

106TH CONGRESS  
1ST SESSION

# H. R. 3320

To amend the privacy provisions of the Gramm-Leach-Bliley Act.

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## IN THE HOUSE OF REPRESENTATIVES

NOVEMBER 10, 1999

Mr. MARKEY (for himself, Mr. BARTON of Texas, Mr. DINGELL, Mr. CAMPBELL, Mr. LUTHER, Mr. WAXMAN, Mr. KUCINICH, Mr. HINCHEY, Ms. ESCHOO, Ms. LEE, Ms. RIVERS, Ms. SCHAKOWSKY, Ms. BALDWIN, Ms. ROYBAL-ALLARD, Mr. LEWIS of Georgia, Mr. TIERNEY, Mr. KILDEE, Mr. OBEY, Mrs. MEEK of Florida, Mr. EVANS, Mr. JACKSON of Illinois, Ms. WOOLSEY, and Mr. BARRETT of Wisconsin) introduced the following bill; which was referred to the Committee on Banking and Financial Services, and in addition to the Committee on Commerce, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

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## A BILL

To amend the privacy provisions of the Gramm-Leach-Bliley Act.

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 “Consumer’s Right to  
5 Financial Privacy Act”.

1 **SEC. 2. AMENDMENT.**

2 Title V of the Gramm-Leach-Bliley Act is amended  
3 to read as follows:

4 **“TITLE V—PRIVACY OF**  
5 **CONSUMER INFORMATION**  
6 **“Subtitle A—Disclosure of**  
7 **Nonpublic Personal Information**

8 **“SEC. 501. PROTECTION OF NONPUBLIC PERSONAL INFOR-**  
9 **MATION.**

10 “(a) **PRIVACY OBLIGATION POLICY.**—It is the policy  
11 of the Congress that each financial institution has an af-  
12 firmative and continuing obligation to respect the privacy  
13 of its customers and to protect the security and confiden-  
14 tiality of those customers’ nonpublic personal information.

15 “(b) **FINANCIAL INSTITUTIONS SAFEGUARDS.**—In  
16 furtherance of the policy in subsection (a), each agency  
17 or authority described in section 504(a) shall establish by  
18 rule or order appropriate standards for the financial insti-  
19 tutions subject to their jurisdiction, and the Commission  
20 shall establish such standards for any financial institu-  
21 tions not subject to such jurisdiction, relating to adminis-  
22 trative, technical, and physical safeguards—

23 “(1) to insure the security and confidentiality of  
24 customer records and information;

1           “(2) to protect against any anticipated threats  
2           or hazards to the security or integrity of such  
3           records; and

4           “(3) to protect against unauthorized access to  
5           or use of such records or information which could  
6           result in substantial harm or inconvenience to any  
7           customer.

8   **“SEC. 502. OBLIGATIONS WITH RESPECT TO PERSONAL**  
9                                   **INFORMATION.**

10          “(a) GENERAL REQUIREMENTS.—Except as other-  
11         wise provided in this subtitle, a financial institution may  
12         not, directly or through any affiliate, disclose or make an  
13         unrelated use of any nonpublic personal information col-  
14         lected by the financial institution in connection with any  
15         transaction with a consumer in any financial product or  
16         any financial service, unless such financial institution pro-  
17         vides or has provided to the consumer a notice that com-  
18         plies with section 503 and the rules thereunder.

19          “(b) OPT-IN REQUIRED FOR INFORMATION TRANS-  
20         FERS.—

21                 “(1) AFFIRMATIVE CONSENT REQUIRED.—Each  
22                 agency or authority described in section 504(a) shall  
23                 by rule prohibit a financial institution that is subject  
24                 to its jurisdiction from making available any non-  
25                 public personal information to any affiliate or other

1 person that is not an employee or agent of the insti-  
2 tution, unless the consumer to whom the information  
3 pertains—

4 “(A) has affirmatively consented in accord-  
5 ance with such rule to the transfer of such in-  
6 formation; and

7 “(B) has not withdrawn the consent.

