) BUSINESS ENTITY RELIEVED FROM GIVING
11 NOTICE.—A business entity obligated to give notice
12 under subsection (a) shall be relieved of such obliga-
13 tion if an owner or licensee of the sensitive person-
14 ally identifiable information subject to the security
15 breach, or other designated third party, provides
16 such notification.

17 (c) TIMELINESS OF NOTIFICATION.—

18 (1) IN GENERAL.—All notifications required
19 under this section shall be made without unreason-
20 able delay following the discovery by the agency or
21 business entity of a security breach.

22 (2) REASONABLE DELAY.—Reasonable delay
23 under this subsection may include any time nec-
24 essary to determine the scope of the security breach,
25 prevent further disclosures, conduct the risk assess-

1 ment described in section 302(a)(3), and restore the
2 reasonable integrity of the data system and provide
3 notice to law enforcement when required.

4 (3) BURDEN OF PRODUCTION.—The agency,
5 business entity, owner, or licensee required to pro-
6 vide notice under this subtitle shall, upon the re-
7 quest of the Attorney General, provide records or
8 other evidence of the notifications required under
9 this subtitle, including to the extent applicable, the
10 reasons for any delay of notification.

11 (d) DELAY OF NOTIFICATION AUTHORIZED FOR LAW
12 ENFORCEMENT PURPOSES.—

13 (1) IN GENERAL.—If a Federal law enforce-
14 ment or intelligence agency determines that the noti-
15 fication required under this section would impede a
16 criminal investigation, such notification shall be de-
17 layed upon written notice from such Federal law en-
18 forcement or intelligence agency to the agency or
19 business entity that experienced the breach.

20 (2) EXTENDED DELAY OF NOTIFICATION.—If
21 the notification required under subsection (a) is de-
22 layed pursuant to paragraph (1), an agency or busi-
23 ness entity shall give notice 30 days after the day
24 such law enforcement delay was invoked unless a
25 Federal law enforcement or intelligence agency pro-

1 vides written notification that further delay is nec-
2 essary.

3 ~~(3) LAW ENFORCEMENT IMMUNITY.—~~No cause
4 of action shall lie in any court against any law en-
5 forcement agency for acts relating to the delay of
6 notification for law enforcement purposes under this
7 subtitle.

8 **SEC. 312. EXEMPTIONS.**

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

11 ~~(1) IN GENERAL.—~~Section 311 shall not apply
12 to an agency or business entity if the agency or busi-
13 ness entity certifies, in writing, that notification of
14 the security breach as required by section 311 rea-
15 sonably could be expected to—

16 ~~(A) cause damage to the national security;~~

17 ~~or~~

18 ~~(B) hinder a law enforcement investigation~~
19 ~~or the ability of the agency to conduct law en-~~
20 ~~forcement investigations.~~

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

24 ~~(A) conceal violations of law, inefficiency,~~

25 ~~or administrative error;~~

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

3 ~~(C)~~ restrain competition.

4 ~~(3)~~ NOTICE.—In every case in which an agency
5 or business agency issues a certification under para-
6 graph ~~(1)~~, the certification, accompanied by a de-
7 scription of the factual basis for the certification,
8 shall be immediately provided to the United States
9 Secret Service and the Federal Bureau of Investiga-
10 tion.

11 ~~(4)~~ SECRET SERVICE AND FBI REVIEW OF CER-
12 TIFICATIONS.—

13 ~~(A)~~ IN GENERAL.—The United States Se-
14 cret Service or the Federal Bureau of Investiga-
15 tion may review a certification provided by an
16 agency under paragraph ~~(3)~~, and shall review a
17 certification provided by a business entity under
18 paragraph ~~(3)~~, to determine whether an exemp-
19 tion under paragraph ~~(1)~~ is merited. Such re-
20 view shall be completed not later than 10 busi-
21 ness days after the date of receipt of the certifi-
22 cation, except as provided in paragraph ~~(5)~~(C).

23 ~~(B)~~ NOTICE.—Upon completing a review
24 under subparagraph ~~(A)~~ the United States Se-
25 cret Service or the Federal Bureau of Investiga-

1 tion shall immediately notify the agency or
2 business entity, in writing, of its determination
3 of whether an exemption under paragraph (1)
4 is merited.

5 (C) EXEMPTION.—The exemption under
6 paragraph (1) shall not apply if the United
7 States Secret Service or the Federal Bureau of
8 Investigation determines under this paragraph
9 that the exemption is not merited.

10 (5) ADDITIONAL AUTHORITY OF THE SECRET
11 SERVICE AND FBI.—

12 (A) IN GENERAL.—In determining under
13 paragraph (4) whether an exemption under
14 paragraph (1) is merited, the United States Se-
15 cret Service or the Federal Bureau of Investiga-
16 tion may request additional information from
17 the agency or business entity regarding the
18 basis for the claimed exemption, if such addi-
19 tional information is necessary to determine
20 whether the exemption is merited.

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

1 (C) ~~TIMING.~~—If the United States Secret
2 Service or the Federal Bureau of Investigation
3 requests additional information under subpara-
4 graph (A), the United States Secret Service or
5 the Federal Bureau of Investigation shall notify
6 the agency or business entity not later than 10
7 business days after the date of receipt of the
8 additional information whether an exemption
9 under paragraph (1) is merited.

10 (b) ~~SAFE HARBOR.~~—An agency or business entity
11 will be exempt from the notice requirements under section
12 311, if—

13 (1) a risk assessment concludes that—

14 (A) there is no significant risk that a secu-
15 rity breach has resulted in, or will result in,
16 harm to the individuals whose sensitive person-
17 ally identifiable information was subject to the
18 security breach, with the encryption of such in-
19 formation establishing a presumption that no
20 significant risk exists; or

21 (B) there is no significant risk that a secu-
22 rity breach has resulted in, or will result in,
23 harm to the individuals whose sensitive person-
24 ally identifiable information was subject to the
25 security breach, with the rendering of such sen-

1 sensitive personally identifiable information indeci-
2 pherable through the use of best practices or
3 methods, such as redaction, access controls, or
4 other such mechanisms, which are widely ac-
5 cepted as an effective industry practice, or an
6 effective industry standard, establishing a pre-
7 sumption that no significant risk exists;

8 (2) without unreasonable delay, but not later
9 than 45 days after the discovery of a security
10 breach, unless extended by the United States Secret
11 Service or the Federal Bureau of Investigation, the
12 agency or business entity notifies the United States
13 Secret Service and the Federal Bureau of Investiga-
14 tion, in writing, of—

15 (A) the results of the risk assessment; and

16 (B) its decision to invoke the risk assess-
17 ment exemption; and

18 (3) the United States Secret Service or the
19 Federal Bureau of Investigation does not indicate, in
20 writing, within 10 business days from receipt of the
21 decision, that notice should be given.

22 (c) FINANCIAL FRAUD PREVENTION EXEMPTION.—

23 (1) IN GENERAL.—A business entity will be ex-
24 empt from the notice requirement under section 311

1 if the business entity utilizes or participates in a se-
2 curity program that—

3 (A) is designed to block the use of the sen-
4 sitive personally identifiable information to ini-
5 tiate unauthorized financial transactions before
6 they are charged to the account of the indi-
7 vidual; and

8 (B) provides for notice to affected individ-
9 uals after a security breach that has resulted in
10 fraud or unauthorized transactions.

11 (2) LIMITATION.—The exemption by this sub-
12 section does not apply if—

13 (A) the information subject to the security
14 breach includes sensitive personally identifiable
15 information, other than a credit card or credit
16 card security code, of any type of the sensitive
17 personally identifiable information identified in
18 section 3; or

19 (B) the security breach includes both the
20 individual's credit card number and the individ-
21 ual's first and last name.

22 **SEC. 313. METHODS OF NOTICE.**

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

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

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

6 (B) Telephone notice to the individual per-
7 sonally.

8 (C) E-mail notice, if the individual has
9 consented to receive such notice and the notice
10 is consistent with the provisions permitting elec-
11 tronic transmission of notices under section 101
12 of the Electronic Signatures in Global and Na-
13 tional Commerce Act (15 U.S.C. 7001).

14 (2) **MEDIA NOTICE.**—Notice to major media
15 outlets serving a State or jurisdiction, if the number
16 of residents of such State whose sensitive personally
17 identifiable information was, or is reasonably be-
18 lieved to have been, accessed or acquired by an un-
19 authorized person exceeds 5,000.

20 **SEC. 314. CONTENT OF NOTIFICATION.**

21 (a) **IN GENERAL.**—Regardless of the method by
22 which notice is provided to individuals under section 313,
23 such notice shall include, to the extent possible—

24 (1) a description of the categories of sensitive
25 personally identifiable information that was, or is

1 reasonably believed to have been, accessed or ac-
 2 quired by an unauthorized person;

3 ~~(2) a toll-free number—~~

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

7 ~~(B) from which the individual may learn~~
 8 ~~what types of sensitive personally identifiable~~
 9 ~~information the agency or business entity main-~~
 10 ~~tained about that individual; and~~

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

13 ~~(b) ADDITIONAL CONTENT.—Notwithstanding sec-~~
 14 ~~tion 319, a State may require that a notice under sub-~~
 15 ~~section (a) shall also include information regarding victim~~
 16 ~~protection assistance provided for by that State.~~

17 **SEC. 315. COORDINATION OF NOTIFICATION WITH CREDIT**
 18 **REPORTING AGENCIES.**

19 If an agency or business entity is required to provide
 20 notification to more than 5,000 individuals under section
 21 311(a), the agency or business entity shall also notify all
 22 consumer reporting agencies that compile and maintain
 23 files on consumers on a nationwide basis (as defined in
 24 section 603(p) of the Fair Credit Reporting Act (15
 25 U.S.C. 1681a(p)) of the timing and distribution of the no-

1 tices. Such notice shall be given to the consumer credit
2 reporting agencies without unreasonable delay and, if it
3 will not delay notice to the affected individuals, prior to
4 the distribution of notices to the affected individuals.

5 **SEC. 316. NOTICE TO LAW ENFORCEMENT.**

6 (a) SECRET SERVICE AND FBI.—Any business entity
7 or agency shall notify the United States Secret Service
8 and the Federal Bureau of Investigation of the fact that
9 a security breach has occurred if—

10 (1) the number of individuals whose sensitive
11 personally identifying information was, or is reason-
12 ably believed to have been accessed or acquired by
13 an unauthorized person exceeds 10,000;

14 (2) the security breach involves a database,
15 networked or integrated databases, or other data
16 system containing the sensitive personally identifi-
17 able information of more than 1,000,000 individuals
18 nationwide;

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

21 (4) the security breach involves primarily sen-
22 sitive personally identifiable information of individ-
23 uals known to the agency or business entity to be
24 employees and contractors of the Federal Govern-

1 ment involved in national security or law enforce-
2 ment.

3 (b) ~~FTC REVIEW OF THRESHOLDS.~~—The Federal
4 Trade Commission may review and adjust the thresholds
5 for notice to law enforcement under subsection (a), after
6 notice and the opportunity for public comment, in a man-
7 ner consistent with this section.

