

Calendar No. 297109TH CONGRESS
1ST SESSION**S. 1789**

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

SEPTEMBER 29, 2005

Mr. SPECTER (for himself, Mr. LEAHY, Mrs. FEINSTEIN, and Mr. FEINGOLD) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

NOVEMBER 17, 2005

Reported by Mr. SPECTER, 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 2005”.

4 (b) **TABLE OF CONTENTS.**—The table of contents for
 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. Fraud and related criminal activity in connection with unauthorized
 access to personally identifiable information.

Sec. 102. Organized criminal activity in connection with unauthorized access to
 personally identifiable information.

Sec. 103. Concealment of security breaches involving sensitive personally identi-
 fiable information.

Sec. 104. Aggravated fraud in connection with computers.

Sec. 105. Review and amendment of Federal sentencing guidelines related to
 fraudulent access to or misuse of digitized or electronic person-
 ally identifiable information.

**TITLE II—ASSISTANCE FOR STATE AND LOCAL LAW ENFORCE-
 MENT COMBATING CRIMES RELATED TO FRAUDULENT, UNAU-
 THORIZED, OR OTHER CRIMINAL USE OF PERSONALLY IDENTI-
 FIABLE INFORMATION**

Sec. 201. Grants for State and local enforcement.

Sec. 202. Authorization of appropriations.

TITLE III—DATA BROKERS

Sec. 301. Transparency and accuracy of data collection.

Sec. 302. Enforcement.

Sec. 303. Relation to State laws.

Sec. 304. Effective date.

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

Subtitle A—Data Privacy and Security Program

Sec. 401. Purpose and applicability of data privacy and security program.

Sec. 402. Requirements for a personal data privacy and security program.

Sec. 403. Enforcement.

Sec. 404. Relation to State laws.

Subtitle B—Security Breach Notification

Sec. 421. Right to notice of security breach.

Sec. 422. Notice procedures.

- Sec. 423. Content of notice.
 Sec. 424. Risk assessment and fraud prevention notice exemptions.
 Sec. 425. Victim protection assistance.
 Sec. 426. Enforcement.
 Sec. 427. Relation to State laws.
 Sec. 428. Study on securing personally identifiable information in the digital era.
 Sec. 429. Reporting on risk assessment exemption.
 Sec. 430. Authorization of appropriations.
 Sec. 431. Reporting on risk assessment exemption.
 Sec. 432. Effective date.

TITLE V—GOVERNMENT ACCESS TO AND USE OF COMMERCIAL
DATA

- Sec. 501. General Services Administration review of contracts.
 Sec. 502. Requirement to audit information security practices of contractors and third party business entities.
 Sec. 503. Privacy impact assessment of government use of commercial information services containing personally identifiable information.
 Sec. 504. Implementation of Chief Privacy Officer requirements.

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;

1 (5) it is important for business entities that
2 own, use, or license personally identifiable informa-
3 tion to adopt reasonable procedures to ensure the se-
4 curity, privacy, and confidentiality of that personally
5 identifiable information;

6 (6) individuals whose personal information has
7 been compromised or who have been victims of iden-
8 tity theft should receive the necessary information
9 and assistance to mitigate their damages and to re-
10 store the integrity of their personal information and
11 identities;

12 (7) data brokers have assumed a significant
13 role in providing identification, authentication, and
14 screening services, and related data collection and
15 analyses for commercial, nonprofit, and government
16 operations;

17 (8) data misuse and use of inaccurate data have
18 the potential to cause serious or irreparable harm to
19 an individual's livelihood, privacy, and liberty and
20 undermine efficient and effective business and gov-
21 ernment operations;

22 (9) there is a need to insure that data brokers
23 conduct their operations in a manner that prioritizes
24 fairness, transparency, accuracy, and respect for the
25 privacy of consumers;

1 ~~(10)~~ government access to commercial data can
2 potentially improve safety, law enforcement, and na-
3 tional security; and

4 ~~(11)~~ because government use of commercial
5 data containing personal information potentially af-
6 fects individual privacy, and law enforcement and
7 national security operations, there is a need for Con-
8 gress to exercise oversight over government use of
9 commercial data.

10 **SEC. 3. DEFINITIONS.**

11 In this Act:

12 ~~(1)~~ AGENCY.—The term “agency” has the same
13 meaning given such term in section 551 of title 5,
14 United States Code.

15 ~~(2)~~ AFFILIATE.—The term “affiliate” means
16 persons related by common ownership or by cor-
17 porate control.

18 ~~(3)~~ BUSINESS ENTITY.—The term “business
19 entity” means any organization, corporation, trust,
20 partnership, sole proprietorship, unincorporated as-
21 sociation, venture established to make a profit, or
22 nonprofit, and any contractor, subcontractor, affil-
23 iate, or licensee thereof engaged in interstate com-
24 merce.

1 (4) **IDENTITY THEFT.**—The term “identity
2 theft” means a violation of section 1028 of title 18,
3 United States Code, or any other similar provision
4 of applicable State law.

5 (5) **DATA BROKER.**—The term “data broker”
6 means a business entity which for monetary fees,
7 dues, or on a cooperative nonprofit basis, currently
8 or regularly engages, in whole or in part, in the
9 practice of collecting, transmitting, or providing ac-
10 cess to sensitive personally identifiable information
11 primarily for the purposes of providing such infor-
12 mation to nonaffiliated third parties on a nationwide
13 basis on more than 5,000 individuals who are not
14 the customers or employees of the business entity or
15 affiliate.

16 (6) **DATA FURNISHER.**—The term “data fur-
17 nisher” means any agency, governmental entity, or-
18 ganization, corporation, trust, partnership, sole pro-
19 prietorship, unincorporated association, venture es-
20 tablished to make a profit, or nonprofit, and any
21 contractor, subcontractor, affiliate, or licensee there-
22 of, that serves as a source of information for a data
23 broker.

24 (7) **PERSONAL ELECTRONIC RECORD.**—The
25 term “personal electronic record” means data associ-

1 ated with an individual contained in a database,
 2 networked or integrated databases, or other data
 3 system that holds sensitive personally identifiable in-
 4 formation of that individual and is provided to non-
 5 affiliated third parties.

6 (8) PERSONALLY IDENTIFIABLE INFORMA-
 7 TION.—The term “personally identifiable informa-
 8 tion” means any information, or compilation of in-
 9 formation, in electronic or digital form serving as a
 10 means of identification, as defined by section
 11 1028(d)(7) of title 18, United State Code.

12 (9) PUBLIC RECORD SOURCE.—The term “pub-
 13 lic record source” means any agency, Federal court,
 14 or State court that maintains personally identifiable
 15 information in records available to the public.

16 (10) SECURITY BREACH.—

17 (A) IN GENERAL.—The term “security
 18 breach” means compromise of the security, con-
 19 fidentiality, or integrity of computerized data
 20 through misrepresentation or actions that result
 21 in, or there is a reasonable basis to conclude
 22 has resulted in, the unauthorized acquisition of
 23 and access to sensitive personally identifiable
 24 information.

1 (B) EXCLUSION.—The term “security
2 breach” does not include—

3 (i) a good faith acquisition of sensitive
4 personally identifiable information by a
5 business entity or agency, or an employee
6 or agent of a business entity or agency, if
7 the sensitive personally identifiable infor-
8 mation is not subject to further unauthor-
9 ized disclosure; or

10 (ii) the release of a public record not
11 otherwise subject to confidentiality or non-
12 disclosure requirements.

13 (11) 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 name in combination
19 with any 1 of the following data elements:

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

23 (ii) Any 2 of the following:

24 (I) Information that relates to—

1 (aa) the past, present, or fu-
2 ture physical or mental health or
3 condition of an individual;

4 (bb) the provision of health
5 care to an individual; or

6 (cc) the past, present, or fu-
7 ture payment for the provision of
8 health care to an individual.

9 (II) Home address or telephone
10 number.

11 (III) Mother's maiden name, if
12 identified as such.

13 (IV) Month, day, and year of
14 birth.

15 (iii) Unique biometric data such as a
16 finger print, voice print, a retina or iris
17 image, or any other unique physical rep-
18 resentation.

19 (iv) A unique electronic identification
20 number, user name, or routing code in
21 combination with the associated security
22 code, access code, or password.

23 (v) Any other information regarding
24 an individual determined appropriate by
25 the Federal Trade Commission.

1 (B) A financial account number or credit
 2 or debit card number in combination with the
 3 required security code, access code, or pass-
 4 word.

5 **TITLE I—ENHANCING PUNISH-**
 6 **MENT FOR IDENTITY THEFT**
 7 **AND OTHER VIOLATIONS OF**
 8 **DATA PRIVACY AND SECU-**
 9 **RITY**

10 **SEC. 101. FRAUD AND RELATED CRIMINAL ACTIVITY IN**
 11 **CONNECTION WITH UNAUTHORIZED ACCESS**
 12 **TO PERSONALLY IDENTIFIABLE INFORMA-**
 13 **TION.**

14 Section 1030(a)(2) of title 18, United States Code,
 15 is amended—

16 (1) in subparagraph (B), by striking “or” after
 17 the semicolon;

18 (2) in subparagraph (C), by inserting “or” after
 19 the semicolon; and

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

21 “(D) information contained in the data-
 22 bases or systems of a data broker, or in other
 23 personal electronic records, as such terms are
 24 defined in section 3 of the Personal Data Pri-
 25 vacy and Security Act of 2005.”

1 **SEC. 102. ORGANIZED CRIMINAL ACTIVITY IN CONNECTION**
 2 **WITH UNAUTHORIZED ACCESS TO PERSON-**
 3 **ALLY IDENTIFIABLE INFORMATION.**

4 Section 1961(1) of title 18, United States Code, is
 5 amended by inserting “section 1030(a)(2)(D)(relating to
 6 fraud and related activity in connection with unauthorized
 7 access to personally identifiable information,” before “sec-
 8 tion 1084”.

9 **SEC. 103. CONCEALMENT OF SECURITY BREACHES INVOLV-**
 10 **ING SENSITIVE PERSONALLY IDENTIFIABLE**
 11 **INFORMATION.**

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

15 **“§ 1039. Concealment of security breaches involving**
 16 **sensitive personally identifiable informa-**
 17 **tion**

18 “(a) Whoever, having knowledge of a security breach
 19 and the obligation to provide notice of such breach to indi-
 20 viduals under title IV of the Personal Data Privacy and
 21 Security Act of 2005, and having not otherwise qualified
 22 for an exemption from providing notice under section 422
 23 of such Act, intentionally and willfully conceals the fact
 24 of such security breach which causes economic damages
 25 to 1 or more persons, shall be fined under this title or
 26 imprisoned not more than 5 years, or both.

1 “(b) For purposes of subsection (a), the term ‘person’
 2 means any individual, corporation, company, association,
 3 firm, partnership, society, or joint stock company.”.

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

“1039. Concealment of security breaches involving personally identifiable infor-
 mation.”.

8 (c) ENFORCEMENT AUTHORITY.—The United States
 9 Secret Service shall have the authority to investigate of-
 10 fenses under this section.

11 **SEC. 104. AGGRAVATED FRAUD IN CONNECTION WITH COM-**
 12 **PUTERS.**

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

16 **“§ 1030A. Aggravated fraud in connection with com-**
 17 **puters**

18 “(a) IN GENERAL.—Whoever, during and in relation
 19 to any felony violation enumerated in subsection (c),
 20 knowingly obtains, accesses, or transmits, without lawful
 21 authority, a means of identification of another person
 22 may, in addition to the punishment provided for such fel-
 23 ony, be sentenced to a term of imprisonment of up to 2
 24 years.

1 “(b) CONSECUTIVE SENTENCES.—Notwithstanding
2 any other provision of law, should a court in its discretion
3 impose an additional sentence under subsection (a)—

4 “(1) no term of imprisonment imposed on a
5 person under this section shall run concurrently, ex-
6 cept as provided in paragraph (3), with any other
7 term of imprisonment imposed on such person under
8 any other provision of law, including any term of im-
9 prisonment imposed for the felony during which the
10 means of identifications was obtained, accessed, or
11 transmitted;

12 “(2) in determining any term of imprisonment
13 to be imposed for the felony during which the means
14 of identification was obtained, accessed, or trans-
15 mitted, a court shall not in any way reduce the term
16 to be imposed for such crime so as to compensate
17 for, or otherwise take into account, any separate
18 term of imprisonment imposed or to be imposed for
19 a violation of this section; and

20 “(3) a term of imprisonment imposed on a per-
21 son for a violation of this section may, in the discre-
22 tion of the court, run concurrently, in whole or in
23 part, only with another term of imprisonment that
24 is imposed by the court at the same time on that
25 person for an additional violation of this section.

1 “(c) DEFINITION.—For purposes of this section, the
 2 term ‘felony violation enumerated in subsection (e)’ means
 3 any offense that is a felony violation of paragraphs (2)
 4 through (7) of section 1030(a).”.

5 (b) CONFORMING AND TECHNICAL AMENDMENTS.—
 6 The table of sections for chapter 47 of title 18, United
 7 States Code, is amended by inserting after the item relat-
 8 ing to section 1030 the following new item:

“1030A. Aggravated fraud in connection with computers.”.

9 **SEC. 105. REVIEW AND AMENDMENT OF FEDERAL SEN-**
 10 **TENCING GUIDELINES RELATED TO FRAUDU-**
 11 **LENT ACCESS TO OR MISUSE OF DIGITIZED**
 12 **OR ELECTRONIC PERSONALLY IDENTIFIABLE**
 13 **INFORMATION.**

14 (a) REVIEW AND AMENDMENT.—Not later than 180
 15 days after the date of enactment of this Act, the United
 16 States Sentencing Commission, pursuant to its authority
 17 under section 994 of title 28, United States Code, and
 18 in accordance with this section, shall review and, if appro-
 19 priate, amend the Federal sentencing guidelines (including
 20 its policy statements) applicable to persons convicted of
 21 using fraud to access, or misuse of, digitized or electronic
 22 personally identifiable information, including identity theft
 23 or any offense under—

24 (1) sections 1028, 1028A, 1030, 1030A, 2511,
 25 and 2701 of title 18, United States Code; or

1 ~~(2)~~ any other relevant provision.

2 ~~(b)~~ REQUIREMENTS.—In carrying out the require-
3 ments of this section, the United States Sentencing Com-
4 mission shall—

5 ~~(1)~~ ensure that the Federal sentencing guide-
6 lines (including its policy statements) reflect—

7 ~~(A)~~ the serious nature of the offenses and
8 penalties referred to in this Act;

9 ~~(B)~~ the growing incidences of theft and
10 misuse of digitized or electronic personally iden-
11 tifiable information, including identity theft;
12 and

13 ~~(C)~~ the need to deter, prevent, and punish
14 such offenses;

15 ~~(2)~~ consider the extent to which the Federal
16 sentencing guidelines (including its policy state-
17 ments) adequately address violations of the sections
18 amended by this Act to—

19 ~~(A)~~ sufficiently deter and punish such of-
20 fenses; and

21 ~~(B)~~ adequately reflect the enhanced pen-
22 alties established under this Act;

23 ~~(3)~~ maintain reasonable consistency with other
24 relevant directives and sentencing guidelines;

1 (4) account for any additional aggravating or
2 mitigating circumstances that might justify excep-
3 tions to the generally applicable sentencing ranges;

4 (5) consider whether to provide a sentencing en-
5 hancement for those convicted of the offenses de-
6 scribed in subsection (a); if the conduct involves—

7 (A) the online sale of fraudulently obtained
8 or stolen personally identifiable information;

9 (B) the sale of fraudulently obtained or
10 stolen personally identifiable information to an
11 individual who is engaged in terrorist activity or
12 aiding other individuals engaged in terrorist ac-
13 tivity; or

14 (C) the sale of fraudulently obtained or
15 stolen personally identifiable information to fi-
16 nance terrorist activity or other criminal activi-
17 ties;

18 (6) make any necessary conforming changes to
19 the Federal sentencing guidelines to ensure that
20 such guidelines (including its policy statements) as
21 described in subsection (a) are sufficiently stringent
22 to deter, and adequately reflect crimes related to
23 fraudulent access to, or misuse of, personally identi-
24 fiable information; and

1 (7) ensure that the Federal sentencing guide-
2 lines adequately meet the purposes of sentencing
3 under section 3553(a)(2) of title 18, United States
4 Code.

