

108TH CONGRESS  
1ST SESSION

# S. 609

To amend the Homeland Security Act of 2002 (Public Law 107–296) to provide for the protection of voluntarily furnished confidential information, and for other purposes.

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## IN THE SENATE OF THE UNITED STATES

MARCH 12, 2003

Mr. LEAHY (for himself, Mr. LEVIN, Mr. LIEBERMAN, Mr. JEFFORDS, and Mr. BYRD) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

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## A BILL

To amend the Homeland Security Act of 2002 (Public Law 107–296) to provide for the protection of voluntarily furnished confidential information, and for other purposes.

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 “Restoration of Free-  
5 dom of Information Act of 2003”.

1 **SEC. 2. PROTECTION OF VOLUNTARILY FURNISHED CON-**  
 2 **FIDENTIAL INFORMATION.**

3 Title II of the Homeland Security Act of 2002 (Pub-  
 4 lic Law 107–296) is amended by striking subtitle B and  
 5 inserting the following:

6 **“Subtitle B—Protection of Volun-**  
 7 **tarily Furnished Confidential**  
 8 **Information**

9 **“SEC. 211. PROTECTION OF VOLUNTARILY FURNISHED**  
 10 **CONFIDENTIAL INFORMATION.**

11 “(a) DEFINITIONS.—In this section:

12 “(1) CRITICAL INFRASTRUCTURE.—The term  
 13 ‘critical infrastructure’ has the meaning given that  
 14 term in section 1016(e) of the USA PATRIOT ACT  
 15 of 2001 (42 U.S.C. 5195c(e)).

16 “(2) FURNISHED VOLUNTARILY.—

17 “(A) DEFINITION.—The term ‘furnished  
 18 voluntarily’ means a submission of a record  
 19 that—

20 “(i) is made to the Department in the  
 21 absence of authority of the Department re-  
 22 quiring that record to be submitted; and

23 “(ii) is not submitted or used to sat-  
 24 isfy any legal requirement or obligation or  
 25 to obtain any grant, permit, benefit (such  
 26 as agency forbearance, loans, or reduction

1 or modifications of agency penalties or rul-  
2 ings), or other approval from the Govern-  
3 ment.

4 “(B) BENEFIT.—In this paragraph, the  
5 term ‘benefit’ does not include any warning,  
6 alert, or other risk analysis by the Department.

7 “(b) IN GENERAL.—Notwithstanding any other pro-  
8 vision of law, a record pertaining to the vulnerability of  
9 and threats to critical infrastructure (such as attacks, re-  
10 sponse, and recovery efforts) that is furnished voluntarily  
11 to the Department shall not be made available under sec-  
12 tion 552 of title 5, United States Code, if—

13 “(1) the provider would not customarily make  
14 the record available to the public; and

15 “(2) the record is designated and certified by  
16 the provider, in a manner specified by the Depart-  
17 ment, as confidential and not customarily made  
18 available to the public.

19 “(c) RECORDS SHARED WITH OTHER AGENCIES.—

20 “(1) IN GENERAL.—

21 “(A) RESPONSE TO REQUEST.—An agency  
22 in receipt of a record that was furnished volun-  
23 tarily to the Department and subsequently  
24 shared with the agency shall, upon receipt of a

1 request under section 552 of title 5, United  
2 States Code, for the record—

3 “(i) not make the record available;

4 and

5 “(ii) refer the request to the Depart-  
6 ment for processing and response in ac-  
7 cordance with this section.

8 “(B) SEGREGABLE PORTION OF  
9 RECORD.—Any reasonably segregable portion of  
10 a record shall be provided to the person re-  
11 questing the record after deletion of any portion  
12 which is exempt under this section.

13 “(2) DISCLOSURE OF INDEPENDENTLY FUR-  
14 NISHED RECORDS.—Notwithstanding paragraph (1),  
15 nothing in this section shall prohibit an agency from  
16 making available under section 552 of title 5, United  
17 States Code, any record that the agency receives  
18 independently of the Department, regardless of  
19 whether or not the Department has a similar or  
20 identical record.

21 “(d) WITHDRAWAL OF CONFIDENTIAL DESIGNA-  
22 TION.—The provider of a record that is furnished volun-  
23 tarily to the Department under subsection (b) may at any  
24 time withdraw, in a manner specified by the Department,  
25 the confidential designation.

1 “(e) PROCEDURES.—The Secretary shall prescribe  
2 procedures for—

3 “(1) the acknowledgement of receipt of records  
4 furnished voluntarily;

5 “(2) the designation, certification, and marking  
6 of records furnished voluntarily as confidential and  
7 not customarily made available to the public;

8 “(3) the care and storage of records furnished  
9 voluntarily;

10 “(4) the protection and maintenance of the con-  
11 fidentiality of records furnished voluntarily; and

12 “(5) the withdrawal of the confidential designa-  
13 tion of records under subsection (d).

14 “(f) EFFECT ON STATE AND LOCAL LAW.—Nothing  
15 in this section shall be construed as preempting or other-  
16 wise modifying State or local law concerning the disclosure  
17 of any information that a State or local government re-  
18 ceives independently of the Department.

19 “(g) REPORT.—

20 “(1) REQUIREMENT.—Not later than 18  
21 months after the date of the enactment of this Act,  
22 the Comptroller General of the United States shall  
23 submit to the committees of Congress specified in  
24 paragraph (2) a report on the implementation and  
25 use of this section, including—

1           “(A) the number of persons in the private  
2 sector, and the number of State and local agen-  
3 cies, that furnished voluntarily records to the  
4 Department under this section;

5           “(B) the number of requests for access to  
6 records granted or denied under this section;  
7 and

8           “(C) such recommendations as the Comp-  
9 troller General considers appropriate regarding  
10 improvements in the collection and analysis of  
11 sensitive information held by persons in the pri-  
12 vate sector, or by State and local agencies, re-  
13 lating to vulnerabilities of and threats to critical  
14 infrastructure, including the response to such  
15 vulnerabilities and threats.

16           “(2) COMMITTEES OF CONGRESS.—The com-  
17 mittees of Congress specified in this paragraph  
18 are—

19           “(A) the Committees on the Judiciary and  
20 Governmental Affairs of the Senate; and

21           “(B) the Committees on the Judiciary and  
22 Government Reform and Oversight of the  
23 House of Representatives.

1           “(3) FORM.—The report shall be submitted in  
2           unclassified form, but may include a classified  
3           annex.”.

4   **SEC. 3. TECHNICAL AND CONFORMING AMENDMENT.**

5           The table of contents for the Homeland Security Act  
6           of 2002 (Public Law 107–296) is amended by striking the  
7           matter relating to subtitle B of title II and inserting the  
8           following:

          “Subtitle B—Protection of Voluntarily Furnished Confidential In-  
          formation.

          “Sec. 211. Protection of Voluntarily Furnished Confidential Infor-  
          mation.”.

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