

108TH CONGRESS
1ST SESSION

S. 1633

To require financial institutions and financial service providers to notify customers of the unauthorized use of personal information, to amend the Fair Credit Reporting Act to require fraud alerts to be included in consumer credit files in such cases, and to provide customers with enhanced access to credit reports in such cases.

IN THE SENATE OF THE UNITED STATES

SEPTEMBER 17, 2003

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

A BILL

To require financial institutions and financial service providers to notify customers of the unauthorized use of personal information, to amend the Fair Credit Reporting Act to require fraud alerts to be included in consumer credit files in such cases, and to provide customers with enhanced access to credit reports in such cases.

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 “Identity Theft Notifi-
5 cation and Credit Restoration Act of 2003”.

1 **SEC. 2. FINDINGS.**

2 Congress finds that—

3 (1) the privacy and financial security of individ-
4 uals is increasingly at risk due to the ever more
5 widespread collection of personal information by
6 both the private and public sector;

7 (2) credit card transactions, real estate records,
8 consumer surveys, credit reports, and Internet
9 websites are all sources of personal information and
10 form the source material for identity thieves;

11 (3) identity theft is one of the fastest growing
12 crimes committed in the United States, and identity
13 theft has become one of the major law enforcement
14 challenges of the new economy, as vast quantities of
15 sensitive personal information are now vulnerable to
16 criminal interception and misuse;

17 (4) criminals who steal personal information
18 use the information to open fraudulent credit card
19 accounts, write bad checks, buy products, and com-
20 mit other financial crimes with assumed financial
21 identities;

22 (5) in 2002, more than 160,000 people notified
23 the Federal Trade Commission that they had been
24 victims of identity theft, more than 3 times the num-
25 ber reported in 2000;

1 (6) identity theft is costly to consumers and to
2 the United States marketplace;

3 (7) victims of identity theft are often required
4 to contact numerous Federal, State, and local law
5 enforcement agencies, consumer credit reporting
6 agencies, and creditors over many years, as each
7 event of fraud arises;

8 (8) the Government, financial institutions, fi-
9 nancial service providers, and credit reporting agen-
10 cies that handle sensitive personal information of
11 consumers have a shared responsibility to protect
12 the information from identity thieves, to assist iden-
13 tity theft victims, and to mitigate the harm that re-
14 sults from fraud perpetrated in the name of the vic-
15 tim; and

16 (9) the private sector can better protect con-
17 sumers by improving customer notification, imple-
18 menting effective fraud alerts, affording greater con-
19 sumer access to credit reports, and establishing
20 other financial identity theft prevention measures.

21 **SEC. 3. TIMELY NOTIFICATION OF UNAUTHORIZED ACCESS**
22 **TO PERSONAL INFORMATION.**

23 Subtitle B of title V of the Gramm-Leach-Bliley Act
24 (15 U.S.C. 6821 et seq.) is amended—

1 (1) by redesignating sections 526 and 527 as
2 sections 528 and 529, respectively; and

3 (2) by inserting after section 525 the following:

4 **“SEC. 526. NOTIFICATION TO CUSTOMERS OF UNAUTHOR-**
5 **IZED ACCESS TO PERSONAL INFORMATION.**

6 “(a) DEFINITIONS.—In this section—

7 “(1) the term ‘breach’—

8 “(A) means unauthorized acquisition of
9 computerized data or paper records which com-
10 promises the security, confidentiality, or integ-
11 rity of personal information maintained by or
12 on behalf of a financial institution; and

13 “(B) does not include a good faith acquisi-
14 tion of personal information by an employee or
15 agent of a financial institution for a business
16 purpose of the institution, if the personal infor-
17 mation is not subject to further unauthorized
18 disclosure; and

19 “(2) with respect to a customer of a financial
20 institution, the term ‘personal information’ means
21 the first name or first initial and last name of the
22 customer, in combination with any one or more of
23 the following data elements, when either the name or
24 the data element is not encrypted:

25 “(A) A social security number.