5 (e) EMERGENCY AUTHORITY TO SENTENCING COM-
6 MISSION.—The United States Sentencing Commission
7 may, as soon as practicable, promulgate amendments
8 under this section in accordance with procedures estab-
9 lished in section 21(a) of the Sentencing Act of 1987 (28
10 U.S.C. 994 note) as though the authority under that Act
11 had not expired.

12 **TITLE II—ASSISTANCE FOR**
13 **STATE AND LOCAL LAW EN-**
14 **FORCEMENT COMBATING**
15 **CRIMES RELATED TO FRAUD-**
16 **ULENT, UNAUTHORIZED, OR**
17 **OTHER CRIMINAL USE OF**
18 **PERSONALLY IDENTIFIABLE**
19 **INFORMATION**

20 **SEC. 201. GRANTS FOR STATE AND LOCAL ENFORCEMENT.**

21 (a) IN GENERAL.—Subject to the availability of
22 amounts provided in advance in appropriations Acts, the
23 Assistant Attorney General for the Office of Justice Pro-
24 grams of the Department of Justice may award a grant
25 to a State to establish and develop programs to increase

1 and enhance enforcement against crimes related to fraud-
2 ulent, unauthorized, or other criminal use of personally
3 identifiable information.

4 (b) APPLICATION.—A State seeking a grant under
5 subsection (a) shall submit an application to the Assistant
6 Attorney General for the Office of Justice Programs of
7 the Department of Justice at such time, in such manner,
8 and containing such information as the Assistant Attorney
9 General may require.

10 (c) USE OF GRANT AMOUNTS.—A grant awarded to
11 a State under subsection (a) shall be used by a State, in
12 conjunction with units of local government within that
13 State, State and local courts, other States, or combina-
14 tions thereof, to establish and develop programs to—

15 (1) assist State and local law enforcement agen-
16 cies in enforcing State and local criminal laws relat-
17 ing to crimes involving the fraudulent, unauthorized,
18 or other criminal use of personally identifiable infor-
19 mation;

20 (2) assist State and local law enforcement agen-
21 cies in educating the public to prevent and identify
22 crimes involving the fraudulent, unauthorized, or
23 other criminal use of personally identifiable informa-
24 tion;

1 (3) educate and train State and local law en-
2 forcement officers and prosecutors to conduct inves-
3 tigations and forensic analyses of evidence and pros-
4 ecutions of crimes involving the fraudulent, unau-
5 thorized, or other criminal use of personally identifi-
6 able information;

7 (4) assist State and local law enforcement offi-
8 cers and prosecutors in acquiring computer and
9 other equipment to conduct investigations and foren-
10 sic analysis of evidence of crimes involving the
11 fraudulent, unauthorized, or other criminal use of
12 personally identifiable information; and

13 (5) facilitate and promote the sharing of Fed-
14 eral law enforcement expertise and information
15 about the investigation, analysis, and prosecution of
16 crimes involving the fraudulent, unauthorized, or
17 other criminal use of personally identifiable informa-
18 tion with State and local law enforcement officers
19 and prosecutors, including the use of multi-jurisdic-
20 tional task forces.

21 (d) ASSURANCES AND ELIGIBILITY.—To be eligible
22 to receive a grant under subsection (a), a State shall pro-
23 vide assurances to the Attorney General that the State—

24 (1) has in effect laws that penalize crimes in-
25 volving the fraudulent, unauthorized, or other crimi-

1 nal use of personally identifiable information, such
2 as penal laws prohibiting—

3 (A) fraudulent schemes executed to obtain
4 personally identifiable information;

5 (B) schemes executed to sell or use fraudu-
6 lently obtained personally identifiable informa-
7 tion; and

8 (C) online sales of personally identifiable
9 information obtained fraudulently or by other
10 illegal means;

11 (2) will provide an assessment of the resource
12 needs of the State and units of local government
13 within that State, including criminal justice re-
14 sources being devoted to the investigation and en-
15 forcement of laws related to crimes involving the
16 fraudulent, unauthorized, or other criminal use of
17 personally identifiable information; and

18 (3) will develop a plan for coordinating the pro-
19 grams funded under this section with other federally
20 funded technical assistant and training programs,
21 including directly funded local programs such as the
22 Local Law Enforcement Block Grant program (de-
23 scribed under the heading “Violent Crime Reduction
24 Programs, State and Local Law Enforcement As-
25 sistance” of the Departments of Commerce, Justice,

1 and State, the Judiciary, and Related Agencies Ap-
2 propriations Act, 1998 (Public Law 105–119)).

3 (c) **MATCHING FUNDS.**—The Federal share of a
4 grant received under this section may not exceed 90 per-
5 cent of the total cost of a program or proposal funded
6 under this section unless the Attorney General waives,
7 wholly or in part, the requirements of this subsection.

8 **SEC. 202. AUTHORIZATION OF APPROPRIATIONS.**

9 (a) **IN GENERAL.**—There is authorized to be appro-
10 priated to carry out this title \$25,000,000 for each of fis-
11 cal years 2006 through 2009.

12 (b) **LIMITATIONS.**—Of the amount made available to
13 carry out this title in any fiscal year not more than 3 per-
14 cent may be used by the Attorney General for salaries and
15 administrative expenses.

16 (c) **MINIMUM AMOUNT.**—Unless all eligible applica-
17 tions submitted by a State or units of local government
18 within a State for a grant under this title have been fund-
19 ed, the State, together with grantees within the State
20 (other than Indian tribes), shall be allocated in each fiscal
21 year under this title not less than 0.75 percent of the total
22 amount appropriated in the fiscal year for grants pursuant
23 to this title, except that the United States Virgin Islands,
24 American Samoa, Guam, and the Northern Mariana Is-
25 lands each shall be allocated 0.25 percent.

1 (d) GRANTS TO INDIAN TRIBES.—Notwithstanding
 2 any other provision of this title, the Attorney General may
 3 use amounts made available under this title to make
 4 grants to Indian tribes for use in accordance with this
 5 title.

6 **TITLE III—DATA BROKERS**

7 **SEC. 301. TRANSPARENCY AND ACCURACY OF DATA COL-** 8 **LECTION.**

9 (a) IN GENERAL.—Data brokers engaging in inter-
 10 state commerce are subject to the requirements of this
 11 title for any product or service offered to third parties that
 12 allows access, use, compilation, distribution, processing,
 13 analyzing, or evaluation of sensitive personally identifiable
 14 information.

15 (b) LIMITATION.—Notwithstanding any other para-
 16 graph of this title, this section shall not apply to—

17 (1) data brokers engaging in interstate com-
 18 merce for any offered product or service currently
 19 subject to, and in compliance with, access and accu-
 20 racy protections similar to those under subsections
 21 (c) through (f) of this section under the Fair Credit
 22 Reporting Act (Public Law 91–508), or the Gramm-
 23 Leach Bliley Act (Public Law 106–102);

24 (2) data brokers engaging in interstate com-
 25 merce for any offered product or service currently in

1 compliance with the requirements for such entities
 2 under the Health Insurance Portability and Ac-
 3 countability Act (Public Law 104-191), and imple-
 4 menting regulations;

5 ~~(3)~~ information in a personal electronic record
 6 held by a data broker if—

7 ~~(A)~~ the data broker maintains such infor-
 8 mation solely pursuant to a license agreement
 9 with another business entity; and

10 ~~(B)~~ the business entity providing such in-
 11 formation to the data broker pursuant to a li-
 12 cense agreement either complies with the provi-
 13 sions of this section or qualifies for this exemp-
 14 tion; and

15 ~~(4)~~ information in a personal record that—

16 ~~(A)~~ the data broker has identified as inae-
 17 curate, but maintains for the purpose of aiding
 18 the data broker in preventing inaccurate infor-
 19 mation from entering an individual's personal
 20 electronic record; and

21 ~~(B)~~ is not maintained primarily for the
 22 purpose of transmitting or otherwise providing
 23 that information, or assessments based on that
 24 information, to non-affiliated third parties.

25 ~~(e) DISCLOSURES TO INDIVIDUALS.—~~

1 (1) IN GENERAL.—A data broker shall, upon
2 the request of an individual, clearly and accurately
3 disclose to such individual for a reasonable fee all
4 personal electronic records pertaining to that indi-
5 vidual maintained for disclosure to third parties in
6 the ordinary course of business in the databases or
7 systems of the data broker at the time of the re-
8 quest.

9 (2) INFORMATION ON HOW TO CORRECT INAC-
10 CURACIES.—The disclosures required under para-
11 graph (1) shall also include guidance to individuals
12 on the processes and procedures for demonstrating
13 and correcting any inaccuracies.

14 (d) CREATION OF AN ACCURACY RESOLUTION PROC-
15 ESS.—A data broker shall develop and publish on its
16 website timely and fair processes and procedures for re-
17 sponding to claims of inaccuracies, including procedures
18 for correcting inaccurate information in the personal elec-
19 tronic records it maintains on individuals.

20 (e) ACCURACY RESOLUTION PROCESS.—

21 (1) INFORMATION FROM A PUBLIC RECORD
22 SOURCE.—

23 (A) IN GENERAL.—If an individual notifies
24 a data broker of a dispute as to the complete-
25 ness or accuracy of information, and the data

1 broker determines that such information is de-
2 rived from a public record source, the data
3 broker shall determine within 30 days whether
4 the information in its system accurately and
5 completely records the information offered by
6 the public record source.

7 (B) DATA BROKER ACTIONS.—If a data
8 broker determines under subparagraph (A) that
9 the information in its systems—

10 (i) does not accurately and completely
11 record the information offered by a public
12 record source, the data broker shall correct
13 any inaccuracies or incompleteness, and
14 provide to such individual written notice of
15 such changes; and

16 (ii) does accurately and completely
17 record the information offered by a public
18 record source, the data broker shall—

19 (I) provide such individual with
20 the name, address, and telephone con-
21 tact information of the public record
22 source; and

23 (II) notify such individual of the
24 right to add for a period of 90 days
25 to the personal electronic record of

1 the individual maintained by the data
2 broker notice of the dispute under
3 subsection (f).

4 (2) INVESTIGATION OF DISPUTED INFORMATION
5 NOT FROM A PUBLIC RECORD SOURCE.—If the com-
6 pleteness or accuracy of any nonpublic record source
7 disclosed to an individual under subsection (e) is dis-
8 puted by the individual and such individual notifies
9 the data broker directly of such dispute, the data
10 broker shall, before the end of the 30-day period be-
11 ginning on the date on which the data broker re-
12 ceives the notice of the dispute—

13 (A) investigate free of charge and record
14 the current status of the disputed information;
15 or

16 (B) delete the item from the individual's
17 data file in accordance with paragraph (8).

18 (3) EXTENSION OF PERIOD TO INVESTIGATE.—
19 Except as provided in paragraph (4), the 30-day pe-
20 riod described in paragraph (1) may be extended for
21 not more than 15 additional days if a data broker
22 receives information from the individual during that
23 30-day period that is relevant to the investigation.

24 (4) LIMITATIONS ON EXTENSION OF PERIOD TO
25 INVESTIGATE.—Paragraph (3) shall not apply to any

1 investigation in which, during the 30-day period de-
2 scribed in paragraph (1), the information that is the
3 subject of the investigation is found to be inaccurate
4 or incomplete or a data broker determines that the
5 information cannot be verified.

6 (5) NOTICE IDENTIFYING THE DATA FUR-
7 NISHER.—If the completeness or accuracy of any in-
8 formation disclosed to an individual under sub-
9 section (c) is disputed by the individual, a data
10 broker shall provide upon the request of the indi-
11 vidual, the name, business address, and telephone
12 contact information of any data furnisher who pro-
13 vided an item of information in dispute.

14 (6) DETERMINATION THAT DISPUTE IS FRIVO-
15 LOUS OR IRRELEVANT.—

16 (A) IN GENERAL.—Notwithstanding para-
17 graphs (1) through (4), a data broker may de-
18 cline to investigate or terminate an investiga-
19 tion of information disputed by an individual
20 under those paragraphs if the data broker rea-
21 sonably determines that the dispute by the indi-
22 vidual is frivolous or irrelevant, including by
23 reason of a failure by the individual to provide
24 sufficient information to investigate the dis-
25 puted information.

1 (B) NOTICE.—Not later than 5 business
2 days after making any determination in accord-
3 ance with subparagraph (A) that a dispute is
4 frivolous or irrelevant, a data broker shall no-
5 tify the individual of such determination by
6 mail, or if authorized by the individual, by any
7 other means available to the data broker.

8 (C) CONTENTS OF NOTICE.—A notice
9 under subparagraph (B) shall include—

10 (i) the reasons for the determination
11 under subparagraph (A); and

12 (ii) identification of any information
13 required to investigate the disputed infor-
14 mation, which may consist of a standard-
15 ized form describing the general nature of
16 such information.

17 (7) CONSIDERATION OF INDIVIDUAL INFORMA-
18 TION.—In conducting any investigation with respect
19 to disputed information in the personal electronic
20 record of any individual, a data broker shall review
21 and consider all relevant information submitted by
22 the individual in the period described in paragraph
23 (2) with respect to such disputed information.

24 (8) TREATMENT OF INACCURATE OR UNVERIFI-
25 ABLE INFORMATION.—

1 (A) IN GENERAL.—If, after any review of
2 public record information under paragraph (1)
3 or any investigation of any information disputed
4 by an individual under paragraphs (2) through
5 (4), an item of information is found to be inae-
6 curate or incomplete or cannot be verified, a
7 data broker shall promptly delete that item of
8 information from the individual’s personal elec-
9 tronic record or modify that item of informa-
10 tion, as appropriate, based on the results of the
11 investigation.

12 (B) NOTICE TO INDIVIDUALS OF REINSER-
13 TION OF PREVIOUSLY DELETED INFORMA-
14 TION.—If any information that has been de-
15 leted from an individual’s personal electronic
16 record pursuant to subparagraph (A) is re-
17 inserted in the personal electronic record of the
18 individual, a data broker shall, not later than 5
19 days after reinsertion, notify the individual of
20 the reinsertion and identify any data furnisher
21 not previously disclosed in writing, or if author-
22 ized by the individual for that purpose, by any
23 other means available to the data broker, unless
24 such notification has been previously given
25 under this subsection.

1 (C) NOTICE OF RESULTS OF INVESTIGA-
2 TION OF DISPUTED INFORMATION FROM A NON-
3 PUBLIC RECORD SOURCE.—

4 (i) IN GENERAL.—Not later than 5
5 business days after the completion of an
6 investigation under paragraph (2), a data
7 broker shall provide written notice to an
8 individual of the results of the investiga-
9 tion, by mail or, if authorized by the indi-
10 vidual for that purpose, by other means
11 available to the data broker.

12 (ii) ADDITIONAL REQUIREMENT.—Be-
13 fore the expiration of the 5-day period, as
14 part of, or in addition to such notice, a
15 data broker shall, in writing, provide to an
16 individual—

17 (I) a statement that the inves-
18 tigation is completed;

19 (II) a report that is based upon
20 the personal electronic record of such
21 individual as that personal electronic
22 record is revised as a result of the in-
23 vestigation;

24 (III) a notice that, if requested
25 by the individual, a description of the

1 procedures used to determine the ac-
2 curacy and completeness of the infor-
3 mation shall be provided to the indi-
4 vidual by the data broker, including
5 the business name, address, and tele-
6 phone number of any data furnisher
7 of information contacted in connection
8 with such information; and

9 (IV) a notice that the individual
10 has the right to request notifications
11 under subsection (f).

