

112TH CONGRESS  
2D SESSION

# H. R. 6183

To protect cyber privacy, and for other purposes.

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IN THE HOUSE OF REPRESENTATIVES

JULY 25, 2012

Mr. CONYERS (for himself, Mr. JOHNSON of Georgia, and Mr. SCOTT of Virginia) introduced the following bill; which was referred to the Committee on the Judiciary

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## A BILL

To protect cyber privacy, 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 “Cyber Privacy For-  
5       tification Act of 2012”.

1                   **TITLE I—DATA BREACH**  
2                   **NOTIFICATION**

3 **SEC. 101. FAILURE TO PROVIDE NOTICE OF SECURITY**  
4                   **BREACHES INVOLVING SENSITIVE PERSON-**  
5                   **ALLY IDENTIFIABLE INFORMATION.**

6           (a) IN GENERAL.—Chapter 47 of title 18, United  
7 States Code, is amended by adding at the end the fol-  
8 lowing:

9           **“§ 1040. Failure to provide notice of security**  
10                   **breaches involving sensitive personally**  
11                   **identifiable information**

12           “(a) Whoever, having a covered obligation to provide  
13 notice of a security breach involving sensitive personally  
14 identifiable information, knowingly fails to do so, shall be  
15 fined under this title or imprisoned not more than 5 years,  
16 or both.

17           “(b) As used in this section—

18                   “(1) the term ‘covered obligation’, with respect  
19 to providing notice of a security breach, means an  
20 obligation under Federal law or, if the breach is in  
21 or affects interstate or foreign commerce, under  
22 State law;

23                   “(2) the term ‘sensitive personally identifiable  
24 information’ means any electronic or digital informa-  
25 tion that includes—

1           “(A) an individual’s first and last name, or  
2           first initial and last name, or address or phone  
3           number in combination with any 1 of the fol-  
4           lowing data elements where the data elements  
5           are not protected by a technology protection  
6           measure that renders the data element indeci-  
7           pherable—

8                   “(i) a nontruncated social security  
9                   number, driver’s license number, state resi-  
10                  dent identification number, passport num-  
11                  ber, or alien registration number;

12                  “(ii) both—

13                          “(I) mother’s maiden name, if  
14                          identified as such; and

15                          “(II) month, day, and year of  
16                          birth; and

17                          “(iii) unique biometric data such as a  
18                          fingerprint, voice print, a retina or iris  
19                          image; or

20           “(B) a financial account number or credit  
21           or debit card number in combination with any  
22           security code, access code or password that is  
23           required for an individual to obtain credit, with-  
24           draw funds, or engage in a financial transaction  
25           by means of such number;



1 with respect to which the major security breach oc-  
2 curred.

3 (3) DEFINITION.—In this subsection—

4 (A) the term “major security breach”  
5 means any security breach involving—

6 (i) means of identification pertaining  
7 to 10,000 or more individuals is, or is rea-  
8 sonably believed to have been acquired;

9 (ii) databases owned by the Federal  
10 Government; or

11 (iii) means of identification of Federal  
12 Government employees or contractors in-  
13 volved in national security matters or law  
14 enforcement; and

15 (B) the term “means of identification” has  
16 the meaning given that term in section 1028 of  
17 title 18, United States Code.

18 **TITLE II—NON-CRIMINAL PRI-**  
19 **VACY ENFORCEMENT AND**  
20 **PRIVACY IMPACT STATE-**  
21 **MENTS**

22 **SEC. 201. ENFORCEMENT BY ATTORNEY GENERAL AND**  
23 **STATE AUTHORITIES.**

24 (a) DEFINITION OF “AUTHORIZED ENTITY”.—As  
25 used in this section, the term “authorized entity” means

1 the Attorney General, with respect to any conduct consti-  
2 tuting a violation of a Federal law enacted after the date  
3 of the enactment of this Act relating to data security and  
4 engaged in by a business entity, and a State Attorney  
5 General with respect to that conduct to the extent the con-  
6 duct adversely affects an interest of the residents of a  
7 State.

8 (b) CIVIL PENALTY.—

9 (1) GENERALLY.—An authorized entity may in  
10 a civil action obtain a civil penalty of not more than  
11 \$500,000 from any business entity that engages in  
12 conduct constituting a violation of a Federal law en-  
13 acted after the date of the enactment of this Act re-  
14 lating to data security.

15 (2) SPECIAL RULE FOR INTENTIONAL VIOLA-  
16 TION.—If the violation described in subsection (a) is  
17 intentional, the maximum civil penalty is  
18 \$1,000,000.

