

105TH CONGRESS
2D SESSION

H. R. 4321

To protect consumers and financial institutions by preventing personal financial information from being obtained from financial institutions under false pretenses.

IN THE HOUSE OF REPRESENTATIVES

JULY 23, 1998

Mr. LEACH (for himself, Mr. LAZIO of New York, Mr. CASTLE, Mr. LAFALCE, Mr. HINCHEY, and Mr. VENTO) introduced the following bill; which was referred to the Committee on Banking and Financial Services

A BILL

To protect consumers and financial institutions by preventing personal financial information from being obtained from financial institutions under false pretenses.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Financial Information
5 Privacy Act of 1998”.

6 **SEC. 2. FINANCIAL INFORMATION PRIVACY.**

7 (a) IN GENERAL.—The Consumer Credit Protection
8 Act (15 U.S.C. 1601 et seq.) is amended by adding at
9 the end the following:

1 **“TITLE X—FINANCIAL INFORMA-**
2 **TION PRIVACY PROTECTION**

3 **“§ 1001. Short title**

4 “This title may be cited as the ‘Financial Information
5 Privacy Act’.

6 **“§ 1002. Definitions**

7 “For purposes of this title, the following definitions
8 shall apply:

9 “(1) CUSTOMER.—The term ‘customer’ means,
10 with respect to a financial institution, any person (or
11 authorized representative of a person) to whom the
12 financial institution provides a service, including
13 that of acting as a fiduciary.

14 “(2) CUSTOMER INFORMATION OF A FINANCIAL
15 INSTITUTION.—The term ‘customer information of a
16 financial institution’ means any information main-
17 tained by a financial institution which is derived
18 from the relationship between the financial institu-
19 tion and a customer of the financial institution and
20 is identifiable to the customer.

21 “(3) DOCUMENT.—The term ‘document’ means
22 any information in any form.

23 “(4) FINANCIAL INSTITUTION.—

24 “(A) IN GENERAL.—The term ‘financial
25 institution’ means any institution engaged in

1 the business of providing financial services to
2 customers who maintain a credit, deposit, trust,
3 or other financial account or relationship with
4 the institution.

5 “(B) CERTAIN FINANCIAL INSTITUTIONS
6 SPECIFICALLY INCLUDED.—The term ‘financial
7 institution’ includes any depository institution
8 (as defined in section 19(b)(1)(A) of the Fed-
9 eral Reserve Act), any broker or dealer in in-
10 vestment securities, any insurance company,
11 any loan or finance company, any investment
12 adviser or investment company, any credit card
13 issuer or operator of a credit card system, and
14 any consumer reporting agency that compiles
15 and maintains files on consumers on a nation-
16 wide basis (as defined in section 603(p)).

17 “(C) FURTHER DEFINITION BY REGULA-
18 TION.—The Federal Trade Commission may
19 prescribe regulations clarifying or describing
20 the types of institutions which shall be treated
21 as financial institutions for purposes of this
22 title.

1 **“§ 1003. Privacy protection for customer information**
2 **of financial institutions**

3 “(a) PROHIBITION ON OBTAINING CUSTOMER INFOR-
4 MATION BY FALSE PRETENSES.—It shall be a violation
5 of this title for any person to obtain or attempt to obtain,
6 or cause to be disclosed or attempt to cause to be disclosed
7 to any person, customer information of a financial institu-
8 tion—

9 “(1) by knowingly making a false, fictitious, or
10 fraudulent statement or representation to an officer,
11 employee, or agent of a financial institution;

12 “(2) by knowingly making a false, fictitious, or
13 fraudulent statement or representation to a cus-
14 tomer of a financial institution; or

15 “(3) by knowingly providing any document to
16 an officer, employee, or agent of a financial institu-
17 tion, knowing that the document is forged, counter-
18 feit, lost, or stolen, was fraudulently obtained, or
19 contains a false, fictitious, or fraudulent statement
20 or representation.

21 “(b) PROHIBITION ON RECEIVING CUSTOMER INFOR-
22 MATION OBTAINED FROM FINANCIAL INSTITUTION
23 UNDER FALSE PRETENSES.—It shall be a violation of this
24 title for any person to receive customer information of a
25 financial institution, knowing or having reason to know

1 that the information was obtained from the institution in
2 any manner described in subsection (a).