12 (D) DESCRIPTION OF INVESTIGATION PRO-
13 CEDURES.—Not later than 15 days after receiv-
14 ing a request from an individual for a descrip-
15 tion referred to in subparagraph (C)(ii)(III), a
16 data broker shall provide to the individual such
17 a description.

18 (E) EXPEDITED DISPUTE RESOLUTION.—
19 If by no later than 3 business days after the
20 date on which a data broker receives notice of
21 a dispute from an individual of information in
22 the personal electronic record of such individual
23 in accordance with paragraph (2), a data
24 broker resolves such dispute in accordance with
25 subparagraph (A) by the deletion of the dis-

1 puted information; then the data broker shall
 2 not be required to comply with subsections (e)
 3 and (f) with respect to that dispute if the data
 4 broker provides to the individual, by telephone
 5 or other means authorized by the individual,
 6 prompt notice of the deletion.

7 (f) NOTICE OF DISPUTE.—

8 (1) IN GENERAL.—If the completeness or accu-
 9 racy of any information disclosed to an individual
 10 under subsection (e) is disputed and unless there is
 11 a reasonable ground to believe that such dispute is
 12 frivolous or irrelevant, an individual may request
 13 that the data broker indicate notice of the dispute
 14 for a period of—

15 (A) 30 days for information from a non-
 16 public record source; and

17 (B) 90 days for information from a public
 18 record source.

19 (2) COMPLIANCE.—A data broker shall be
 20 deemed in compliance with the requirements under
 21 paragraph (1) by either—

22 (A) allowing the individual to file a brief
 23 statement setting forth the nature of the dis-
 24 pute under paragraph (2); or

1 (B) using an alternative notice method
2 that—

3 (i) clearly flags the disputed informa-
4 tion for third parties accessing the infor-
5 mation; and

6 (ii) provides a means for third parties
7 to obtain further information regarding the
8 nature of the dispute.

9 (3) CONTENTS OF STATEMENT.—A data broker
10 may limit statements made under paragraph (2)(A)
11 to not more than 100 words if it provides an indi-
12 vidual with assistance in writing a clear summary of
13 the dispute or until the dispute is resolved.

14 (g) ADDITIONAL REQUIREMENTS.—The Federal
15 Trade Commission may exempt certain classes of data
16 brokers from this title in a rulemaking process pursuant
17 to section 553 of title 5, United States Code.

18 **SEC. 302. ENFORCEMENT.**

19 (a) CIVIL PENALTIES.—

20 (1) PENALTIES.—Any data broker that violates
21 the provisions of section 301 shall be subject to civil
22 penalties of not more than \$1,000 per violation per
23 day, with a maximum of \$15,000 per day, while
24 such violations persist.

1 (2) INTENTIONAL OR WILLFUL VIOLATION.—A
 2 data broker that intentionally or willfully violates the
 3 provisions of section 301 shall be subject to addi-
 4 tional penalties in the amount of \$1,000 per viola-
 5 tion per day, with a maximum of an additional
 6 \$15,000 per day, while such violations persist.

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

11 (4) OTHER RIGHTS AND REMEDIES.—The
 12 rights and remedies available under this subsection
 13 are cumulative and shall not affect any other rights
 14 and remedies available under law.

15 (b) INJUNCTIVE ACTIONS BY THE ATTORNEY GEN-
 16 ERAL.—

17 (1) IN GENERAL.—Whenever it appears that a
 18 data broker to which this title applies has engaged,
 19 is engaged, or is about to engage, in any act or prac-
 20 tice constituting a violation of this title, the Attorney
 21 General may bring a civil action in an appropriate
 22 district court of the United States to—

23 (A) enjoin such act or practice;

24 (B) enforce compliance with this title;

25 (C) obtain damages—

1 (i) in the sum of actual damages, res-
2 titution, and other compensation on behalf
3 of the affected residents of a State; and

4 (ii) punitive damages, if the violation
5 is willful or intentional; and

6 (D) obtain such other relief as the court
7 determines to be appropriate.

8 (2) OTHER INJUNCTIVE RELIEF.—Upon a
9 proper showing in the action under paragraph (1),
10 the court shall grant a permanent injunction or a
11 temporary restraining order without bond.

12 (c) STATE ENFORCEMENT.—

13 (1) CIVIL ACTIONS.—In any case in which the
14 attorney general of a State has reason to believe
15 that an interest of the residents of that State has
16 been or is threatened or adversely affected by an act
17 or practice that violates this title, the State may
18 bring a civil action on behalf of the residents of that
19 State in a district court of the United States of ap-
20 propriate jurisdiction, or any other court of com-
21 petent jurisdiction, to—

22 (A) enjoin that act or practice;

23 (B) enforce compliance with this title;

24 (C) obtain—

1 (i) damages in the sum of actual dam-
2 ages, restitution, or other compensation on
3 behalf of affected residents of the State;
4 and

5 (ii) punitive damages, if the violation
6 is willful or intentional; or

7 (D) obtain such other legal and equitable
8 relief as the court may consider to be appro-
9 priate.

10 (2) NOTICE.—

11 (A) IN GENERAL.—Before filing an action
12 under this subsection, the attorney general of
13 the State involved shall provide to the Attorney
14 General—

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

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

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

1 (C) NOTIFICATION WHEN PRACTICABLE.—

2 In an action described under subparagraph (B),
3 the attorney general of a State shall provide the
4 written notice and the copy of the complaint to
5 the Attorney General as soon after the filing of
6 the complaint as practicable.

7 (3) ATTORNEY GENERAL AUTHORITY.—Upon
8 receiving notice under paragraph (2), the Attorney
9 General shall have the right to—

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

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

15 (C) file petitions for appeal.

16 (4) PENDING PROCEEDINGS.—If the Attorney
17 General has instituted a proceeding or action for a
18 violation of this title or any regulations thereunder,
19 no attorney general of a State may, during the pend-
20 ency of such proceeding or action, bring an action
21 under this subsection against any defendant named
22 in such criminal proceeding or civil action for any
23 violation that is alleged in that proceeding or action.

24 (5) RULE OF CONSTRUCTION.—For purposes of
25 bringing any civil action under paragraph (1), noth-

1 ing in this title shall be construed to prevent an at-
 2 torney general of a State from exercising the powers
 3 conferred on the attorney general by the laws of that
 4 State to—

5 (A) conduct investigations;

6 (B) administer oaths and affirmations; or

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

10 (6) VENUE; SERVICE OF PROCESS.—

11 (A) VENUE.—Any action brought under
 12 this subsection may be brought in the district
 13 court of the United States that meets applicable
 14 requirements relating to venue under section
 15 1931 of title 28, United States Code.

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

19 (i) is an inhabitant; or

20 (ii) may be found.

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

1 **SEC. 303. RELATION TO STATE LAWS.**

2 No requirement or prohibition may be imposed under
3 the laws of any State with respect to any subject matter
4 regulated under section 301, relating to individual access
5 to, and correction of, personal electronic records held by
6 databrokers.

7 **SEC. 304. EFFECTIVE DATE.**

8 This title shall take effect 180 days after the date
9 of enactment of this Act and shall be implemented pursu-
10 ant to a State by State rollout schedule set by the Federal
11 Trade Commission, but in no case shall full implementa-
12 tion and effect of this title occur later than 1 year and
13 180 days after the date of enactment of this Act.

14 **TITLE IV—PRIVACY AND SECURITY**
15 **OF PERSONALLY IDENTIFIABLE INFORMATION**
16 **Subtitle A—Data Privacy and**
17 **Security Program**

19 **SEC. 401. PURPOSE AND APPLICABILITY OF DATA PRIVACY**
20 **AND SECURITY PROGRAM.**

21 (a) **PURPOSE.**—The purpose of this subtitle is to en-
22 sure standards for developing and implementing adminis-
23 trative, technical, and physical safeguards to protect the
24 privacy, security, confidentiality, integrity, storage, and
25 disposal of sensitive personally identifiable information.

1 (b) ~~IN GENERAL.~~—A business entity engaging in
2 interstate commerce that involves collecting, accessing,
3 transmitting, using, storing, or disposing of sensitive per-
4 sonally identifiable information in electronic or digital
5 form on 10,000 or more United States persons is subject
6 to the requirements for a data privacy and security pro-
7 gram under section 402 for protecting sensitive personally
8 identifiable information.

9 (c) ~~LIMITATIONS.~~—Notwithstanding any other obli-
10 gation under this subtitle, this subtitle does not apply to—

11 (1) ~~financial institutions—~~

12 (A) ~~subject to the data security require-~~
13 ~~ments and implementing regulations under the~~
14 ~~Gramm-Leach-Bliley Act (15 U.S.C. 6801 et~~
15 ~~seq.); and~~

16 (B) ~~subject to—~~

17 (i) ~~examinations for compliance with~~
18 ~~the requirements of this Act by 1 or more~~
19 ~~Federal or State functional regulators (as~~
20 ~~defined in section 509 of the Gramm-~~
21 ~~Leach-Bliley Act (15 U.S.C. 6809)); or~~

22 (ii) ~~compliance with part 314 of title~~
23 ~~16, Code of Federal Regulations; or~~

24 (2) ~~“covered entities” subject to the Health In-~~
25 ~~surance Portability and Accountability Act of 1996~~

1 (42 U.S.C. 1301 et seq.), including the data security
2 requirements and implementing regulations of that
3 Act.

4 (d) SAFE HARBOR.—A business entity shall be
5 deemed in compliance with the privacy and security pro-
6 gram requirements under section 402 if the business enti-
7 ty complies with or provides protection equal to industry
8 standards, as identified by the Federal Trade Commission,
9 that are applicable to the type of sensitive personally iden-
10 tifiable information involved in the ordinary course of
11 business of such business entity.

12 **SEC. 402. REQUIREMENTS FOR A PERSONAL DATA PRIVACY**
13 **AND SECURITY PROGRAM.**

14 (a) PERSONAL DATA PRIVACY AND SECURITY PRO-
15 GRAM.—Unless otherwise limited under section 401(e), a
16 business entity subject to this subtitle shall comply with
17 the following safeguards and any others identified by the
18 Federal Trade Commission in a rulemaking process pursu-
19 ant to section 553 of title 5, United States Code, to pro-
20 tect the privacy and security of sensitive personally identi-
21 fiable information:

22 (1) SCOPE.—A business entity shall implement
23 a comprehensive personal data privacy and security
24 program that includes administrative, technical, and
25 physical safeguards appropriate to the size and com-

1 plexity of the business entity and the nature and
2 scope of its activities.

3 ~~(2) DESIGN.~~—The personal data privacy and
4 security program shall be designed to—

5 (A) ensure the privacy, security, and con-
6 fidentiality of personal electronic records;

7 (B) protect against any anticipated
8 vulnerabilities to the privacy, security, or integ-
9 rity of personal electronic records; and

10 (C) protect against unauthorized access to
11 use of personal electronic records that could re-
12 sult in substantial harm or inconvenience to any
13 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 alter-
19 ation of sensitive personally identifiable infor-
20 mation or systems containing sensitive person-
21 ally identifiable 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; and

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.

6 (4) RISK MANAGEMENT AND CONTROL.—Each
7 business entity shall—

8 (A) design its personal data privacy and
9 security program to control the risks identified
10 under paragraph (3); and

11 (B) adopt measures commensurate with
12 the sensitivity of the data as well as the size,
13 complexity, and scope of the activities of the
14 business entity that—

15 (i) control access to systems and fa-
16 cilities containing sensitive personally iden-
17 tifiable information, including controls to
18 authenticate and permit access only to au-
19 thorized individuals;

20 (ii) detect actual and attempted
21 fraudulent, unlawful, or unauthorized ac-
22 cess, disclosure, use, or alteration of sen-
23 sitive personally identifiable information,
24 including by employees and other individ-

1 uals otherwise authorized to have access;
2 and

3 (iii) protect sensitive personally identi-
4 fiable information during use, trans-
5 mission, storage, and disposal by
6 encryption or other reasonable means (in-
7 cluding as directed for disposal of records
8 under section 628 of the Fair Credit Re-
9 porting Act (15 U.S.C. 1681w) and the
10 implementing regulations of such Act as
11 set forth in section 682 of title 16, Code
12 of Federal Regulations).

13 (b) TRAINING.—Each business entity subject to this
14 subtitle shall take steps to ensure employee training and
15 supervision for implementation of the data security pro-
16 gram of the business entity.

17 (c) VULNERABILITY TESTING.—

18 (1) IN GENERAL.—Each business entity subject
19 to this subtitle shall take steps to ensure regular
20 testing of key controls, systems, and procedures of
21 the personal data privacy and security program to
22 detect, prevent, and respond to attacks or intrusions,
23 or other system failures.

24 (2) FREQUENCY.—The frequency and nature of
25 the tests required under paragraph (1) shall be de-

1 terminated by the risk assessment of the business enti-
2 ty under subsection (a)(3).

3 (d) ~~RELATIONSHIP TO SERVICE PROVIDERS.~~—In the
4 event a business entity subject to this subtitle engages
5 service providers not subject to this subtitle, such business
6 entity shall—

7 (1) exercise appropriate due diligence in select-
8 ing those service providers for responsibilities related
9 to sensitive personally identifiable information, and
10 take reasonable steps to select and retain service
11 providers that are capable of maintaining appro-
12 priate safeguards for the security, privacy, and in-
13 tegrity of the sensitive personally identifiable infor-
14 mation at issue; and

15 (2) require those service providers by contract
16 to implement and maintain appropriate measures de-
17 signed to meet the objectives and requirements gov-
18 erning entities subject to this section, section 401,
19 and subtitle B.

20 (e) ~~PERIODIC ASSESSMENT AND PERSONAL DATA~~
21 ~~PRIVACY AND SECURITY MODERNIZATION.~~—Each busi-
22 ness entity subject to this subtitle shall on a regular basis
23 monitor, evaluate, and adjust, as appropriate its data pri-
24 vacy and security program in light of any relevant changes
25 in—

- 1 (1) technology;
- 2 (2) the sensitivity of personally identifiable in-
- 3 formation;
- 4 (3) internal or external threats to personally
- 5 identifiable information; and
- 6 (4) the changing business arrangements of the
- 7 business entity, such as—
- 8 (A) mergers and acquisitions;
- 9 (B) alliances and joint ventures;
- 10 (C) outsourcing arrangements;
- 11 (D) bankruptcy; and
- 12 (E) changes to sensitive personally identifi-
- 13 able information systems.

14 (f) IMPLEMENTATION TIME LINE.—Not later than 1

15 year after the date of enactment of this Act, a business

16 entity subject to the provisions of this subtitle shall imple-

17 ment a data privacy and security program pursuant to this

18 subtitle.

19 **SEC. 403. ENFORCEMENT.**

20 (a) CIVIL PENALTIES.—

21 (1) IN GENERAL.—Any business entity that vio-

22 lates the provisions of sections 401 or 402 shall be

23 subject to civil penalties of not more than \$5,000

24 per violation per day, with a maximum of \$35,000

25 per day, while such violations persist.

1 (2) INTENTIONAL OR WILLFUL VIOLATION.—A
2 business entity that intentionally or willfully violates
3 the provisions of sections 401 or 402 shall be subject
4 to additional penalties in the amount of \$5,000 per
5 violation per day, with a maximum of an additional
6 \$35,000 per day, while such violations persist.

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

11 (4) OTHER RIGHTS AND REMEDIES.—The
12 rights and remedies available under this section are
13 cumulative and shall not affect any other rights and
14 remedies available under law

15 (b) INJUNCTIVE ACTIONS BY THE ATTORNEY GEN-
16 ERAL.—

17 (1) IN GENERAL.—Whenever it appears that a
18 business entity or agency to which this subtitle ap-
19 plies has engaged, is engaged, or is about to engage,
20 in any act or practice constituting a violation of this
21 subtitle, the Attorney General may bring a civil ac-
22 tion in an appropriate district court of the United
23 States to—

24 (A) enjoin such act or practice;

1 ~~(B)~~ enforce compliance with this subtitle;

2 and

3 ~~(C)~~ obtain damages—

4 (i) in the sum of actual damages, res-
5 titution, and other compensation on behalf
6 of the affected residents of a State; and

7 (ii) punitive damages, if the violation
8 is willful or intentional; and

9 ~~(D)~~ obtain such other relief as the court
10 determines to be appropriate.