8 “(2) FLEXIBILITY OF FORM.—A financial insti-  
9 tution may, in complying with paragraph (1),  
10 present the opportunity to consent in a clear and  
11 conspicuous manner that permits the consumer to  
12 consent—

13 “(A)(i) with respect to both affiliates and  
14 nonaffiliated persons;

15 “(ii) separately with respect to affiliates  
16 generally and nonaffiliated persons generally; or

17 “(iii) separately with respect to specified  
18 affiliates and nonaffiliated persons; and

19 “(B) separately with respect to specified fi-  
20 nancial and nonfinancial products and services  
21 that may be offered to the consumer.

22 “(3) DENIAL OF SERVICE PROHIBITED.—The  
23 rule prescribed pursuant to paragraph (1) shall pro-  
24 hibit a financial institution from denying any con-  
25 sumer a financial product or a financial service for

1 the refusal by the consumer to grant the consent re-  
2 quired by such rule.

3 “(c) ACCESS TO AND CORRECTION OF INFORMATION  
4 VENDED TO THIRD PARTIES.—

5 “(1) RULE REQUIRED.—Each agency or au-  
6 thority described in section 504(a) shall by rule re-  
7 quire a financial institution that is subject to its ju-  
8 risdiction and that makes available nonpublic per-  
9 sonal information collected by the financial institu-  
10 tion to any person or entity other than an employee  
11 or agent of such institution to afford that  
12 consumer—

13 “(A) the opportunity to examine, upon re-  
14 quest, all nonpublic personal information that  
15 was so made available; and

16 “(B) the opportunity to dispute the accu-  
17 racy of any of such information, and to present  
18 evidence thereon.

19 “(d) LIMITATIONS ON THE SHARING OF ACCOUNT  
20 NUMBER INFORMATION FOR MARKETING PURPOSES.—A  
21 financial institution shall not disclose an account number  
22 or similar form of access number or access code for a cred-  
23 it card account, deposit account, or transaction account  
24 of a consumer to any affiliate or any nonaffiliated third  
25 party for use in telemarketing, direct mail marketing, or

1 other marketing through electronic mail or other electronic  
2 means to the consumer.

3 “(e) LIMITS ON REUSE OF INFORMATION.—Except  
4 as otherwise provided in this subtitle, an affiliate or a non-  
5 affiliated third party that receives from a financial institu-  
6 tion nonpublic personal information under this section  
7 shall not, directly or through an affiliate of such receiving  
8 third party, disclose such information to any other person  
9 that is an affiliate or a nonaffiliated third party of both  
10 the financial institution and such receiving third party,  
11 unless such disclosure would be lawful if made directly to  
12 such other person by the financial institution.

13 “(f) GENERAL EXCEPTIONS.—Subsections (a) and  
14 (b) shall not prohibit the disclosure of nonpublic personal  
15 information—

16 “(1) as necessary to effect, administer, or en-  
17 force a transaction requested or authorized by the  
18 consumer, or in connection with—

19 “(A) servicing or processing a financial  
20 product or service requested or authorized by  
21 the consumer;

22 “(B) maintaining or servicing the con-  
23 sumer’s account with the financial institution;

24 or

1           “(C) a proposed or actual securitization,  
2           secondary market sale (including sales of serv-  
3           icing rights), or similar transaction related to a  
4           transaction of the consumer;

5           “(2) with the consent or at the direction of the  
6           consumer;

7           “(3)(A) to protect the confidentiality or security  
8           of the financial institution’s records pertaining to  
9           the consumer, the service or product, or the trans-  
10          action therein; (B) to protect against or prevent ac-  
11          tual or potential fraud, unauthorized transactions,  
12          claims, or other liability; (C) for required institu-  
13          tional risk control, or for resolving customer disputes  
14          or inquiries; (D) to persons holding a legal or bene-  
15          ficial interest relating to the consumer; or (E) to  
16          persons acting in a fiduciary or representative capac-  
17          ity on behalf of the consumer;

18          “(4) to provide information to insurance rate  
19          advisory organizations, guaranty funds or agencies,  
20          applicable rating agencies of the financial institu-  
21          tion, and the institution’s attorneys, accountants,  
22          and auditors;

23          “(5) to the extent specifically permitted or re-  
24          quired under other provisions of law and in accord-  
25          ance with the Right to Financial Privacy Act of

1 1978, to law enforcement agencies (including a Fed-  
2 eral functional regulator, the Secretary of the Treas-  
3 ury with respect to subchapter II of chapter 53 of  
4 title 31, United States Code, and chapter 2 of title  
5 I of Public Law 91–508 (12 U.S.C. 1951–1959), a  
6 State insurance authority, or the Federal Trade  
7 Commission), self-regulatory organizations, or for an  
8 investigation on a matter related to public safety;