8 (c) ~~ADVANCE NOTICE TO LAW ENFORCEMENT.~~—Not
9 later than 48 hours before notifying an individual of a se-
10 curity breach under section 311, a business entity or agen-
11 cy that is required to provide notice under this section
12 shall notify the United States Secret Service and the Fed-
13 eral Bureau of Investigation of the fact that the business
14 entity or agency intends to provide the notice.

15 (d) ~~NOTICE TO OTHER LAW ENFORCEMENT AGEN-~~
16 ~~CIES.~~—The United States Secret Service and the Federal
17 Bureau of Investigation shall be responsible for noti-
18 fying—

19 (1) the United States Postal Inspection Service,
20 if the security breach involves mail fraud;

21 (2) the attorney general of each State affected
22 by the security breach; and

23 (3) the Federal Trade Commission, if the secu-
24 rity breach involves consumer reporting agencies

1 subject to the Fair Credit Reporting Act (15 U.S.C.
2 1681 et seq.); or anticompetitive conduct.

3 (e) **TIMING OF NOTICES.**—The notices required
4 under this section shall be delivered as follows:

5 (1) Notice under subsection (a) shall be deliv-
6 ered as promptly as possible, but not later than 14
7 days after discovery of the events requiring notice.

8 (2) Notice under subsection (d) shall be deliv-
9 ered not later than 14 days after the Service receives
10 notice of a security breach from an agency or busi-
11 ness entity.

12 **SEC. 317. ENFORCEMENT.**

13 (a) **CIVIL ACTIONS BY THE ATTORNEY GENERAL.**—
14 The Attorney General may bring a civil action in the ap-
15 propriate United States district court against any business
16 entity that engages in conduct constituting a violation of
17 this subtitle and, upon proof of such conduct by a prepon-
18 derance of the evidence, such business entity shall be sub-
19 ject to a civil penalty of not more than \$1,000 per day
20 per individual whose sensitive personally identifiable infor-
21 mation was, or is reasonably believed to have been,
22 accessed or acquired by an unauthorized person, up to a
23 maximum of \$1,000,000 per violation, unless such conduct
24 is found to be willful or intentional. In determining the
25 amount of a civil penalty under this subsection, the court

1 shall take into account the degree of culpability of the
 2 business entity, any prior violations of this subtitle by the
 3 business entity, the ability of the business entity to pay,
 4 the effect on the ability of the business entity to continue
 5 to do business, and such other matters as justice may re-
 6 quire.

7 (b) INJUNCTIVE ACTIONS BY THE ATTORNEY GEN-
 8 ERAL.—

9 (1) IN GENERAL.—If it appears that a business
 10 entity has engaged, or is engaged, in any act or
 11 practice constituting a violation of this subtitle, the
 12 Attorney General may petition an appropriate dis-
 13 trict court of the United States for an order—

14 (A) enjoining such act or practice; or

15 (B) enforcing compliance with this subtitle.

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

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

24 (d) FRAUD ALERT.—Section 605A(b)(1) of the Fair
 25 Credit Reporting Act (15 U.S.C. 1681e-1(b)(1)) is

1 amended by inserting “, or evidence that the consumer
 2 has received notice that the consumer’s financial informa-
 3 tion has or may have been compromised,” after “identity
 4 theft report”.

5 **SEC. 318. ENFORCEMENT BY STATE ATTORNEYS GENERAL.**

6 (a) IN GENERAL.—

7 (1) CIVIL ACTIONS.—In any case in which the
 8 attorney general of a State or any State or local law
 9 enforcement agency authorized by the State attorney
 10 general or by State statute to prosecute violations of
 11 consumer protection law, has reason to believe that
 12 an interest of the residents of that State has been
 13 or is threatened or adversely affected by the engage-
 14 ment of a business entity in a practice that is pro-
 15 hibited under this subtitle, the State or the State or
 16 local law enforcement agency on behalf of the resi-
 17 dents of the agency’s jurisdiction, may bring a civil
 18 action on behalf of the residents of the State or ju-
 19 risdiction in a district court of the United States of
 20 appropriate jurisdiction or any other court of com-
 21 petent jurisdiction, including a State court, to—

22 (A) enjoin that practice;

23 (B) enforce compliance with this subtitle;

24 or

1 (C) civil penalties of not more than \$1,000
2 per day per individual whose sensitive person-
3 ally identifiable information was, or is reason-
4 ably believed to have been, accessed or acquired
5 by an unauthorized person, up to a maximum
6 of \$1,000,000 per violation, unless such con-
7 duct is found to be willful or intentional.

8 (2) NOTICE.—

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

13 (i) written notice of the action; and

14 (ii) a copy of the complaint for the ac-
15 tion.

16 (B) EXEMPTION.—

17 (i) IN GENERAL.—Subparagraph (A)
18 shall not apply with respect to the filing of
19 an action by an attorney general of a State
20 under this subtitle, if the State attorney
21 general determines that it is not feasible to
22 provide the notice described in such sub-
23 paragraph before the filing of the action.

24 (ii) NOTIFICATION.—In an action de-
25 scribed in clause (i), the attorney general

1 of a State shall provide notice and a copy
2 of the complaint to the Attorney General
3 at the time the State attorney general files
4 the action.

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

8 (1) move to stay the action, pending the final
9 disposition of a pending Federal proceeding or ac-
10 tion;

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

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

17 (4) file petitions for appeal.

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

1 (d) CONSTRUCTION.—For purposes of bringing any
2 civil action under subsection (a), nothing in this subtitle
3 regarding notification shall be construed to prevent an at-
4 torney general of a State from exercising the powers con-
5 ferred on such attorney general by the laws of that State
6 to—

- 7 (1) conduct investigations;
- 8 (2) administer oaths or affirmations; or
- 9 (3) compel the attendance of witnesses or the
10 production of documentary and other evidence.

11 (e) VENUE; SERVICE OF PROCESS.—

12 (1) VENUE.—Any action brought under sub-
13 section (a) may be brought in—

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

18 (B) another court of competent jurisdic-
19 tion.

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

23 (A) is an inhabitant; or

24 (B) may be found.

1 (f) NO PRIVATE CAUSE OF ACTION.—Nothing in this
2 subtitle establishes a private cause of action against a
3 business entity for violation of any provision of this sub-
4 title.

5 **SEC. 319. EFFECT ON FEDERAL AND STATE LAW.**

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

11 **SEC. 320. AUTHORIZATION OF APPROPRIATIONS.**

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

17 **SEC. 321. REPORTING ON RISK ASSESSMENT EXEMPTIONS.**

18 The United States Secret Service and the Federal
19 Bureau of Investigation shall report to Congress not later
20 than 18 months after the date of enactment of this Act,
21 and upon the request by Congress thereafter, on—

22 (1) the number and nature of the security
23 breaches described in the notices filed by those busi-
24 ness entities invoking the risk assessment exemption
25 under section 312(b) and the response of the United

1 States Secret Service and the Federal Bureau of In-
2 vestigation to such notices; and

3 ~~(2) the number and nature of security breaches~~
4 ~~subject to the national security and law enforcement~~
5 ~~exemptions under section 312(a), provided that such~~
6 ~~report may not disclose the contents of any risk as-~~
7 ~~essment provided to the United States Secret Serv-~~
8 ~~ice and the Federal Bureau of Investigation pursu-~~
9 ~~ant to this subtitle.~~

10 **SEC. 322. EFFECTIVE DATE.**

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

14 **TITLE IV—GOVERNMENT AC-**
15 **CESS TO AND USE OF COM-**
16 **MERCIAL DATA**

17 **SEC. 401. GENERAL SERVICES ADMINISTRATION REVIEW**
18 **OF CONTRACTS.**

19 (a) **IN GENERAL.**—In considering contract awards
20 totaling more than \$500,000 and entered into after the
21 date of enactment of this Act with data brokers, the Ad-
22 ministrator of the General Services Administration shall
23 evaluate—

24 (1) the data privacy and security program of a
25 data broker to ensure the privacy and security of

1 data containing personally identifiable information;
2 including whether such program adequately address-
3 es privacy and security threats created by malicious
4 software or code, or the use of peer-to-peer file shar-
5 ing software;

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

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

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

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

23 (c) PENALTIES.—In awarding contracts with data
24 brokers for products or services related to access, use,
25 compilation, distribution, processing, analyzing, or evalu-

1 ating personally identifiable information, the Adminis-
2 trator of the General Services Administration shall—

3 (1) include monetary or other penalties—

4 (A) for failure to comply with subtitles A
5 and B of title III; or

6 (B) if a contractor knows or has reason to
7 know that the personally identifiable informa-
8 tion being provided is inaccurate, and provides
9 such inaccurate information; and

10 (2) require a data broker that engages service
11 providers not subject to subtitle A of title III for re-
12 sponsibilities related to sensitive personally identifi-
13 able information to—

14 (A) exercise appropriate due diligence in
15 selecting those service providers for responsibil-
16 ities related to personally identifiable informa-
17 tion;

18 (B) take reasonable steps to select and re-
19 tain service providers that are capable of main-
20 taining appropriate safeguards for the security,
21 privacy, and integrity of the personally identifi-
22 able information at issue; and

23 (C) require such service providers, by con-
24 tract, to implement and maintain appropriate

1 measures designed to meet the objectives and
2 requirements in title III.

3 (d) **LIMITATION.**—The penalties under subsection (c)
4 shall not apply to a data broker providing information that
5 is accurately and completely recorded from a public record
6 source or licensor.

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

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

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

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

16 (3) by adding at the end the following:

17 “(9) procedures for evaluating and auditing the
18 information security practices of contractors or third
19 party business entities supporting the information
20 systems or operations of the agency involving per-
21 sonally identifiable information (as that term is de-
22 fined in section 3 of the Personal Data Privacy and
23 Security Act of 2011) and ensuring remedial action
24 to address any significant deficiencies.”.

1 **SEC. 403. PRIVACY IMPACT ASSESSMENT OF GOVERNMENT**
 2 **USE OF COMMERCIAL INFORMATION SERV-**
 3 **ICES CONTAINING PERSONALLY IDENTIFI-**
 4 **ABLE INFORMATION.**

5 (a) **IN GENERAL.**—Section 208(b)(1) of the ~~E-Gov-~~
 6 ~~ernment Act of 2002 (44 U.S.C. 3501 note)~~ is amended—

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

9 (2) in subparagraph (A)(ii), by striking the pe-
 10 riod and inserting “; or”; and

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

12 “(iii) purchasing or subscribing for a
 13 fee to personally identifiable information
 14 from a data broker (as such terms are de-
 15 fined in section 3 of the Personal Data
 16 Privacy and Security Act of 2011).”.