11 ~~(2) OTHER INJUNCTIVE RELIEF.~~—Upon a
12 proper showing in the action under paragraph ~~(1)~~,
13 the court shall grant a permanent injunction or a
14 temporary restraining order without bond.

15 ~~(c) STATE ENFORCEMENT.~~—

16 ~~(1) CIVIL ACTIONS.~~—In any case in which the
17 attorney general of a State has reason to believe
18 that an interest of the residents of that State has
19 been or is threatened or adversely affected by an act
20 or practice that violates this subtitle, the State may
21 bring a civil action on behalf of the residents of that
22 State in a district court of the United States of ap-
23 propriate jurisdiction, or any other court of com-
24 petent jurisdiction, to—

25 ~~(A)~~ enjoin that act or practice;

1 ~~(B)~~ enforce compliance with this subtitle;

2 ~~(C)~~ obtain—

3 ~~(i)~~ damages in the sum of actual dam-
4 ages, restitution, or other compensation on
5 behalf of affected residents of the State;
6 and

7 ~~(ii)~~ punitive damages, if the violation
8 is willful or intentional; or

9 ~~(D)~~ obtain such other legal and equitable
10 relief as the court may consider to be appro-
11 priate.

12 ~~(2)~~ NOTICE.—

13 ~~(A)~~ IN GENERAL.—Before filing an action
14 under this subsection, the attorney general of
15 the State involved shall provide to the Attorney
16 General—

17 ~~(i)~~ a written notice of that action; and

18 ~~(ii)~~ a copy of the complaint for that
19 action.

20 ~~(B)~~ EXCEPTION.—Subparagraph ~~(A)~~ shall
21 not apply with respect to the filing of an action
22 by an attorney general of a State under this
23 subsection, if the attorney general of a State
24 determines that it is not feasible to provide the

1 notice described in this subparagraph before the
2 filing of the action.

3 (C) NOTIFICATION WHEN PRACTICABLE.—

4 In an action described under subparagraph (B),
5 the attorney general of a State shall provide the
6 written notice and the copy of the complaint to
7 the Attorney General as soon after the filing of
8 the complaint as practicable.

9 (3) ATTORNEY GENERAL AUTHORITY.—Upon
10 receiving notice under paragraph (2), the Attorney
11 General shall have the right to—

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

15 (B) intervene in an action brought under
16 paragraph (1); and

17 (C) file petitions for appeal.

18 (4) PENDING PROCEEDINGS.—If the Attorney
19 General has instituted a proceeding or action for a
20 violation of this title or any regulations thereunder,
21 no attorney general of a State may, during the pend-
22 ency of such proceeding or action, bring an action
23 under this subsection against any defendant named
24 in such criminal proceeding or civil action for any
25 violation that is alleged in that proceeding or action.

1 (5) ~~RULE OF CONSTRUCTION.~~—For purposes of
 2 bringing any civil action under paragraph (1) noth-
 3 ing in this title shall be construed to prevent an at-
 4 torney general of a State from exercising the powers
 5 conferred on the attorney general by the laws of that
 6 State to—

7 (A) conduct investigations;

8 (B) administer oaths and affirmations; or

9 (C) compel the attendance of witnesses or
 10 the production of documentary and other evi-
 11 dence.

12 (6) ~~VENUE; SERVICE OF PROCESS.~~—

13 (A) ~~VENUE.~~—Any action brought under
 14 this subsection may be brought in the district
 15 court of the United States that meets applicable
 16 requirements relating to venue under section
 17 1931 of title 28, United States Code.

18 (B) ~~SERVICE OF PROCESS.~~—In an action
 19 brought under this subsection process may be
 20 served in any district in which the defendant—

21 (i) is an inhabitant; or

22 (ii) may be found.

23 (d) ~~NO PRIVATE CAUSE OF ACTION.~~—Nothing in
 24 this title establishes a private cause of action against a

1 business entity for violation of any provision of this sub-
 2 title.

3 **SEC. 404. RELATION TO STATE LAWS.**

4 (a) IN GENERAL.—No State may—

5 (1) require an entity described in section 401(e)
 6 to comply with this subtitle or any regulation pro-
 7 mulgated thereunder; and

8 (2) require an entity in compliance with the
 9 safe harbor established under section 401(d), to
 10 comply with any other provision of this subtitle.

11 (b) EFFECT OF SUBTITLE A.—Except as provided in
 12 subsection (a), this subtitle does not annul, alter, affect,
 13 or exempt any person subject to the provisions of this sub-
 14 title from complying with the laws of any State with re-
 15 spect to security programs for sensitive personally identifi-
 16 able information, except to the extent that those laws are
 17 inconsistent with any provisions of this subtitle, and then
 18 only to the extent of such inconsistency.

19 **Subtitle B—Security Breach**
 20 **Notification**

21 **SEC. 421. NOTICE TO INDIVIDUALS.**

22 (a) IN GENERAL.—Any agency, or business entity en-
 23 gaged in interstate commerce, that uses, accesses, trans-
 24 mits, stores, disposes of or collects sensitive personally
 25 identifiable information shall, following the discovery of a

1 security breach maintained by the agency or business enti-
2 ty that contains such information, notify any resident of
3 the United States whose sensitive personally identifiable
4 information was subject to the security breach.

5 (b) OBLIGATION OF OWNER OR LICENSEE.—

6 (1) NOTICE TO OWNER OR LICENSEE.—Any
7 agency, or business entity engaged in interstate com-
8 merce, that uses, accesses, transmits, stores, dis-
9 poses of, or collects sensitive personally identifiable
10 information that the agency or business entity does
11 not own or license shall notify the owner or licensee
12 of the information following the discovery of a secu-
13 rity breach containing such information.

14 (2) NOTICE BY OWNER, LICENSEE OR OTHER
15 DESIGNATED THIRD PARTY.—Nothing in this subtitle
16 shall prevent or abrogate an agreement between an
17 agency or business entity required to give notice
18 under this section and a designated third party, in-
19 cluding an owner or licensee of the sensitive person-
20 ally identifiable information subject to the security
21 breach, to provide the notifications required under
22 subsection (a).

23 (3) BUSINESS ENTITY RELIEVED FROM GIVING
24 NOTICE.—A business entity obligated to give notice
25 under subsection (a) shall be relieved of such obliga-

1 tion if an owner or licensee of the sensitive person-
2 ally identifiable information subject to the security
3 breach, or other designated third party, provides
4 such notification.

5 (c) TIMELINESS OF NOTIFICATION.—

6 (1) IN GENERAL.—All notifications required
7 under this section shall be made without unreason-
8 able delay following—

9 (A) the discovery by the agency or business
10 entity of a security breach; and

11 (B) any measures necessary to determine
12 the scope of the breach, prevent further disclo-
13 sures, and restore the reasonable integrity of
14 the data system.

15 (2) BURDEN OF PROOF.—The agency, business
16 entity, owner, or licensee required to provide notifi-
17 cation under this section shall have the burden of
18 demonstrating that all notifications were made as re-
19 quired under this subtitle, including evidence dem-
20 onstrating the necessity of any delay.

21 (d) DELAY OF NOTIFICATION AUTHORIZED FOR LAW
22 ENFORCEMENT PURPOSES.—

23 (1) IN GENERAL.—If a law enforcement agency
24 determines that the notification required under this
25 section would impede a criminal investigation, such

1 notification may be delayed upon the written request
2 of the law enforcement agency.

3 ~~(2) EXTENDED DELAY OF NOTIFICATION.—~~If
4 the notification required under subsection (a) is de-
5 layed pursuant to paragraph (1), an agency or busi-
6 ness entity shall give notice 30 days after the day
7 such law enforcement delay was invoked unless a law
8 enforcement agency provides written notification
9 that further delay is necessary.

10 **SEC. 422. EXEMPTIONS.**

11 ~~(a) EXEMPTION FOR NATIONAL SECURITY AND LAW~~
12 ~~ENFORCEMENT.—~~

13 ~~(1) IN GENERAL.—~~Section 421 shall not apply
14 to an agency if the head of the agency certifies, in
15 writing, that notification of the security breach as
16 required by section 421 reasonably could be expected
17 to—

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

19 ~~or~~

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

23 ~~(2) LIMITS ON CERTIFICATIONS.—~~The head of
24 an agency may not execute a certification under
25 paragraph (1) to—

1 (A) conceal violations of law, inefficiency,
2 or administrative error;

3 (B) prevent embarrassment to a business
4 entity, organization, or agency; or

5 (C) restrain competition.

6 (3) NOTICE.—In every case in which a head of
7 an agency issues a certification under paragraph (1),
8 the certification, accompanied by a concise descrip-
9 tion of the factual basis for the certification, shall be
10 immediately provided to the Congress.

11 (b) RISK ASSESSMENT EXEMPTION.—An agency or
12 business entity will be exempt from the notice require-
13 ments under section 421, if—

14 (1) a risk assessment concludes that there is no
15 significant risk that the security breach has resulted
16 in, or will result in, harm to the individuals whose
17 sensitive personally identifiable information was sub-
18 ject to the security breach;

19 (2) without unreasonable delay, but not later
20 than 45 days after the discovery of a security
21 breach, unless extended by the United States Secret
22 Service, the business entity notifies the United
23 States Secret Service, in writing, of—

24 (A) the results of the risk assessment;

1 (~~B~~) its decision to invoke the risk assess-
2 ment exemption; and

3 (~~3~~) the United States Secret Service does not
4 indicate, in writing, within 10 days from receipt of
5 the decision, that notice should be given.

6 (~~c~~) FINANCIAL FRAUD PREVENTION EXEMPTION.—

7 (~~1~~) IN GENERAL.—A business entity will be ex-
8 empt from the notice requirement under section 421
9 if the business entity utilizes or participates in a se-
10 curity program that—

11 (A) is designed to block the use of the sen-
12 sitive personally identifiable information to ini-
13 tiate unauthorized financial transactions before
14 they are charged to the account of the indi-
15 vidual; and

16 (~~B~~) provides for notice after a security
17 breach that has resulted in fraud or unauthor-
18 ized transactions.

19 (~~2~~) LIMITATION.—The exemption by this sub-
20 section does not apply if the information subject to
21 the security breach includes, in addition to an ac-
22 count number, sensitive personally identifiable infor-
23 mation.

1 **SEC. 423. METHODS OF NOTICE.**

2 An agency, or business entity shall be in compliance
3 with section 421 if it provides:

4 (1) **INDIVIDUAL NOTICE.**—

5 (A) Written notification to the last known
6 home mailing address of the individual in the
7 records of the agency or business entity; or

8 (B) 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.**—If more than 5,000 resi-
15 dents of a State or jurisdiction are impacted, notice
16 to major media outlets serving that State or jurisdic-
17 tion.

18 **SEC. 424. CONTENT OF NOTIFICATION.**

19 (a) **IN GENERAL.**—Regardless of the method by
20 which notice is provided to individuals under section 423,
21 such notice shall include, to the extent possible—

22 (1) a description of the categories of sensitive
23 personally identifiable information that was, or is
24 reasonably believed to have been, acquired by an un-
25 authorized person;

26 (2) a toll-free number—

1 nationwide basis (as defined in section 603(p) of the Fair
2 Credit Reporting Act (15 U.S.C. 1681a(p)) of the timing
3 and distribution of the notices.

4 **SEC. 426. NOTICE TO LAW ENFORCEMENT.**

5 (a) SECRET SERVICE.—Any business entity or agen-
6 cy required to give notice under section 421 shall also give
7 notice to the United States Secret Service if the security
8 breach impacts—

9 (1) more than 10,000 individuals nationwide;

10 (2) a database, networked or integrated data-
11 bases, or other data system associated with the sen-
12 sitive personally identifiable information on more
13 than 1,000,000 individuals nationwide;

14 (3) databases owned by the Federal Govern-
15 ment; or

16 (4) primarily sensitive personally identifiable in-
17 formation of employees and contractors of the Fed-
18 eral Government involved in national security or law
19 enforcement.

20 (b) NOTICE TO OTHER LAW ENFORCEMENT AGEN-
21 CIES.—The United States Secret Service shall be respon-
22 sible for notifying—

23 (1)(A) the Federal Bureau of Investigation, if
24 the security breach involves espionage, foreign coun-
25 terintelligence, information protected against unau-

1 thorized disclosure for reasons of national defense or
2 foreign relations; or Restricted Data (as that term
3 is defined in section 11y of the Atomic Energy Act
4 of 1954 (42 U.S.C. 2014(y)), except for offenses af-
5 fecting the duties of the United States Secret Serv-
6 ice under section 3056(a) of title 18, United States
7 Code; and

8 (B) the United States Postal Inspection Serv-
9 ice; if the security breach involves mail fraud; and

10 (2) the attorney general of each State affected
11 by the security breach.

12 (c) 30-DAY RULE.—The notices to Federal law en-
13 forcement and the attorney general of each State affected
14 by a security breach required under this section shall be
15 delivered without unreasonable delay; but not later than
16 30 days after discovery of the events requiring notice.

17 **SEC. 427. CIVIL REMEDIES.**

18 (a) PENALTIES.—Any agency, or business entity en-
19 gaged in interstate commerce, that violates this subtitle
20 shall be subject to a fine of—

21 (1) not more than \$1,000 per individual per
22 day whose sensitive personally identity information
23 was; or is reasonably believed to have been; acquired
24 by an unauthorized person; or

1 (2) not more than \$50,000 per day while the
2 failure to give notice under this subtitle persists.

3 (b) **EQUITABLE RELIEF.**—Any agency or business
4 entity that violates, proposes to violate, or has violated this
5 subtitle may be enjoined from further violations by a court
6 of competent jurisdiction.

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

11 (d) **FRAUD ALERT.**—Section 605A(b)(1) of the Fair
12 Credit Reporting Act (~~15 U.S.C. 1681e-1(b)(1)~~) is
13 amended by inserting “, or evidence that the consumer
14 has received notice that the consumer’s financial informa-
15 tion has or may have been compromised,” after “identity
16 theft report”.

17 (e) **INJUNCTIVE ACTIONS BY THE ATTORNEY GEN-**
18 **ERAL.**—Whenever it appears that a business entity or
19 agency to which this subtitle applies has engaged, is en-
20 gaged, or is about to engage, in any act or practice consti-
21 tuting a violation of this subtitle, the Attorney General
22 may bring a civil action in an appropriate district court
23 of the United States to—

24 (1) enjoin such act or practice;

25 (2) enforce compliance with this subtitle;

1 (3) obtain damages—

2 (A) in the sum of actual damages, restitu-
3 tion, and other compensation on behalf of the
4 affected residents of a State; and

5 (B) punitive damages, if the violation is
6 willful or intentional; and

7 (4) obtain such other relief as the court deter-
8 mines to be appropriate.

9 **SEC. 428. ENFORCEMENT BY STATE ATTORNEYS GENERAL.**

10 (a) IN GENERAL.—

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

1 any other court of competent jurisdiction, including
2 a State court, to—

3 (A) enjoin that practice;

4 (B) enforce compliance with this subtitle;

5 (C) obtain damages, restitution, or other
6 compensation on behalf of residents of the
7 State; or

8 (D) obtain such other relief as the court
9 may consider to be appropriate.

10 (2) NOTICE.—

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

15 (i) written notice of the action; and

16 (ii) a copy of the complaint for the ac-
17 tion.

18 (B) EXEMPTION.—

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

1 (ii) NOTIFICATION.—In an action de-
2 scribed in clause (i), the attorney general
3 of a State shall provide notice and a copy
4 of the complaint to the Attorney General
5 at the time the State attorney general files
6 the action.

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

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

13 (2) intervene in an action brought under sub-
14 section (a)(2); and

15 (3) file petitions for appeal.