9 “(6)(A) to a consumer reporting agency in ac-  
10 cordance with the Fair Credit Reporting Act, or (B)  
11 from a consumer report reported by a consumer re-  
12 porting agency in accordance with the Fair Credit  
13 Reporting Act;

14 “(7) in connection with a proposed or actual  
15 sale, merger, transfer, or exchange of all or a por-  
16 tion of a business or operating unit if the disclosure  
17 of nonpublic personal information concerns solely  
18 consumers of such business or unit; or

19 “(8) to comply with Federal, State, or local  
20 laws, rules, and other applicable legal requirements;  
21 to comply with a properly authorized civil, criminal,  
22 or regulatory investigation or subpoena or summons  
23 by Federal, State, or local authorities; or to respond  
24 to judicial process or government regulatory authori-  
25 ties having jurisdiction over the financial institution



1 for examination, compliance, or other purposes as  
2 authorized by law.

3 **“SEC. 503. NOTICE CONCERNING DISCLOSING INFORMA-**  
4 **TION.**

5 “(a) **RULE REQUIRED.**—Each agency or authority  
6 described in section 504(a) shall prescribe rules in accord-  
7 ance with this section to prohibit unfair and deceptive acts  
8 or practices in connection with the disclosing of nonpublic  
9 personal information or with making unrelated uses of  
10 such information. Such rules shall require any financial  
11 institution, through the use of a form that complies with  
12 the rules prescribed under subsection (b), to clearly and  
13 conspicuously disclose to the consumer at the time of es-  
14 tablishing a customer relationship with a consumer and  
15 not less than annually during the continuation of such  
16 relationship—

17 “(1) the categories of nonpublic personal infor-  
18 mation that are collected by the financial institution;

19 “(2) the practices and policies of the financial  
20 institution with respect to disclosing nonpublic per-  
21 sonal information, or making unrelated uses of such  
22 information, including—

23 “(A) the categories of persons to whom the  
24 information is or may be disclosed or who may  
25 be permitted to make unrelated uses of such in-

1           formation, other than the persons to whom the  
2           information must be provided to effect, admin-  
3           ister, or enforce the transaction; and

4           “(B) the practices and policies of the insti-  
5           tution with respect to disclosing or making un-  
6           related uses of nonpublic personal information  
7           of persons who have ceased to be customers of  
8           the financial institution;

9           “(3) the policies that the institution maintains  
10          to protect the confidentiality and security of non-  
11          public personal information;

12          “(4) the practices and policies of the institution  
13          with respect to providing consumers the opportunity  
14          to examine and dispute information pursuant to the  
15          rule prescribed under section 502(c); and

16          “(5) the right of the consumer under such sec-  
17          tion to examine, upon request, the nonpublic per-  
18          sonal information, to dispute the accuracy of any of  
19          such information, and to present evidence thereon.

20          “(b) DESIGN OF NOTICE REQUIREMENTS.—In pre-  
21          scribing the form of a notice for purposes of subsection  
22          (a), each agency or authority described in section 504(a)  
23          shall ensure that consumers are provided a clear and con-  
24          spicuous disclosure that permits them to compare dif-  
25          ferences in the measures that the financial institution

1 takes, and the policies that the institution has established,  
2 to protect the consumer’s privacy as compared to the  
3 measures taken and the policies established by other fi-  
4 nancial institutions. Such form shall specifically identify  
5 the rights the institution affords consumers to grant or  
6 deny consent to (1) the disclosing of nonpublic personal  
7 information for any purpose other than as required in  
8 order to effect, administer, or enforce the consumer’s  
9 transaction, or (2) the making of an unrelated use of such  
10 information.

11 “(c) ADDITIONAL CONTENTS OF RULES; EXEMPTIVE  
12 RULES.—Each agency or authority described in section  
13 504(a) shall, by rule, and may by order—

14 “(1) specify the disclosures and uses of infor-  
15 mation which, for purposes of this subtitle and the  
16 rules prescribed thereunder, may be treated as nec-  
17 essary to effect, administer, or enforce a consumer’s  
18 transaction with respect to a variety of financial  
19 services and financial products;

20 “(2) specify timing requirements with respect to  
21 notices to new and existing customers, which shall  
22 not require notices more frequently than annually  
23 unless there has been a change in the information  
24 required to be disclosed pursuant to subsection (a);  
25 and

1           “(3) provide, consistent with the purposes of  
2           this subtitle, exemptions or temporary waivers to, or  
3           delayed effective dates for, any requirement of this  
4           subtitle or the rules prescribed thereunder.