17 (b) **LIMITATION.**—Notwithstanding any other provi-
 18 sion of law, commencing 1 year after the date of enact-
 19 ment of this Act, no Federal agency may enter into a con-
 20 tract with a data broker to access for a fee any database
 21 consisting primarily of personally identifiable information
 22 concerning United States persons (other than news report-
 23 ing or telephone directories) unless the head of such de-
 24 partment or agency—

25 (1) completes a privacy impact assessment
 26 under section 208 of the ~~E-Government Act of 2002~~

1 (44 U.S.C. 3501 note), which shall subject to the
2 provision in that Act pertaining to sensitive informa-
3 tion, include a description of—

4 (A) such database;

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

7 (C) the amount of the contract for use;

8 (2) adopts regulations that specify—

9 (A) the personnel permitted to access, ana-
10 lyze, or otherwise use such databases;

11 (B) standards governing the access, anal-
12 ysis, or use of such databases;

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

18 (D) standards limiting the retention and
19 redisclosure of personally identifiable informa-
20 tion obtained from such databases;

21 (E) procedures ensuring that such data
22 meet standards of accuracy, relevance, com-
23 pleteness, and timeliness;

1 (F) the auditing and security measures to
2 protect against unauthorized access, analysis,
3 use, or modification of data in such databases;

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

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

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

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

18 (A) providing for penalties—

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

21 (ii) if the entity knows or has reason
22 to know that the personally identifiable in-
23 formation being provided to the Federal
24 department or agency is inaccurate, and
25 provides such inaccurate information; and

1 ~~(B)~~ requiring a data broker that engages
 2 service providers not subject to subtitle A of
 3 title III for responsibilities related to sensitive
 4 personally identifiable information to—

5 (i) exercise appropriate due diligence
 6 in selecting those service providers for re-
 7 sponsibilities related to personally identifi-
 8 able information;

9 (ii) take reasonable steps to select and
 10 retain service providers that are capable of
 11 maintaining appropriate safeguards for the
 12 security, privacy, and integrity of the per-
 13 sonally identifiable information at issue;
 14 and

15 (iii) require such service providers, by
 16 contract, to implement and maintain ap-
 17 propriate measures designed to meet the
 18 objectives and requirements in title III.

19 ~~(c)~~ LIMITATION ON PENALTIES.—The penalties
 20 under subsection ~~(b)(3)(A)~~ shall not apply to a data
 21 broker providing information that is accurately and com-
 22 pletely recorded from a public record source.

23 ~~(d)~~ STUDY OF GOVERNMENT USE.—

24 (1) SCOPE OF STUDY.—Not later than 180
 25 days after the date of enactment of this Act, the

1 Comptroller General of the United States shall con-
 2 duct a study and audit and prepare a report on Fed-
 3 eral agency actions to address the recommendations
 4 in the Government Accountability Office’s April
 5 2006 report on agency adherence to key privacy
 6 principles in using data brokers or commercial data-
 7 bases containing personally identifiable information.

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

10 **TITLE V—COMPLIANCE WITH**
 11 **STATUTORY PAY-AS-YOU-GO ACT**

12 **SEC. 501. BUDGET COMPLIANCE.**

13 The budgetary effects of this Act, for the purpose of
 14 complying with the Statutory Pay-As-You-Go Act of 2010,
 15 shall be determined by reference to the latest statement
 16 titled “Budgetary Effects of PAYGO Legislation” for this
 17 Act, submitted for printing in the Congressional Record
 18 by the Chairman of the Senate Budget Committee, pro-
 19 vided that such statement has been submitted prior to the
 20 vote on passage.

21 **SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

22 (a) *SHORT TITLE.*—This Act may be cited as the “Per-
 23 sonal Data Privacy and Security Act of 2011”.

24 (b) *TABLE OF CONTENTS.*—The table of contents of this
 25 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. Penalties for fraud and related activity in connection with computers.
Sec. 104. Trafficking in passwords.
Sec. 105. Conspiracy and attempted computer fraud offenses.
Sec. 106. Criminal and civil forfeiture for fraud and related activity in connection with computers.
Sec. 107. Limitation on civil actions involving unauthorized use.
Sec. 108. Reporting of certain criminal cases.
Sec. 109. Damage to critical infrastructure computers.
Sec. 110. Limitation on actions involving unauthorized use.

**TITLE II—PRIVACY AND SECURITY OF PERSONALLY IDENTIFIABLE
 INFORMATION**

Subtitle A—A Data Privacy and Security Program

- Sec. 201. Purpose and applicability of data privacy and security program.*
Sec. 202. Requirements for a personal data privacy and security program.
Sec. 203. Enforcement.
Sec. 204. Relation to other laws.

Subtitle B—Security Breach Notification

- Sec. 211. Notice to individuals.*
Sec. 212. Exemptions.
Sec. 213. Methods of notice.
Sec. 214. Content of notification.
Sec. 215. Coordination of notification with credit reporting agencies.
Sec. 216. Notice to law enforcement.
Sec. 217. Enforcement.
Sec. 218. Enforcement by State attorneys general.
Sec. 219. Effect on Federal and State law.
Sec. 220. Reporting on exemptions.
Sec. 221. Effective date.

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

- Sec. 301. Budget compliance.*

1 SEC. 2. FINDINGS.

2 Congress finds that—

- 3 (1) databases of personally identifiable informa-
 4 tion are increasingly prime targets of hackers, iden-

1 *tity thieves, rogue employees, and other criminals, in-*
2 *cluding organized and sophisticated criminal oper-*
3 *ations;*

4 (2) *identity theft is a serious threat to the Na-*
5 *tion's economic stability, national security, homeland*
6 *security, cybersecurity, the development of e-com-*
7 *merce, and the privacy rights of Americans;*

8 (3) *security breaches are a serious threat to con-*
9 *sumer confidence, homeland security, national secu-*
10 *rity, e-commerce, and economic stability;*

11 (4) *it is important for business entities that own,*
12 *use, or license personally identifiable information to*
13 *adopt reasonable procedures to ensure the security,*
14 *privacy, and confidentiality of that personally identi-*
15 *fiable information;*

16 (5) *individuals whose personal information has*
17 *been compromised or who have been victims of iden-*
18 *tity theft should receive the necessary information and*
19 *assistance to mitigate their damages and to restore*
20 *the integrity of their personal information and identi-*
21 *ties;*

22 (6) *data misuse and use of inaccurate data have*
23 *the potential to cause serious or irreparable harm to*
24 *an individual's livelihood, privacy, and liberty and*

1 *undermine efficient and effective business and govern-*
2 *ment operations;*

3 *(7) government access to commercial data can*
4 *potentially improve safety, law enforcement, and na-*
5 *tional security; and*

6 *(8) because government use of commercial data*
7 *containing personal information potentially affects*
8 *individual privacy, and law enforcement and na-*
9 *tional security operations, there is a need for Con-*
10 *gress to exercise oversight over government use of com-*
11 *mercial data.*

12 **SEC. 3. DEFINITIONS.**

13 *In this Act, the following definitions shall apply:*

14 *(1) AFFILIATE.—The term “affiliate” means per-*
15 *sons related by common ownership or by corporate*
16 *control.*

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

20 *(3) BUSINESS ENTITY.—The term “business enti-*
21 *ty” means any organization, corporation, trust, part-*
22 *nership, sole proprietorship, unincorporated associa-*
23 *tion, or venture established to make a profit, or non-*
24 *profit.*

1 (4) *DATA SYSTEM COMMUNICATION INFORMA-*
2 *TION.*—*The term “data system communication infor-*
3 *mation” means dialing, routing, addressing, or sig-*
4 *nalng information that identifies the origin, direc-*
5 *tion, destination, processing, transmission, or termi-*
6 *nation of each communication initiated, attempted,*
7 *or received.*

8 (5) *DESIGNATED ENTITY.*—*The term “designated*
9 *entity” means the Federal Government entity des-*
10 *ignated by the Secretary of Homeland Security under*
11 *section 216(a).*

12 (6) *ENCRYPTION.*—*The term “encryption”—*
13 (A) *means the protection of data in elec-*
14 *tronic form, in storage or in transit, using an*
15 *encryption technology that has been generally ac-*
16 *cepted by experts in the field of information se-*
17 *curity that renders such data indecipherable in*
18 *the absence of associated cryptographic keys nec-*
19 *essary to enable decryption of such data; and*

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

23 (7) *IDENTITY THEFT.*—*The term “identity theft”*
24 *means a violation of section 1028(a)(7) of title 18,*
25 *United States Code.*

1 (8) *PERSONALLY IDENTIFIABLE INFORMATION.*—
2 *The term “personally identifiable information” means*
3 *any information, or compilation of information, in*
4 *electronic or digital form that is a means of identi-*
5 *fication, as defined by section 1028(d)(7) of title 18,*
6 *United State Code.*

7 (9) *PUBLIC RECORD SOURCE.*—*The term “public*
8 *record source” means the Congress, any agency, any*
9 *State or local government agency, the government of*
10 *the District of Columbia and governments of the terri-*
11 *ories or possessions of the United States, and Fed-*
12 *eral, State or local courts, courts martial and mili-*
13 *tary commissions, that maintain personally identifi-*
14 *able information in records available to the public.*

15 (10) *SECURITY BREACH.*—

16 (A) *IN GENERAL.*—*The term “security*
17 *breach” means compromise of the security, con-*
18 *fidentiality, or integrity of, or the loss of, com-*
19 *puterized data that result in, or that there is a*
20 *reasonable basis to conclude has resulted in—*

21 (i) *the unauthorized acquisition of sen-*
22 *sitive personally identifiable information;*
23 *and*

24 (ii) *access to sensitive personally iden-*
25 *tifiable information that is for an unau-*

1 *thorized purpose, or in excess of authoriza-*
2 *tion.*

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

5 (i) *a good faith acquisition of sensitive*
6 *personally identifiable information by a*
7 *business entity or agency, or an employee or*
8 *agent of a business entity or agency, if the*
9 *sensitive personally identifiable information*
10 *is not subject to further unauthorized disclo-*
11 *sure;*

12 (ii) *the release of a public record not*
13 *otherwise subject to confidentiality or non-*
14 *disclosure requirements or the release of in-*
15 *formation obtained from a public record,*
16 *including information obtained from a news*
17 *report or periodical; or*

18 (iii) *any lawfully authorized investiga-*
19 *tive, protective, or intelligence activity of a*
20 *law enforcement or intelligence agency of*
21 *the United States, a State, or a political*
22 *subdivision of a State.*

23 (11) *SENSITIVE PERSONALLY IDENTIFIABLE IN-*
24 *FORMATION.—The term “sensitive personally identifi-*
25 *able information” means any information or com-*

1 *pilation of information, in electronic or digital form*
2 *that includes the following:*

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

6 *(i) Home address or telephone number.*

7 *(ii) Mother's maiden name.*

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

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

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

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

20 *(E) Any combination of the following data*
21 *elements:*

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

24 *(ii) A unique account identifier, in-*
25 *cluding a financial account number or cred-*

1 *it or debit card number, electronic identi-*
2 *fication number, user name, or routing*
3 *code.*

