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To establish procedures for the protection of consumers from misuse of, and unauthorized access to, sensitive personal information contained in private information files maintained by commercial entities engaged in, or affecting, interstate commerce, provide for enforcement of those procedures by the Federal Trade Commission, and for other purposes.

IN THE SENATE OF THE UNITED STATES

JULY 21, 2005

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

A BILL

To establish procedures for the protection of consumers from misuse of, and unauthorized access to, sensitive personal information contained in private information files maintained by commercial entities engaged in, or affecting, interstate commerce, provide for enforcement of those procedures by the Federal Trade Commission, 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 “Consumer Identity
5 Protection and Security Act”.

1 **SEC. 2. SECURITY FREEZES.**

2 The Fair Credit Reporting Act (15 U.S.C. 1601 et
3 seq.) is amended by inserting after section 605B the fol-
4 lowing:

5 **“SEC. 605C. SECURITY FREEZES.**

6 “(a) IN GENERAL.—A consumer reporting agency
7 shall place a security freeze on a private information file
8 when requested by the consumer to whom that file re-
9 lates—

10 “(1) by certified mail,

11 “(2) by telephone by providing certain sensitive
12 personal information, or

13 “(3) through a secure electronic mail connec-
14 tion if such connection is made available by the con-
15 sumer reporting agency.

16 “(b) TIMING.—A consumer reporting agency shall
17 place the requested security freeze on the private informa-
18 tion file no later than 2 business days after receiving a
19 written or telephone request from the consumer or 24
20 hours after receiving a secure electronic mail request.

21 “(c) CONFIRMATION.—Within 2 business days after
22 placing a security freeze on a private information file
23 under subsection (a), the consumer reporting agency that
24 received the request from the consumer shall—

25 “(1) send a written confirmation of the security
26 freeze to the consumer; and

1 “(2) provide to the consumer a unique personal
2 identification number or password to be used by the
3 consumer to authorize access to the private informa-
4 tion file or to remove the security freeze on the file.

5 “(d) PROHIBITION ON UNAUTHORIZED ACCESS.—A
6 consumer reporting agency may not grant access to a pri-
7 vate information file on which a security freeze has been
8 placed, or release information contained in a such a pri-
9 vate information file, except in accordance with the provi-
10 sions of this section or other Federal law.

11 “(e) LIMITED OR TEMPORARY ACCESS TO FROZEN
12 REPORT.—

13 “(1) IN GENERAL.—Within 3 business days
14 after receiving a request from a consumer upon
15 whose private information file a security freeze has
16 been placed to allow access to that file to a third
17 party, or for a period of time, specified by the con-
18 sumer, a consumer reporting agency shall make the
19 private information file available in accordance with
20 the request notwithstanding the security freeze.
21 Each consumer reporting agency shall develop proce-
22 dures involving the use of telephone, facsimile ma-
23 chine, or, upon the consent of the consumer in the
24 manner required by the Electronic Signatures in
25 Global and National Commerce Act (15 U.S.C. 7001

1 et seq.) for notices legally required to be in writing,
2 by the Internet, e-mail, or other electronic medium,
3 to receive and process a request from a consumer to
4 provide limited or temporary access to the private
5 information file under this section in an expedited
6 manner.

7 “(2) REQUEST REQUIREMENTS.—A consumer
8 reporting agency may not allow access to a private
9 information file under paragraph (1) unless—

10 “(A) the request was made by the con-
11 sumer by telephone, certified mail, or security
12 electronic mail (except as provided in accord-
13 ance with procedures established pursuant to
14 the second sentence of paragraph (1)); and

15 “(B) the consumer provides—

16 “(i) proper identification,

17 “(ii) the unique personal identification
18 number or password provided by the con-
19 sumer reporting agency under this section;
20 and

21 “(iii) the proper information regard-
22 ing the third party who is to receive the
23 private information file or the time period
24 for which the file shall be made available.

1 “(3) TERMINATION NOT PERMITTED.—A con-
2 sumer reporting agency may not terminate a secu-
3 rity freeze on the basis of a request under paragraph
4 (1) for limited access to a private information file.

5 “(f) TERMINATION OF SECURITY FREEZE.—

6 “(1) IN GENERAL.—A consumer reporting
7 agency shall terminate a security freeze on a private
8 information file if—

9 “(A) the consumer requests that the secu-
10 rity freeze be terminated; or

11 “(B) the consumer reporting agency—

12 “(i) determines that the security
13 freeze was placed on the private informa-
14 tion file due to a material misrepresenta-
15 tion of fact by the consumer; and

16 “(ii) notifies the consumer in writing
17 not less than 5 business days before termi-
18 nating the security freeze under this sub-
19 paragraph.

20 “(2) TERMINATION REQUESTS.—Except as pro-
21 vided in paragraph (1)(B), a consumer reporting
22 agency may not terminate a security freeze on a pri-
23 vate information file unless the consumer provides—

24 “(A) proper identification; and

1 “(B) the unique personal identification
2 number or password provided by the consumer
3 reporting agency under this section.

