

109<sup>TH</sup> CONGRESS  
2<sup>D</sup> SESSION

# S. 3176

To protect the privacy of veterans and spouses of veterans affected by the security breach at the Department of Veterans Affairs on May 3, 2006, and for other purposes.

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IN THE SENATE OF THE UNITED STATES

MAY 25, 2006

Mr. REID (for Mr. ROCKEFELLER) introduced the following bill; which was read twice and referred to the Committee on Banking, Housing, and Urban Affairs

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## A BILL

To protect the privacy of veterans and spouses of veterans affected by the security breach at the Department of Veterans Affairs on May 3, 2006, and for other purposes.

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

3       **SECTION 1. SHORT TITLE.**

4       This Act may be cited as the “Veterans Privacy Pro-  
5       tection Act of 2006”.

1 **SEC. 2. FEDERAL TRADE COMMISSION PROGRAM FOR VET-**  
2 **ERANS AN SPOUSES OF VETERANS AT RISK**  
3 **OF IDENTITY THEFT.**

4 (a) PROGRAM REQUIRED.—The Federal Trade Com-  
5 mission shall, in consultation with the Secretary of Vet-  
6 erans Affairs, develop and implement a program to pro-  
7 vide financial counseling and support to any veteran or  
8 spouse described in subsection (e).

9 (b) ACCESS.—The program required by subsection  
10 (a) shall be accessible through a toll-free telephone num-  
11 ber (commonly referred to as an “800 number”) estab-  
12 lished and operated by the Federal Trade Commission for  
13 purposes of the program.

14 (c) ELEMENTS.—Under the program required by  
15 subsection (a), the Federal Trade Commission shall—

16 (1) provide to veterans and spouses described in  
17 subsection (e) such financial and other counseling as  
18 the Commission considers appropriate relating to  
19 identity theft and the theft of data as described in  
20 that subsection; and

21 (2) upon request of any veteran or spouse de-  
22 scribed in subsection (e), assist such veteran or  
23 spouse in securing the placement of an extended  
24 fraud alert or credit security freeze under sections  
25 605A(b)(3) and 605C of the Fair Credit Reporting  
26 Act, as added by this Act, respectively.

1 (d) VETERANS NOT SUBJECT TO IDENTITY  
2 THEFT.—

3 (1) NOTICE TO FTC OF IDENTIFICATION OF  
4 VETERANS NOT SUBJECT TO IDENTITY THEFT.—

5 Upon conclusively identifying any veteran otherwise  
6 described in subsection (e) as not being at risk of  
7 identity theft as described in that subsection, the  
8 Secretary shall immediately notify the Federal Trade  
9 Commission of such identification.

10 (2) NOTICE TO VETERANS.—The program re-  
11 quired by subsection (a) shall include mechanisms to  
12 ensure that any veteran who seeks counseling and  
13 support under the program after receipt by the  
14 Commission of notice under paragraph (1) covering  
15 such veteran is informed that such veteran is no  
16 longer subject to identity theft as described in sub-  
17 section (e).

18 (e) APPLICABILITY.—This section shall apply with re-  
19 spect to—

20 (1) any veteran, as defined in section 101 of  
21 title 38, United States Code, who may be a victim  
22 of identity theft as a result of the security breach at  
23 the Department of Veterans Affairs on May 3, 2006;  
24 and

1           (2) any spouse (or former spouse) of such vet-  
 2           eran who the Secretary of Veterans Affairs has con-  
 3           clusively identified as being at risk of identity theft  
 4           as a result of that security breach.

5 **SEC. 3. EXTENDED CONSUMER CREDIT FRAUD ALERTS AND**  
 6                   **SECURITY FREEZES FOR VETERANS AND**  
 7                   **SPOUSES OF VETERANS AFFECTED BY SECU-**  
 8                   **RITY BREACH.**

9           (a) **AUTOMATIC FRAUD ALERTS.**—Section 605A(b)  
 10 of the Fair Credit Reporting Act (15 U.S.C. 1681c–1(b))  
 11 is amended by adding at the end the following:

12                   “(3) **AUTOMATIC EXTENDED FRAUD ALERTS**  
 13                   **FOR CERTAIN VETERANS.**—

14                           “(A) **IN GENERAL.**—Upon the direct re-  
 15                           quest of a veteran or spouse described in sub-  
 16                           paragraph (D), each consumer reporting agency  
 17                           described in section 603(p)(1) that maintains a  
 18                           file on the veteran shall take the actions speci-  
 19                           fied in subparagraphs (A) through (C) of para-  
 20                           graph (1) with respect to the veteran or spouse.

