

110TH CONGRESS
1ST SESSION

H. R. 1307

To establish the Office of Veterans Identity Protection Claims to reimburse injured persons for injuries suffered as a result of the unauthorized use, disclosure, or dissemination of identifying information stolen from the Department of Veterans Affairs, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

MARCH 1, 2007

Mrs. WILSON of New Mexico (for herself, Mr. BACHUS, Mrs. BONO, Mr. BURTON of Indiana, Mrs. CUBIN, Mrs. JO ANN DAVIS of Virginia, Mrs. DRAKE, Mr. RADANOVICH, Mr. RAMSTAD, Mr. REICHERT, Mr. SESSIONS, Mr. SHUSTER, Mr. SPRATT, and Mr. WOLF) introduced the following bill; which was referred to the Committee on the Judiciary

A BILL

To establish the Office of Veterans Identity Protection Claims to reimburse injured persons for injuries suffered as a result of the unauthorized use, disclosure, or dissemination of identifying information stolen from the Department of Veterans Affairs, 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 Identity Pro-
5 tection Act”, or the “VIP Act”.

1 **SEC. 2. PURPOSES.**

2 The purposes of this Act are—

3 (1) to reimburse injured persons for injuries
4 suffered as a result of the unauthorized use, disclo-
5 sure, or dissemination of identifying information im-
6 properly released by or obtained from the Depart-
7 ment of Veterans Affairs; and

8 (2) to provide for the expeditious consideration
9 and settlement of claims for those injuries.

10 **SEC. 3. DEFINITIONS.**

11 In this Act:

12 (1) DIRECTOR.—The term “Director” means
13 the Director of the Office of Veterans Identity Pro-
14 tection Claims.

15 (2) INJURED PERSON.—The term “injured per-
16 son” means an individual—

17 (A) whose name or other personal identi-
18 fying information is part of data of the Depart-
19 ment of Veterans Affairs that—

20 (i) was stolen from the home of an
21 employee of the Department of Veterans
22 Affairs on or around May 3, 2006;

23 (ii) was reported missing from the
24 Birmingham VA Medical Center on or
25 around January 22, 2007; or

(iii) is otherwise compromised as a result of a security breach, including any action or omission by an officer, employee, volunteer, or contractor (or employee of a contractor) of the Department of Veterans Affairs in contravention of any security policy or procedure of the Department that results in such a breach; and

(B) who suffered an injury as a result of the unauthorized use, disclosure, or dissemination of personal identifying information that was included in data described in subparagraph (A).

(3) OFFICE.—The term “Office” means the Office of Veterans Identity Protection Claims established under section 4(a).

SEC. 4. OFFICE OF VETERANS IDENTITY PROTECTION CLAIMS.

(a) OFFICE ESTABLISHED.—There is established an independent office of the executive branch to receive, process, and pay claims in accordance with this Act. Such office shall be known as the Office of Veterans Identity Protection Claims.

(b) DIRECTOR.—Not later than 30 days after the enactment of this Act, the President shall appoint a director

1 of the Office of Veterans Identity Protection Claims. The
2 Director shall, on behalf of the United States, investigate,
3 consider, ascertain, adjust, determine, grant, deny, or set-
4 tle any claim for money damages asserted under section
5 5(b).

6 (c) FUNDING.—The Office—

7 (1) shall be funded from funds made available
8 to the Director under this Act;

9 (2) may reimburse other Federal agencies for
10 claims processing support and assistance;

11 (3) may appoint and fix the compensation of
12 such temporary personnel as may be necessary, with-
13 out regard to the provisions of title 5, United States
14 Code, governing appointments in competitive service;
15 and

16 (4) upon the request of the Director, may re-
17 quest that the head of any Federal department or
18 agency detail, on a reimbursable basis, any of the
19 personnel of that department or agency to the Office
20 to assist it in carrying out its duties under this Act.

21 **SEC. 5. REIMBURSEMENT FOR INJURIES SUFFERED.**

22 (a) REIMBURSEMENT.—Each injured person shall be
23 entitled to receive from the United States—

24 (1) reimbursement for any injuries suffered by
25 the injured person as a result of the unauthorized

1 use, disclosure, or dissemination of personal identi-
2 fying information that was included in the data de-
3 scribed in section 3(2)(A); and

4 (2) damages described in subsection (d)(3), as
5 determined by the Director.

6 (b) SUBMISSION OF CLAIMS.—Not later than 2 years
7 after the date on which regulations are first promulgated
8 under subsection (f), an injured person may submit to the
9 Director a written claim for one or more injuries suffered
10 by the injured person in accordance with such require-
11 ments as the Director determines to be appropriate.