19 (c) INJUNCTIVE RELIEF.—An authorized entity may,  
20 in a civil action against a business entity that has engaged,  
21 or is engaged, in any conduct constituting a violation of  
22 a Federal law enacted after the date of the enactment of  
23 this Act relating to data security, obtain an order—

24 (1) enjoining such act or practice; or

25 (2) enforcing compliance with that law.

1 (d) OTHER RIGHTS AND REMEDIES.—The rights and  
2 remedies available under this section do not affect any  
3 other rights and remedies available under Federal or State  
4 law.

5 **SEC. 202. COORDINATION OF STATE AND FEDERAL EF-**  
6 **FORTS.**

7 (a) NOTICE.—

8 (1) IN GENERAL.—A State consumer protection  
9 attorney may not bring an action under section 201,  
10 until the attorney general of the State involved pro-  
11 vides to the Attorney General of the United States—

12 (A) written notice of the action; and

13 (B) a copy of the complaint for the action.

14 (2) EXCEPTION.—Paragraph (1) does not apply  
15 with respect to the filing of an action by an attorney  
16 general of a State under this section if the State at-  
17 torney general determines that it is not feasible to  
18 provide the notice described in such subparagraph  
19 before the filing of the action, in such a case the  
20 State attorney general shall provide notice and a  
21 copy of the complaint to the Attorney General at the  
22 time the State attorney general files the action.

23 (b) FEDERAL PROCEEDINGS.—The Attorney General  
24 may—

1           (1) move to stay any non-Federal action under  
2           section 201, pending the final disposition of a pend-  
3           ing Federal action under that section;

4           (2) initiate an action in an appropriate United  
5           States district court and move to consolidate all  
6           pending actions under section 201, including State  
7           actions, in that court; and

8           (3) intervene in a State action under section  
9           201.

10          (c) PENDING PROCEEDINGS.—If the Attorney Gen-  
11          eral institutes a proceeding or action for a violation of a  
12          Federal law enacted after the date of the enactment of  
13          this Act relating to data security, no authority of a State  
14          may, during the pendency of such proceeding or action,  
15          bring an action under this section against any defendant  
16          named in such criminal proceeding or a civil action against  
17          any defendant for any violation that is alleged in that pro-  
18          ceeding or action.

19          (d) DEFINITION.—As used in this section, the term  
20          “State consumer protection attorney” means the attorney  
21          general of a State or any State or local law enforcement  
22          agency authorized by the State attorney general or by  
23          State statute to prosecute violations of consumer protec-  
24          tion law.



1 **SEC. 203. REQUIREMENT THAT AGENCY RULEMAKING**  
2 **TAKE INTO CONSIDERATION IMPACTS ON IN-**  
3 **DIVIDUAL PRIVACY.**

4 (a) IN GENERAL.—Title 5, United States Code, is  
5 amended by adding after section 553 the following new  
6 section:

7 **“§ 553a. Privacy impact assessment in rulemaking**

8 “(a) INITIAL PRIVACY IMPACT ASSESSMENT.—

9 “(1) IN GENERAL.—Whenever an agency is re-  
10 quired by section 553 of this title, or any other law,  
11 to publish a general notice of proposed rulemaking  
12 for a proposed rule, or publishes a notice of pro-  
13 posed rulemaking for an interpretative rule involving  
14 the internal revenue laws of the United States, and  
15 such rule or proposed rulemaking pertains to the  
16 collection, maintenance, use, or disclosure of person-  
17 ally identifiable information from 10 or more indi-  
18 viduals, other than agencies, instrumentalities, or  
19 employees of the Federal Government, the agency  
20 shall prepare and make available for public comment  
21 an initial privacy impact assessment that describes  
22 the impact of the proposed rule on the privacy of in-  
23 dividuals. Such assessment or a summary thereof  
24 shall be signed by the senior agency official with pri-  
25 mary responsibility for privacy policy and be pub-  
26 lished in the Federal Register at the time of the

1 publication of a general notice of proposed rule-  
2 making for the rule.

3 “(2) CONTENTS.—Each initial privacy impact  
4 assessment required under this subsection shall con-  
5 tain the following:

6 “(A) A description and analysis of the ex-  
7 tent to which the proposed rule will impact the  
8 privacy interests of individuals, including the  
9 extent to which the proposed rule—

10 “(i) provides notice of the collection of  
11 personally identifiable information, and  
12 specifies what personally identifiable infor-  
13 mation is to be collected and how it is to  
14 be collected, maintained, used, and dis-  
15 closed;

16 “(ii) allows access to such information  
17 by the person to whom the personally iden-  
18 tifiable information pertains and provides  
19 an opportunity to correct inaccuracies;

20 “(iii) prevents such information,  
21 which is collected for one purpose, from  
22 being used for another purpose; and

23 “(iv) provides security for such infor-  
24 mation, including the provision of written  
25 notice to any individual, within 14 days of

1 the date of compromise, whose privacy in-  
2 terests are compromised by the unauthor-  
3 ized release of personally identifiable infor-  
4 mation as a result of a breach of security  
5 at or by the agency.