5   **“SEC. 504. ENFORCEMENT.**

6           “(a) IN GENERAL.—This subtitle and the rules pre-  
7           scribed thereunder shall be enforced by the Federal func-  
8           tional regulators, the State insurance authorities, and the  
9           Federal Trade Commission with respect to financial insti-  
10          tutions and other persons subject to their jurisdiction  
11          under applicable law, as follows:

12           “(1) Under section 8 of the Federal Deposit In-  
13          surance Act, in the case of—

14           “(A) national banks, Federal branches and  
15          Federal agencies of foreign banks by the Office  
16          of the Comptroller of the Currency;

17           “(B) member banks of the Federal Reserve  
18          System (other than national banks), branches  
19          and agencies of foreign banks (other than Fed-  
20          eral branches, Federal agencies, and insured  
21          State branches of foreign banks), commercial  
22          lending companies owned or controlled by for-  
23          eign banks, organizations operating under sec-  
24          tion 25 or 25A of the Federal Reserve Act,

1 bank holding companies by the Board of Gov-  
2 ernors of the Federal Reserve System;

3 “(C) banks insured by the Federal Deposit  
4 Insurance Corporation (other than members of  
5 the Federal Reserve System), insured State  
6 branches of foreign banks by the Board of Di-  
7 rectors of the Federal Deposit Insurance Cor-  
8 poration; and

9 “(D) savings association the deposits of  
10 which are insured by the Federal Deposit In-  
11 surance Corporation by the Director of the Of-  
12 fice of Thrift Supervision.

13 “(2) Under the Federal Credit Union Act, by  
14 the Administrator of the National Credit Union Ad-  
15 ministration with respect to any Federal or state  
16 chartered credit union.

17 “(3) Under the Securities Exchange Act of  
18 1934, by the Securities and Exchange Commission  
19 with respect to any broker-dealer.

20 “(4) Under the Investment Company Act of  
21 1940, by the Securities and Exchange Commission  
22 with respect to investment companies.

23 “(5) Under the Investment Advisers Act of  
24 1940, by the Securities and Exchange Commission

1 with respect to investment advisers registered with  
2 the Commission under such Act.

3 “(6) Under the Federal Home Loan Bank Act,  
4 by the Federal Housing Finance Board with respect  
5 to Federal home loan banks.

6 “(7) In the case of any person engaged in pro-  
7 viding insurance, by the State insurance authority,  
8 if that State has elected to become a participating  
9 State, notwithstanding any of the limitations of sec-  
10 tion 104 of the Gramm-Leach-Bliley Act.

11 “(8) Under the Federal Trade Commission Act,  
12 by the Federal Trade Commission for—

13 “(A) any other financial institution (other  
14 than a person engaged in providing insurance)  
15 or any other person that is not subject to the  
16 jurisdiction of any agency or authority under  
17 paragraphs (1) through (6) of this subsection;  
18 and

19 “(B) any person engaged in providing in-  
20 surance who is domiciled in a State that does  
21 not elect to become a participating State.

22 “(b) ENFORCEMENT OF SECTION 501.—

23 “(1) IN GENERAL.—Except as provided in para-  
24 graph (2), the agencies and authorities described in  
25 subsection (a) shall implement the standards pre-

1 scribed under section 501(b) in the same manner, to  
2 the extent practicable, as standards prescribed pur-  
3 suant to subsection (a) of section 39 of the Federal  
4 Deposit Insurance Act are implemented pursuant to  
5 such section.

6 “(2) EXCEPTION.—The agencies and authori-  
7 ties described in paragraphs (3), (4), (5), (7), and  
8 (8) of subsection (a) shall implement the standards  
9 prescribed under section 501(b) by rule with respect  
10 to the financial institutions subject to their respec-  
11 tive jurisdictions under subsection (a).