21                           “(B) **AUTOMATIC ALERTS.**—Notwith-  
 22                           standing the requirements of paragraph (1), a  
 23                           veteran or spouse described in subparagraph  
 24                           (D) is not required to submit any identity theft  
 25                           report, proof of identity, or other documenta-

1           tion with respect to an extended fraud alert re-  
2           quired by subparagraph (A).

3           “(C) VETERANS NOT SUBJECT TO IDEN-  
4           TITY THEFT.—Upon conclusively identifying  
5           any veteran as not being at risk of identity  
6           theft as a result of the security breach de-  
7           scribed in subparagraph (A)—

8                   “(i) the Secretary of Veterans Affairs  
9                   shall immediately notify each consumer re-  
10                  porting agency and the veteran involved  
11                  that such veteran is no longer subject to  
12                  identity theft as a result of the security  
13                  breach described in subparagraph (A); and

14                   “(ii) the requirements of subpara-  
15                  graph (A) shall no longer apply with re-  
16                  spect to any such veteran as of the date of  
17                  such notification.

18           “(D) APPLICABILITY.—This paragraph  
19           shall apply to—

20                   “(i) each veteran, as defined in sec-  
21                  tion 101 of title 38, United States Code,  
22                  who may be a victim of identity theft as a  
23                  result of the security breach at the Depart-  
24                  ment of Veterans Affairs on May 3, 2006;  
25                  and

1           “(ii) each spouse (or former spouse)  
2           of such veteran who the Secretary of Vet-  
3           erans Affairs has conclusively identified as  
4           being at risk of identity theft as a result  
5           of that security breach.”.

6           (b) SECURITY FREEZES FOR VETERANS.—The Fair  
7           Credit Reporting Act (15 U.S.C. 1681 et seq.) is amended  
8           by inserting after section 605B the following:

9           **“SEC. 605C. SECURITY FREEZES FOR CERTAIN VETERANS.**

10          “(a) APPLICABILITY.—This section shall apply with  
11          respect to—

12                 “(1) any veteran, as defined in section 101 of  
13                 title 38, United States Code, who may be a victim  
14                 of identity theft as a result of the security breach at  
15                 the Department of Veterans Affairs on May 3, 2006;  
16                 and

17                 “(2) any spouse (or former spouse) of such vet-  
18                 eran who the Secretary of Veterans Affairs has con-  
19                 clusively identified as being at risk of identity theft  
20                 as a result of that security breach.

21          “(b) SECURITY FREEZES.—

22                 “(1) EMPLACEMENT.—A veteran or spouse de-  
23                 scribed in subsection (a) may include a security  
24                 freeze in the file of that veteran or spouse main-  
25                 tained by a consumer reporting agency described in

1 section 603(p)(1), by making a request to the con-  
2 sumer reporting agency in writing, by telephone, or  
3 through a secure electronic connection made avail-  
4 able by the consumer reporting agency.

5 “(2) CONSUMER DISCLOSURE.—If a veteran or  
6 spouse described in subsection (a) requests a secu-  
7 rity freeze under this section, the consumer report-  
8 ing agency shall disclose to that person the process  
9 of placing and removing the security freeze and ex-  
10 plain to that veteran or spouse the potential con-  
11 sequences of the security freeze. A consumer report-  
12 ing agency may not imply or inform a veteran or  
13 spouse that the placement or presence of a security  
14 freeze on the file of that veteran or spouse may neg-  
15 atively affect their credit score.

16 “(c) EFFECT OF SECURITY FREEZE.—

17 “(1) RELEASE OF INFORMATION BLOCKED.—If  
18 a security freeze is in place in the file of a veteran  
19 or spouse described in subsection (a), a consumer re-  
20 porting agency may not release information from the  
21 file of that veteran or spouse for consumer credit  
22 purposes to a third party without prior express writ-  
23 ten authorization from that veteran or spouse.