6 “(B) A description of any significant alter-  
7 natives to the proposed rule which accomplish  
8 the stated objectives of applicable statutes and  
9 which minimize any significant privacy impact  
10 of the proposed rule on individuals.

11 “(b) FINAL PRIVACY IMPACT ASSESSMENT.—

12 “(1) IN GENERAL.—Whenever an agency pro-  
13 mulgates a final rule under section 553 of this title,  
14 after being required by that section or any other law  
15 to publish a general notice of proposed rulemaking,  
16 or promulgates a final interpretative rule involving  
17 the internal revenue laws of the United States, and  
18 such rule or proposed rulemaking pertains to the  
19 collection, maintenance, use, or disclosure of person-  
20 ally identifiable information from 10 or more indi-  
21 viduals, other than agencies, instrumentalities, or  
22 employees of the Federal Government, the agency  
23 shall prepare a final privacy impact assessment,  
24 signed by the senior agency official with primary re-  
25 sponsibility for privacy policy.

1           “(2) CONTENTS.—Each final privacy impact as-  
2           sessment required under this subsection shall con-  
3           tain the following:

4                   “(A) A description and analysis of the ex-  
5                   tent to which the final rule will impact the pri-  
6                   vacy interests of individuals, including the ex-  
7                   tent to which such rule—

8                           “(i) provides notice of the collection of  
9                           personally identifiable information, and  
10                          specifies what personally identifiable infor-  
11                          mation is to be collected and how it is to  
12                          be collected, maintained, used, and dis-  
13                          closed;

14                          “(ii) allows access to such information  
15                          by the person to whom the personally iden-  
16                          tifiable information pertains and provides  
17                          an opportunity to correct inaccuracies;

18                          “(iii) prevents such information,  
19                          which is collected for one purpose, from  
20                          being used for another purpose; and

21                          “(iv) provides security for such infor-  
22                          mation, including the provision of written  
23                          notice to any individual, within 14 days of  
24                          the date of compromise, whose privacy in-  
25                          terests are compromised by the unauthor-

1            ized release of personally identifiable infor-  
2            mation as a result of a breach of security  
3            at or by the agency.

4            “(B) A summary of any significant issues  
5            raised by the public comments in response to  
6            the initial privacy impact assessment, a sum-  
7            mary of the analysis of the agency of such  
8            issues, and a statement of any changes made in  
9            such rule as a result of such issues.

10           “(C) A description of the steps the agency  
11           has taken to minimize the significant privacy  
12           impact on individuals consistent with the stated  
13           objectives of applicable statutes, including a  
14           statement of the factual, policy, and legal rea-  
15           sons for selecting the alternative adopted in the  
16           final rule and why each one of the other signifi-  
17           cant alternatives to the rule considered by the  
18           agency which affect the privacy interests of in-  
19           dividuals was rejected.

20           “(3) AVAILABILITY TO PUBLIC.—The agency  
21           shall make copies of the final privacy impact assess-  
22           ment available to members of the public and shall  
23           publish in the Federal Register such assessment or  
24           a summary thereof.

25           “(c) WAIVERS.—

1           “(1) EMERGENCIES.—An agency head may  
2 waive or delay the completion of some or all of the  
3 requirements of subsections (a) and (b) to the same  
4 extent as the agency head may, under section 608,  
5 waive or delay the completion of some or all of the  
6 requirements of sections 603 and 604, respectively.

7           “(2) NATIONAL SECURITY.—An agency head  
8 may, for national security reasons, or to protect  
9 from disclosure classified information, confidential  
10 commercial information, or information the disclo-  
11 sure of which may adversely affect a law enforce-  
12 ment effort, waive or delay the completion of some  
13 or all of the following requirements:

14           “(A) The requirement of subsection (a)(1)  
15 to make an assessment available for public com-  
16 ment, provided that such assessment is made  
17 available, in classified form, to the Committees  
18 on the Judiciary of the House of Representa-  
19 tives and the Senate, in lieu of making such as-  
20 sessment available to the public.

