

105TH CONGRESS
2D SESSION

S. 2433

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

IN THE SENATE OF THE UNITED STATES

SEPTEMBER 2 (legislative day, AUGUST 31), 1998

Mr. D'AMATO introduced the following bill; which was read twice and referred to the Committee on Banking, Housing, and Urban Affairs

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. FINANCIAL INFORMATION PRIVACY.**

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

7 **“TITLE X—FINANCIAL INFORMA-**
8 **TION PRIVACY PROTECTION**

“Sec.

“1001. Short title.

“1002. Definitions.

“1003. Privacy protection for customer information of financial institutions.

“1004. Administrative enforcement.

“1005. Civil liability.

“1006. Criminal penalty.

“1007. Relation to State laws.

“1008. Agency guidance.

1 **“§ 1001. Short title**

2 “This title may be cited as the ‘Financial Information
3 Privacy Act’.

4 **“§ 1002. Definitions**

5 “For purposes of this title, the following definitions
6 shall apply:

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

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

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

21 “(4) FINANCIAL INSTITUTION.—

1 “(A) IN GENERAL.—The term ‘financial
2 institution’ means any institution engaged in
3 the business of providing financial services to
4 customers who maintain a credit, deposit, trust,
5 or other financial account or relationship with
6 the institution.

7 “(B) CERTAIN FINANCIAL INSTITUTIONS
8 SPECIFICALLY INCLUDED.—The term ‘financial
9 institution’ includes any depository institution
10 (as defined in section 19(b)(1)(A) of the Fed-
11 eral Reserve Act), any loan or finance company,
12 any credit card issuer or operator of a credit
13 card system, and any consumer reporting agen-
14 cy that compiles and maintains files on consum-
15 ers on a nationwide basis (as defined in section
16 603(p)).

17 “(C) FURTHER DEFINITION BY REGULA-
18 TION.—The Board of Governors of the Federal
19 Reserve System may prescribe regulations fur-
20 ther defining the term ‘financial institution’, in
21 accordance with subparagraph (A), for purposes
22 of this 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 relating to another person—

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 with the
12 intent to deceive the officer, employee, or agent into
13 relying on that statement or representation for pur-
14 poses of releasing the customer information;

15 “(2) by knowingly making a false, fictitious, or
16 fraudulent statement or representation to a cus-
17 tomer of a financial institution with the intent to de-
18 ceive the customer into relying on that statement or
19 representation for purposes of releasing the cus-
20 tomer information or authorizing the release of such
21 information; or

22 “(3) by knowingly providing any document to
23 an officer, employee, or agent of a financial institu-
24 tion, knowing that the document is forged, counter-
25 feit, lost, or stolen, was fraudulently obtained, or
26 contains a false, fictitious, or fraudulent statement

1 or representation, if the document is provided with
2 the intent to deceive the officer, employee, or agent
3 into relying on that document for purposes of releas-
4 ing the customer information.

5 “(b) PROHIBITION ON SOLICITATION OF A PERSON
6 TO OBTAIN CUSTOMER INFORMATION FROM FINANCIAL
7 INSTITUTION UNDER FALSE PRETENSES.—It shall be a
8 violation of this title to request a person to obtain cus-
9 tomer information of a financial institution, knowing or
10 consciously avoiding knowing that the person will obtain,
11 or attempt to obtain, the information from the institution
12 in any manner described in subsection (a).

13 “(c) NONAPPLICABILITY TO LAW ENFORCEMENT
14 AGENCIES.—No provision of this section shall be con-
15 strued so as to prevent any action by a law enforcement
16 agency, or any officer, employee, or agent of such agency,
17 to obtain customer information of a financial institution
18 in connection with the performance of the official duties
19 of the agency.

20 “(d) NONAPPLICABILITY TO FINANCIAL INSTITU-
21 TIONS IN CERTAIN CASES.—No provision of this section
22 shall be construed so as to prevent any financial institu-
23 tion, or any officer, employee, or agent of a financial insti-
24 tution, from obtaining customer information of such finan-
25 cial institution in the course of—

1 “(1) testing the security procedures or systems
2 of such institution for maintaining the confidential-
3 ity of customer information;

4 “(2) investigating allegations of misconduct or
5 negligence on the part of any officer, employee, or
6 agent of the financial institution; or

7 “(3) recovering customer information of the fi-
8 nancial institution which was obtained or received by
9 another person in any manner described in sub-
10 section (a) or (b).

11 “(e) NONAPPLICABILITY TO CERTAIN TYPES OF
12 CUSTOMER INFORMATION OF FINANCIAL INSTITU-
13 TIONS.—No provision of this section shall be construed so
14 as to prevent any person from obtaining customer infor-
15 mation of a financial institution that otherwise is available
16 as a public record filed pursuant to the securities laws (as
17 defined in section 3(a)(47) of the Securities Exchange Act
18 of 1934).