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

24 (d) CONSTRUCTION.—For purposes of bringing any
25 civil action under subsection (a), nothing in this subtitle

1 regarding notification shall be construed to prevent an at-
 2 torney general of a State from exercising the powers con-
 3 ferred on such attorney general by the laws of that State
 4 to—

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

9 (c) VENUE; SERVICE OF PROCESS.—

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

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

16 (B) another court of competent jurisdic-
 17 tion.

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

21 (A) is an inhabitant; or

22 (B) may be found.

23 (f) NO PRIVATE CAUSE OF ACTION.—Nothing in this
 24 subtitle establishes a private cause of action against a data
 25 broker for violation of any provision of this subtitle.

1 **SEC. 429. EFFECT ON FEDERAL AND STATE LAW.**

2 The provisions of this subtitle shall supersede any
3 other provision of Federal law or any provision of law of
4 any State relating to notification of a security breach, ex-
5 cept as provided in section 424(b).

6 **SEC. 430. AUTHORIZATION OF APPROPRIATIONS.**

7 There are authorized to be appropriated such sums
8 as may be necessary to cover the costs incurred by the
9 United States Secret Service to carry out investigations
10 and risk assessments of security breaches as required
11 under this subtitle.

12 **SEC. 431. REPORTING ON RISK ASSESSMENT EXEMPTION.**

13 The United States Secret Service shall report to Con-
14 gress not later than 18 months after the date of enactment
15 of this Act, and upon the request by Congress thereafter,
16 on the number and nature of the security breaches de-
17 scribed in the notices filed by those business entities invok-
18 ing the risk assessment exemption under section 422(b)
19 and the response of the United States Secret Service to
20 those notices.

21 **SEC. 432. EFFECTIVE DATE.**

22 This subtitle shall take effect on the expiration of the
23 date which is 90 days after the date of enactment of this
24 Act.

1 **TITLE V—GOVERNMENT ACCESS**
2 **TO AND USE OF COMMERCIAL**
3 **DATA**

4 **SEC. 501. GENERAL SERVICES ADMINISTRATION REVIEW**
5 **OF CONTRACTS.**

6 (a) IN GENERAL.—In considering contract awards
7 totaling more than \$500,000 and entered into after the
8 date of enactment of this Act with data brokers, the Ad-
9 ministrator of the General Services Administration shall
10 evaluate—

11 (1) the data privacy and security program of a
12 data broker to ensure the privacy and security of
13 data containing personally identifiable information,
14 including whether such program adequately address-
15 es privacy and security threats created by malicious
16 software or code, or the use of peer-to-peer file shar-
17 ing software;

18 (2) the compliance of a data broker with such
19 program;

20 (3) the extent to which the databases and sys-
21 tems containing personally identifiable information
22 of a data broker have been compromised by security
23 breaches; and

1 (4) the response by a data broker to such
2 breaches, including the efforts by such data broker
3 to mitigate the impact of such breaches.

4 (b) COMPLIANCE SAFE HARBOR.—The data privacy
5 and security program of a data broker shall be deemed
6 sufficient for the purposes of subsection (a), if the data
7 broker complies with or provides protection equal to indus-
8 try standards, as identified by the Federal Trade Commis-
9 sion, that are applicable to the type of personally identifi-
10 able information involved in the ordinary course of busi-
11 ness of such data broker.

12 (c) PENALTIES.—In awarding contracts with data
13 brokers for products or services related to access, use,
14 compilation, distribution, processing, analyzing, or evalu-
15 ating personally identifiable information, the Adminis-
16 trator of the General Services Administration shall—

17 (1) include monetary or other penalties—

18 (A) for failure to comply with subtitles A
19 and B of title IV of this Act; or

20 (B) if a contractor knows or has reason to
21 know that the personally identifiable informa-
22 tion being provided is inaccurate, and provides
23 such inaccurate information; and

24 (2) require a data broker that engages service
25 providers not subject to subtitle A of title IV for re-

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

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

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

6 “(9) procedures for evaluating and auditing the
7 information security practices of contractors or third
8 party business entities supporting the information
9 systems or operations of the agency involving per-
10 sonally identifiable information (as that term is de-
11 fined in section 3 of the Personal Data Privacy and
12 Security Act of 2005) and ensuring remedial action
13 to address any significant deficiencies.”.

14 **SEC. 503. PRIVACY IMPACT ASSESSMENT OF GOVERNMENT**
15 **USE OF COMMERCIAL INFORMATION SERV-**
16 **ICES CONTAINING PERSONALLY IDENTIFI-**
17 **ABLE INFORMATION.**

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

20 (1) in subparagraph (A)(i), by striking “or”;
21 and

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

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

1 “(iii) purchasing or subscribing for a
 2 fee to personally identifiable information
 3 from a data broker (as such terms are de-
 4 fined in section 3 of the Personal Data
 5 Privacy and Security Act of 2005).”.

6 (b) LIMITATION.—Notwithstanding any other provi-
 7 sion of law, commencing 1 year after the date of enact-
 8 ment of this Act, no Federal department or agency may
 9 enter into a contract with a data broker to access for a
 10 fee any database consisting primarily of personally identi-
 11 fiable information concerning United States persons
 12 (other than news reporting or telephone directories) unless
 13 the head of such department or agency—

14 (1) completes a privacy impact assessment
 15 under section 208 of the E-Government Act of 2002
 16 (44 U.S.C. 3501 note), which shall subject to the
 17 provision in that Act pertaining to sensitive informa-
 18 tion, include a description of—

19 (A) such database;

20 (B) the name of the data broker from
 21 whom it is obtained; and

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

23 (2) adopts regulations that specify—

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

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

3 (C) any standards used to ensure that the
4 personally identifiable information accessed,
5 analyzed, or used is the minimum necessary to
6 accomplish the intended legitimate purpose of
7 the Federal department or agency;

8 (D) standards limiting the retention and
9 redisclosure of personally identifiable informa-
10 tion obtained from such databases;

11 (E) procedures ensuring that such data
12 meet standards of accuracy, relevance, com-
13 pleteness, and timeliness;

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

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

21 (H) mechanisms, if any, for the enforce-
22 ment and independent oversight of existing or
23 planned procedures, policies, or guidelines; and

24 (I) an outline of enforcement mechanisms
25 for accountability to protect individuals and the

1 public against unlawful or illegitimate access or
2 use of databases; and

3 ~~(3)~~ incorporates into the contract or other
4 agreement totaling more than \$500,000, provi-
5 sions—

6 (A) providing for penalties—

7 (i) for failure to comply with title IV
8 of this Act; or

9 (ii) if the entity knows or has reason
10 to know that the personally identifiable in-
11 formation being provided to the Federal
12 department or agency is inaccurate, and
13 provides such inaccurate information.

14 (B) requiring a data broker that engages
15 service providers not subject to subtitle A of
16 title IV for responsibilities related to sensitive
17 personally identifiable information to—

18 (i) exercise appropriate due diligence
19 in selecting those service providers for re-
20 sponsibilities related to personally identifi-
21 able information;

22 (ii) take reasonable steps to select and
23 retain service providers that are capable of
24 maintaining appropriate safeguards for the
25 security, privacy, and integrity of the per-

1 sonally identifiable information at issue;
2 and

3 (iii) require such service providers, by
4 contract, to implement and maintain appro-
5 priate measures designed to meet the ob-
6 jectives and requirements in title IV.

7 (e) ~~LIMITATION ON PENALTIES.~~—The penalties
8 under paragraph (3)(A) shall not apply to a data broker
9 providing information that is accurately and completely re-
10 corded from a public record source.

11 (d) ~~INDIVIDUAL SCREENING PROGRAMS.~~—

12 (1) ~~IN GENERAL.~~—Notwithstanding any other
13 provision of law, commencing one year after the date
14 of enactment of this Act, no Federal department or
15 agency may use commercial databases or contract
16 with a data broker to implement an individual
17 screening program unless such program is—

18 (A) congressionally authorized; and

19 (B) subject to regulations developed by no-
20 tice and comment that—

21 (i) establish a procedure to enable in-
22 dividuals, who suffer an adverse con-
23 sequence because the screening system de-
24 termined that they might pose a security
25 threat, to appeal such determination and

1 correct information contained in the sys-
2 tem;

3 (ii) ensure that Federal and commer-
4 cial databases that will be used to establish
5 the identity of individuals or otherwise
6 make assessments of individuals under the
7 system will not produce a large number of
8 false positives or unjustified adverse con-
9 sequences;

10 (iii) ensure the efficacy and accuracy
11 of all of the search tools that will be used
12 and ensure that the department or agency
13 can make an accurate predictive assess-
14 ment of those who may constitute a threat;

15 (iv) establish an internal oversight
16 board to oversee and monitor the manner
17 in which the system is being implemented;

18 (v) establish sufficient operational
19 safeguards to reduce the opportunities for
20 abuse;

21 (vi) implement substantial security
22 measures to protect the system from unau-
23 thorized access;

1 (vii) adopt policies establishing the ef-
2 fective oversight of the use and operation
3 of the system; and

4 (viii) ensure that there are no specific
5 privacy concerns with the technological ar-
6 chitecture of the system; and

7 (C) coordinated with the Terrorist Screen-
8 ing Center or any such successor organization.

9 (2) DEFINITION.—As used in this subsection,
10 the term “individual screening program”—

11 (A) means a system that relies on person-
12 ally identifiable information from commercial
13 databases to—

14 (i) evaluate all or most individuals
15 seeking to exercise a particular right or
16 privilege under Federal law; and

17 (ii) determine whether such individ-
18 uals are on a terrorist watch list or other-
19 wise pose a security threat; and

20 (B) does not include any program or sys-
21 tem to grant security clearances.

22 (c) STUDY OF GOVERNMENT USE.—

23 (1) SCOPE OF STUDY.—Not later than 180
24 days after the date of enactment of this Act, the
25 Comptroller General of the United States shall con-

1 duct a study and audit and prepare a report on Fed-
2 eral agency use of data brokers or commercial data-
3 bases containing personally identifiable information,
4 including the impact on privacy and security, and
5 the extent to which Federal contracts include suffi-
6 cient provisions to ensure privacy and security pro-
7 tections, and penalties for failures in privacy and se-
8 curity practices.

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

11 **SEC. 504. IMPLEMENTATION OF CHIEF PRIVACY OFFICER**
12 **REQUIREMENTS.**

13 (a) DESIGNATION OF THE CHIEF PRIVACY OFFI-
14 CER.—Pursuant to the requirements under section 522 of
15 the Transportation, Treasury, Independent Agencies, and
16 General Government Appropriations Act, 2005 (division H
17 of Public Law 108–447; 118 Stat. 3199) that each agency
18 designate a Chief Privacy Officer, the Department of Jus-
19 tice shall implement such requirements by designating a
20 department-wide Chief Privacy Officer, whose primary
21 role shall be to fulfill the duties and responsibilities of
22 Chief Privacy Officer and who shall report directly to the
23 Deputy Attorney General.

24 (b) DUTIES AND RESPONSIBILITIES OF CHIEF PRI-
25 VACY OFFICER.—In addition to the duties and responsibil-

ities outlined under section 522 of the Transportation,
 Treasury, Independent Agencies, and General Government
 Appropriations Act, 2005 (division H of Public Law 108–
 447; 118 Stat. 3199), the Department of Justice Chief
 Privacy Officer shall—

(1) oversee the Department of Justice’s imple-
 mentation of the requirements under section 603 to
 conduct privacy impact assessments of the use of
 commercial data containing personally identifiable
 information by the Department;

(2) promote the use of law enforcement tech-
 nologies that sustain privacy protections, and assure
 that the implementation of such technologies relat-
 ing to the use, collection, and disclosure of person-
 ally identifiable information preserve the privacy and
 security of such information; and

(3) coordinate with the Privacy and Civil Lib-
 erties Oversight Board, established in the Intel-
 ligence Reform and Terrorism Prevention Act of
 2004 (Public Law 108–458), in implementing para-
 graphs (1) and (2) of this subsection.

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) *SHORT TITLE.*—This Act may be cited as the “Per-
 sonal Data Privacy and Security Act of 2005”.

1 **(b) TABLE OF CONTENTS.**—*The table of contents for*
 2 *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 identifiable information.

Sec. 103. Review and amendment of Federal sentencing guidelines related to fraudulent access to or misuse of digitized or electronic personally identifiable information.

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. 321. Notice to individuals.

Sec. 322. Exemptions.

Sec. 323. Methods of notice.

Sec. 324. Content of notification.

Sec. 325. Coordination of notification with credit reporting agencies.

Sec. 326. Notice to law enforcement.

Sec. 327. Enforcement.

Sec. 328. Enforcement by State attorneys general.

Sec. 329. Effect on Federal and State law.

Sec. 330. Authorization of appropriations.

Sec. 331. Reporting on risk assessment exemptions.

Sec. 332. 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.

Sec. 404. Implementation of chief privacy officer requirements.

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, in-*
6 *cluding 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 con-*
15 *sumer confidence, homeland security, e-commerce, and*
16 *economic stability;*

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

22 *(6) individuals whose personal information has*
23 *been compromised or who have been victims of iden-*
24 *tity theft should receive the necessary information and*

1 *assistance to mitigate their damages and to restore*
2 *the integrity of their personal information and identi-*
3 *ties;*

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

9 (8) *data misuse and use of inaccurate data have*
10 *the potential to cause serious or irreparable harm to*
11 *an individual's livelihood, privacy, and liberty and*
12 *undermine efficient and effective business and govern-*
13 *ment operations;*

14 (9) *there is a need to insure that data brokers*
15 *conduct their operations in a manner that prioritizes*
16 *fairness, transparency, accuracy, and respect for the*
17 *privacy of consumers;*

18 (10) *government access to commercial data can*
19 *potentially improve safety, law enforcement, and na-*
20 *tional security; and*

21 (11) *because government use of commercial data*
22 *containing personal information potentially affects*
23 *individual privacy, and law enforcement and na-*
24 *tional security operations, there is a need for Con-*

1 *gress to exercise oversight over government use of com-*
2 *mercial data.*

3 **SEC. 3. DEFINITIONS.**

4 *In this Act:*

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

8 (2) *AFFILIATE.*—*The term “affiliate” means per-*
9 *sons related by common ownership or by corporate*
10 *control.*

11 (3) *BUSINESS ENTITY.*—*The term “business enti-*
12 *ty” means any organization, corporation, trust, part-*
13 *nership, sole proprietorship, unincorporated associa-*
14 *tion, venture established to make a profit, or non-*
15 *profit, and any contractor, subcontractor, affiliate, or*
16 *licensee thereof engaged in interstate commerce.*

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

20 (5) *DATA BROKER.*—*The term “data broker”*
21 *means a business entity which for monetary fees or*
22 *dues regularly engages in the practice of collecting,*
23 *transmitting, or providing access to sensitive person-*
24 *ally identifiable information on more than 5,000 in-*
25 *dividuals who are not the customers or employees of*

1 *that business entity or affiliate primarily for the pur-*
2 *poses of providing such information to nonaffiliated*
3 *third parties on an interstate basis.*

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

9 (7) *PERSONAL ELECTRONIC RECORD.*—

10 (A) *IN GENERAL.*—*The term “personal elec-*
11 *tronic record” means data associated with an in-*
12 *dividual contained in a database, networked or*
13 *integrated databases, or other data system that*
14 *holds sensitive personally identifiable informa-*
15 *tion of that individual and is provided to non-*
16 *affiliated third parties.*

17 (B) *EXCLUSIONS.*—*The term “personal elec-*
18 *tronic record” does not include—*

19 (i) *any data related to an individual’s*
20 *past purchases of consumer goods; or*

21 (ii) *any proprietary assessment or*
22 *evaluation of an individual or any propri-*
23 *etary assessment or evaluation of informa-*
24 *tion about an individual.*

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 serving as a means of iden-*
5 *tification, 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 *tories 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 computerized data*
19 *through misrepresentation or actions that result*
20 *in, or there is a reasonable basis to conclude has*
21 *resulted in, acquisition of or access to sensitive*
22 *personally identifiable information that is unau-*
23 *thorized or in excess of authorization.*

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

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

8 (ii) the release of a public record not
 9 otherwise subject to confidentiality or non-
 10 disclosure requirements.