12 “(c) STATE ACTION FOR VIOLATIONS.—

13 “(1) AUTHORITY OF STATES.—In addition to  
14 such other remedies as are provided under State  
15 law, if the chief law enforcement officer of a State,  
16 or an official or agency designated by a State, has  
17 reason to believe that any person has violated or is  
18 violating this subtitle or a rule prescribed under this  
19 subtitle, other than section 501 or a rule prescribed  
20 under such section, the State—

21 “(A) may bring an action to enjoin such  
22 violation in any appropriate United States dis-  
23 trict court or in any other court of competent  
24 jurisdiction; and

1           “(B) may bring an action on behalf of the  
2 residents of the State to enforce compliance  
3 with such rule, to obtain damages, restitution,  
4 or other compensation on behalf of residents of  
5 such State, or to obtain such further and other  
6 relief as the court may deem appropriate.

7           “(2) RIGHTS OF FEDERAL REGULATORS.—

8           “(A) PRIOR NOTICE.—The State shall  
9 serve prior written notice of any action under  
10 paragraph (1) upon the Federal Trade Commis-  
11 sion and provide the Federal Trade Commission  
12 with a copy of its complaint, except in any case  
13 in which such prior notice is not feasible, in  
14 which case the State shall serve such notice im-  
15 mediately upon instituting such action.

16           “(B) RIGHT TO INTERVENE.—The Federal  
17 Trade Commission shall transmit the notice re-  
18 ceived under subparagraph (A) to the agency or  
19 authority that has jurisdiction of the subject of  
20 the complaint, and such agency or authority  
21 shall have the right—

22                   “(i) to intervene in an action under  
23 paragraph (1);

24                   “(ii) upon so intervening, to be heard  
25 on all matters arising therein;



1                   “(iii) to remove the action to the ap-  
2                   propriate United States district court; and

3                   “(iv) to file petitions for appeal.

4                   “(3) INVESTIGATORY POWERS.—For purposes  
5                   of bringing any action under this subsection, no pro-  
6                   vision of this subsection shall be construed as pre-  
7                   venting the chief law enforcement officer, or an offi-  
8                   cial or agency designated by a State, from exercising  
9                   the powers conferred on the chief law enforcement  
10                  officer or such official by the laws of such State to  
11                  conduct investigations or to administer oaths or af-  
12                  firmations or to compel the attendance of witnesses  
13                  or the production of documentary and other evi-  
14                  dence.

15                  “(4) LIMITATION ON STATE ACTION WHILE  
16                  FEDERAL ACTION PENDING.—If a Federal agency or  
17                  authority has instituted a civil action for a violation  
18                  of this subtitle, no State may, during the pendency  
19                  of such action, bring an action under this section  
20                  against any defendant named in the complaint of the  
21                  Federal agency or authority or such agency for any  
22                  violation of this subtitle that is alleged in that com-  
23                  plaint.

24                  “(d) DEFINITIONS.—The terms used in subsection  
25 (a)(1) that are not defined in this subtitle or otherwise

1 defined in section 3(s) of the Federal Deposit Insurance  
2 Act shall have the meaning given to them in section 1(b)  
3 of the International Banking Act of 1978.

4 **“SEC. 505. FAIR CREDIT REPORTING ACT AMENDMENT.**

5 “(a) AMENDMENT.—Section 621 of the Fair Credit  
6 Reporting Act (15 U.S.C. 1681s) is amended—

7 “(1) in subsection (d), by striking everything  
8 following the end of the second sentence; and

9 “(2) by striking subsection (e) and inserting in  
10 lieu thereof the following:

11 “ ‘(e) REGULATORY AUTHORITY.—

12 “ ‘(1) The Federal banking agencies referred to  
13 in paragraphs (1) and (2) of subsection (b) shall  
14 jointly prescribe such regulations as necessary to  
15 carry out the purposes of this Act with respect to  
16 any persons identified under paragraphs (1) and (2)  
17 of subsection (b).

18 “ ‘(2) The Administrator of the National Credit  
19 Union Administration shall prescribe such regula-  
20 tions as necessary to carry out the purposes of this  
21 Act with respect to any persons identified under  
22 paragraph (3) of subsection (b).

23 “ ‘(3) The Federal Trade Commission shall pre-  
24 scribe such regulations as necessary to carry out the

1 purposes of this Act with respect to any persons  
2 identified under subsection (a).’.