1 “(B) A driver’s license number or other of-
2 ficially recognized form of identification.

3 “(C) A credit card number, debit card
4 number, or any required security code, access
5 code, or password that would permit access to
6 financial account information relating to that
7 customer.

8 “(b) NOTIFICATION RELATING TO BREACH OF PER-
9 SONAL INFORMATION.—

10 “(1) FINANCIAL INSTITUTION REQUIREMENT.—

11 In any case in which there has been a breach of per-
12 sonal information at a financial institution, or such
13 a breach is reasonably believed to have occurred, the
14 financial institution shall promptly notify—

15 “(A) each customer affected by the viola-
16 tion or suspected violation;

17 “(B) each consumer reporting agency de-
18 scribed in section 603(p) of the Fair Credit Re-
19 porting Act (15 U.S.C. 1681a); and

20 “(C) appropriate law enforcement agencies,
21 in any case in which the financial institution
22 has reason to believe that the breach or sus-
23 pected breach affects a large number of cus-
24 tomers, including as described in subsection

1 (e)(1)(C), subject to regulations of the Federal
2 Trade Commission.

3 “(2) OTHER ENTITIES.—For purposes of para-
4 graph (1), any person that maintains personal infor-
5 mation for or on behalf of a financial institution
6 shall promptly notify the financial institution of any
7 case in which such customer information has been,
8 or is reasonably believed to have been, breached.

9 “(c) TIMING.—Notification required by this section
10 shall be made—

11 “(1) promptly and without unreasonable delay,
12 upon discovery of the breach or suspected breach;
13 and

14 “(2) consistent with—

15 “(A) the legitimate needs of law enforce-
16 ment, as provided in subsection (d); and

17 “(B) any measures necessary to determine
18 the scope of the breach or restore the reason-
19 able integrity of the information security system
20 of the financial institution.

21 “(d) DELAYS FOR LAW ENFORCEMENT PURPOSES.—
22 Notification required by this section may be delayed if a
23 law enforcement agency determines that the notification
24 would impede a criminal investigation, and in any such
25 case, notification shall be made promptly after the law en-

1 enforcement agency determines that it would not com-
2 promise the investigation.

3 “(e) FORM OF NOTICE.—Notification required by
4 this section may be provided—

5 “(1) to a customer—

6 “(A) in writing;

7 “(B) in electronic form, if the notice pro-
8 vided is consistent with the provisions regarding
9 electronic records and signatures set forth in
10 section 101 of the Electronic Signatures in
11 Global and National Commerce Act (15 U.S.C.
12 7001);

13 “(C) if the Federal Trade Commission de-
14 termines that the number of all customers af-
15 fected by, or the cost of providing notifications
16 relating to, a single breach or suspected breach
17 would make other forms of notification prohibi-
18 tive, or in any case in which the financial insti-
19 tution certifies in writing to the Federal Trade
20 Commission that it does not have sufficient cus-
21 tomer contact information to comply with other
22 forms of notification, in the form of—

23 “(i) an e-mail notice, if the financial
24 institution has access to an e-mail address

1 for the affected customer that it has rea-
2 son to believe is accurate;

3 “(ii) a conspicuous posting on the
4 Internet website of the financial institu-
5 tion, if the financial institution maintains
6 such a website; or

7 “(iii) notification through the media
8 that a breach of personal information has
9 occurred or is suspected that compromises
10 the security, confidentiality, or integrity of
11 customer information of the financial insti-
12 tution; or

13 “(D) in such other form as the Federal
14 Trade Commission may by rule prescribe; and

15 “(2) to consumer reporting agencies and law
16 enforcement agencies (where appropriate), in such
17 form as the Federal Trade Commission may pre-
18 scribe, by rule.