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

7 (12) *SERVICE PROVIDER.—The term “service*
8 *provider” means a business entity that provides elec-*
9 *tronic data transmission, routing, intermediate and*
10 *transient storage, or connections to its system or net-*
11 *work, where the business entity providing such serv-*
12 *ices does not select or modify the content of the elec-*
13 *tronic data, is not the sender or the intended recipi-*
14 *ent of the data, and the business entity transmits,*
15 *routes, stores, or provides connections for personal in-*
16 *formation in a manner that personal information is*
17 *undifferentiated from other types of data that such*
18 *business entity transmits, routes, stores, or provides*
19 *connections. Any such business entity shall be treated*
20 *as a service provider under this Act only to the extent*
21 *that it is engaged in the provision of such trans-*
22 *mission, routing, intermediate and transient storage*
23 *or connections.*

1 **TITLE I—ENHANCING PUNISH-**
 2 **MENT FOR IDENTITY THEFT**
 3 **AND OTHER VIOLATIONS OF**
 4 **DATA PRIVACY AND SECURITY**

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

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

12 **SEC. 102. CONCEALMENT OF SECURITY BREACHES INVOLV-**
 13 **ING SENSITIVE PERSONALLY IDENTIFIABLE**
 14 **INFORMATION.**

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

17 **“§1041. Concealment of security breaches involving**
 18 **sensitive personally identifiable informa-**
 19 **tion**

20 *“(a) IN GENERAL.—Whoever, having knowledge of a*
 21 *security breach and of the fact that notice of such security*
 22 *breach is required under title II of the Personal Data Pri-*
 23 *vacy and Security Act of 2011, intentionally and willfully*
 24 *conceals the fact of such security breach, shall, in the event*
 25 *that such security breach results in economic harm to any*

1 *individual in the amount of \$1,000 or more, be fined under*
2 *this title or imprisoned for not more than 5 years, or both.*

3 “(b) *PERSON DEFINED.*—*For purposes of subsection*
4 *(a), the term ‘person’ has the same meaning as in section*
5 *1030(e)(12) of title 18, United States Code.*

6 “(c) *NOTICE REQUIREMENT.*—*Any person seeking an*
7 *exemption under section 212(b) of the Personal Data Pri-*
8 *vacy and Security Act of 2011 shall be immune from pros-*
9 *ecution under this section if the Federal Trade Commission*
10 *does not indicate, in writing, that such notice be given*
11 *under section 212(b)(3) of such Act.”.*

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

“1041. Concealment of security breaches involving sensitive personally identifiable information.”.

15 (c) *ENFORCEMENT AUTHORITY.*—

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

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

1 **SEC. 103. PENALTIES FOR FRAUD AND RELATED ACTIVITY**
2 **IN CONNECTION WITH COMPUTERS.**

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

5 “(c) *The punishment for an offense under subsection*
6 *(a) or (b) of this section is—*

7 “(1) *a fine under this title or imprisonment for*
8 *not more than 20 years, or both, in the case of an of-*
9 *fense under subsection (a)(1) of this section;*

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

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

17 “(i) *the offense was committed for purposes*
18 *of commercial advantage or private financial*
19 *gain;*

20 “(ii) *the offense was committed in the fur-*
21 *therance of any criminal or tortious act in viola-*
22 *tion of the Constitution or laws of the United*
23 *States, or of any State; or*

24 “(iii) *the value of the information obtained,*
25 *or that would have been obtained if the offense*
26 *was completed, exceeds \$5,000;*

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

4 “(4) a fine under this title or imprisonment of
5 not more than 20 years, or both, in the case of an of-
6 fense under subsection (a)(4) of this section;

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

12 “(i) loss to 1 or more persons during any
13 1-year period (and, for purposes of an investiga-
14 tion, prosecution, or other proceeding brought by
15 the United States only, loss resulting from a re-
16 lated course of conduct affecting 1 or more other
17 protected computers) aggregating at least \$5,000
18 in value;

19 “(ii) the modification or impairment, or
20 potential modification or impairment, of the
21 medical examination, diagnosis, treatment, or
22 care of 1 or more individuals;

23 “(iii) physical injury to any person;

24 “(iv) a threat to public health or safety;

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

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

8 “(B) a fine under this title, imprisonment for
9 not more than 10 years, or both, in the case of an of-
10 fense under subsection (a)(5)(B), if the offense caused
11 a harm provided in clause (i) through (vi) of sub-
12 paragraph (A) of this subsection;

13 “(C) if the offender attempts to cause or know-
14 ingly or recklessly causes death from conduct in viola-
15 tion of subsection (a)(5)(A), a fine under this title,
16 imprisonment for any term of years or for life, or
17 both; or

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

21 “(6) a fine under this title or imprisonment for
22 not more than 10 years, or both, in the case of an of-
23 fense under subsection (a)(6) of this section; or

1 “(7) a fine under this title or imprisonment for
2 not more than 10 years, or both, in the case of an of-
3 fense under subsection (a)(7) of this section.”.

4 **SEC. 104. TRAFFICKING IN PASSWORDS.**

5 Section 1030(a) of title 18, United States Code, is
6 amended by striking paragraph (6) and inserting the fol-
7 lowing:

8 “(6) knowingly and with intent to defraud traf-
9 fics (as defined in section 1029) in—

10 “(A) any password or similar information
11 through which a protected computer as defined
12 in subparagraphs (A) and (B) of subsection
13 (e)(2) may be accessed without authorization; or

14 “(B) any means of access through which a
15 protected computer as defined in subsection
16 (e)(2)(A) may be accessed without authoriza-
17 tion.”.

18 **SEC. 105. CONSPIRACY AND ATTEMPTED COMPUTER FRAUD**

19 **OFFENSES.**

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

1 **SEC. 106. CRIMINAL AND CIVIL FORFEITURE FOR FRAUD**
2 **AND RELATED ACTIVITY IN CONNECTION**
3 **WITH COMPUTERS.**

4 *Section 1030 of title 18, United States Code, is amend-*
5 *ed by striking subsections (i) and (j) and inserting the fol-*
6 *lowing:*

7 “(i) *CRIMINAL FORFEITURE.*—

8 “(1) *The court, in imposing sentence on any per-*
9 *son convicted of a violation of this section, or con-*
10 *victed of conspiracy to violate this section, shall order,*
11 *in addition to any other sentence imposed and irre-*
12 *spective of any provision of State law, that such per-*
13 *son forfeit to the United States—*

14 “(A) *such person’s interest in any property,*
15 *real or personal, that was used, or intended to*
16 *be used, to commit or facilitate the commission*
17 *of such violation; and*

18 “(B) *any property, real or personal, consti-*
19 *tuting or derived from any gross proceeds, or*
20 *any property traceable to such property, that*
21 *such person obtained, directly or indirectly, as a*
22 *result of such violation.*

23 “(2) *The criminal forfeiture of property under*
24 *this subsection, including any seizure and disposition*
25 *of the property, and any related judicial or adminis-*
26 *trative proceeding, shall be governed by the provisions*

1 *of section 413 of the Comprehensive Drug Abuse Pre-*
2 *vention and Control Act of 1970 (21 U.S.C. 853), ex-*
3 *cept subsection (d) of that section.*

4 *“(j) CIVIL FORFEITURE.—*

5 *“(1) The following shall be subject to forfeiture to*
6 *the United States and no property right, real or per-*
7 *sonal, shall exist in them:*

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

12 *“(B) Any property, real or personal, consti-*
13 *tuting or derived from any gross proceeds ob-*
14 *tained directly or indirectly, or any property*
15 *traceable to such property, as a result of the com-*
16 *mission of any violation of this section, or a con-*
17 *spiracy to violate this section.*

18 *“(2) Seizures and forfeitures under this sub-*
19 *section shall be governed by the provisions in chapter*
20 *46 of title 18, United States Code, relating to civil*
21 *forfeitures, except that such duties as are imposed on*
22 *the Secretary of the Treasury under the customs laws*
23 *described in section 981(d) of title 18, United States*
24 *Code, shall be performed by such officers, agents and*
25 *other persons as may be designated for that purpose*

1 “(A) exceeded authorized access to a non-
2 governmental computer; or

3 “(B) accessed a non-governmental computer
4 without authorization; and

5 “(2) the sole basis for the Government deter-
6 mining that access to the non-governmental computer
7 was unauthorized, or in excess of authorization was
8 that the defendant violated a contractual obligation or
9 agreement with a service provider or employer, such
10 as an acceptable use policy or terms of service agree-
11 ment.”.

12 **SEC. 109. DAMAGE TO CRITICAL INFRASTRUCTURE COM-**
13 **PUTERS.**

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

17 **“§ 1030A. Aggravated damage to a critical infrastruc-**
18 **ture computer**

19 “(a) *DEFINITIONS.*—In this section—

20 “(1) the terms ‘computer’ and ‘damage’ have the
21 meanings given such terms in section 1030; and

22 “(2) the term ‘critical infrastructure computer’
23 means a computer that manages or controls systems
24 or assets vital to national defense, national security,
25 national economic security, public health or safety, or

1 *any combination of those matters, whether publicly or*
2 *privately owned or operated, including—*

3 “(A) *gas and oil production, storage, and*
4 *delivery systems;*

5 “(B) *water supply systems;*

6 “(C) *telecommunication networks;*

7 “(D) *electrical power delivery systems;*

8 “(E) *finance and banking systems;*

9 “(F) *emergency services;*

10 “(G) *transportation systems and services;*

11 *and*

12 “(H) *government operations that provide*
13 *essential services to the public*

14 “(b) *OFFENSE.—It shall be unlawful to, during and*
15 *in relation to a felony violation of section 1030, inten-*
16 *tionally cause or attempt to cause damage to a critical in-*
17 *frastructure computer, and such damage results in (or, in*
18 *the case of an attempt, would, if completed have resulted*
19 *in) the substantial impairment—*

20 “(1) *of the operation of the critical infrastruc-*
21 *ture computer; or*

22 “(2) *of the critical infrastructure associated with*
23 *the computer.*

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

4 “(d) *CONSECUTIVE SENTENCE.*—Notwithstanding any
5 other provision of law—

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

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

15 “(3) in determining any term of imprisonment
16 to be imposed for a felony violation of section 1030,
17 a court shall not in any way reduce the term to be
18 imposed for such crime so as to compensate for, or
19 otherwise take into account, any separate term of im-
20 prisonment imposed or to be imposed for a violation
21 of this section; and

22 “(4) a term of imprisonment imposed on a per-
23 son for a violation of this section may, in the discre-
24 tion of the court, run concurrently, in whole or in
25 part, only with another term of imprisonment that is

1 **TITLE II—PRIVACY AND SECUR-**
2 **ITY OF PERSONALLY IDENTIFI-**
3 **FIABLE INFORMATION**

4 **Subtitle A—A Data Privacy and**
5 **Security Program**

6 **SEC. 201. PURPOSE AND APPLICABILITY OF DATA PRIVACY**
7 **AND SECURITY PROGRAM.**

8 (a) *PURPOSE.*—The purpose of this subtitle is to en-
9 sure standards for developing and implementing adminis-
10 trative, technical, and physical safeguards to protect the se-
11 curity of sensitive personally identifiable information.

12 (b) *IN GENERAL.*—A business entity engaging in
13 interstate commerce that involves collecting, accessing,
14 transmitting, using, storing, or disposing of sensitive per-
15 sonally identifiable information in electronic or digital
16 form on 10,000 or more United States persons is subject
17 to the requirements for a data privacy and security pro-
18 gram under section 202 for protecting sensitive personally
19 identifiable information.