4 “(3) TIMING.—A consumer reporting agency
5 shall terminate a security freeze on a private infor-
6 mation file within 3 business days after receiving a
7 request that meets the requirements of this sub-
8 section from the consumer to whom the file relates.

9 “(g) DENIAL OF THIRD PARTY REQUESTS.—

10 “(1) REQUESTS DENIED DUE TO SECURITY
11 FREEZE.—Notwithstanding any other provision of
12 law to the contrary, if a third party’s request for ac-
13 cess to a private information file is denied because
14 there is a security freeze on it, that third party may
15 treat any application in connection with which the
16 request is made as incomplete.

17 “(2) NOTIFICATION OF CONSUMER.—If a con-
18 sumer reporting agency denies a third party’s re-
19 quest for access to a private information file on
20 which a security freeze has been placed for any pur-
21 pose other than account review, the consumer re-
22 porting agency shall notify the consumer that it de-
23 nied the request within 1 business day thereafter.
24 The notice shall identify the third party making the
25 request and the stated purpose of the request.

1 “(h) EXCEPTIONS TO SECURITY FREEZE.—The pro-
2 visions of this section do not apply to requests for access
3 to a private information file by—

4 “(1) a Federal, State, or local law enforcement
5 agency acting within the scope of its authority or
6 pursuant to a court order, warrant, or subpoena;

7 “(2) a Federal, State, or local agency that ad-
8 ministers a program for establishing an enforcing
9 child support obligations;

10 “(3) a Federal, State, or local health agency or
11 its agents or assignees acting to investigate fraud;

12 “(4) a Federal, State, or local tax agency, or its
13 agents or assignees, acting to investigate or collect
14 delinquent taxes or unpaid court orders or to fulfill
15 any of its other statutory responsibilities;

16 “(5) a person, or the person’s subsidiary, affil-
17 iate, agent, or assignee with which the consumer has
18 or, prior to assignment, had an account, contract, or
19 debtor-creditor relationship for the purposes of re-
20 viewing the account or collecting the financial obliga-
21 tion owing for the account, contract, or debt;

22 “(6) a subsidiary, affiliate, agent, assignee, or
23 prospective assignee of a person to whom access has
24 been granted under paragraph (5) for purposes of

1 facilitating the extension of credit or other permis-
2 sible use; or

3 “(7) any person or entity for the purpose of
4 providing a consumer with a copy of his or her pri-
5 vate information file upon the consumer’s request.

6 “(i) NOTIFICATION OF VIOLATION.—

7 “(1) NOTIFICATION.—If a consumer reporting
8 agency violates the requirements of this section with
9 respect to access to a private information file, it
10 shall notify the consumer in writing of the violation
11 within 5 business days. The notice shall include a
12 description of the information to which access was
13 granted and the name and address of the third party
14 to whom such access was granted.

15 “(2) COMPLAINTS TO CONSUMER PROTECTION
16 AGENCIES.—If a private information file on which a
17 security freeze under this section is accessed in vio-
18 lation of this section, the consumer to whom the file
19 relates may file a complaint with the Federal Trade
20 Commission, the attorney general of the State in
21 which the consumer resides, or any other Federal or
22 State consumer protection agency.

23 “(j) APPLICATION TO OTHER CONSUMER REPORTING
24 AGENCIES.—

1 “(1) NOTIFICATION.—Whenever a consumer re-
2 porting agency receives a request from a consumer
3 under this section that meets the requirements of
4 this section to place a security freeze on his or her
5 private information file under subsection (a), to pro-
6 vide temporary or limited access to such a private
7 information file under subsection (e), or to terminate
8 a security freeze on such a private information file
9 under subsection (f), it shall notify (on a secure
10 basis) every other consumer reporting agency in the
11 United States that it knows, or has reason to know,
12 to maintain a private information file on that con-
13 sumer of the request.

14 “(2) COMPLIANCE BY OTHER CONSUMER RE-
15 PORTING AGENCIES.—A consumer reporting agency
16 that receives a reported request under paragraph (1)
17 shall comply with the requirements of this section
18 with respect to that request to the same extent and
19 in the same manner as if it had received the request
20 from the consumer.

21 “(3) LIABILITY.—A consumer reporting agency
22 responding to a notification from another consumer
23 reporting agency under paragraph (1) is liable for
24 any violation of this section with respect to the re-
25 quest to which the notification relates, to the same

1 extent as if it had received the request from the con-
2 sumer, except that such an agency shall not be liable
3 for any violation attributable to incorrect informa-
4 tion provided in the request from the notifying agen-
5 cy.

6 “(k) SERVICE FEES AND CHARGES.—

7 “(1) FEES PROHIBITED.—A consumer report-
8 ing agency may not impose a charge or fee for plac-
9 ing a security freeze on a private information file
10 under subsection (a), for providing limited access to
11 a private information file under subsection (e), or
12 for terminating a security freeze on a private infor-
13 mation file under subsection (f).