12 (c) INVESTIGATION OF CLAIMS.—

13 (1) APPLICABILITY OF STATE LAW.—Except as
14 otherwise provided in this Act, the laws of the State
15 in which the injured person resides shall apply to the
16 calculation of damages under subsection (d)(3).

17 (2) EXTENT OF DAMAGES.—Any payment
18 under this Act—

19 (A) shall be limited to actual compensatory
20 damages measured by injuries suffered and in-
21 terest before settlement or payment of a claim;
22 and

23 (B) shall not include punitive damages.

24 (d) PAYMENT OF CLAIMS.—

1 (1) DETERMINATION AND PAYMENT OF
2 AMOUNT.—

3 (A) IN GENERAL.—Not later than 180
4 days after the date on which a claim is sub-
5 mitted under this Act, the Director shall deter-
6 mine and fix the amount, if any, to be paid for
7 the claim.

8 (B) PARAMETERS OF DETERMINATION.—
9 In determining and settling a claim under this
10 Act, the Director shall determine only—

11 (i) whether the claimant is an injured
12 person;

13 (ii) whether the injury that is the sub-
14 ject of the claim resulted from the unau-
15 thorized use, disclosure, or dissemination
16 of personal identifying information that
17 was included in the data described in sec-
18 tion 3(2)(A);

19 (iii) the amount, if any, to be allowed
20 and paid to the injured person under this
21 Act.

22 (C) OTHER PAYMENTS OR SETTLE-
23 MENTS.—In determining the amount of, and
24 paying, a claim under this Act, to prevent re-
25 covery by a claimant in excess of actual com-

1 pensatory damages, the Director shall reduce
2 the amount to be paid for the claim by an
3 amount that is equal to the total of any pay-
4 ments or settlements of any nature that were
5 paid, or will be paid, to the injured person with
6 respect to the claim.

7 (2) PARTIAL PAYMENT.—

8 (A) IN GENERAL.—At the request of a
9 claimant, the Director may make one or more
10 advance or partial payments before the final
11 settlement of a claim, including final settlement
12 on any portion or aspect of a claim that is de-
13 termined to be severable.

14 (B) JUDICIAL DECISION.—If a claimant re-
15 ceives a partial payment on a claim under this
16 Act, but further payment on the claim is subse-
17 quently denied by the Director, the claimant
18 may—

19 (i) seek judicial review under sub-
20 section (i); and

21 (ii) keep any partial payment that the
22 claimant received, unless the Director de-
23 termines that the claimant—

24 (I) was not eligible to receive the
25 reimbursement; or

1 (II) fraudulently procured the re-
2 imbursement.

3 (3) ALLOWABLE DAMAGES.—A claim that is
4 paid under this Act may include otherwise uncom-
5 pensated damages for loss of property, business loss,
6 or financial loss resulting from the unauthorized use,
7 disclosure, or dissemination of personal identifying
8 information that was included in the data described
9 in section 3(2)(A).

10 (e) ACCEPTANCE OF AWARD.—The acceptance by a
11 claimant of any payment under this Act, except an ad-
12 vance or partial payment made under subsection (d)(2),
13 shall—

14 (1) be final and conclusive on the claimant,
15 with respect to all claims arising out of or relating
16 to the same subject matter;

17 (2) constitute a complete release of all claims
18 against the United States (including any agency or
19 employee of the United States) under chapter 171 of
20 title 28, United States Code (commonly known as
21 the “Federal Tort Claims Act”), or any other Fed-
22 eral or State law, arising out of or relating to the
23 same subject matter; and

24 (3) shall include a certification by the claimant,
25 made under penalty of perjury and subject to the

1 provisions of section 1001 of title 18, United States
2 Code, that such claim is true and correct.

3 (f) REGULATIONS AND PUBLIC INFORMATION.—

4 (1) REGULATIONS.—Notwithstanding any other
5 provision of law, not later than 45 days after the
6 date of the enactment of this Act, the Director shall
7 promulgate and publish in the Federal Register in-
8 terim final regulations for the processing and pay-
9 ment of claims under this Act.

10 (2) PUBLIC INFORMATION.—

11 (A) IN GENERAL.—At the time at which
12 the Director promulgates regulations under
13 paragraph (1), the Director shall publish, in
14 newspapers of general circulation in the each of
15 the several States and the District of Columbia,
16 a clear, concise, and easily understandable ex-
17 planation, in English and Spanish, of—

18 (i) the rights conferred under this
19 Act; and

20 (ii) the procedural and other require-
21 ments of the regulations promulgated
22 under paragraph (1).

23 (B) DISSEMINATION THROUGH OTHER
24 MEDIA.—The Director shall disseminate the ex-
25 planation published under subparagraph (A)

1 through brochures, pamphlets, radio, television,
2 and other media that the Director determines
3 are likely to reach prospective claimants.