3 “(b) RELATION TO OTHER PROVISIONS.—Except for  
4 the amendment made by this section, nothing in this title  
5 shall be construed to modify, limit, or supersede the oper-  
6 ation of the Fair Credit Reporting Act, and no inference  
7 shall be drawn on the basis of the provisions of this title  
8 regarding whether information is transaction or experience  
9 information under section 603 of such Act.

10 **“SEC. 506. STATE ELECTION TO PARTICIPATE.**

11 “(a) REGULATIONS.—The Secretary of the Treasury  
12 may promulgate such regulations as may be necessary to  
13 establish the procedures governing whether the election re-  
14 quired under section 504(a)(7) has been made.

15 “(b) DEADLINE.—The deadline for a State to elect  
16 to become a participating state is the first day of the first  
17 calendar quarter beginning after the close of the first leg-  
18 islative session of the State legislature that begins on or  
19 after the date the regulations required by section 504(a)  
20 are issued in final form. For purposes of the previous sen-  
21 tence, in the case of a State that has a 2-year legislative  
22 session, each year of such session shall be deemed to be  
23 a separate regular session of the State legislature.

1 **“SEC. 507. RELATION TO STATE LAWS.**

2       “(a) IN GENERAL.—This subtitle shall not be con-  
3 strued as superseding, altering, or affecting the statutes,  
4 regulations, orders, or interpretations in effect in any  
5 State, except to the extent that such statutes, regulations,  
6 orders, or interpretations are inconsistent with the provi-  
7 sions of this subtitle, and then only to the extent of the  
8 inconsistency.

9       “(b) GREATER PROTECTION UNDER STATE LAW.—  
10 For purposes of this section, a State statute, regulation,  
11 order, or interpretation is not inconsistent with the provi-  
12 sions of this subtitle if the protection such statute, regula-  
13 tion, order, or interpretation affords any person is greater  
14 than the protection provided under this subtitle as deter-  
15 mined by the Commission or a Federal functional regu-  
16 lator, on its own motion or upon the petition of any inter-  
17 ested party.

18 **“SEC. 508. DEFINITIONS.**

19       “As used in this subtitle:

20           “(1) COMMISSION.—The term ‘Commission’  
21 means the Federal Trade Commission.

22           “(2) FEDERAL FUNCTIONAL REGULATOR.—The  
23 term ‘Federal functional regulator’ means—

24                   “(A) the Board of Governors of the Fed-  
25 eral Reserve System;

1           “(B) the Office of the Comptroller of the  
2           Currency;

3           “(C) the Board of Directors of the Federal  
4           Deposit Insurance Corporation;

5           “(D) the Director of the Office of Thrift  
6           Supervision;

7           “(E) the National Credit Union Adminis-  
8           tration Board; and

9           “(F) the Securities and Exchange Commis-  
10          sion.

11          “(3) FINANCIAL INSTITUTION.—The term ‘fi-  
12          nancial institution’ means any institution the busi-  
13          ness of which is engaging in financial activities or  
14          activities that are incidental or complementary to fi-  
15          nancial activities, as determined under section 4(k)  
16          of the Bank Holding Company Act of 1956.

17          “(4) NONPUBLIC PERSONAL INFORMATION.—

18                 “(A) The term ‘nonpublic personal infor-  
19                 mation’ means personally identifiable financial  
20                 information—

21                         “(i) provided by a consumer to a fi-  
22                         nancial institution;

23                         “(ii) resulting from any transaction  
24                         with the consumer or the service performed  
25                         for the consumer; or

1                   “(iii) otherwise obtained by the finan-  
2                   cial institution.

3                   “(B) Such term does not include publicly  
4                   available information, as such term is defined  
5                   by the regulations prescribed under section 504.

6                   “(C) Notwithstanding subparagraph (B),  
7                   such term—

8                   (i) shall include any list, description,  
9                   or other grouping of consumers (and pub-  
10                  licly available information pertaining to  
11                  them) that is derived using any personally  
12                  identifiable information other than publicly  
13                  available information; but

14                  “(ii) shall not include any list, de-  
15                  scription, or other grouping of consumers  
16                  (and publicly available information per-  
17                  taining to them) that is derived without  
18                  using any nonpublic personal information.