24 “(2) INFORMATION PROVIDED TO THIRD PAR-  
25 TIES.—Paragraph (2) does not prevent a consumer

1 reporting agency from advising a third party that a  
2 security freeze is in effect with respect to the file of  
3 a veteran or spouse described in subsection (a). If a  
4 third party, in connection with an application for  
5 credit, requests access to a consumer file on which  
6 a security freeze is in place under this section, the  
7 third party may treat the application as incomplete.

8 “(3) CREDIT SCORE NOT AFFECTED.—The  
9 placement of a security freeze under this section  
10 may not be taken into account for any purpose in  
11 determining the credit score of the veteran or spouse  
12 to whom the security freeze relates.

13 “(d) REMOVAL; TEMPORARY SUSPENSION.—

14 “(1) IN GENERAL.—Except as provided in para-  
15 graph (4), a security freeze under this section shall  
16 remain in place until the veteran or spouse to whom  
17 it relates requests that the security freeze be re-  
18 moved. A veteran or spouse may remove a security  
19 freeze on his or her credit report by making a re-  
20 quest to the consumer reporting agency in writing,  
21 by telephone, or through a secure electronic connec-  
22 tion made available by the consumer reporting agen-  
23 cy.

1           “(2) CONDITIONS.—A consumer reporting  
2 agency may remove a security freeze placed in the  
3 file of a veteran or spouse under this section only—

4           “(A) upon request of that veteran or  
5 spouse, pursuant to paragraph (1); or

6           “(B) if the agency determines that the file  
7 of that veteran or spouse was frozen due to a  
8 material misrepresentation of fact by that vet-  
9 eran or spouse.

10           “(3) NOTIFICATION TO CONSUMER.—If a con-  
11 sumer reporting agency intends to remove a security  
12 freeze pursuant to paragraph (2)(B), the consumer  
13 reporting agency shall notify the veteran or spouse  
14 to whom the security freeze relates in writing prior  
15 to removing the freeze.

16           “(4) TEMPORARY SUSPENSION.—A veteran or  
17 spouse described in subsection (a) may have a secu-  
18 rity freeze under this section temporarily suspended  
19 by making a request to the consumer reporting  
20 agency in writing or by telephone and specifying be-  
21 ginning and ending dates for the period during  
22 which the security freeze is not to apply.

23           “(e) RESPONSE TIMES; NOTIFICATION OF OTHER  
24 ENTITIES.—

1           “(1) IN GENERAL.—A consumer reporting  
2 agency shall—

3           “(A) place a security freeze in the file of  
4 a veteran or spouse under subsection (b) not  
5 later than 5 business days after receiving a re-  
6 quest from the veteran or spouse under sub-  
7 section (b)(1); and

8           “(B) remove or temporarily suspend a se-  
9 curity freeze not later than 3 business days  
10 after receiving a request for removal or tem-  
11 porary suspension from the veteran or spouse  
12 under subsection (d).

13           “(2) NOTIFICATION OF OTHER AGENCIES.—A  
14 consumer reporting agency shall notify all other con-  
15 sumer reporting agencies described in section  
16 603(p)(1) of a request under this section not later  
17 than 3 days after placing, removing, or temporarily  
18 suspending a security freeze in the file of the vet-  
19 eran or spouse under subsection (b), (d)(2)(A), or  
20 (d)(4).

21           “(3) IMPLEMENTATION BY OTHER AGENCIES.—  
22 A consumer reporting agency that is notified of a re-  
23 quest under paragraph (2) to place, remove, or tem-  
24 porarily suspend a security freeze in the file of a vet-  
25 eran or spouse shall—

1           “(A) request proper identification from the  
2           veteran or spouse, in accordance with sub-  
3           section (g), not later than 3 business days after  
4           receiving the notification; and

5           “(B) place, remove, or temporarily suspend  
6           the security freeze on that credit report not  
7           later than 3 business days after receiving prop-  
8           er identification.

9           “(f) CONFIRMATION.—Except as provided in sub-  
10          section (c)(3), whenever a consumer reporting agency  
11          places, removes, or temporarily suspends a security freeze  
12          at the request of a veteran or spouse under subsection (b)  
13          or (d), respectively, it shall send a written confirmation  
14          thereof to the veteran or spouse not later than 10 business  
15          days after placing, removing, or temporarily suspending  
16          the security freeze. This subsection does not apply to the  
17          placement, removal, or temporary suspension of a security  
18          freeze by a consumer reporting agency because of a notifi-  
19          cation received under subsection (e)(2).