20 (c) *LIMITATIONS.*—Notwithstanding any other obliga-
21 tion under this subtitle, this subtitle does not apply to the
22 following:

23 (1) *FINANCIAL INSTITUTIONS.*—Financial insti-
24 tutions—

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

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

8 (2) *HIPAA REGULATED ENTITIES.*—

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

14 (B) *BUSINESS ENTITIES.*—A Business enti-
15 ty shall be deemed in compliance with this Act
16 if the business entity—

17 (i) is acting as a business associate, as
18 that term is defined under the Health In-
19 surance Portability and Accountability Act
20 of 1996 (42 U.S.C. 1301 et seq.) and is in
21 compliance with the requirements imposed
22 under that Act and implementing regula-
23 tions promulgated under that Act; and

24 (ii) is subject to, and currently in com-
25 pliance, with the privacy and data security

1 *requirements under sections 13401 and*
2 *13404 of division A of the American Rein-*
3 *vestment and Recovery Act of 2009 (42*
4 *U.S.C. 17931 and 17934) and imple-*
5 *menting regulations promulgated under*
6 *such sections.*

7 (3) *SERVICE PROVIDERS.*—*A service provider for*
8 *any electronic communication by a third-party, to the*
9 *extent that the service provider is exclusively engaged*
10 *in the transmission, routing, or temporary, inter-*
11 *mediate, or transient storage of that communication.*

12 (4) *PUBLIC RECORDS.*—*Public records not other-*
13 *wise subject to a confidentiality or nondisclosure re-*
14 *quirement, or information obtained from a public*
15 *record, including information obtained from a news*
16 *report or periodical.*

17 (d) *SAFE HARBORS.*—

18 (1) *IN GENERAL.*—*A business entity shall be*
19 *deemed in compliance with the privacy and security*
20 *program requirements under section 202 if the busi-*
21 *ness entity complies with or provides protection equal*
22 *to industry standards or standards widely accepted as*
23 *an effective industry practice, as identified by the*
24 *Federal Trade Commission, that are applicable to the*
25 *type of sensitive personally identifiable information*

1 (2) *DESIGN.*—*The personal data privacy and se-*
2 *curity program shall be designed to—*

3 (A) *ensure the privacy, security, and con-*
4 *fidentiality of sensitive personally identifying*
5 *information;*

6 (B) *protect against any anticipated*
7 *vulnerabilities to the privacy, security, or integ-*
8 *egrity of sensitive personally identifying informa-*
9 *tion; and*

10 (C) *protect against unauthorized access to*
11 *use of sensitive personally identifying informa-*
12 *tion that could create a significant risk of harm*
13 *or fraud to any individual.*

14 (3) *RISK ASSESSMENT.*—*A business entity*
15 *shall—*

16 (A) *identify reasonably foreseeable internal*
17 *and external vulnerabilities that could result in*
18 *unauthorized access, disclosure, use, or alteration*
19 *of sensitive personally identifiable information*
20 *or systems containing sensitive personally identi-*
21 *fiable information;*

22 (B) *assess the likelihood of and potential*
23 *damage from unauthorized access, disclosure,*
24 *use, or alteration of sensitive personally identifi-*
25 *able information;*

1 (C) assess the sufficiency of its policies,
2 technologies, and safeguards in place to control
3 and minimize risks from unauthorized access,
4 disclosure, use, or alteration of sensitive person-
5 ally identifiable information; and

6 (D) assess the vulnerability of sensitive per-
7 sonally identifiable information during destruc-
8 tion and disposal of such information, including
9 through the disposal or retirement of hardware.

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

12 (A) design its personal data privacy and se-
13 curity program to control the risks identified
14 under paragraph (3);

15 (B) adopt measures commensurate with the
16 sensitivity of the data as well as the size, com-
17 plexity, and scope of the activities of the business
18 entity that—

19 (i) control access to systems and facili-
20 ties containing sensitive personally identifi-
21 able information, including controls to au-
22 thenticate and permit access only to author-
23 ized individuals;

24 (ii) detect, record, and preserve infor-
25 mation relevant to actual and attempted

1 *fraudulent, unlawful, or unauthorized ac-*
2 *cess, disclosure, use, or alteration of sen-*
3 *sitive personally identifiable information,*
4 *including by employees and other individ-*
5 *uals otherwise authorized to have access;*

6 (iii) *protect sensitive personally identi-*
7 *fiable information during use, transmission,*
8 *storage, and disposal by encryption, redac-*
9 *tion, or access controls that are widely ac-*
10 *cepted as an effective industry practice or*
11 *industry standard, or other reasonable*
12 *means (including as directed for disposal of*
13 *records under section 628 of the Fair Credit*
14 *Reporting Act (15 U.S.C. 1681w) and the*
15 *implementing regulations of such Act as set*
16 *forth in section 682 of title 16, Code of Fed-*
17 *eral Regulations);*

18 (iv) *ensure that sensitive personally*
19 *identifiable information is properly de-*
20 *stroyed and disposed of, including during*
21 *the destruction of computers, diskettes, and*
22 *other electronic media that contain sensitive*
23 *personally identifiable information;*

24 (v) *trace access to records containing*
25 *sensitive personally identifiable information*

1 so that the business entity can determine
2 who accessed or acquired such sensitive per-
3 sonally identifiable information pertaining
4 to specific individuals; and

5 (vi) ensure that no third party or cus-
6 tomer of the business entity is authorized to
7 access or acquire sensitive personally identi-
8 fiable information without the business enti-
9 ty first performing sufficient due diligence
10 to ascertain, with reasonable certainty, that
11 such information is being sought for a valid
12 legal purpose; and

13 (C) establish a plan and procedures for
14 minimizing the amount of sensitive personally
15 identifiable information maintained by such
16 business entity, which shall provide for the reten-
17 tion of sensitive personally identifiable informa-
18 tion only as reasonably needed for the business
19 purposes of such business entity or as necessary
20 to comply with any legal obligation.

21 (b) *TRAINING.*—Each business entity subject to this
22 subtitle shall take steps to ensure employee training and
23 supervision for implementation of the data security pro-
24 gram of the business entity.

25 (c) *VULNERABILITY TESTING.*—

1 (1) *IN GENERAL.*—*Each business entity subject*
2 *to this subtitle shall take steps to ensure regular test-*
3 *ing of key controls, systems, and procedures of the*
4 *personal data privacy and security program to detect,*
5 *prevent, and respond to attacks or intrusions, or other*
6 *system failures.*

7 (2) *FREQUENCY.*—*The frequency and nature of*
8 *the tests required under paragraph (1) shall be deter-*
9 *mined by the risk assessment of the business entity*
10 *under subsection (a)(3).*

11 (d) *RELATIONSHIP TO CERTAIN PROVIDERS OF SERV-*
12 *ICES.*—*In the event a business entity subject to this subtitle*
13 *engages a person or entity not subject to this subtitle (other*
14 *than a service provider) to receive sensitive personally iden-*
15 *tifiable information in performing services or functions*
16 *(other than the services or functions provided by a service*
17 *provider) on behalf of and under the instruction of such*
18 *business entity, such business entity shall—*

19 (1) *exercise appropriate due diligence in select-*
20 *ing the person or entity for responsibilities related to*
21 *sensitive personally identifiable information, and take*
22 *reasonable steps to select and retain a person or enti-*
23 *ty that is capable of maintaining appropriate safe-*
24 *guards for the security, privacy, and integrity of the*

1 *sensitive personally identifiable information at issue;*
2 *and*

3 (2) *require the person or entity by contract to*
4 *implement and maintain appropriate measures de-*
5 *signed to meet the objectives and requirements gov-*
6 *erning entities subject to section 201, this section, and*
7 *subtitle B.*

8 (e) *PERIODIC ASSESSMENT AND PERSONAL DATA PRI-*
9 *VACY AND SECURITY MODERNIZATION.—Each business en-*
10 *tity subject to this subtitle shall on a regular basis monitor,*
11 *evaluate, and adjust, as appropriate its data privacy and*
12 *security program in light of any relevant changes in—*

13 (1) *technology;*

14 (2) *the sensitivity of personally identifiable in-*
15 *formation;*

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

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

20 (A) *mergers and acquisitions;*

21 (B) *alliances and joint ventures;*

22 (C) *outsourcing arrangements;*

23 (D) *bankruptcy; and*

24 (E) *changes to sensitive personally identifi-*
25 *able information systems.*

1 (f) *IMPLEMENTATION TIMELINE.*—Not later than 1
2 year after the date of enactment of this Act, a business enti-
3 ty subject to the provisions of this subtitle shall implement
4 a data privacy and security program pursuant to this sub-
5 title.

6 **SEC. 203. ENFORCEMENT.**

7 (a) *CIVIL PENALTIES.*—

8 (1) *IN GENERAL.*—Any business entity that vio-
9 lates the provisions of sections 201 or 202 shall be
10 subject to civil penalties of not more than \$5,000 per
11 violation per day while such a violation exists, with
12 a maximum of \$500,000 per violation.

13 (2) *INTENTIONAL OR WILLFUL VIOLATION.*—A
14 business entity that intentionally or willfully violates
15 the provisions of sections 201 or 202 shall be subject
16 to additional penalties in the amount of \$5,000 per
17 violation per day while such a violation exists, with
18 a maximum of an additional \$500,000 per violation.

19 (3) *PENALTY LIMITS.*—

20 (A) *IN GENERAL.*—Notwithstanding any
21 other provision of law, the total sum of civil pen-
22 alties assessed against a business entity for all
23 violations of the provisions of this subtitle result-
24 ing from the same or related acts or omissions

1 *shall not exceed \$500,000, unless such conduct is*
2 *found to be willful or intentional.*

3 (B) *DETERMINATIONS.*—*The determination*
4 *of whether a violation of a provision of this sub-*
5 *title has occurred, and if so, the amount of the*
6 *penalty to be imposed, if any, shall be made by*
7 *the court sitting as the finder of fact. The deter-*
8 *mination of whether a violation of a provision of*
9 *this subtitle was willful or intentional, and if so,*
10 *the amount of the additional penalty to be im-*
11 *posed, if any, shall be made by the court sitting*
12 *as the finder of fact.*

13 (C) *ADDITIONAL PENALTY LIMIT.*—*If a*
14 *court determines under subparagraph (B) that a*
15 *violation of a provision of this subtitle was will-*
16 *ful or intentional and imposes an additional*
17 *penalty, the court may not impose an additional*
18 *penalty in an amount that exceeds \$500,000.*

19 (4) *EQUITABLE RELIEF.*—*A business entity en-*
20 *gaged in interstate commerce that violates this section*
21 *may be enjoined from further violations by a United*
22 *States district court.*

23 (5) *OTHER RIGHTS AND REMEDIES.*—*The rights*
24 *and remedies available under this section are cumu-*

1 *lative and shall not affect any other rights and rem-*
2 *edies available under law.*

3 *(b) FEDERAL TRADE COMMISSION AUTHORITY.—Any*
4 *business entity shall have the provisions of this subtitle en-*
5 *forced against it by the Federal Trade Commission.*