3 (c) NONAPPLICABILITY TO LAW ENFORCEMENT
4 AGENCIES.—No provision of this section shall be con-
5 strued so as to prevent any action by a law enforcement
6 agency, or any officer, employee, or agent of such agency,
7 to obtain customer information of a financial institution
8 in connection with the performance of the official duties
9 of the agency.

10 **“§ 1004. Administrative enforcement**

11 “(a) ENFORCEMENT BY FEDERAL TRADE COMMIS-
12 SION.—Except as provided in subsection (b), compliance
13 with this title shall be enforced under the Federal Trade
14 Commission Act by the Federal Trade Commission in the
15 same manner and with the same power and authority as
16 the Commission has under the title VIII, the Fair Debt
17 Collection Practices Act, to enforce compliance with such
18 title.

19 “(b) ENFORCEMENT BY OTHER AGENCIES IN CER-
20 TAIN CASES.—

21 “(1) IN GENERAL.—Compliance with this title
22 shall be enforced under—

23 “(A) section 8 of the Federal Deposit In-
24 surance Act, in the case of—

1 “(i) national banks, and Federal
2 branches and Federal agencies of foreign
3 banks, by the Office of the Comptroller of
4 the Currency;

5 “(ii) member banks of the Federal
6 Reserve System (other than national
7 banks), branches and agencies of foreign
8 banks (other than Federal branches, Fed-
9 eral agencies, and insured State branches
10 of foreign banks), commercial lending com-
11 panies owned or controlled by foreign
12 banks, and organizations operating under
13 section 25 or 25A of the Federal Reserve
14 Act, by the Board;

15 “(iii) banks insured by the Federal
16 Deposit Insurance Corporation (other than
17 members of the Federal Reserve System)
18 and insured State branches of foreign
19 banks, by the Board of Directors of the
20 Federal Deposit Insurance Corporation;

21 “(iv) savings associations the deposits
22 of which are insured by the Federal De-
23 posit Insurance Corporation;

24 “(B) the Federal Credit Union Act, by the
25 Administrator of the National Credit Union Ad-

1 ministration with respect to any Federal credit
2 union; and

3 “(C) the Farm Credit Act of 1971, by the
4 Farm Credit Administration with respect to any
5 Federal land bank, Federal land bank associa-
6 tion, Federal intermediate credit bank, or pro-
7 duction credit association.

8 “(2) VIOLATIONS OF THIS TITLE TREATED AS
9 VIOLATIONS OF OTHER LAWS.—For the purpose of
10 the exercise by any agency referred to in paragraph
11 (1) of its powers under any Act referred to in that
12 paragraph, a violation of this title shall be deemed
13 to be a violation of a requirement imposed under
14 that Act. In addition to its powers under any provi-
15 sion of law specifically referred to in paragraph (1),
16 each of the agencies referred to in that paragraph
17 may exercise, for the purpose of enforcing compli-
18 ance with this title, any other authority conferred on
19 such agency by law.

20 “(c) STATE ACTION FOR VIOLATIONS.—

21 “(1) AUTHORITY OF STATES.—In addition to
22 such other remedies as are provided under State
23 law, if the chief law enforcement officer of a State,
24 or an official or agency designated by a State, has

1 reason to believe that any person has violated or is
2 violating this title, the State—

3 “(A) may bring an action to enjoin such
4 violation in any appropriate United States dis-
5 trict court or in any other court of competent
6 jurisdiction;

7 “(B) may bring an action on behalf of the
8 residents of the State to recover damages of not
9 more than \$1,000 for each willful or negligent
10 violation; and

11 “(C) in the case of any successful action
12 under subparagraph (A) or (B), shall be award-
13 ed the costs of the action and reasonable attor-
14 ney fees as determined by the court.

15 “(2) RIGHTS OF FEDERAL REGULATORS.—

16 “(A) PRIOR NOTICE.—The State shall
17 serve prior written notice of any action under
18 paragraph (1) upon the Federal Trade Commis-
19 sion and provide the Federal Trade Commission
20 with a copy of its complaint, except in any case
21 in which such prior notice is not feasible, in
22 which case the State shall serve such notice im-
23 mediately upon instituting such action.