20          “(g) ID REQUIRED.—A consumer reporting agency  
21          may not place, remove, or temporarily suspend a security  
22          freeze in the file of a veteran or spouse described in sub-  
23          section (a) at the request of the veteran or spouse, unless  
24          the veteran or spouse provides proper identification (with-

1 in the meaning of section 610(a)(1)) and the regulations  
2 thereunder.

3 “(h) EXCEPTIONS.—This section does not apply to  
4 the use of the file of a veteran or spouse described in sub-  
5 section (a) maintained by a consumer reporting agency by  
6 any of the following:

7 “(1) A person or entity, or a subsidiary, affil-  
8 iate, or agent of that person or entity, or an as-  
9 signee of a financial obligation owing by the veteran  
10 or spouse to that person or entity, or a prospective  
11 assignee of a financial obligation owing by the vet-  
12 eran or spouse to that person or entity in conjunc-  
13 tion with the proposed purchase of the financial obli-  
14 gation, with which the veteran or spouse has or had  
15 prior to assignment an account or contract, includ-  
16 ing a demand deposit account, or to whom the vet-  
17 eran or spouse issued a negotiable instrument, for  
18 the purposes of reviewing the account or collecting  
19 the financial obligation owing for the account, con-  
20 tract, or negotiable instrument.

21 “(2) Any Federal, State, or local agency, law  
22 enforcement agency, trial court, or private collection  
23 agency acting pursuant to a court order, warrant,  
24 subpoena, or other compulsory process.

1           “(3) A child support agency or its agents or as-  
2           signs acting pursuant to subtitle D of title IV of the  
3           Social Security Act (42 U.S.C. et seq.) or similar  
4           State law.

5           “(4) The Department of Health and Human  
6           Services, a similar State agency, or the agents or as-  
7           signs of the Federal or State agency acting to inves-  
8           tigate medicare or medicaid fraud.

9           “(5) The Internal Revenue Service or a State  
10          or municipal taxing authority, or a State department  
11          of motor vehicles, or any of the agents or assigns of  
12          these Federal, State, or municipal agencies acting to  
13          investigate or collect delinquent taxes or unpaid  
14          court orders or to fulfill any of their other statutory  
15          responsibilities.

16          “(6) The use of consumer credit information for  
17          the purposes of prescreening, as provided for under  
18          this title.

19          “(7) Any person or entity administering a cred-  
20          it file monitoring subscription to which the veteran  
21          or spouse has subscribed.

22          “(8) Any person or entity for the purpose of  
23          providing a veteran or spouse with a copy of his or  
24          her credit report or credit score upon request of the  
25          veteran or spouse.

1 “(i) FEES.—

2 “(1) IN GENERAL.—Except as provided in para-  
3 graph (2), a consumer reporting agency may charge  
4 a reasonable fee, for placing, removing, or tempo-  
5 rarily suspending a security freeze in the file of the  
6 veteran or spouse described in subsection (a), which  
7 cost shall be submitted to and paid by the Depart-  
8 ment of Veterans Affairs, pursuant to procedures es-  
9 tablished by the Secretary of Veterans Affairs.

10 “(2) ID THEFT VICTIMS.—A consumer report-  
11 ing agency may not charge a fee for placing, remov-  
12 ing, or temporarily suspending a security freeze in  
13 the file of a veteran or spouse described in sub-  
14 section (a), if—

15 “(A) the veteran or spouse is a victim of  
16 identity theft;

17 “(B) the veteran or spouse requests the se-  
18 curity freeze in writing;

19 “(C) the veteran or spouse has filed a po-  
20 lice report with respect to the theft, or an iden-  
21 tity theft report (as defined in section  
22 603(q)(4), within 90 days after the date on  
23 which the theft occurred or was discovered by  
24 the veteran or spouse; and

1           “(D) the veteran or spouse provides a copy  
2           of the report to the reporting agency.