4 (g) CONSULTATION.—In administering this Act, the
5 Director shall consult with the Attorney General, the Sec-
6 retary of Veterans Affairs, the Secretary of the Defense,
7 the Secretary of Commerce, other Federal agencies, and
8 State and local authorities, as determined to be necessary
9 by the Director to—

10 (1) ensure the efficient administration of the
11 claims process; and

12 (2) provide for local concerns.

13 (h) ELECTION OF REMEDY.—

14 (1) IN GENERAL.—An injured person may elect
15 to seek reimbursement from the United States for
16 one or more injuries resulting from the unauthorized
17 use, disclosure, or dissemination of personal identi-
18 fying information that was included in the data de-
19 scribed in section 3(2)(A) by—

20 (A) submitting a claim under this Act;

21 (B) filing a claim or bringing a civil action
22 under chapter 171 of title 28, United States
23 Code; or

24 (C) bringing an authorized civil action
25 under any other provision of law.

1 (2) EFFECT OF ELECTION.—An election by an
2 injured person to seek reimbursement in any manner
3 described in paragraph (1) shall be final and conclu-
4 sive on the claimant with respect to all injuries re-
5 sulting from the unauthorized use, disclosure, or dis-
6 semination of personal identifying information that
7 was included in the data described in section 3(2)(A)
8 that are suffered by the claimant.

9 (3) ARBITRATION.—

10 (A) IN GENERAL.—Not later than 45 days
11 after the date of the enactment of this Act, the
12 Director shall establish by regulation proce-
13 dures under which a dispute regarding a claim
14 submitted under this Act may be settled by ar-
15 bitration.

16 (B) ARBITRATION AS REMEDY.—On estab-
17 lishment of arbitration procedures under sub-
18 paragraph (A), an injured person that submits
19 a disputed claim under this Act may elect to
20 settle the claim through arbitration.

21 (C) BINDING EFFECT.—An election by an
22 injured person to settle a claim through arbitra-
23 tion under this paragraph shall—

24 (i) be binding; and

1 (ii) preclude any exercise by the in-
2 jured person of the right to judicial review
3 of a claim described in subsection (i).

4 (4) NO EFFECT ON ENTITLEMENTS.—Nothing
5 in this Act affects any right of a claimant to file a
6 claim for benefits under any Federal entitlement
7 program.

8 (i) JUDICIAL REVIEW.—

9 (1) IN GENERAL.—Any claimant aggrieved by a
10 final decision of the Director under this Act may,
11 not later than 60 days after the date on which the
12 decision is issued, bring a civil action in the an ap-
13 propriate United States District Court, to modify or
14 set aside the decision, in whole or in part.

15 (2) RECORD.—The court shall hear a civil ac-
16 tion under paragraph (1) on the record made before
17 the Director.

18 (3) STANDARD.—The decision of the Director
19 incorporating the findings of the Director shall be
20 upheld if the decision is supported by substantial
21 evidence on the record considered as a whole.

22 (j) ATTORNEY'S AND AGENT'S FEES.—

23 (1) IN GENERAL.—No attorney or agent, acting
24 alone or in combination with any other attorney or
25 agent, shall charge, demand, receive, or collect, for

1 services rendered in connection with a claim sub-
2 mitted under this Act, fees in excess of 10 percent
3 of the amount of any payment on the claim.

4 (2) VIOLATION.—An attorney or agent who vio-
5 lates paragraph (1) shall be fined not more than
6 \$10,000.

7 (k) APPLICABILITY OF DEBT COLLECTION REQUIRE-
8 MENTS.—Section 3716 of title 31, United States Code,
9 shall not apply to any payment under this Act.

10 **SEC. 6. REPORT; AUDIT.**

11 (a) Not later than 180 days after the date of promul-
12 gation of regulations under section 5(f)(1), and semiannu-
13 ally thereafter, the Director shall submit to the Commit-
14 tees on Veterans Affairs, Energy and Commerce, and Ju-
15 diciary of the House of Representatives, and the Commit-
16 tees on Veterans Affairs, Commerce, Science and Trans-
17 portation, and Judiciary of the Senate, a report that de-
18 scribes the claims submitted under this Act during the six
19 months preceding the date of submission of the report,
20 including, for each claim—

21 (1) the amount claimed;

22 (2) a brief description of the nature of the
23 claim; and

24 (3) the status or disposition of the claim, in-
25 cluding the amount of any payment under this Act.

1 (b) The Comptroller General shall conduct an annual
2 audit on the payment of all claims made under this Act,
3 and shall report to the committees described in subsection
4 (a) on the results of this audit beginning not later than
5 the expiration of the 1-year period beginning on the date
6 of the enactment of this Act.

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

8 There are authorized to be appropriated to the Direc-
9 tor such sums as are necessary to carry out this Act, to
10 remain available until expended.

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