19 “(f) CONTENT OF NOTIFICATION.—Each notification
20 to a customer under subsection (b) shall include—

21 “(1) a statement that—

22 “(A) credit reporting agencies have been
23 notified of the relevant breach or suspected
24 breach; and

1 “(B) the credit report and file of the cus-
2 tomer will contain a fraud alert to make credi-
3 tors aware of the breach or suspected breach,
4 and to inform creditors that the express author-
5 ization of the customer is required for any new
6 issuance or extension of credit (in accordance
7 with section 605(g) of the Fair Credit Report-
8 ing Act); and

9 “(2) such other information as the Federal
10 Trade Commission determines is appropriate.

11 “(g) COMPLIANCE.—Notwithstanding subsection (e),
12 a financial institution shall be deemed to be in compliance
13 with this section if—

14 “(1) the financial institution has established a
15 comprehensive information security program that is
16 consistent with the standards prescribed by the ap-
17 propriate regulatory body under section 501(b);

18 “(2) the financial institution notifies affected
19 customers and consumer reporting agencies in ac-
20 cordance with its own internal information security
21 policies in the event of a breach or suspected breach
22 of personal information; and

23 “(3) such internal security policies incorporate
24 notification procedures that are consistent with the

1 requirements of this section and the rules of the
2 Federal Trade Commission under this section.

3 “(h) CIVIL PENALTIES.—

4 “(1) DAMAGES.—Any customer injured by a
5 violation of this section may institute a civil action
6 to recover damages arising from that violation.

7 “(2) INJUNCTIONS.—Actions of a financial in-
8 stitution in violation or potential violation of this
9 section may be enjoined.

10 “(3) CUMULATIVE EFFECT.—The rights and
11 remedies available under this section are in addition
12 to any other rights and remedies available under ap-
13 plicable law.

14 “(i) RULES OF CONSTRUCTION.—

15 “(1) IN GENERAL.—Compliance with this sec-
16 tion by a financial institution shall not be construed
17 to be a violation of any provision of subtitle (A), or
18 any other provision of Federal or State law prohib-
19 iting the disclosure of financial information to third
20 parties.

21 “(2) LIMITATION.—Except as specifically pro-
22 vided in this section, nothing in this section requires
23 or authorizes a financial institution to disclose infor-
24 mation that it is otherwise prohibited from disclosing

1 under subtitle A or any other provision of Federal
2 or State law.

3 “(3) NO NEW RECORDKEEPING OBLIGATION.—
4 Nothing in this section creates an obligation on the
5 part of a financial institution to obtain, retain, or
6 maintain information or records that are not other-
7 wise required to be obtained, retained, or maintained
8 in the ordinary course of its business or under other
9 applicable law.”.

10 **SEC. 4. INCLUSION OF FRAUD ALERTS IN CONSUMER**
11 **CREDIT REPORTS.**

12 Section 605 of the Fair Credit Reporting Act (15
13 U.S.C. 1681c) is amended by adding at the end the fol-
14 lowing:

15 “(g) FRAUD ALERTS.—

16 “(1) DEFINED TERM.—In this subsection, the
17 term ‘fraud alert’ means a clear and conspicuous
18 statement in the file of a consumer that notifies all
19 prospective users of the consumer credit report (or
20 any portion thereof) relating to the consumer,
21 that—

22 “(A) the identity of the consumer may
23 have been used, without the consent of the con-
24 sumer, to fraudulently obtain goods or services
25 in the name of the consumer; and

1 “(B) the consumer does not authorize the
2 issuance or extension of credit in the name of
3 the consumer, unless the issuer of such credit,
4 upon receiving appropriate evidence of the true
5 identity of the consumer—

6 “(i) obtains express preauthorization
7 from the consumer at a telephone number
8 designated by the consumer; or

9 “(ii) utilizes another reasonable means
10 of communication to obtain the express
11 preauthorization of the consumer.

12 “(2) INCLUSION OF FRAUD ALERT IN CON-
13 SUMER FILE.—

14 “(A) UPON NOTIFICATION BY FINANCIAL
15 INSTITUTION.—A consumer reporting agency
16 shall include a fraud alert meeting the require-
17 ments of this subsection in the file of a con-
18 sumer promptly upon receipt of a notice from
19 a financial institution under section
20 526(b)(1)(B) of the Gramm-Leach-Bliley Act
21 relating to the consumer.