6 *(c) STATE ENFORCEMENT.—*

7 *(1) CIVIL ACTIONS.—In any case in which the*
8 *attorney general of a State or any State or local law*
9 *enforcement agency authorized by the State attorney*
10 *general or by State statute to prosecute violations of*
11 *consumer protection law, has reason to believe that an*
12 *interest of the residents of that State has been or is*
13 *threatened or adversely affected by the acts or prac-*
14 *tices of a business entity that violate this subtitle, the*
15 *State may bring a civil action on behalf of the resi-*
16 *dents of that State in a district court of the United*
17 *States of appropriate jurisdiction to—*

18 *(A) enjoin that act or practice;*

19 *(B) enforce compliance with this subtitle; or*

20 *(C) obtain civil penalties of not more than*
21 *\$5,000 per violation per day while such viola-*
22 *tions persist, up to a maximum of \$500,000 per*
23 *violation.*

24 *(2) PENALTY LIMITS.—*

1 (A) *IN GENERAL.*—*Notwithstanding any*
2 *other provision of law, the total sum of civil pen-*
3 *alties assessed against a business entity for all*
4 *violations of the provisions of this subtitle result-*
5 *ing from the same or related acts or omissions*
6 *shall not exceed \$500,000, unless such conduct is*
7 *found to be willful or intentional.*

8 (B) *DETERMINATIONS.*—*The determination*
9 *of whether a violation of a provision of this sub-*
10 *title has occurred, and if so, the amount of the*
11 *penalty to be imposed, if any, shall be made by*
12 *the court sitting as the finder of fact. The deter-*
13 *mination of whether a violation of a provision of*
14 *this subtitle was willful or intentional, and if so,*
15 *the amount of the additional penalty to be im-*
16 *posed, if any, shall be made by the court sitting*
17 *as the finder of fact.*

18 (C) *ADDITIONAL PENALTY LIMIT.*—*If a*
19 *court determines under subparagraph (B) that a*
20 *violation of a provision of this subtitle was will-*
21 *ful or intentional and imposes an additional*
22 *penalty, the court may not impose an additional*
23 *penalty in an amount that exceeds \$500,000.*

24 (3) *NOTICE.*—

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

5 (i) *a written notice of that action; and*
6 (ii) *a copy of the complaint for that*
7 *action.*

8 (B) *EXCEPTION.*—*Subparagraph (A) shall*
9 *not apply with respect to the filing of an action*
10 *by an attorney general of a State under this sub-*
11 *section, if the attorney general of a State deter-*
12 *mines that it is not feasible to provide the notice*
13 *described in this subparagraph before the filing*
14 *of the action.*

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

21 (4) *FEDERAL TRADE COMMISSION AUTHORITY.*—
22 *Upon receiving notice under paragraph (2), the Fed-*
23 *eral Trade Commission shall have the right to—*

1 (A) move to stay the action, pending the
2 final disposition of a pending Federal proceeding
3 or action as described in paragraph (4);

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

6 (C) file petitions for appeal.

7 (5) *PENDING PROCEEDINGS.*—If the Federal
8 Trade Commission initiates a Federal civil action for
9 a violation of this subtitle, or any regulations there-
10 under, no attorney general of a State may bring an
11 action for a violation of this subtitle that resulted
12 from the same or related acts or omissions against a
13 defendant named in the Federal civil action initiated
14 by the Federal Trade Commission.

15 (6) *RULE OF CONSTRUCTION.*—For purposes of
16 bringing any civil action under paragraph (1) noth-
17 ing in this subtitle shall be construed to prevent an
18 attorney general of a State from exercising the powers
19 conferred on the attorney general by the laws of that
20 State to—

21 (A) conduct investigations;

22 (B) administer oaths and affirmations; or

23 (C) compel the attendance of witnesses or
24 the production of documentary and other evi-
25 dence.

1 (7) *VENUE; SERVICE OF PROCESS.*—

2 (A) *VENUE.*—*Any action brought under this*
3 *subsection may be brought in the district court*
4 *of the United States that meets applicable re-*
5 *quirements relating to venue under section 1391*
6 *of title 28, United States Code.*

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

10 (i) *is an inhabitant; or*

11 (ii) *may be found.*

12 (d) *NO PRIVATE CAUSE OF ACTION.*—*Nothing in this*
13 *subtitle establishes a private cause of action against a busi-*
14 *ness entity for violation of any provision of this subtitle.*

15 **SEC. 204. RELATION TO OTHER LAWS.**

16 (a) *IN GENERAL.*—*No State may require any business*
17 *entity subject to this subtitle to comply with any require-*
18 *ments with respect to administrative, technical, and phys-*
19 *ical safeguards for the protection of personal information.*

20 (b) *LIMITATIONS.*—*Nothing in this subtitle shall be*
21 *construed to modify, limit, or supersede the operation of*
22 *the Gramm-Leach-Bliley Act or its implementing regula-*
23 *tions, including those adopted or enforced by States.*

1 **Subtitle B—Security Breach**
2 **Notification**

3 **SEC. 211. NOTICE TO INDIVIDUALS.**

4 (a) *IN GENERAL.*—Any agency, or business entity en-
5 gaged in interstate commerce, other than a service provider,
6 that uses, accesses, transmits, stores, disposes of or collects
7 sensitive personally identifiable information shall, following
8 the discovery of a security breach of such information, no-
9 tify any resident of the United States whose sensitive per-
10 sonally identifiable information has been, or is reasonably
11 believed to have been, accessed, or acquired.

12 (b) *OBLIGATION OF OWNER OR LICENSEE.*—

13 (1) *NOTICE TO OWNER OR LICENSEE.*—Any
14 agency, or business entity engaged in interstate com-
15 merce, that uses, accesses, transmits, stores, disposes
16 of, or collects sensitive personally identifiable infor-
17 mation that the agency or business entity does not
18 own or license shall notify the owner or licensee of the
19 information following the discovery of a security
20 breach involving such information.

21 (2) *NOTICE BY OWNER, LICENSEE, OR OTHER*
22 *DESIGNATED THIRD PARTY.*—Nothing in this subtitle
23 shall prevent or abrogate an agreement between an
24 agency or business entity required to give notice
25 under this section and a designated third party, in-

1 *cluding an owner or licensee of the sensitive person-*
2 *ally identifiable information subject to the security*
3 *breach, to provide the notifications required under*
4 *subsection (a).*

5 *(3) BUSINESS ENTITY RELIEVED FROM GIVING*
6 *NOTICE.—A business entity obligated to give notice*
7 *under subsection (a) shall be relieved of such obliga-*
8 *tion if an owner or licensee of the sensitive personally*
9 *identifiable information subject to the security breach,*
10 *or other designated third party, provides such notifi-*
11 *cation.*

12 *(4) SERVICE PROVIDERS.—If a service provider*
13 *becomes aware of a security breach of data in elec-*
14 *tronic form containing sensitive personal information*
15 *that is owned or possessed by another business entity*
16 *that connects to or uses a system or network provided*
17 *by the service provider for the purpose of transmit-*
18 *ting, routing, or providing intermediate or transient*
19 *storage of such data, the service provider shall be re-*
20 *quired to notify the business entity who initiated such*
21 *connection, transmission, routing, or storage of the se-*
22 *curity breach if the business entity can be reasonably*
23 *identified. Upon receiving such notification from a*
24 *service provider, the business entity shall be required*

1 to provide the notification required under subsection
2 (a).

3 (c) *TIMELINESS OF NOTIFICATION.*—

4 (1) *IN GENERAL.*—All notifications required
5 under this section shall be made without unreasonable
6 delay following the discovery by the agency or busi-
7 ness entity of a security breach.

8 (2) *REASONABLE DELAY.*—

9 (A) *IN GENERAL.*—Reasonable delay under
10 this subsection may include any time necessary
11 to determine the scope of the security breach, pre-
12 vent further disclosures, conduct the risk assess-
13 ment described in section 202(a)(3), and restore
14 the reasonable integrity of the data system and
15 provide notice to law enforcement when required.

16 (B) *EXTENSION.*—

17 (i) *IN GENERAL.*—Except as provided
18 in section 212, delay of notification shall
19 not exceed 60 days following the discovery
20 of the security breach, unless the business
21 entity or agency request an extension of
22 time and the Federal Trade Commission de-
23 termines in writing that additional time is
24 reasonably necessary to determine the scope
25 of the security breach, prevent further dis-

1 *closures, conduct the risk assessment, restore*
2 *the reasonable integrity of the data system,*
3 *or to provide notice to the entity designated*
4 *by the Secretary of Homeland Security pur-*
5 *suant to section 216.*

6 (ii) *APPROVAL OF REQUEST.—If the*
7 *Federal Trade Commission approves the re-*
8 *quest for delay, the agency or business enti-*
9 *ty may delay the time period for notifica-*
10 *tion for additional periods of up to 30 days.*

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

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

20 (1) *IN GENERAL.—If the United States Secret*
21 *Service or the Federal Bureau of Investigation deter-*
22 *mines that the notification required under this section*
23 *would impede a criminal investigation, or national*
24 *security activity, such notification shall be delayed*
25 *upon written notice from the United States Secret*

1 *Service or the Federal Bureau of Investigation to the*
2 *agency or business entity that experienced the breach.*
3 *The notification from the United States Secret Service*
4 *or the Federal Bureau of Investigation shall specify*
5 *in writing the period of delay requested for law en-*
6 *forcement or national security purposes.*

7 (2) *EXTENDED DELAY OF NOTIFICATION.*—*If the*
8 *notification required under subsection (a) is delayed*
9 *pursuant to paragraph (1), an agency or business en-*
10 *tity shall give notice 30 days after the day such law*
11 *enforcement or national security delay was invoked*
12 *unless a Federal law enforcement or intelligence agen-*
13 *cy provides written notification that further delay is*
14 *necessary.*

15 (3) *LAW ENFORCEMENT IMMUNITY.*—*No non-con-*
16 *stitutional cause of action shall lie in any court*
17 *against any agency for acts relating to the delay of*
18 *notification for law enforcement or national security*
19 *purposes under this subtitle.*

20 (e) *LIMITATIONS.*—*Notwithstanding any other obliga-*
21 *tion under this subtitle, this subtitle does not apply to the*
22 *following:*

23 (1) *FINANCIAL INSTITUTIONS.*—*Financial insti-*
24 *tutions—*

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

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

8 (2) *HIPAA REGULATED ENTITIES.*—

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

14 (B) *BUSINESS ENTITIES.*—A *Business enti-*
15 *ty* shall be deemed in compliance with this Act
16 if the business entity—

17 (i)(I) is acting as a covered entity and
18 as a business associate, as those terms are
19 defined under the *Health Insurance Port-*
20 *ability and Accountability Act of 1996* (42
21 U.S.C. 1301 et seq.) and is in compliance
22 with the requirements imposed under that
23 Act and implementing regulations promul-
24 gated under that Act; and

1 (ii) is subject to, and currently in
2 compliance, with the data breach notifica-
3 tion, privacy and data security require-
4 ments under the Health Information Tech-
5 nology for Economic and Clinical Health
6 (HITECH) Act, (42 U.S.C. 17932) and im-
7 plementing regulations promulgated there-
8 under; or

9 (ii) is acting as a vendor of personal
10 health records and third party service pro-
11 vider, subject to the Health Information
12 Technology for Economic and Clinical
13 Health (HITECH) Act (42 U.S.C. 17937),
14 including the data breach notification re-
15 quirements and implementing regulations of
16 that Act.