21           “(B) The requirement of subsection (a)(1)  
22 to have an assessment or summary thereof pub-  
23 lished in the Federal Register, provided that  
24 such assessment or summary is made available,  
25 in classified form, to the Committees on the Ju-

1           diciary of the House of Representatives and the  
2           Senate, in lieu of publishing such assessment or  
3           summary in the Federal Register.

4           “(C) The requirements of subsection  
5           (b)(3), provided that the final privacy impact  
6           assessment is made available, in classified form,  
7           to the Committees on the Judiciary of the  
8           House of Representatives and the Senate, in  
9           lieu of making such assessment available to the  
10          public and publishing such assessment in the  
11          Federal Register.

12          “(d) PROCEDURES FOR GATHERING COMMENTS.—  
13          When any rule is promulgated which may have a signifi-  
14          cant privacy impact on individuals, or a privacy impact  
15          on a substantial number of individuals, the head of the  
16          agency promulgating the rule or the official of the agency  
17          with statutory responsibility for the promulgation of the  
18          rule shall assure that individuals have been given an op-  
19          portunity to participate in the rulemaking for the rule  
20          through techniques such as—

21                  “(1) the inclusion in an advance notice of pro-  
22                  posed rulemaking, if issued, of a statement that the  
23                  proposed rule may have a significant privacy impact  
24                  on individuals, or a privacy impact on a substantial  
25                  number of individuals;

1           “(2) the publication of a general notice of pro-  
2           posed rulemaking in publications of national circula-  
3           tion likely to be obtained by individuals;

4           “(3) the direct notification of interested individ-  
5           uals;

6           “(4) the conduct of open conferences or public  
7           hearings concerning the rule for individuals, includ-  
8           ing soliciting and receiving comments over computer  
9           networks; and

10          “(5) the adoption or modification of agency  
11          procedural rules to reduce the cost or complexity of  
12          participation in the rulemaking by individuals.

13          “(e) PERIODIC REVIEW OF RULES.—

14          “(1) IN GENERAL.—Each agency shall carry  
15          out a periodic review of the rules promulgated by the  
16          agency that have a significant privacy impact on in-  
17          dividuals, or a privacy impact on a substantial num-  
18          ber of individuals. Under such periodic review, the  
19          agency shall determine, for each such rule, whether  
20          the rule can be amended or rescinded in a manner  
21          that minimizes any such impact while remaining in  
22          accordance with applicable statutes. For each such  
23          determination, the agency shall consider the fol-  
24          lowing factors:

25                  “(A) The continued need for the rule.



1           “(B) The nature of complaints or com-  
2           ments received from the public concerning the  
3           rule.

4           “(C) The complexity of the rule.

5           “(D) The extent to which the rule over-  
6           laps, duplicates, or conflicts with other Federal  
7           rules, and, to the extent feasible, with State and  
8           local governmental rules.

9           “(E) The length of time since the rule was  
10          last reviewed under this subsection.

11          “(F) The degree to which technology, eco-  
12          nomic conditions, or other factors have changed  
13          in the area affected by the rule since the rule  
14          was last reviewed under this subsection.

15          “(2) PLAN REQUIRED.—Each agency shall  
16          carry out the periodic review required by paragraph  
17          (1) in accordance with a plan published by such  
18          agency in the Federal Register. Each such plan shall  
19          provide for the review under this subsection of each  
20          rule promulgated by the agency not later than 10  
21          years after the date on which such rule was pub-  
22          lished as the final rule and, thereafter, not later  
23          than 10 years after the date on which such rule was  
24          last reviewed under this subsection. The agency may

1 amend such plan at any time by publishing the revision in the Federal Register.

3 “(3) ANNUAL PUBLICATION.—Each year, each  
4 agency shall publish in the Federal Register a list of  
5 the rules to be reviewed by such agency under this  
6 subsection during the following year. The list shall  
7 include a brief description of each such rule and the  
8 need for and legal basis of such rule and shall invite  
9 public comment upon the determination to be made  
10 under this subsection with respect to such rule.

11 “(f) JUDICIAL REVIEW.—

12 “(1) IN GENERAL.—For any rule subject to this  
13 section, an individual who is adversely affected or  
14 aggrieved by final agency action is entitled to judicial  
15 review of agency compliance with the requirements  
16 of subsections (b) and (c) in accordance with  
17 chapter 7. Agency compliance with subsection (d)  
18 shall be judicially reviewable in connection with judicial  
19 review of subsection (b).

20 “(2) JURISDICTION.—Each court having jurisdiction  
21 to review such rule for compliance with section 553,  
22 or under any other provision of law, shall have jurisdiction  
23 to review any claims of noncompliance with subsections  
24 (b) and (c) in accordance with chapter 7. Agency compliance  
25 with subsection (d)

1 shall be judicially reviewable in connection with judi-  
2 cial review of subsection (b).