22 “(B) UPON REQUEST OF CONSUMER.—A
23 consumer reporting agency shall include a fraud
24 alert meeting the requirements of this sub-

1 section in the file of a consumer promptly upon
2 receipt of—

3 “(i) a request by the consumer; and

4 “(ii) appropriate evidence of—

5 “(I) the true identity of the per-
6 son making the request; and

7 “(II) the claim of identity theft
8 forming the basis for the request.

9 “(3) CONSUMER REPORTING AGENCY RESPON-
10 SIBILITIES.—A consumer reporting agency shall en-
11 sure that each person procuring consumer credit in-
12 formation with respect to a consumer is made aware
13 of the existence of a fraud alert in the file of that
14 consumer, regardless of whether a full credit report,
15 credit score, or summary report is requested.

16 “(4) REMOVAL OF FRAUD ALERTS.—The Fed-
17 eral Trade Commission shall issue appropriate regu-
18 lations to establish—

19 “(A) the duration of fraud alerts required
20 by this subsection, which standard shall be ap-
21 plied consistently to all consumer reporting
22 agencies, to the extent possible; and

23 “(B) procedures for the removal of fraud
24 alerts included in the files of consumers under
25 this subsection.

1 “(5) VIOLATIONS.—

2 “(A) CONSUMER REPORTING AGENCY.—A
3 consumer reporting agency that fails to notify
4 any user of a consumer credit report of the ex-
5 istence of a fraud alert in that report shall be
6 in violation of this section.

7 “(B) USER OF A CONSUMER REPORT.—A
8 user of a consumer report that fails to comply
9 with preauthorization procedures contained in a
10 fraud alert in the file of a consumer and issues
11 or extends credit in the name of the consumer
12 to a person other than the consumer shall be in
13 violation of this subsection.

14 “(C) NO ADVERSE ACTION BASED SOLELY
15 ON FRAUD ALERT.—It shall be a violation of
16 this title for the user of a consumer report to
17 take adverse action with respect to a consumer
18 based solely on the inclusion of a fraud alert in
19 the file of that consumer, as required by this
20 subsection.”.

21 **SEC. 5. ACCESS TO CREDIT REPORTS AND SCORES.**

22 (a) NO FEE IN CERTAIN CASES.—Section 612(c) of
23 the Fair Credit Reporting Act (15 U.S.C. 1681j(c)) is
24 amended to read as follows:

1 “(c) NO-COST ACCESS TO CREDIT REPORTS AND
2 SCORES.—

3 “(1) IN GENERAL.—Upon request of a con-
4 sumer, and without charge to the consumer, a con-
5 sumer reporting agency shall make all of the disclo-
6 sures listed under section 609 to the consumer—

7 “(A) once during each calendar year; and

8 “(B) once every 3 months during the 1–
9 year period beginning on the date on which a
10 fraud alert is included in the file of a consumer
11 under section 605(g).

12 “(2) FEE AUTHORIZED.—A credit reporting
13 agency may charge a reasonable fee for the costs of
14 disclosures under paragraph (1)(B) to the financial
15 institution providing the notification that is the basis
16 for the subject fraud alert, as required by section
17 526(b)(1)(B) of the Gramm-Leach-Bliley Act.”.

18 (b) INCLUSION OF CREDIT SCORES.—Section
19 609(a)(1) of the Fair Credit Reporting Act (15 U.S.C.
20 1681g(a)(1)) is amended by striking “except that” and
21 all that follows through “predictors” and inserting “, in-
22 cluding any credit score”.

23 **SEC. 6. REGULATIONS.**

24 Not later than 180 days after the date of enactment
25 of this Act, the Federal Trade Commission, after consulta-

1 tion with Federal banking agencies, the Securities and Ex-
2 change Commission, and other appropriate financial serv-
3 ices regulatory agencies, shall issue final regulations to
4 carry out the amendments made by this Act.

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