11 (11) *SENSITIVE PERSONALLY IDENTIFIABLE IN-*
 12 *FORMATION.—The term “sensitive personally identifi-*
 13 *able information” means any information or com-*
 14 *pileation of information, in electronic or digital form*
 15 *that includes—*

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

19 (i) *A non-truncated social security*
 20 *number, driver’s license number, passport*
 21 *number, or alien registration number.*

22 (ii) *Any 2 of the following:*

23 (I) *Home address or telephone*
 24 *number.*

1 (ii) *Mother's maiden name, if*
2 *identified as such.*

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

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

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

16 (B) *a financial account number or credit or*
17 *debit card number in combination with any se-*
18 *curity code, access code or password that is re-*
19 *quired for an individual to obtain money, goods,*
20 *services or any other thing of value.*

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(a)(2)(D) (relating to*
 10 *fraud and related activity in connection with unauthorized*
 11 *access to sensitive personally identifiable information as de-*
 12 *finied in the Data Privacy and Security Act of 2005,” before*
 13 *“section 1084”.*

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

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

19 **“SEC. 1039. CONCEALMENT OF SECURITY BREACHES IN-**
 20 **VOLVING SENSITIVE PERSONALLY IDENTIFI-**
 21 **ABLE INFORMATION.**

22 *“(a) Whoever, having knowledge of a security breach*
 23 *and of the obligation either individually or collectively to*
 24 *provide notice of such breach to individuals under title IV*
 25 *of the Personal Data Privacy and Security Act of 2005,*

1 *and having not otherwise qualified for an exemption from*
 2 *providing notice under section 422 of such Act, inten-*
 3 *tionally and willfully conceals the fact of such security*
 4 *breach and which breach causes economic damage to 1 or*
 5 *more persons, shall be fined under this title or imprisoned*
 6 *not more than 5 years, or both.*

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

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

“1039. Concealment of security breaches involving personally identifiable in-
formation.”.

13 **(c) ENFORCEMENT AUTHORITY.—**

14 **(1) IN GENERAL.—***The United States Secret*
 15 *Service shall have the authority to investigate offenses*
 16 *under this section.*

17 **(2) NON-EXCLUSIVITY.—***The authority granted*
 18 *in paragraph (1) shall not be exclusive of any exist-*
 19 *ing authority held by any other Federal agency.*

1 **SEC. 103. REVIEW AND AMENDMENT OF FEDERAL SEN-**
2 **TENCING GUIDELINES RELATED TO FRAUDU-**
3 **LENT ACCESS TO OR MISUSE OF DIGITIZED**
4 **OR ELECTRONIC PERSONALLY IDENTIFIABLE**
5 **INFORMATION.**

6 (a) *REVIEW AND AMENDMENT.*—*The United States*
7 *Sentencing Commission, pursuant to its authority under*
8 *section 994 of title 28, United States Code, and in accord-*
9 *ance with this section, shall review and, if appropriate,*
10 *amend the Federal sentencing guidelines (including its pol-*
11 *icy statements) applicable to persons convicted of using*
12 *fraud to access, or misuse of, digitized or electronic person-*
13 *ally identifiable information, including identity theft or*
14 *any offense under—*

15 (1) *sections 1028, 1028A, 1030, 1030A, 2511,*
16 *and 2701 of title 18, United States Code; and*

17 (2) *any other relevant provision.*

18 (b) *REQUIREMENTS.*—*In carrying out the require-*
19 *ments of this section, the United States Sentencing Commis-*
20 *sion shall—*

21 (1) *ensure that the Federal sentencing guidelines*
22 *(including its policy statements) reflect—*

23 (A) *the serious nature of the offenses and*
24 *penalties referred to in this Act;*

1 (B) the growing incidences of theft and mis-
2 use of digitized or electronic personally identifi-
3 able information, including identity theft; and

4 (C) the need to deter, prevent, and punish
5 such offenses;

6 (2) consider the extent to which the Federal sen-
7 tencing guidelines (including its policy statements)
8 adequately address violations of the sections amended
9 by this Act to—

10 (A) sufficiently deter and punish such of-
11 fenses; and

12 (B) adequately reflect the enhanced pen-
13 alties established under this Act;

14 (3) maintain reasonable consistency with other
15 relevant directives and sentencing guidelines;

16 (4) account for any additional aggravating or
17 mitigating circumstances that might justify excep-
18 tions to the generally applicable sentencing ranges;

19 (5) consider whether to provide a sentencing en-
20 hancement for those convicted of the offenses described
21 in subsection (a), if the conduct involves—

22 (A) the online sale of fraudulently obtained
23 or stolen personally identifiable information;

24 (B) the sale of fraudulently obtained or sto-
25 len personally identifiable information to an in-

1 *dividual who is engaged in terrorist activity or*
2 *aiding other individuals engaged in terrorist ac-*
3 *tivity; or*

4 *(C) the sale of fraudulently obtained or sto-*
5 *len personally identifiable information to finance*
6 *terrorist activity or other criminal activities;*

7 *(6) make any necessary conforming changes to*
8 *the Federal sentencing guidelines to ensure that such*
9 *guidelines (including its policy statements) as de-*
10 *scribed in subsection (a) are sufficiently stringent to*
11 *deter, and adequately reflect crimes related to fraudu-*
12 *lent access to, or misuse of, personally identifiable in-*
13 *formation; and*

14 *(7) ensure that the Federal sentencing guidelines*
15 *adequately meet the purposes of sentencing under sec-*
16 *tion 3553(a)(2) of title 18, United States Code.*

17 *(c) EMERGENCY AUTHORITY TO SENTENCING COMMIS-*
18 *SION.—The United States Sentencing Commission may, as*
19 *soon as practicable, promulgate amendments under this sec-*
20 *tion in accordance with procedures established in section*
21 *21(a) of the Sentencing Act of 1987 (28 U.S.C. 994 note)*
22 *as though the authority under that Act had not expired.*

TITLE II—DATA BROKERS**SEC. 201. TRANSPARENCY AND ACCURACY OF DATA COLLECTION.**

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

(b) *LIMITATION.*—Notwithstanding any other provision of this title, this section shall not apply to—

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

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

(3) any data broker currently subject to and in compliance with the data security requirements for such entities under the Health Insurance Portability and Accountability Act (Public Law 104–191), and its implementing regulations;

1 (4) *information in a personal electronic record*
2 *that—*

3 (A) *the data broker has identified as inac-*
4 *curate, but maintains for the purpose of aiding*
5 *the data broker in preventing inaccurate infor-*
6 *mation from entering an individual's personal*
7 *electronic record; and*

8 (B) *is not maintained primarily for the*
9 *purpose of transmitting or otherwise providing*
10 *that information, or assessments based on that*
11 *information, to non-affiliated third parties; and*

12 (5) *information concerning proprietary meth-*
13 *odologies, techniques, scores, or algorithms relating to*
14 *fraud prevention not normally provided to third par-*
15 *ties in the ordinary course of business.*

16 (c) *DISCLOSURES TO INDIVIDUALS.—*

17 (1) *IN GENERAL.—A data broker shall, upon the*
18 *request of an individual, disclose to such individual*
19 *for a reasonable fee all personal electronic records per-*
20 *taining to that individual maintained specifically for*
21 *disclosure to third parties that request information on*
22 *that individual in the ordinary course of business in*
23 *the databases or systems of the data broker at the time*
24 *of such request.*

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

5 (d) *ACCURACY RESOLUTION PROCESS.*—

6 (1) *INFORMATION FROM A PUBLIC RECORD OR*
7 *LICENSOR.*—

8 (A) *IN GENERAL.*—*If an individual notifies*
9 *a data broker of a dispute as to the completeness*
10 *or accuracy of information disclosed to such in-*
11 *dividual under subsection (c) that is derived*
12 *from a public record source or pursuant to a li-*
13 *cence agreement, such data broker shall deter-*
14 *mine within 30 days whether the information in*
15 *its system accurately and completely records the*
16 *information available from the public record*
17 *source or licensor.*

18 (B) *DATA BROKER ACTIONS.*—*If a data*
19 *broker determines under subparagraph (A) that*
20 *the information in its systems does not accu-*
21 *rately and completely record the information*
22 *available from a public record source or licensor,*
23 *the data broker shall —*

1 (i) correct any inaccuracies or incom-
2 pletteness, and provide to such individual
3 written notice of such changes; or

4 (ii) provide such individual with the
5 contact information of the public record or
6 licensor.

7 (2) *INFORMATION NOT FROM A PUBLIC RECORD*
8 *SOURCE OR LICENSOR.*—If an individual notifies a
9 data broker of a dispute as to the completeness or ac-
10 curacy of information not from a public record or li-
11 censor that was disclosed to the individual under sub-
12 section (c), the data broker shall, within 30 days of
13 receiving notice of such dispute—

14 (A) review and consider free of charge any
15 information submitted by such individual that is
16 relevant to the completeness or accuracy of the
17 disputed information; and

18 (B) correct any information found to be in-
19 complete or inaccurate and provide notice to
20 such individual of whether and what informa-
21 tion was corrected, if any.

22 (3) *EXTENSION OF REVIEW PERIOD.*—The 30-
23 day period described in paragraph (1) may be ex-
24 tended for not more than 30 additional days if a data
25 broker receives information from the individual dur-

1 *ing the initial 30-day period that is relevant to the*
2 *completeness or accuracy of any disputed informa-*
3 *tion.*

4 (4) *NOTICE IDENTIFYING THE DATA FUR-*
5 *NISHER.—If the completeness or accuracy of any in-*
6 *formation not from a public record source or licensor*
7 *that was disclosed to an individual under subsection*
8 *(c) is disputed by such individual, the data broker*
9 *shall provide, upon the request of such individual, the*
10 *contact information of any data furnisher that pro-*
11 *vided the disputed information.*

12 (5) *DETERMINATION THAT DISPUTE IS FRIVO-*
13 *LOUS OR IRRELEVANT.—*

14 (A) *IN GENERAL.—Notwithstanding para-*
15 *graphs (1) through (3), a data broker may de-*
16 *cline to investigate or terminate a review of in-*
17 *formation disputed by an individual under those*
18 *paragraphs if the data broker reasonably deter-*
19 *mines that the dispute by the individual is frivo-*
20 *lous or intended to perpetrate fraud.*

21 (B) *NOTICE.—A data broker shall notify an*
22 *individual of a determination under subpara-*
23 *graph (A) within a reasonable time by any*
24 *means available to such data broker.*

1 **SEC. 202. ENFORCEMENT.**

2 (a) *CIVIL PENALTIES.*—

3 (1) *PENALTIES.*—*Any data broker that violates*
4 *the provisions of section 201 shall be subject to civil*
5 *penalties of not more than \$1,000 per violation per*
6 *day while such violations persist, up to a maximum*
7 *of \$250,000 per violation.*

8 (2) *INTENTIONAL OR WILLFUL VIOLATION.*—*A*
9 *data broker that intentionally or willfully violates the*
10 *provisions of section 201 shall be subject to additional*
11 *penalties in the amount of \$1,000 per violation per*
12 *day, to a maximum of an additional \$250,000 per*
13 *violation, while such violations persist.*

14 (3) *EQUITABLE RELIEF.*—*A data broker engaged*
15 *in interstate commerce that violates this section may*
16 *be enjoined from further violations by a court of com-*
17 *petent jurisdiction.*

18 (4) *OTHER RIGHTS AND REMEDIES.*—*The rights*
19 *and remedies available under this subsection are cu-*
20 *mulative and shall not affect any other rights and*
21 *remedies available under law.*

22 (b) *FEDERAL TRADE COMMISSION AUTHORITY.*—*Any*
23 *data broker shall have the provisions of this title enforced*
24 *against it by the Federal Trade Commission.*

25 (c) *STATE ENFORCEMENT.*—

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

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

14 (B) *enforce compliance with this title; or*

15 (C) *obtain civil penalties of not more than*
16 *\$1,000 per violation per day while such viola-*
17 *tions persist, up to a maximum of \$250,000 per*
18 *violation.*

19 (2) *NOTICE.*—

20 (A) *IN GENERAL.*—*Before filing an action*
21 *under this subsection, the attorney general of the*
22 *State involved shall provide to the Federal Trade*
23 *Commission—*

24 (i) *a written notice of that action; and*

1 (ii) a copy of the complaint for that
2 action.

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

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

16 (3) *FEDERAL TRADE COMMISSION AUTHORITY.*—
17 Upon receiving notice under paragraph (2), the Fed-
18 eral Trade Commission shall have the right to—

19 (A) move to stay the action, pending the
20 final disposition of a pending Federal proceeding
21 or action as described in paragraph (4);

22 (B) intervene in an action brought under
23 paragraph (1); and

24 (C) file petitions for appeal.

1 (4) *PENDING PROCEEDINGS.*—*If the Federal*
2 *Trade Commission has instituted a proceeding or*
3 *civil action for a violation of this title, no attorney*
4 *general of a State may, during the pendency of such*
5 *proceeding or civil action, bring an action under this*
6 *subsection against any defendant named in such civil*
7 *action for any violation that is alleged in that civil*
8 *action.*

9 (5) *RULE OF CONSTRUCTION.*—*For purposes of*
10 *bringing any civil action under paragraph (1), noth-*
11 *ing in this title shall be construed to prevent an attor-*
12 *ney general of a State from exercising the powers con-*
13 *ferred on the attorney general by the laws of that*
14 *State to—*

15 (A) *conduct investigations;*

16 (B) *administer oaths and affirmations; or*

17 (C) *compel the attendance of witnesses or*
18 *the production of documentary and other evi-*
19 *dence.*

20 (6) *VENUE; SERVICE OF PROCESS.*—

21 (A) *VENUE.*—*Any action brought under this*
22 *subsection may be brought in the district court*
23 *of the United States that meets applicable re-*
24 *quirements relating to venue under section 1931*
25 *of title 28, United States Code.*

1 (B) *SERVICE OF PROCESS.*—*In an action*
2 *brought under this subsection process may be*
3 *served in any district in which the defendant—*

4 (i) *is an inhabitant; or*

5 (ii) *may be found.*

6 (d) *NO PRIVATE CAUSE OF ACTION.*—*Nothing in this*
7 *title establishes a private cause of action against a data*
8 *broker for violation of any provision of this title.*

9 (e) *IMPLEMENTATION TIME LINE.*—*Not later than 1*
10 *year after the date of enactment of this Act, a business enti-*
11 *ty subject to the provisions of this title shall implement a*
12 *data privacy and security program pursuant to this title.*

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

14 *No requirement or prohibition may be imposed under*
15 *the laws of any State with respect to any subject matter*
16 *regulated under section 201, relating to individual access*
17 *to, and correction of, personal electronic records held by*
18 *data brokers.*

19 **SEC. 204. EFFECTIVE DATE.**

20 *This title shall take effect 180 days after the date of*
21 *enactment of this Act.*

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

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

6 **SEC. 301. 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 302 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:

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

24 (A) subject to the data security requirements
 25 and implementing regulations under the

1 *Gramm-Leach-Bliley Act (15 U.S.C. 6801 et*
2 *seq.); and*

3 *(B) subject to—*

4 *(i) examinations for compliance with*
5 *the requirements of this Act by a Federal*
6 *Functional Regulator or State Insurance*
7 *Authority (as those terms are defined in sec-*
8 *tion 509 of the Gramm-Leach-Bliley Act*
9 *(15 U.S.C. 6809)); or*

10 *(ii) compliance with part 314 of title*
11 *16, Code of Federal Regulations.*