14 “(2) REPLACEMENT IDENTIFICATION CODES
15 AND PASSWORDS.—A consumer reporting agency—

16 “(A) may not impose a fee for the replace-
17 ment or reissue of a lost or forgotten personal
18 identification number or password the first time
19 the replacement or reissue is provided to the
20 consumer; but

21 “(B) may impose a fee of not more than
22 \$5 for a second or subsequent replacement or
23 reissue of such a personal identification number
24 or password.”.

1 **SEC. 3. DEFINITIONS.**

2 Section 603 of the Fair Credit Reporting Act (15
3 U.S.C. 1681a) is amended by adding at the end the fol-
4 lowing:

5 “(y) DEFINITIONS RELATING TO SECURITY
6 FREEZES.—For purposes of section 605C, the following
7 definitions shall apply:

8 “(1) ACCOUNT REVIEW.—The term ‘account re-
9 view’ means any activity related to account mainte-
10 nance, monitoring, credit line increases, or account
11 upgrades and enhancements.

12 “(2) PRIVATE INFORMATION FILE.—

13 “(A) IN GENERAL.—The term ‘private in-
14 formation file’ means any written, oral, or other
15 communication of any information by a con-
16 sumer reporting agency bearing on a con-
17 sumer’s character, general reputation, personal
18 characteristics, mode of living, employment, or
19 personal financial information to be used in
20 whole or in part for political campaign, chari-
21 table solicitation, commercial marketing pur-
22 poses or as a factor in establishing the con-
23 sumer’s eligibility for—

24 “(i) credit or insurance to be used pri-
25 marily for personal, family, or household
26 purposes; or

1 “(ii) employment purposes.

2 “(B) EXCLUSIONS.—Except as provided in
3 subparagraph (C), the term ‘private informa-
4 tion file’ does not include—

5 “(i) any report containing information
6 solely as to transactions or experiences be-
7 tween the consumer and the person mak-
8 ing the report;

9 “(ii) the communication of that infor-
10 mation among persons related by common
11 ownership or affiliated by corporate con-
12 trol; or

13 “(iii) the communication of other in-
14 formation among persons related by com-
15 mon ownership or affiliated by corporate
16 control, if it is clearly and conspicuously
17 disclosed to the consumer that the infor-
18 mation may be communicated among such
19 persons and the consumer is given the op-
20 portunity, before the time that the infor-
21 mation is initially communicated, to direct
22 that such information not be commu-
23 nicated among such persons;

24 “(iv) any authorization or approval of
25 a specific extension of credit directly or in-

1 directly by the issuer of a credit card or
2 similar device; or

3 “(v) any report in which a person who
4 has been requested by a third party to
5 make a specific extension of credit directly
6 or indirectly to a consumer conveys his or
7 her decision with respect to such request,
8 if the third party advises the consumer of
9 the name and address of the person to
10 whom the request was made, and such per-
11 son makes the required disclosures to the
12 consumer under Federal law.

13 “(C) RESTRICTION ON SHARING OF MED-
14 ICAL INFORMATION.—Except for information or
15 any communication of information disclosed as
16 provided in Federal law, the exclusions in sub-
17 paragraph (B) do not apply with respect to in-
18 formation disclosed to any person related by
19 common ownership or affiliated by corporate
20 control, if the information is—

21 “(i) medical information;

22 “(ii) an individualized list or descrip-
23 tion based on the payment transactions of
24 the consumer for medical products or serv-
25 ices; or

1 “(iii) an aggregate list of identified
2 consumers based on payment transactions
3 for medical products or services.”.

4 **SEC. 4. REGULATIONS.**

5 (a) **RULEMAKING PROCEEDING.**—Within 90 days
6 after the date of enactment of this Act, the Federal Trade
7 Commission shall initiate a rulemaking proceeding to pro-
8 vide rules, guidelines, and criteria for compliance with the
9 requirements of section 605C of the Fair Credit Reporting
10 Act, as added by this Act, including—

11 (1) rules necessary to implement the provisions
12 of that section 605C that include required contents
13 for a request for a security freeze, criteria for identi-
14 fication verification of the requesting party, and con-
15 sumer notification requirements to ensure that con-
16 sumers are aware of their rights under that section;

17 (2) rules to ensure that a request for a security
18 freeze on a private information file, a request from
19 a consumer for limited or temporary access to a pri-
20 vate information file, or a requested termination of
21 such a freeze under that section, will be commu-
22 nicated by the consumer reporting agency receiving
23 the request to other consumer reporting agencies, as
24 required by subsection (j) of that section, and imple-
25 mented by those agencies in a timely manner; and

1 (3) rules to provide for the application of that
2 section in a manner that does not conflict with any
3 other provision of Federal law governing the acquisi-
4 tion, maintenance, disposition, or access to informa-
5 tion contained in a private information file.

6 (b) FINAL RULE.—The Commission shall issue final
7 rules pursuant to the proceeding initiated under sub-
8 section (a) within 1 year after the date of enactment of
9 this Act.

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