3           “(j) LIMITATION ON INFORMATION CHANGES IN  
4 FROZEN REPORTS.—

5           “(1) IN GENERAL.—If a security freeze is in  
6           place in the file of a veteran or spouse described in  
7           subsection (a), the consumer reporting agency may  
8           not change any of the following official information  
9           in that file without sending a written confirmation  
10          of the change to the veteran or spouse within 30  
11          days after the date on which the change is made:

12                   “(A) Name.

13                   “(B) Date of birth.

14                   “(C) Social Security number.

15                   “(D) Address.

16          “(2) CONFIRMATION.—Paragraph (1) does not  
17          require written confirmation for technical modifica-  
18          tions of the official information of a veteran or  
19          spouse, including name and street abbreviations,  
20          complete spellings, or transposition of numbers or  
21          letters. In the case of an address change, the written  
22          confirmation shall be sent to both the new address  
23          and to the former address of the veteran or spouse.

24          “(k) CERTAIN ENTITY EXEMPTIONS.—

1           “(1) AGGREGATORS AND OTHER AGENCIES.—

2           The provisions of this section do not apply to a con-  
3           sumer reporting agency that acts only as a reseller  
4           of credit information by assembling and merging in-  
5           formation contained in the data base of another con-  
6           sumer reporting agency or multiple consumer report-  
7           ing agencies, and does not maintain a permanent  
8           data base of credit information from which new con-  
9           sumer credit reports are produced.

10           “(2) OTHER EXEMPTED ENTITIES.—The fol-  
11           lowing entities are not required to place a security  
12           freeze in the file of a veteran or spouse described in  
13           subsection (a) in accordance with this section:

14                   “(A) A check services or fraud prevention  
15                   services company, which issues reports on inci-  
16                   dents of fraud or authorizations for the purpose  
17                   of approving or processing negotiable instru-  
18                   ments, electronic fund transfers, or similar  
19                   methods of payments.

20                   “(B) A deposit account information service  
21                   company, which issues reports regarding ac-  
22                   count closures due to fraud, substantial over-  
23                   drafts, ATM abuse, or similar negative informa-  
24                   tion regarding such veteran or spouse, to in-  
25                   quiring banks or other financial institutions for

1 use only in reviewing the request of such vet-  
 2 eran or spouse for a deposit account at the in-  
 3 quiring bank or financial institution.”.

4 (c) FEES.—Any fee associated with an extended  
 5 fraud alert or security freeze required by the amendments  
 6 made by this section that would otherwise be required to  
 7 be paid by the consumer shall be paid by the Department  
 8 of Veterans Affairs.

9 **SEC. 4. PENALTIES FOR IDENTITY THEFT OF VETERANS.**

10 Section 1028 of title 18, United States Code, is  
 11 amended—

12 (1) in subsection (b), by striking “The punish-  
 13 ment for” and inserting the following “Except as  
 14 provided in subsection (j), the punishment for”; and

15 (2) by adding at the end the following:

16 “(j) IDENTITY THEFT OF VETERANS.—

17 “(1) IN GENERAL.—In determining the punish-  
 18 ment applicable under subsection (b), if the offense  
 19 is an offense described in paragraph (2), the fine  
 20 and term of imprisonment otherwise applicable  
 21 under subsection (b) shall be doubled.

22 “(2) TYPE OF OFFENSE.—An offense described  
 23 in this paragraph is an offense under subsection (a)  
 24 that—

1           “(A) involves any document or other infor-  
2           mation—

3                   “(i) relating to a veteran (as defined  
4                   in section 101 of title 38) or a spouse of  
5                   a veteran; and

6                   “(ii) obtained as a direct or indirect  
7                   result of the security breach at the Depart-  
8                   ment of Veterans Affairs on May 3, 2006;  
9                   and

10           “(B) was committed after the date of en-  
11           actment of this subsection.”.

12 **SEC. 5. FUNDING.**

13           (a) REIMBURSEMENT.—The Secretary of Veterans  
14           Affairs shall reimburse the Federal Trade Commission for  
15           any costs incurred by the Commission in carrying out this  
16           Act and the amendments made by this Act.

17           (b) AVAILABILITY OF FUNDS.—Amounts appro-  
18           priated to the Secretary and available for obligation may  
19           be utilized for purposes of reimbursement of the Federal  
20           Trade Commission under subsection (a).