3 “(3) LIMITATIONS.—

4 “(A) An individual may seek such review  
5 during the period beginning on the date of final  
6 agency action and ending 1 year later, except  
7 that where a provision of law requires that an  
8 action challenging a final agency action be com-  
9 menced before the expiration of 1 year, such  
10 lesser period shall apply to an action for judicial  
11 review under this subsection.

12 “(B) In the case where an agency delays  
13 the issuance of a final privacy impact assess-  
14 ment pursuant to subsection (c), an action for  
15 judicial review under this section shall be filed  
16 not later than—

17 “(i) 1 year after the date the assess-  
18 ment is made available to the public; or

19 “(ii) where a provision of law requires  
20 that an action challenging a final agency  
21 regulation be commenced before the expi-  
22 ration of the 1-year period, the number of  
23 days specified in such provision of law that  
24 is after the date the assessment is made  
25 available to the public.

1           “(4) RELIEF.—In granting any relief in an ac-  
2           tion under this subsection, the court shall order the  
3           agency to take corrective action consistent with this  
4           section and chapter 7, and may—

5                   “(A) remand the rule to the agency; and

6                   “(B) defer the enforcement of the rule  
7           against individuals, unless the court finds that  
8           continued enforcement of the rule is in the pub-  
9           lic interest.

10           “(5) RULE OF CONSTRUCTION.—Nothing in  
11           this subsection limits the authority of any court to  
12           stay the effective date of any rule or provision there-  
13           of under any other provision of law or to grant any  
14           other relief in addition to the requirements of this  
15           subsection.

16           “(6) RECORD OF AGENCY ACTION.—In an ac-  
17           tion for the judicial review of a rule, the privacy im-  
18           pact assessment for such rule, including an assess-  
19           ment prepared or corrected pursuant to paragraph  
20           (4), shall constitute part of the entire record of  
21           agency action in connection with such review.

22           “(7) EXCLUSIVITY.—Compliance or noncompli-  
23           ance by an agency with the provisions of this section  
24           shall be subject to judicial review only in accordance  
25           with this subsection.

1           “(8) SAVINGS CLAUSE.—Nothing in this sub-  
2           section bars judicial review of any other impact  
3           statement or similar assessment required by any  
4           other law if judicial review of such statement or as-  
5           sessment is otherwise permitted by law.

6           “(g) DEFINITION.—For purposes of this section, the  
7           term ‘personally identifiable information’ means informa-  
8           tion that can be used to identify an individual, including  
9           such individual’s name, address, telephone number, photo-  
10          graph, social security number or other identifying infor-  
11          mation. It includes information about such individual’s  
12          medical or financial condition.”.

13          (b) PERIODIC REVIEW TRANSITION PROVISIONS.—

14                 (1) INITIAL PLAN.—For each agency, the plan  
15                 required by subsection (e) of section 553a of title 5,  
16                 United States Code (as added by subsection (a)),  
17                 shall be published not later than 180 days after the  
18                 date of the enactment of this Act.

19                 (2) REVIEW PERIOD.—In the case of a rule pro-  
20                 mulgated by an agency before the date of the enact-  
21                 ment of this Act, such plan shall provide for the  
22                 periodic review of such rule before the expiration of  
23                 the 10-year period beginning on the date of the en-  
24                 actment of this Act. For any such rule, the head of  
25                 the agency may provide for a 1-year extension of

1 such period if the head of the agency, before the ex-  
2 piration of the period, certifies in a statement pub-  
3 lished in the Federal Register that reviewing such  
4 rule before the expiration of the period is not fea-  
5 sible. The head of the agency may provide for addi-  
6 tional 1-year extensions of the period pursuant to  
7 the preceding sentence, but in no event may the pe-  
8 riod exceed 15 years.

9 (c) CONGRESSIONAL REVIEW.—Section 801(a)(1)(B)  
10 of title 5, United States Code, is amended—

11 (1) by redesignating clauses (iii) and (iv) as  
12 clauses (iv) and (v), respectively; and

13 (2) by inserting after clause (ii) the following  
14 new clause:

15 “(iii) the agency’s actions relevant to section  
16 553a;”.

17 (d) CLERICAL AMENDMENT.—The table of sections  
18 at the beginning of chapter 5 of title 5, United States  
19 Code, is amended by adding after the item relating to sec-  
20 tion 553 the following new item:

“553a. Privacy impact assessment in rulemaking.”.

○