19 “**§ 1004. Administrative enforcement**

20 “(a) ENFORCEMENT BY FEDERAL TRADE COMMIS-
21 SION.—Except as provided in subsection (b), compliance
22 with this title shall be enforced by the Federal Trade Com-
23 mission in the same manner and with the same power and
24 authority as the Commission has under title VIII, the Fair

1 Debt Collection Practices Act, to enforce compliance with
2 such title.

3 “(b) ENFORCEMENT BY OTHER AGENCIES IN CER-
4 TAIN CASES.—

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

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

9 “(i) national banks, and Federal
10 branches and Federal agencies of foreign
11 banks, by the Office of the Comptroller of
12 the Currency;

13 “(ii) member banks of the Federal
14 Reserve System (other than national
15 banks), branches and agencies of foreign
16 banks (other than Federal branches, Fed-
17 eral agencies, and insured State branches
18 of foreign banks), commercial lending com-
19 panies owned or controlled by foreign
20 banks, and organizations operating under
21 section 25 or 25A of the Federal Reserve
22 Act, by the Board;

23 “(iii) banks insured by the Federal
24 Deposit Insurance Corporation (other than
25 members of the Federal Reserve System

1 and national nonmember banks) and in-
2 sured State branches of foreign banks, by
3 the Board of Directors of the Federal De-
4 posit Insurance Corporation; and

5 “(iv) savings associations the deposits
6 of which are insured by the Federal De-
7 posit Insurance Corporation, by the Direc-
8 tor of the Office of Thrift Supervision; and

9 “(B) the Federal Credit Union Act, by the
10 Administrator of the National Credit Union Ad-
11 ministration with respect to any Federal credit
12 union.

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

25 “(c) STATE ACTION FOR VIOLATIONS.—

1 “(1) AUTHORITY OF STATES.—In addition to
2 such other remedies as are provided under State
3 law, if the chief law enforcement officer of a State,
4 or an official or agency designated by a State, has
5 reason to believe that any person has violated or is
6 violating this title, the State—

7 “(A) may bring an action to enjoin such
8 violation in any appropriate United States dis-
9 trict court or in any other court of competent
10 jurisdiction;

11 “(B) may bring an action on behalf of the
12 residents of the State to recover damages of not
13 more than \$1,000 for each violation; and

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

18 “(2) RIGHTS OF FEDERAL REGULATORS.—

19 “(A) PRIOR NOTICE.—The State shall
20 serve prior written notice of any action under
21 paragraph (1) upon the Federal Trade Commis-
22 sion and, in the case of an action which involves
23 a financial institution described in section
24 1004(b)(1), the agency referred to in such sec-
25 tion with respect to such institution and provide

1 the Federal Trade Commission and any such
2 agency with a copy of its complaint, except in
3 any case in which such prior notice is not fea-
4 sible, in which case the State shall serve such
5 notice immediately upon instituting such action.

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

9 “(i) to intervene in an action under
10 paragraph (1);

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

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

15 “(iv) to file petitions for appeal.

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

1 or the production of documentary and other evi-
2 dence.

3 “(4) LIMITATION ON STATE ACTION WHILE
4 FEDERAL ACTION PENDING.—If the Federal Trade
5 Commission or any agency described in subsection
6 (b) has instituted a civil action for a violation of this
7 title, no State may, during the pendency of such ac-
8 tion, bring an action under this section against any
9 defendant named in the complaint of the Federal
10 Trade Commission or such agency for any violation
11 of this title that is alleged in that complaint.

12 **“§ 1005. Civil liability**

13 “Any person, other than a financial institution, who
14 fails to comply with any provision of this title with respect
15 to any financial institution or any customer information
16 of a financial institution shall be liable to such financial
17 institution or the customer to whom such information re-
18 lates in an amount equal to the sum of the amounts deter-
19 mined under each of the following paragraphs:

20 “(1) ACTUAL DAMAGES.—The greater of—

21 “(A) the amount of any actual damage
22 sustained by the financial institution or cus-
23 tomer as a result of such failure; or

24 “(B) any amount received by the person
25 who failed to comply with this title, including

1 an amount equal to the value of any nonmone-
2 tary consideration, as a result of the action
3 which constitutes such failure.

4 “(2) ADDITIONAL DAMAGES.—Such additional
5 amount as the court may allow.

6 “(3) ATTORNEYS’ FEES.—In the case of any
7 successful action to enforce any liability under para-
8 graph (1) or (2), the costs of the action, together
9 with reasonable attorneys’ fees.

10 **“§ 1006. Criminal penalty**

11 “(a) IN GENERAL.—Whoever violates, or attempts to
12 violate, section 1003 shall be fined in accordance with title
13 18, United States Code, or imprisoned for not more than
14 5 years, or both.

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

23 **“§ 1007. Relation to State laws**

24 “(a) IN GENERAL.—This title shall not be construed
25 as superseding, altering, or affecting the statutes, regula-

1 tions, orders, or interpretations in effect in any State, ex-
2 cept to the extent that such statutes, regulations, orders,
3 or interpretations are inconsistent with the provisions of
4 this title, and then only to the extent of the inconsistency.

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

11 **“§ 1008. Agency guidance**

12 “In furtherance of the objectives of this title, each
13 Federal banking agency (as defined in section 3(z) of the
14 Federal Deposit Insurance Act) shall issue advisories to
15 depository institutions under the jurisdiction of the agen-
16 cy, in order to assist such depository institutions in deter-
17 ring and detecting activities proscribed under section
18 1003.”.

19 (b) REPORT TO THE CONGRESS.—Before the end of
20 the 18-month period beginning on the date of the enact-
21 ment of this Act, the Comptroller General, in consultation
22 with the Federal Trade Commission, Federal banking
23 agencies, and appropriate Federal law enforcement agen-
24 cies, shall submit to the Congress a report on the follow-
25 ing:

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

5 (2) Any recommendations for additional legisla-
6 tive or regulatory action to address threats to the
7 privacy of financial information created by attempts
8 to obtain information by fraudulent means or false
9 pretenses.

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