1 “(B) RIGHT TO INTERVENE.—The Federal
2 Trade Commission or an agency described in
3 subsection (b) shall have the right—

4 “(i) to intervene in an action under
5 paragraph (1);

6 “(ii) upon so intervening, to be heard
7 on all matters arising therein;

8 “(iii) to remove the action to the ap-
9 propriate United States district court; and

10 “(iv) to file petitions for appeal.

11 “(3) INVESTIGATORY POWERS.—For purposes
12 of bringing any action under this subsection, no pro-
13 vision of this subsection shall be construed as pre-
14 venting the chief law enforcement officer, or an offi-
15 cial or agency designated by a State, from exercising
16 the powers conferred on the chief law enforcement
17 officer or such official by the laws of such State to
18 conduct investigations or to administer oaths or af-
19 firmations or to compel the attendance of witnesses
20 or the production of documentary and other evi-
21 dence.

22 “(4) LIMITATION ON STATE ACTION WHILE
23 FEDERAL ACTION PENDING.—If the Federal Trade
24 Commission or any agency described in subsection
25 (b) has instituted a civil action for a violation of this

1 title, no State may, during the pendency of such ac-
2 tion, bring an action under this section against any
3 defendant named in the complaint of the Federal
4 Trade Commission or such agency for any violation
5 of this title that is alleged in that complaint.

6 **“§ 1005. Criminal penalty**

7 “(a) IN GENERAL.—Whoever violates, or attempts to
8 violate, section 1003 shall be fined in accordance with title
9 18, United States Code, or imprisoned for not more than
10 5 years, or both.

11 “(b) ENHANCED PENALTY FOR AGGRAVATED
12 CASES.—Whoever violates, or attempts to violate, section
13 1003 while violating another law of the United States or
14 as part of a pattern of any illegal activity involving more
15 than \$100,000 in a 12-month period shall be fined twice
16 the amount provided in subsection (b)(3) or (c)(3) (as the
17 case may be) of section 3571 of title 18, United States
18 Code, imprisoned for not more than 10 years, or both.

19 **“§ 1006. Relation to State laws**

20 “(a) IN GENERAL.—This title shall not be construed
21 as superseding, altering, or affecting the statutes, regula-
22 tions, orders, or interpretations in effect in any State, ex-
23 cept to the extent that such statutes, regulations, orders,
24 or interpretations are inconsistent with the provisions of
25 this title, and then only to the extent of the inconsistency.

1 “(b) GREATER PROTECTION UNDER STATE LAW.—
2 For purposes of this section, a State statute, regulation,
3 order, or interpretation is not inconsistent with the provi-
4 sions of this title if the protection such statute, regulation,
5 order, or interpretation affords any person is greater than
6 the protection provided under this title.

7 “(c) DETERMINATION OF INCONSISTENCY.—

8 “(1) IN GENERAL.—The Federal Trade Com-
9 mission shall, upon its own motion or upon the re-
10 quest of any State or other interested party, submit-
11 ted in accordance with procedures prescribed in reg-
12 ulations of the Commission, determine whether a
13 State requirement is inconsistent or affords greater
14 protection.

15 “(2) EFFECT OF DETERMINATION.—If the Fed-
16 eral Trade Commission determines that a State re-
17 quirement is inconsistent, a person shall incur no li-
18 ability under the law of the State for a good faith
19 failure to comply with that law, notwithstanding that
20 such determination is subsequently amended, re-
21 scinded, or determined by judicial or other authority
22 to be invalid for any reason.”.

23 “(b) REPORT TO THE CONGRESS.—Before the end of
24 the 18-month period beginning on the date of the enact-

1 ment of this Act, the Comptroller General shall submit
2 to the Congress a report on the following:

3 (1) The efficacy and adequacy of the remedies
4 provided in the amendments made by subsection (a)
5 in addressing attempts to obtain financial informa-
6 tion by fraudulent means or by false pretenses.

7 (2) Any recommendations for additional legisla-
8 tive or regulatory action to address threats to the
9 privacy of financial information.

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