17 **SEC. 212. EXEMPTIONS.**

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

20 (1) *IN GENERAL.*—Section 211 shall not apply to
21 an agency or business entity if—

22 (A) the United States Secret Service or the
23 Federal Bureau of Investigation determines that
24 notification of the security breach could be ex-
25 pected to reveal sensitive sources and methods or

1 *similarly impede the ability of the Government*
2 *to conduct law enforcement investigations; or*

3 *(B) the Federal Bureau of Investigation de-*
4 *termines that notification of the security breach*
5 *could be expected to cause damage to the na-*
6 *tional security.*

7 (2) *IMMUNITY.*—*No non-constitutional cause of*
8 *action shall lie in any court against any Federal*
9 *agency for acts relating to the exemption from notifi-*
10 *cation for law enforcement or national security pur-*
11 *poses under this title.*

12 **(b) SAFE HARBOR.**—

13 (1) *IN GENERAL.*—*An agency or business entity*
14 *shall be exempt from the notice requirements under*
15 *section 211, if—*

16 (A) *a risk assessment conducted by the*
17 *agency or business entity concludes that, based*
18 *upon the information available, there is no sig-*
19 *nificant risk that a security breach has resulted*
20 *in, or will result in, identity theft, economic loss*
21 *or harm, or physical harm to the individuals*
22 *whose sensitive personally identifiable informa-*
23 *tion was subject to the security breach;*

24 (B) *without unreasonable delay, but not*
25 *later than 45 days after the discovery of a secu-*

1 *rity breach, unless extended by the Federal Trade*
2 *Commission, the agency or business entity noti-*
3 *fies the Federal Trade Commission, in writing,*
4 *of—*

5 *(i) the results of the risk assessment;*

6 *and*

7 *(ii) its decision to invoke the risk as-*
8 *essment exemption; and*

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

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

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

19 *(B) the rendering of sensitive personally*
20 *identifiable information described in paragraph*
21 *(1)(A)(ii) unusable, unreadable, or indecipher-*
22 *able through data security technology or method-*
23 *ology that is generally accepted by experts in the*
24 *field of information security, such as redaction*

1 *or access controls shall establish a rebuttable pre-*
2 *sumption that no significant risk exists.*

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

5 (A) *fail to conduct the risk assessment in a*
6 *reasonable manner, or according to standards*
7 *generally accepted by experts in the field of in-*
8 *formation security; or*

9 (B) *submit the results of a risk assessment*
10 *that contains fraudulent or deliberately mis-*
11 *leading information.*

12 (c) *FINANCIAL FRAUD PREVENTION EXEMPTION.—*

13 (1) *IN GENERAL.—A business entity will be ex-*
14 *empt from the notice requirement under section 211*
15 *if the business entity utilizes or participates in a se-*
16 *curity program that—*

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

21 (B) *provides for notice to affected individ-*
22 *uals after a security breach that has resulted in*
23 *fraud or unauthorized transactions.*

24 (2) *LIMITATION.—The exemption in paragraph*
25 (1) *does not apply if the information subject to the*

1 *security breach includes an individual's first and last*
2 *name, or any other type of sensitive personally identi-*
3 *fiable information as defined in section 3, unless that*
4 *information is only a credit card number or credit*
5 *card security code.*

6 **SEC. 213. METHODS OF NOTICE.**

7 *An agency or business entity shall be in compliance*
8 *with section 211 if it provides the following:*

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

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

14 (B) *Telephone notice to the individual per-*
15 *sonally.*

16 (C) *E-mail notice, if the individual has*
17 *consented to receive such notice and the notice is*
18 *consistent with the provisions permitting elec-*
19 *tronic transmission of notices under section 101*
20 *of the Electronic Signatures in Global and Na-*
21 *tional Commerce Act (15 U.S.C. 7001).*

22 (2) *MEDIA NOTICE.—Notice to major media out-*
23 *lets serving a State or jurisdiction, if the number of*
24 *residents of such State whose sensitive personally*
25 *identifiable information was, or is reasonably believed*

1 *to have been, accessed or acquired by an unauthorized*
2 *person exceeds 5,000.*

3 **SEC. 214. CONTENT OF NOTIFICATION.**

4 *(a) IN GENERAL.—Regardless of the method by which*
5 *notice is provided to individuals under section 213, such*
6 *notice shall include, to the extent possible—*

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

11 *(2) a toll-free number—*

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

15 *(B) from which the individual may learn*
16 *what types of sensitive personally identifiable in-*
17 *formation the agency or business entity main-*
18 *tained about that individual; and*

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

21 *(b) ADDITIONAL CONTENT.—Notwithstanding section*
22 *219, a State may require that a notice under subsection*
23 *(a) shall also include information regarding victim protec-*
24 *tion assistance provided for by that State.*

1 *Federal Government entity to receive the notices re-*
2 *quired under sections 212 and 216, and any other re-*
3 *ports and information about information security in-*
4 *cidents, threats, and vulnerabilities.*

5 (2) *RESPONSIBILITIES OF THE DESIGNATED EN-*
6 *TITY.—The designated entity shall—*

7 (A) *be responsible for promptly providing*
8 *the information that it receives to the United*
9 *States Secret Service and the Federal Bureau of*
10 *Investigation, and to the Federal Trade Commis-*
11 *sion for civil law enforcement purposes; and*

12 (B) *provide the information described in*
13 *subparagraph (A) as appropriate to other Fed-*
14 *eral agencies for law enforcement, national secu-*
15 *rity, or data security purposes.*

16 (b) *NOTICE.—Any business entity or agency shall no-*
17 *tify the designated entity of the fact that a security breach*
18 *has occurred if—*

19 (1) *the number of individuals whose sensitive*
20 *personally identifying information was, or is reason-*
21 *ably believed to have been accessed or acquired by an*
22 *unauthorized person exceeds 5,000;*

23 (2) *the security breach involves a database,*
24 *networked or integrated databases, or other data sys-*
25 *tem containing the sensitive personally identifiable*

1 *information of more than 500,000 individuals nation-*
2 *wide;*

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

5 *(4) the security breach involves primarily sen-*
6 *sitive personally identifiable information of individ-*
7 *uals known to the agency or business entity to be em-*
8 *ployees and contractors of the Federal Government in-*
9 *volved in national security or law enforcement.*

10 *(c) FTC RULEMAKING AND REVIEW OF THRESH-*
11 *OLDS.—Not later 1 year after the date of the enactment of*
12 *this Act, the Federal Trade Commission, in consultation*
13 *with the Attorney General of the United States and the Sec-*
14 *retary of the Department of Homeland Security, shall pro-*
15 *mulgate regulations regarding the reports required under*
16 *subsection (a). The Federal Trade Commission, in consulta-*
17 *tion with the Attorney General and the Secretary of the De-*
18 *partment of Homeland Security, after notice and the oppor-*
19 *tunity for public comment, and in a manner consistent*
20 *with this section, shall promulgate regulations, as nec-*
21 *essary, under section 553 of title 5, United States Code, to*
22 *adjust the thresholds for notice to law enforcement and na-*
23 *tional security authorities under subsection (a) and to fa-*
24 *cilitate the purposes of this section.*

1 (d) *TIMING.*—*The notice required under subsection (a)*
2 *shall be provided as promptly as possible, but such notice*
3 *must be provided either 72 hours before notice is provided*
4 *to an individual pursuant to section 211, or not later than*
5 *10 days after the business entity or agency discovers the*
6 *security breach or discovers that the nature of the security*
7 *breach requires notice to law enforcement under this section,*
8 *whichever occurs first.*

9 **SEC. 217. ENFORCEMENT.**

10 (a) *IN GENERAL.*—*The Attorney General of the United*
11 *States and the Federal Trade Commission may enforce civil*
12 *violations of section 211.*

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

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

23 (2) *PENALTY LIMITATION.*—*Notwithstanding any*
24 *other provision of law, the total amount of the civil*
25 *penalty assessed against a business entity for conduct*

1 *involving the same or related acts or omissions that*
2 *results in a violation of this subtitle may not exceed*
3 *\$1,000,000.*

4 (3) *DETERMINATIONS.*—*The determination of*
5 *whether a violation of a provision of this subtitle has*
6 *occurred, and if so, the amount of the penalty to be*
7 *imposed, if any, shall be made by the court sitting as*
8 *the finder of fact. The determination of whether a vio-*
9 *lation of a provision of this subtitle was willful or in-*
10 *tentional, and if so, the amount of the additional pen-*
11 *alty to be imposed, if any, shall be made by the court*
12 *sitting as the finder of fact.*

13 (4) *ADDITIONAL PENALTY LIMIT.*—*If a court de-*
14 *termines under paragraph (3) that a violation of a*
15 *provision of this subtitle was willful or intentional*
16 *and imposes an additional penalty, the court may not*
17 *impose an additional penalty in an amount that ex-*
18 *ceeds \$1,000,000.*

19 (c) *INJUNCTIVE ACTIONS BY THE ATTORNEY GEN-*
20 *ERAL.*—

21 (1) *IN GENERAL.*—*If it appears that a business*
22 *entity has engaged, or is engaged, in any act or prac-*
23 *tice constituting a violation of this subtitle, the Attor-*
24 *ney General may petition an appropriate district*
25 *court of the United States for an order—*

1 (A) enjoining such act or practice; or

2 (B) enforcing compliance with this subtitle.

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

7 (d) *CIVIL ACTIONS BY THE FEDERAL TRADE COMMIS-*
8 *SION.*—

9 (1) *IN GENERAL.*—Compliance with the require-
10 ments imposed under this subtitle may be enforced
11 under the Federal Trade Commission Act (15 U.S.C.
12 41 et seq.) by the Federal Trade Commission with re-
13 spect to business entities subject to this Act. All of the
14 functions and powers of the Federal Trade Commis-
15 sion under the Federal Trade Commission Act are
16 available to the Commission to enforce compliance by
17 any person with the requirements imposed under this
18 title.