21 **SEC. 6. COMPTROLLER GENERAL STUDIES ON DATA PRO-**  
22 **TECTION AND OTHER MATTERS.**

23           (a) STUDY ON DATA PROTECTION BY DEPARTMENT  
24           OF VETERANS AFFAIRS.—

1           (1) IN GENERAL.—The Comptroller General of  
2 the United States shall conduct a study of the data  
3 protection procedures of the Department of Veterans  
4 Affairs.

5           (2) ELEMENTS.—The study required by para-  
6 graph (1) shall include the following:

7           (A) A review and assessment of the data  
8 protection procedures of the Department of  
9 Veterans Affairs in effect before May 3, 2006.

10           (B) A review and assessment of any modi-  
11 fications of the data protection procedures of  
12 the Department of Veterans Affairs adopted as  
13 a result of the loss of data resulting from the  
14 security breach at the Department on May 3,  
15 2006.

16           (b) STUDY ON SECURITY BREACH INVESTIGATION BY  
17 DEPARTMENT OF VETERANS AFFAIRS.—

18           (1) IN GENERAL.—The Comptroller General of  
19 the United States shall conduct a review and assess-  
20 ment of the investigation carried out by the Depart-  
21 ment of Veterans Affairs with respect to the security  
22 breach at the Department on May 3, 2006.

23           (2) COOPERATION.—The Secretary of Veterans  
24 Affairs shall ensure that the personnel of the De-  
25 partment of Veterans Affairs cooperate fully with

1 the Comptroller General in the conduct of the review  
2 and assessment required by paragraph (1).

3 (c) STUDY ON FTC PROGRAM FOR VETERANS AND  
4 SPOUSES AT RISK OF IDENTITY THEFT.—The Comptroller  
5 General of the United States shall conduct a study  
6 of the program of the Federal Trade Commission for veterans  
7 and spouses of veterans at risk of identity theft required  
8 by section 2. The study shall include an assessment  
9 of the effectiveness of the program in meeting the financial  
10 counseling and similar needs of individuals seeking counseling  
11 and support through the program.

12 (d) STUDY ON COMPLIANCE OF FEDERAL AGENCIES  
13 WITH REQUIREMENTS ON PERSONAL DATA.—

14 (1) IN GENERAL.—The Comptroller General of  
15 the United States shall conduct a study of the compliance  
16 of the departments and agencies of the Federal Government  
17 with applicable requirements relating to the preservation of the  
18 confidentiality of personal data.  
19

20 (2) ELEMENTS.—The study required by paragraph  
21 (1) shall include the following:

22 (A) A review and assessment of the current  
23 procedures and practices of the departments and agencies of the  
24 Federal Government

1 regarding the preservation of the confidentiality  
2 of personal data.

3 (B) A comparative analysis of the proce-  
4 dures practices referred to in subparagraph (A)  
5 with current standards of the Federal Trade  
6 Commission for the preservation of the con-  
7 fidentiality of personal data by commercial and  
8 non-commercial private entities.

9 (C) A review and assessment of the modi-  
10 fications of the data protection procedures  
11 adopted by the Department of Veterans Affairs  
12 as a result of the loss of data resulting from the  
13 security breach on May 3, 2006, including an  
14 assessment of the feasibility and advisability of  
15 the adoption of any such modifications by other  
16 departments and agencies of the Federal Gov-  
17 ernment.

18 (D) An identification of recommendations  
19 for improvements to the procedures and prac-  
20 tices of the departments and agencies of the  
21 Federal Government regarding the preservation  
22 of the confidentiality of personal data.

23 (e) REPORT.—Not later than 18 months after the  
24 date of the enactment of this Act, the Comptroller General  
25 of the United States shall submit to Congress a report

1 setting forth the results of each study conducted under  
2 this section. The report shall set forth the results of each  
3 study separately, and shall include such recommendations  
4 for legislative and administrative action as the Com-  
5 troller General considers appropriate in light of the stud-  
6 ies.

7 **SEC. 7. AUTHORIZATION OF APPROPRIATIONS.**

8       There are authorized to be appropriated to the Sec-  
9 retary of Veterans Affairs, such sums as may be necessary  
10 to carry out this Act and the amendments made by this  
11 Act.

○