12 *(2) HIPPA REGULATED ENTITIES.—*

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

18 *(B) BUSINESS ENTITIES.—A business entity*
19 *shall be deemed in compliance with the privacy*
20 *and security program requirements under section*
21 *302 if the business entity is acting as a “busi-*
22 *ness associate” as that term is defined in the*
23 *Health Insurance Portability and Accountability*
24 *Act of 1996 (42 U.S.C. 1301 et. seq.) and is in*

1 *compliance with requirements imposed under*
2 *that Act and its implementing regulations*

3 (d) *SAFE HARBORS.*—

4 (1) *IN GENERAL.*—*A business entity shall be*
5 *deemed in compliance with the privacy and security*
6 *program requirements under section 302 if the busi-*
7 *ness entity complies with or provides protection equal*
8 *to industry standards, as identified by the Federal*
9 *Trade Commission, that are applicable to the type of*
10 *sensitive personally identifiable information involved*
11 *in the ordinary course of business of such business en-*
12 *tity.*

13 (2) *LIMITATION.*—*Nothing in this subsection*
14 *shall be construed to permit, and nothing does permit,*
15 *the Federal Trade Commission to issue regulations re-*
16 *quiring, or according greater legal status to, the im-*
17 *plementation of or application of a specific technology*
18 *or technological specifications for meeting the require-*
19 *ments of this title.*

20 **SEC. 302. REQUIREMENTS FOR A PERSONAL DATA PRIVACY**
21 **AND SECURITY PROGRAM.**

22 (a) *PERSONAL DATA PRIVACY AND SECURITY PRO-*
23 *GRAM.*—*A business entity subject to this subtitle shall com-*
24 *ply with the following safeguards and any other adminis-*
25 *trative, technical, or physical safeguards identified by the*

1 *Federal Trade Commission in a rulemaking process pursu-*
2 *ant to section 553 of title 5, United States Code, for the*
3 *protection of sensitive personally identifiable information:*

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

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

12 (A) *ensure the privacy, security, and con-*
13 *fidentiality of personal electronic records;*

14 (B) *protect against any anticipated*
15 *vulnerabilities to the privacy, security, or integ-*
16 *egrity 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 result in substantial harm or in-*
21 *convenience 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 alteration*
2 *of sensitive personally identifiable information*
3 *or systems containing sensitive personally identi-*
4 *fiable 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 per-*
15 *sonally identifiable information during destruc-*
16 *tion and disposal of such information, including*
17 *through the disposal or retirement of hardware.*

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

20 *(A) design its personal data privacy and se-*
21 *curity program to control the risks identified*
22 *under paragraph (3); and*

23 *(B) adopt measures commensurate with the*
24 *sensitivity of the data as well as the size, com-*

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

3 *(i) control access to systems and facili-*
4 *ties containing sensitive personally identifi-*
5 *able information, including controls to au-*
6 *thenticate and permit access only to author-*
7 *ized individuals;*

8 *(ii) detect actual and attempted fraud-*
9 *ulent, unlawful, or unauthorized access, dis-*
10 *closure, use, or alteration of sensitive per-*
11 *sonally identifiable information, including*
12 *by employees and other individuals other-*
13 *wise authorized to have access;*

14 *(iii) protect sensitive personally identi-*
15 *fiable information during use, transmission,*
16 *storage, and disposal by encryption or other*
17 *reasonable means (including as directed for*
18 *disposal of records under section 628 of the*
19 *Fair Credit Reporting Act (15 U.S.C.*
20 *1681w) and the implementing regulations of*
21 *such Act as set forth in section 682 of title*
22 *16, Code of Federal Regulations); and*

23 *(iv) ensure that sensitive personally*
24 *identifiable information is properly de-*
25 *stroyed and disposed of, including during*

1 *the destruction of computers, diskettes, and*
2 *other electronic media that contain sensitive*
3 *personally identifiable information.*

4 **(b) TRAINING.**—*Each business entity subject to this*
5 *subtitle shall take steps to ensure employee training and*
6 *supervision for implementation of the data security pro-*
7 *gram of the business entity.*

8 **(c) VULNERABILITY TESTING.**—

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

15 **(2) FREQUENCY.**—*The frequency and nature of*
16 *the tests required under paragraph (1) shall be deter-*
17 *mined by the risk assessment of the business entity*
18 *under subsection (a)(3).*

19 **(d) RELATIONSHIP TO SERVICE PROVIDERS.**—*In the*
20 *event a business entity subject to this subtitle engages serv-*
21 *ice providers not subject to this subtitle, such business entity*
22 *shall—*

23 **(1)** *exercise appropriate due diligence in select-*
24 *ing those service providers for responsibilities related*
25 *to sensitive personally identifiable information, and*

1 *take reasonable steps to select and retain service pro-*
2 *viders that are capable of maintaining appropriate*
3 *safeguards for the security, privacy, and integrity of*
4 *the sensitive personally identifiable information at*
5 *issue; and*

6 *(2) require those service providers by contract to*
7 *implement and maintain appropriate measures de-*
8 *signed to meet the objectives and requirements gov-*
9 *erning entities subject to section 301, this section, and*
10 *subtitle B.*

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

16 *(1) technology;*

17 *(2) the sensitivity of personally identifiable in-*
18 *formation;*

19 *(3) internal or external threats to personally*
20 *identifiable information; and*

21 *(4) the changing business arrangements of the*
22 *business entity, such as—*

23 *(A) mergers and acquisitions;*

24 *(B) alliances and joint ventures;*

25 *(C) outsourcing arrangements;*

1 (D) bankruptcy; and

2 (E) changes to sensitive personally identifi-
3 able information systems.

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

9 **SEC. 303. ENFORCEMENT.**

10 (a) *CIVIL PENALTIES.*—

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

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

22 (3) *EQUITABLE RELIEF.*—A business entity en-
23 gaged in interstate commerce that violates this section
24 may be enjoined from further violations by a court of
25 competent jurisdiction.

1 (4) *OTHER RIGHTS AND REMEDIES.*—*The rights*
2 *and remedies available under this section are cumu-*
3 *lative and shall not affect any other rights and rem-*
4 *edies available under law.*

5 (b) *FEDERAL TRADE COMMISSION AUTHORITY.*—*Any*
6 *data broker shall have the provisions of this title enforced*
7 *against it by the Federal Trade Commission.*

8 (c) *STATE ENFORCEMENT.*—

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

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

22 (B) *enforce compliance with this title; or*

23 (C) *obtain civil penalties of not more than*
24 *\$5,000 per violation per day while such viola-*

1 *tions persist, up to a maximum of \$500,000 per*
2 *violation.*

3 *(2) NOTICE.—*

4 *(A) IN GENERAL.—Before filing an action*
5 *under this subsection, the Attorney General of the*
6 *State involved shall provide to the Federal Trade*
7 *Commission—*

8 *(i) a written notice of that action; and*
9 *(ii) a copy of the complaint for that*
10 *action.*

11 *(B) EXCEPTION.—Subparagraph (A) shall*
12 *not apply with respect to the filing of an action*
13 *by an Attorney General of a State under this*
14 *subsection, if the attorney general of a State de-*
15 *termines that it is not feasible to provide the no-*
16 *tice described in this subparagraph before the fil-*
17 *ing of the action.*

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

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

4 (A) *move to stay the action, pending the*
5 *final disposition of a pending Federal proceeding*
6 *or action as described in paragraph (4);*

7 (B) *intervene in an action brought under*
8 *paragraph (1); and*

9 (C) *file petitions for appeal.*

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

19 (5) *RULE OF CONSTRUCTION.*—*For purposes of*
20 *bringing any civil action under paragraph (1) noth-*
21 *ing in this title shall be construed to prevent an attor-*
22 *ney general of a State from exercising the powers con-*
23 *ferred on the attorney general by the laws of that*
24 *State to—*

25 (A) *conduct investigations;*

1 (B) administer oaths and affirmations; or

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

5 (6) *VENUE; SERVICE OF PROCESS.*—

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

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

14 (i) is an inhabitant; or

15 (ii) may be found.

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

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

20 (a) *IN GENERAL.*—No State may require any business
21 entity subject to this subtitle to comply with any require-
22 ments with respect to administrative, technical, and phys-
23 ical safeguards for the protection of sensitive personally
24 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. 321. NOTICE TO INDIVIDUALS.***

8 (a) *IN GENERAL.*—*Any agency, or business entity en-*
 9 *gaged in interstate commerce, that uses, accesses, transmits,*
 10 *stores, disposes of or collects sensitive personally identifiable*
 11 *information shall, following the discovery of a security*
 12 *breach of such information notify any resident of the United*
 13 *States whose sensitive personally identifiable information*
 14 *has been, or is reasonably believed to have been, accessed,*
 15 *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, disposes*
 20 *of, or collects sensitive personally identifiable infor-*
 21 *mation that the agency or business entity does not*
 22 *own or license shall notify the owner or licensee of the*
 23 *information following the discovery of a security*
 24 *breach involving such information.*

1 (2) *NOTICE BY OWNER, LICENSEE OR OTHER*
2 *DESIGNATED THIRD PARTY.*—*Nothing in this subtitle*
3 *shall prevent or abrogate an agreement between an*
4 *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 personally*
14 *identifiable information subject to the security breach,*
15 *or other designated third party, provides such notifi-*
16 *cation.*

17 (c) *TIMELINESS OF NOTIFICATION.*—

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

22 (2) *REASONABLE DELAY.*—*Reasonable delay*
23 *under this subsection may include any time necessary*
24 *to determine the scope of the security breach, prevent*
25 *further disclosures, and restore the reasonable integ-*

1 *riety of the data system and provide notice to law en-*
2 *forcement when required.*

3 (3) *BURDEN OF PROOF.*—*The agency, business*
4 *entity, owner, or licensee required to provide notifica-*
5 *tion under this section shall have the burden of dem-*
6 *onstrating that all notifications were made as re-*
7 *quired under this subtitle, including evidence dem-*
8 *onstrating the necessity of any delay.*

9 (d) *DELAY OF NOTIFICATION AUTHORIZED FOR LAW*
10 *ENFORCEMENT PURPOSES.*—

11 (1) *IN GENERAL.*—*If a Federal law enforcement*
12 *agency determines that the notification required*
13 *under this section would impede a criminal investiga-*
14 *tion, such notification shall be delayed upon written*
15 *notice from such Federal law enforcement agency to*
16 *the agency or business entity that experienced the*
17 *breach.*

18 (2) *EXTENDED DELAY OF NOTIFICATION.*—*If the*
19 *notification required under subsection (a) is delayed*
20 *pursuant to paragraph (1), an agency or business en-*
21 *tity shall give notice 30 days after the day such law*
22 *enforcement delay was invoked unless a Federal law*
23 *enforcement agency provides written notification that*
24 *further delay is necessary.*

1 (3) *LAW ENFORCEMENT IMMUNITY.*—No cause of
2 action shall lie in any court against any law enforce-
3 ment agency for acts relating to the delay of notifica-
4 tion for law enforcement purposes under this Act.

5 **SEC. 322. EXEMPTIONS.**

6 (a) *EXEMPTION FOR NATIONAL SECURITY AND LAW*
7 *ENFORCEMENT.*—

8 (1) *IN GENERAL.*—Section 321 shall not apply to
9 an agency if the agency certifies, in writing, that no-
10 tification of the security breach as required by section
11 321 reasonably could be expected to—

12 (A) cause damage to the national security;

13 or

14 (B) hinder a law enforcement investigation
15 or the ability of the agency to conduct law en-
16 forcement investigations.

17 (2) *LIMITS ON CERTIFICATIONS.*—An agency
18 may not execute a certification under paragraph (1)
19 to—

20 (A) conceal violations of law, inefficiency,
21 or administrative error;

22 (B) prevent embarrassment to a business
23 entity, organization, or agency; or

24 (C) restrain competition.

1 (3) *NOTICE.*—*In every case in which an agency*
2 *issues a certification under paragraph (1), the certifi-*
3 *cation, accompanied by a description of the factual*
4 *basis for the certification, shall be immediately pro-*
5 *vided to the United States Secret Service.*

6 (b) *SAFE HARBOR.*—*An agency or business entity will*
7 *be exempt from the notice requirements under section 321,*
8 *if—*

9 (1) *a risk assessment concludes that there is no*
10 *significant risk that the security breach has resulted*
11 *in, or will result in, harm to the individuals whose*
12 *sensitive personally identifiable information was sub-*
13 *ject to the security breach;*

14 (2) *without unreasonable delay, but not later*
15 *than 45 days after the discovery of a security breach,*
16 *unless extended by the United States Secret Service,*
17 *the agency or business entity notifies the United*
18 *States Secret Service, in writing, of—*

19 (A) *the results of the risk assessment; and*

20 (B) *its decision to invoke the risk assess-*
21 *ment exemption; and*

22 (3) *the United States Secret Service does not in-*
23 *dicade, in writing, within 10 days from receipt of the*
24 *decision, that notice should be given.*

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

1 (1) *IN GENERAL.*—A business entity will be ex-
2 empt from the notice requirement under section 321
3 if the business entity utilizes or participates in a se-
4 curity program that—

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

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

13 (2) *LIMITATION.*—The exemption by this sub-
14 section does not apply if the information subject to
15 the security breach includes sensitive personally iden-
16 tifiable information in addition to the sensitive per-
17 sonally identifiable information identified in section
18 3.

19 **SEC. 323. METHODS OF NOTICE.**

20 An agency, or business entity shall be in compliance
21 with section 321 if it provides both:

22 (1) *INDIVIDUAL NOTICE.*—

23 (A) Written notification to the last known
24 home mailing address of the individual in the
25 records of the agency or business entity;

1 (B) Telephone notice to the individual per-
2 sonally; or

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

9 (2) *MEDIA NOTICE.*—Notice to major media out-
10 lets serving a State or jurisdiction, if the number of
11 residents of such State whose sensitive personally
12 identifiable information was, or is reasonably believed
13 to have been, acquired by an unauthorized person ex-
14 ceeds 5,000.

15 **SEC. 324. CONTENT OF NOTIFICATION.**

16 (a) *IN GENERAL.*—Regardless of the method by which
17 notice is provided to individuals under section 323, such
18 notice shall include, to the extent possible—

19 (1) a description of the categories of sensitive
20 personally identifiable information that was, or is
21 reasonably believed to have been, acquired by an un-
22 authorized person;

23 (2) a toll-free number—

1 (A) that the individual may use to contact
2 the agency or business entity, or the agent of the
3 agency or business entity; and

4 (B) from which the individual may learn
5 what types of sensitive personally identifiable in-
6 formation the agency or business entity main-
7 tained about that individual; and

8 (3) the toll-free contact telephone numbers and
9 addresses for the major credit reporting agencies.

10 (b) *ADDITIONAL CONTENT.*—Notwithstanding section
11 329, a State may require that a notice under subsection
12 (a) shall also include information regarding victim protec-
13 tion assistance provided for by that State.

14 **SEC. 325. COORDINATION OF NOTIFICATION WITH CREDIT**
15 **REPORTING AGENCIES.**

16 If an agency or business entity is required to provide
17 notification to more than 1,000 individuals under section
18 321(a), the agency or business entity shall also notify, with-
19 out unreasonable delay, all consumer reporting agencies
20 that compile and maintain files on consumers on a nation-
21 wide basis (as defined in section 603(p) of the Fair Credit
22 Reporting Act (15 U.S.C. 1681a(p)) of the timing and dis-
23 tribution of the notices.

1 **SEC. 326. NOTICE TO LAW ENFORCEMENT.**

2 (a) *SECRET SERVICE.*—Any business entity or agency
3 shall give notice of a security breach to the United States
4 Secret Service if—

5 (1) the number of individuals whose sensitive
6 personally identifying information was, or is reason-
7 ably believed to have been acquired by an unauthor-
8 ized person exceeds 10,000;

9 (2) the security breach involves a database,
10 networked or integrated databases, or other data sys-
11 tem containing the sensitive personally identifiable
12 information of more than 1,000,000 individuals na-
13 tionwide;

14 (3) the security breach involves databases owned
15 by the Federal Government; or

16 (4) the security breach involves primarily sen-
17 sitive personally identifiable information of employees
18 and contractors of the Federal Government involved
19 in national security or law enforcement.