19 (2) *PENALTY LIMITATION.*—

20 (A) *IN GENERAL.*—Notwithstanding any
21 other provision of law, the total sum of civil pen-
22 alties assessed against a business entity for all
23 violations of the provisions of this subtitle result-
24 ing from the same or related acts or omissions

1 *may not exceed \$1,000,000, unless such conduct*
2 *is found to be willful or intentional.*

3 *(B) DETERMINATIONS.—The determination*
4 *of whether a violation of a provision of this sub-*
5 *title has occurred, and if so, the amount of the*
6 *penalty to be imposed, if any, shall be made by*
7 *the court sitting as the finder of fact. The deter-*
8 *mination of whether a violation of a provision of*
9 *this subtitle was willful or intentional, and if so,*
10 *the amount of the additional penalty to be im-*
11 *posed, if any, shall be made by the court sitting*
12 *as the finder of fact.*

13 *(C) ADDITIONAL PENALTY LIMIT.—If a*
14 *court determines under subparagraph (B) that a*
15 *violation of a provision of this subtitle was will-*
16 *ful or intentional and imposes an additional*
17 *penalty, the court may not impose an additional*
18 *penalty in an amount that exceeds \$1,000,000.*

19 *(3) UNFAIR OR DECEPTIVE ACTS OR PRAC-*
20 *TICES.—For the purpose of the exercise by the Federal*
21 *Trade Commission of its functions and powers under*
22 *the Federal Trade Commission Act, a violation of any*
23 *requirement or prohibition imposed under this title*
24 *shall constitute an unfair or deceptive act or practice*
25 *in commerce in violation of a regulation under sec-*

1 *tion 18(a)(1)(B) of the Federal Trade Commission*
2 *Act (15 U.S.C. 57a(a)(I)(B)) regarding unfair or de-*
3 *ceptive acts or practices and shall be subject to en-*
4 *forcement by the Federal Trade Commission under*
5 *that Act with respect to any business entity, irrespec-*
6 *tive of whether that business entity is engaged in com-*
7 *merce or meets any other jurisdictional tests in the*
8 *Federal Trade Commission Act.*

9 *(e) COORDINATION OF ENFORCEMENT.—*

10 *(1) IN GENERAL.—Before opening an investiga-*
11 *tion, the Federal Trade Commission shall consult*
12 *with the Attorney General.*

13 *(2) LIMITATION.—The Federal Trade Commis-*
14 *sion may initiate investigations under this subsection*
15 *unless the Attorney General determines that such an*
16 *investigation would impede an ongoing criminal in-*
17 *vestigation or national security activity.*

18 *(3) COORDINATION AGREEMENT.—*

19 *(A) IN GENERAL.—In order to avoid con-*
20 *licts and promote consistency regarding the en-*
21 *forcement and litigation of matters under this*
22 *Act, not later than 180 days after the enactment*
23 *of this Act, the Attorney General and the Com-*
24 *mission shall enter into an agreement for coordi-*
25 *nation regarding the enforcement of this Act.*

1 (B) *REQUIREMENT.*—*The coordination*
2 *agreement entered into under subparagraph (A)*
3 *shall include provisions to ensure that parallel*
4 *investigations and proceedings under this section*
5 *are conducted in a matter that avoids conflicts*
6 *and does not impede the ability of the Attorney*
7 *General to prosecute violations of Federal crimi-*
8 *nal laws.*

9 (4) *COORDINATION WITH THE FCC.*—*If an en-*
10 *forcement action under this Act relates to customer*
11 *proprietary network information, the Federal Trade*
12 *Commission shall coordinate the enforcement action*
13 *with the Federal Communications Commission.*

14 (f) *RULEMAKING.*—*The Federal Trade Commission*
15 *may, in consultation with the Attorney General, issue such*
16 *other regulations as it determines to be necessary to carry*
17 *out this subtitle. All regulations promulgated under this Act*
18 *shall be issued in accordance with section 553 of title 5,*
19 *United States Code. Where regulations relate to customer*
20 *proprietary network information, the promulgation of such*
21 *regulations will be coordinated with the Federal Commu-*
22 *nications Commission.*

23 (g) *OTHER RIGHTS AND REMEDIES.*—*The rights and*
24 *remedies available under this subtitle are cumulative and*

1 *shall not affect any other rights and remedies available*
2 *under law.*

3 *(h) FRAUD ALERT.—Section 605A(b)(1) of the Fair*
4 *Credit Reporting Act (15 U.S.C. 1681c–1(b)(1)) is amended*
5 *by inserting “, or evidence that the consumer has received*
6 *notice that the consumer’s financial information has or*
7 *may have been compromised,” after “identity theft report”.*

8 **SEC. 218. ENFORCEMENT BY STATE ATTORNEYS GENERAL.**

9 *(a) IN GENERAL.—*

10 *(1) CIVIL ACTIONS.—In any case in which the*
11 *attorney general of a State or any State or local law*
12 *enforcement agency authorized by the State attorney*
13 *general or by State statute to prosecute violations of*
14 *consumer protection law, has reason to believe that an*
15 *interest of the residents of that State has been or is*
16 *threatened or adversely affected by the engagement of*
17 *a business entity in a practice that is prohibited*
18 *under this subtitle, the State or the State or local law*
19 *enforcement agency on behalf of the residents of the*
20 *agency’s jurisdiction, may bring a civil action on be-*
21 *half of the residents of the State or jurisdiction in a*
22 *district court of the United States of appropriate ju-*
23 *risdiction to—*

24 *(A) enjoin that practice;*

25 *(B) enforce compliance with this subtitle; or*

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

5 (2) *PENALTY LIMITATION.—*

6 (A) *IN GENERAL.—Notwithstanding any*
7 *other provision of law, the total sum of civil pen-*
8 *alties assessed against a business entity for all*
9 *violations of the provisions of this subtitle result-*
10 *ing from the same or related acts or omissions*
11 *may not exceed \$1,000,000, unless such conduct*
12 *is found to be willful or intentional.*

13 (B) *DETERMINATIONS.—The determination*
14 *of whether a violation of a provision of this sub-*
15 *title has occurred, and if so, the amount of the*
16 *penalty to be imposed, if any, shall be made by*
17 *the court sitting as the finder of fact. The deter-*
18 *mination of whether a violation of a provision of*
19 *this subtitle was willful or intentional, and if so,*
20 *the amount of the additional penalty to be im-*
21 *posed, if any, shall be made by the court sitting*
22 *as the finder of fact.*

23 (C) *ADDITIONAL PENALTY LIMIT.—If a*
24 *court determines under subparagraph (B) that a*
25 *violation of a provision of this subtitle was will-*

1 *ful or intentional and imposes an additional*
2 *penalty, the court may not impose an additional*
3 *penalty in an amount that exceeds \$1,000,000.*

4 (3) *NOTICE.—*

5 (A) *IN GENERAL.—**Before filing an action*
6 *under paragraph (1), the attorney general of the*
7 *State involved shall provide to the Attorney Gen-*
8 *eral of the United States—*

9 (i) *written notice of the action; and*

10 (ii) *a copy of the complaint for the ac-*
11 *tion.*

12 (B) *EXEMPTION.—*

13 (i) *IN GENERAL.—**Subparagraph (A)*
14 *shall not apply with respect to the filing of*
15 *an action by an attorney general of a State*
16 *under this subtitle, if the State attorney*
17 *general determines that it is not feasible to*
18 *provide the notice described in such sub-*
19 *paragraph before the filing of the action.*

20 (ii) *NOTIFICATION.—**In an action de-*
21 *scribed in clause (i), the attorney general of*
22 *a State shall provide notice and a copy of*
23 *the complaint to the Attorney General at*
24 *the time the State attorney general files the*
25 *action.*

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

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

6 (2) initiate an action in the appropriate United
7 States district court under section 217 and move to
8 consolidate all pending actions, including State ac-
9 tions, in such court;

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

12 (4) file petitions for appeal.

13 (c) *PENDING PROCEEDINGS.*—If the Attorney General
14 or the Federal Trade Commission initiate a criminal pro-
15 ceeding or civil action for a violation of a provision of this
16 subtitle, or any regulations thereunder, no attorney general
17 of a State may bring an action for a violation of a provi-
18 sion of this subtitle against a defendant named in the Fed-
19 eral criminal proceeding or civil action.

20 (d) *CONSTRUCTION.*—For purposes of bringing any
21 civil action under subsection (a), nothing in this subtitle
22 regarding notification shall be construed to prevent an at-
23 torney general of a State from exercising the powers con-
24 ferred on such attorney general by the laws of that State
25 to—

- 1 (1) *conduct investigations;*
 2 (2) *administer oaths or affirmations; or*
 3 (3) *compel the attendance of witnesses or the*
 4 *production of documentary and other evidence.*

5 (e) *VENUE; SERVICE OF PROCESS.—*

6 (1) *VENUE.—Any action brought under sub-*
 7 *section (a) may be brought in—*

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

12 (B) *another court of competent jurisdiction.*

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

16 (A) *is an inhabitant; or*

17 (B) *may be found.*

18 (f) *NO PRIVATE CAUSE OF ACTION.—Nothing in this*
 19 *subtitle establishes a private cause of action against a busi-*
 20 *ness entity for violation of any provision of this subtitle.*

21 **SEC. 219. EFFECT ON FEDERAL AND STATE LAW.**

22 *For any entity, or agency that is subject to this sub-*
 23 *title, the provisions of this subtitle shall supersede any other*
 24 *provision of Federal law, or any provisions of the law of*
 25 *any State, relating to notification of a security breach, ex-*

1 *cept as provided in section 214(b). Nothing in this subtitle*
2 *shall be construed to modify, limit, or supersede the oper-*
3 *ation of the Gramm-Leach-Bliley Act (15 U.S.C. 6801 et*
4 *seq.) or its implementing regulations, including those regu-*
5 *lations adopted or enforced by States, the Health Insurance*
6 *Portability and Accountability Act of 1996 (42 U.S.C. 1301*
7 *et seq.) or its implementing regulations, or the Health In-*
8 *formation Technology for Economic and Clinical Health*
9 *Act (42 U.S.C. 17937) or its implementing regulations.*

10 **SEC. 220. REPORTING ON EXEMPTIONS.**

11 *(a) FTC REPORT.—Not later than 18 months after the*
12 *date of enactment of this Act, and upon request by Congress*
13 *thereafter, the Federal Trade Commission shall submit a*
14 *report to Congress on the number and nature of the security*
15 *breaches described in the notices filed by those business enti-*
16 *ties invoking the risk assessment exemption under section*
17 *212(b) and their response to such notices.*

18 *(b) LAW ENFORCEMENT REPORT.—*

19 *(1) IN GENERAL.—Not later than 18 months*
20 *after the date of enactment of this Act, and upon the*
21 *request by Congress thereafter, the United States Se-*
22 *cret Service and Federal Bureau of Investigation shall*
23 *submit a report to Congress on the number and na-*
24 *ture of security breaches subject to the national secu-*

1 *riety and law enforcement exemptions under section*
2 *212(a).*

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

8 **SEC. 221. EFFECTIVE DATE.**

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

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

14 **SEC. 301. BUDGET COMPLIANCE.**

15 *The budgetary effects of this Act, for the purpose of*
16 *complying with the Statutory Pay-As-You-Go Act of 2010,*
17 *shall be determined by reference to the latest statement titled*
18 *“Budgetary Effects of PAYGO Legislation” for this Act,*
19 *submitted for printing in the Congressional Record by the*
20 *Chairman of the Senate Budget Committee, provided that*
21 *such statement has been submitted prior to the vote on pas-*
22 *sage.*

Calendar No. 181

112TH CONGRESS
1ST Session

S. 1151

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.

SEPTEMBER 22, 2011

Reported with an amendment