20 (b) *NOTICE TO OTHER LAW ENFORCEMENT AGEN-*
21 *CIES.*—The United States Secret Service shall be responsible
22 for notifying—

23 (1) the Federal Bureau of Investigation, if the se-
24 curity breach involves espionage, foreign counterintel-
25 ligence, information protected against unauthorized
26 disclosure for reasons of national defense or foreign

1 *relations, or Restricted Data (as that term is defined*
2 *in section 11y of the Atomic Energy Act of 1954 (42*
3 *U.S.C. 2014(y)), except for offenses affecting the du-*
4 *ties of the United States Secret Service under section*
5 *3056(a) of title 18, United States Code;*

6 *(2) the United States Postal Inspection Service,*
7 *if the security breach involves mail fraud; and*

8 *(3) the attorney general of each State affected by*
9 *the security breach.*

10 *(c) 14-DAY RULE.—The notices to Federal law enforce-*
11 *ment and the attorney general of each State affected by a*
12 *security breach required under this section shall be delivered*
13 *as promptly as possible, but not later than 14 days after*
14 *discovery of the events requiring notice.*

15 **SEC. 327. ENFORCEMENT.**

16 *(a) CIVIL ACTIONS BY THE ATTORNEY GENERAL.—The*
17 *Attorney General may bring a civil action in the appro-*
18 *priate United States district court against any business en-*
19 *tity that engages in conduct constituting a violation of this*
20 *subtitle and, upon proof of such conduct by a preponderance*
21 *of the evidence, such business entity shall be subject to a*
22 *civil penalty of not more than \$1,000 per day per indi-*
23 *vidual whose sensitive personally identifiable information*
24 *was, or is reasonably believed to have been, accessed or ac-*

1 *quired by an unauthorized person, up to a maximum of*
2 *\$50,000 per person.*

3 *(b) INJUNCTIVE ACTIONS BY THE ATTORNEY GEN-*
4 *ERAL.—*

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

10 *(A) enjoining such act or practice; or*

11 *(B) enforcing compliance with this subtitle.*

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

16 *(c) OTHER RIGHTS AND REMEDIES.—The rights and*
17 *remedies available under this subtitle are cumulative and*
18 *shall not affect any other rights and remedies available*
19 *under law.*

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

1 **SEC. 328. ENFORCEMENT BY STATE ATTORNEYS GENERAL.**

2 (a) *IN GENERAL.*—

3 (1) *CIVIL ACTIONS.*—*In any case in which the*
4 *attorney general of a State or any State or local law*
5 *enforcement agency authorized by the State attorney*
6 *general or by State statute to prosecute violations of*
7 *consumer protection law, has reason to believe that an*
8 *interest of the residents of that State has been or is*
9 *threatened or adversely affected by the engagement of*
10 *a business entity in a practice that is prohibited*
11 *under this subtitle, the State or the State or local law*
12 *enforcement agency on behalf of the residents of the*
13 *agency's jurisdiction, may bring a civil action on be-*
14 *half of the residents of the State or jurisdiction in a*
15 *district court of the United States of appropriate ju-*
16 *risdiction or any other court of competent jurisdic-*
17 *tion, including a State court, to—*

18 (A) *enjoin that practice;*

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

20 (C) *civil penalties of not more than \$1,000*
21 *per day per individual whose sensitive person-*
22 *ally identifiable information was, or is reason-*
23 *ably believed to have been, accessed or acquired*
24 *by an unauthorized person, up to a maximum of*
25 *\$50,000 per day.*

26 (2) *NOTICE.*—

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

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

6 (ii) *a copy of the complaint for the ac-*
7 *tion.*

8 (B) *EXEMPTION.*—

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

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

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

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

3 (2) *initiate an action in the appropriate United*
4 *States district court under section 327 and move to*
5 *consolidate all pending actions, including State ac-*
6 *tions, in such court;*

7 (3) *intervene in an action brought under sub-*
8 *section (a)(2); and*

9 (4) *file petitions for appeal.*

10 (c) *PENDING PROCEEDINGS.—If the Attorney General*
11 *has instituted a proceeding or action for a violation of this*
12 *subtitle or any regulations thereunder, no attorney general*
13 *of a State may, during the pendency of such proceeding*
14 *or action, bring an action under this subtitle against any*
15 *defendant named in such criminal proceeding or civil ac-*
16 *tion for any violation that is alleged in that proceeding or*
17 *action.*

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

24 (1) *conduct investigations;*

25 (2) *administer oaths or affirmations; or*

1 (3) *compel the attendance of witnesses or the*
2 *production of documentary and other evidence.*

3 (e) *VENUE; SERVICE OF PROCESS.—*

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

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

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

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

14 (A) *is an inhabitant; or*

15 (B) *may be found.*

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

19 **SEC. 329. EFFECT ON FEDERAL AND STATE LAW.**

20 (a) *IN GENERAL.—The provisions of this subtitle shall*
21 *supersede any other provision of Federal law or any provi-*
22 *sion of law of any State relating to notification of a secu-*
23 *rity breach, except as provided in section 324(b).*

1 (b) *GRAMM-LEACH-BLILEY.*—*This subtitle shall not*
2 *preclude any operation permitted under section 507 of the*
3 *Gramm-Leach-Bliley Act (15 U.S.C. 6807).*

4 **SEC. 330. AUTHORIZATION OF APPROPRIATIONS.**

5 *There are authorized to be appropriated such sums as*
6 *may be necessary to cover the costs incurred by the United*
7 *States Secret Service to carry out investigations and risk*
8 *assessments of security breaches as required under this sub-*
9 *title.*

10 **SEC. 331. REPORTING ON RISK ASSESSMENT EXEMPTIONS.**

11 *The United States Secret Service shall report to Con-*
12 *gress not later than 18 months after the date of enactment*
13 *of this Act, and upon the request by Congress thereafter,*
14 *on—*

15 (1) *the number and nature of the security*
16 *breaches described in the notices filed by those busi-*
17 *ness entities invoking the risk assessment exemption*
18 *under section 322(b) of this Act and the response of*
19 *the United States Secret Service to such notices; and*

20 (2) *the number and nature of security breaches*
21 *subject to the national security and law enforcement*
22 *exemptions under section 322(a) of this Act.*

1 **SEC. 332. EFFECTIVE DATE.**

2 *This subtitle shall take effect on the expiration of the*
3 *date which is 90 days after the date of enactment of this*
4 *Act.*

5 **TITLE IV—GOVERNMENT ACCESS**
6 **TO AND USE OF COMMERCIAL**
7 **DATA**

8 **SEC. 401. GENERAL SERVICES ADMINISTRATION REVIEW OF**
9 **CONTRACTS.**

10 *(a) IN GENERAL.—In considering contract awards to-*
11 *taling more than \$500,000 and entered into after the date*
12 *of enactment of this Act with data brokers, the Adminis-*
13 *trator of the General Services Administration shall evalu-*
14 *ate—*

15 *(1) the data privacy and security program of a*
16 *data broker to ensure the privacy and security of data*
17 *containing personally identifiable information, in-*
18 *cluding whether such program adequately addresses*
19 *privacy and security threats created by malicious*
20 *software or code, or the use of peer-to-peer file sharing*
21 *software;*

22 *(2) the compliance of a data broker with such*
23 *program;*

24 *(3) the extent to which the databases and systems*
25 *containing personally identifiable information of a*

1 *data broker have been compromised by security*
2 *breaches; and*

3 (4) *the response by a data broker to such*
4 *breaches, including the efforts by such data broker to*
5 *mitigate the impact of such security breaches.*

6 (b) *COMPLIANCE SAFE HARBOR.—The data privacy*
7 *and security program of a data broker shall be deemed suffi-*
8 *cient for the purposes of subsection (a), if the data broker*
9 *complies with or provides protection equal to industry*
10 *standards, as identified by the Federal Trade Commission,*
11 *that are applicable to the type of personally identifiable in-*
12 *formation involved in the ordinary course of business of*
13 *such data broker.*

14 (c) *PENALTIES.—In awarding contracts with data*
15 *brokers for products or services related to access, use, com-*
16 *pilation, distribution, processing, analyzing, or evaluating*
17 *personally identifiable information, the Administrator of*
18 *the General Services Administration shall—*

19 (1) *include monetary or other penalties—*

20 (A) *for failure to comply with subtitles A*
21 *and B of title IV of this Act; or*

22 (B) *if a contractor knows or has reason to*
23 *know that the personally identifiable informa-*
24 *tion being provided is inaccurate, and provides*
25 *such inaccurate information; and*

1 (2) require a data broker that engages service
 2 providers not subject to subtitle A of title IV for re-
 3 sponsibilities related to sensitive personally identifi-
 4 able information to—

5 (A) exercise appropriate due diligence in se-
 6 lecting those service providers for responsibilities
 7 related to personally identifiable information;

8 (B) take reasonable steps to select and re-
 9 tain service providers that are capable of main-
 10 taining appropriate safeguards for the security,
 11 privacy, and integrity of the personally identifi-
 12 able information at issue; and

13 (C) require such service providers, by con-
 14 tract, to implement and maintain appropriate
 15 measures designed to meet the objectives and re-
 16 quirements in title IV.

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

21 **SEC. 402. REQUIREMENT TO AUDIT INFORMATION SECU-**
 22 **RITY PRACTICES OF CONTRACTORS AND**
 23 **THIRD PARTY BUSINESS ENTITIES.**

24 Section 3544(b) of title 44, United States Code, is
 25 amended—

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

3 (2) *in paragraph (8), by striking the period and*
4 *inserting “; and”; and*

5 (3) *by adding at the end the following:*

6 “(9) *procedures for evaluating and auditing the*
7 *information security practices of contractors or third*
8 *party business entities supporting the information*
9 *systems or operations of the agency involving person-*
10 *ally identifiable information (as that term is defined*
11 *in section 3 of the Personal Data Privacy and Secu-*
12 *rity Act of 2005) and ensuring remedial action to ad-*
13 *dress any significant deficiencies.”.*

14 **SEC. 403. PRIVACY IMPACT ASSESSMENT OF GOVERNMENT**
15 **USE OF COMMERCIAL INFORMATION SERV-**
16 **ICES CONTAINING PERSONALLY IDENTIFI-**
17 **ABLE INFORMATION.**

18 (a) *IN GENERAL.*—*Section 208(b)(1) of the E-Govern-*
19 *ment Act of 2002 (44 U.S.C. 3501 note) is amended—*

20 (1) *in subparagraph (A)(i), by striking “or”;*
21 *and*

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

24 (3) *by inserting after clause (ii) the following:*

1 “(iii) purchasing or subscribing for a
2 fee to personally identifiable information
3 from a data broker (as such terms are de-
4 fined in section 3 of the Personal Data Pri-
5 vacy and Security Act of 2005).”.

6 (b) *LIMITATION.*—Notwithstanding any other provi-
7 sion of law, commencing 1 year after the date of enactment
8 of this Act, no Federal agency may enter into a contract
9 with a data broker to access for a fee any database con-
10 sisting primarily of personally identifiable information
11 concerning United States persons (other than news report-
12 ing or telephone directories) unless the head of such depart-
13 ment or agency—

14 (1) completes a privacy impact assessment under
15 section 208 of the E-Government Act of 2002 (44
16 U.S.C. 3501 note), which shall subject to the provision
17 in that Act pertaining to sensitive information, in-
18 clude a description of—

19 (A) such database;

20 (B) the name of the data broker from whom
21 it is obtained; and

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

23 (2) adopts regulations that specify—

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

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

3 (C) any standards used to ensure that the
4 personally identifiable information accessed,
5 analyzed, or used is the minimum necessary to
6 accomplish the intended legitimate purpose of the
7 Federal agency;

8 (D) standards limiting the retention and re-
9 disclosure of personally identifiable information
10 obtained from such databases;

11 (E) procedures ensuring that such data
12 meet standards of accuracy, relevance, complete-
13 ness, and timeliness;

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

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

21 (H) mechanisms, if any, for the enforcement
22 and independent oversight of existing or planned
23 procedures, policies, or guidelines; and

24 (I) an outline of enforcement mechanisms
25 for accountability to protect individuals and the

1 *public against unlawful or illegitimate access or*
2 *use of databases; and*

3 (3) *incorporates into the contract or other agree-*
4 *ment totaling more than \$500,000, provisions—*

5 (A) *providing for penalties—*

6 (i) *for failure to comply with title IV*
7 *of this Act; or*

8 (ii) *if the entity knows or has reason*
9 *to know that the personally identifiable in-*
10 *formation being provided to the Federal de-*
11 *partment or agency is inaccurate, and pro-*
12 *vides such inaccurate information; and*

13 (B) *requiring a data broker that engages*
14 *service providers not subject to subtitle A of title*
15 *IV for responsibilities related to sensitive person-*
16 *ally identifiable information to—*

17 (i) *exercise appropriate due diligence*
18 *in selecting those service providers for re-*
19 *sponsibilities related to personally identifi-*
20 *able information;*

21 (ii) *take reasonable steps to select and*
22 *retain service providers that are capable of*
23 *maintaining appropriate safeguards for the*
24 *security, privacy, and integrity of the per-*

1 sonally identifiable information at issue;
2 and
3 (iii) require such service providers, by
4 contract, to implement and maintain appro-
5 priate measures designed to meet the objec-
6 tives and requirements in title IV.

7 (c) *LIMITATION ON PENALTIES.*—The penalties under
8 subsection (b)(3)(A) shall not apply to a data broker pro-
9 viding information that is accurately and completely re-
10 corded from a public record source.

11 (d) *STUDY OF GOVERNMENT USE.*—

12 (1) *SCOPE OF STUDY.*—Not later than 180 days
13 after the date of enactment of this Act, the Comp-
14 troller General of the United States shall conduct a
15 study and audit and prepare a report on Federal
16 agency use of data brokers or commercial databases
17 containing personally identifiable information, in-
18 cluding the impact on privacy and security, and the
19 extent to which Federal contracts include sufficient
20 provisions to ensure privacy and security protections,
21 and penalties for failures in privacy and security
22 practices.

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

1 **SEC. 404. IMPLEMENTATION OF CHIEF PRIVACY OFFICER**
2 **REQUIREMENTS.**

3 (a) *DESIGNATION OF THE CHIEF PRIVACY OFFICER.—*
4 *Pursuant to the requirements under section 522 of the*
5 *Transportation, Treasury, Independent Agencies, and Gen-*
6 *eral Government Appropriations Act, 2005 (division H of*
7 *Public Law 108–447; 118 Stat. 3199) that each agency des-*
8 *ignate a Chief Privacy Officer, the Department of Justice*
9 *shall implement such requirements by designating a depart-*
10 *ment-wide Chief Privacy Officer, whose primary role shall*
11 *be to fulfill the duties and responsibilities of Chief Privacy*
12 *Officer and who shall report directly to the Deputy Attorney*
13 *General.*

14 (b) *DUTIES AND RESPONSIBILITIES OF CHIEF PRI-*
15 *VACY OFFICER.—In addition to the duties and responsibil-*
16 *ities outlined under section 522 of the Transportation,*
17 *Treasury, Independent Agencies, and General Government*
18 *Appropriations Act, 2005 (division H of Public Law 108–*
19 *447; 118 Stat. 3199), the Department of Justice Chief Pri-*
20 *vacy Officer shall—*

21 (1) *oversee the Department of Justice’s imple-*
22 *mentation of the requirements under section 603 to*
23 *conduct privacy impact assessments of the use of com-*
24 *mercial data containing personally identifiable infor-*
25 *mation by the Department; and*

1 (2) *coordinate with the Privacy and Civil Lib-*
2 *erties Oversight Board, established in the Intelligence*
3 *Reform and Terrorism Prevention Act of 2004 (Public*
4 *Law 108–458), in implementing this section.*

Calendar No. 297

109TH CONGRESS
1ST Session
S. 1789

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.

NOVEMBER 17, 2005

Reported with an amendment