19                  “(5) DIRECTORY INFORMATION.—The term  
20                  ‘publicly available directory information’ means sub-  
21                  scriber list information required to be made available  
22                  for publication pursuant to section 222(e) of the  
23                  Communications Act of 1934 (47 U.S.C. 222(3)).

24                  “(6) UNRELATED USE.—The term ‘unrelated  
25                  use’, when used with respect to information collected

1 by the financial institution in connection with any  
2 transaction with a consumer in any financial product  
3 or any financial service, means any use other than  
4 a use that is necessary to effect, administer, or en-  
5 force such transaction.

6 “(7) AFFILIATE.—The term ‘affiliate’ means  
7 any company that controls, is controlled by, or is  
8 under common control with another company.

9 “(8) NONAFFILIATED THIRD PARTY.—The term  
10 ‘nonaffiliated third party’ means any entity that is  
11 not an affiliate of, or related by common ownership  
12 or affiliated by corporate control with, the financial  
13 institution, but does not include a joint employee of  
14 such institution.

15 “(9) NECESSARY TO EFFECT, ADMINISTER, OR  
16 ENFORCE.—The disclosing or use of nonpublic per-  
17 sonal information shall be treated as necessary to ef-  
18 fect or administer a transaction with a consumer if  
19 the disclosing or use—

20 “(A) is required, or is a usual, appropriate,  
21 or acceptable method, to carry out the trans-  
22 action or the product or service business of  
23 which the transaction is a part, and record or  
24 service or maintain the consumer’s account in  
25 the ordinary course of providing the financial

1 service or financial product, or to administer or  
2 service benefits or claims relating to the trans-  
3 action or the product or service business of  
4 which it is a part, and includes—

5 “(i) providing the consumer or the  
6 consumer’s agent or broker with a con-  
7 firmation, statement, or other record of the  
8 transaction, or information on the status  
9 or value of the financial service or financial  
10 product; and

11 “(ii) the accrual or recognition of in-  
12 centives or bonuses associated with the  
13 transaction that are provided by the finan-  
14 cial institution or any other party;

15 “(B) is required, or is one of the lawful or  
16 appropriate methods, to enforce the rights of  
17 the financial institution or of other persons en-  
18 gaged in carrying out the financial transaction,  
19 or providing the product or service;

20 “(C) is required, or is a usual, appropriate,  
21 or acceptable method, for insurance under-  
22 writing at the consumer’s request or for rein-  
23 surance purposes, or for any of the following  
24 purposes as they relate to a consumer’s insur-  
25 ance: account administration, reporting, inves-



1           tigating, or preventing fraud or material mis-  
2           representation, processing premium payments,  
3           processing insurance claims, administering in-  
4           surance benefits (including utilization review ac-  
5           tivities), participating in research projects, or as  
6           otherwise required or specifically permitted by  
7           Federal or State law; or

8           “(D) the disclosure is required, or is a  
9           usual, appropriate or acceptable method, in con-  
10          nection with—

11                   “(i) the authorization, settlement, bill-  
12                   ing, processing, clearing, transferring, rec-  
13                   onciling, or collection of amounts charged,  
14                   debited, or otherwise paid using a debit,  
15                   credit or other payment card, check, or ac-  
16                   count number, or by other payment means;

17                   “(ii) the transfer of receivables, ac-  
18                   counts or interests therein; or

19                   “(iii) the audit of debit, credit or  
20                   other payment information.

21          Each agency or authority described in section 504(a)  
22          shall, consistent with the purposes of this subtitle,  
23          prescribe by rule actions that shall, in a variety of  
24          financial services, and with respect to a variety of fi-

1 nancial products, be treated as necessary to effect,  
2 administer, or enforce a financial transaction.

3 “(10) FINANCIAL SERVICES; FINANCIAL PROD-  
4 UCTS; TRANSACTION; RELATED TRANSACTION.—  
5 Each agency or authority described in section 504(a)  
6 shall, consistent with the purposes of this subtitle,  
7 prescribe by rule definitions of the terms ‘financial  
8 services’, ‘financial products’, ‘transaction’, ‘related  
9 transaction’, and ‘unrelated third party’ for purposes  
10 of this subtitle.

11 “(11) STATE INSURANCE AUTHORITY.—The  
12 term ‘State insurance authority’ means, in the case  
13 of any person engaged in providing insurance, the  
14 State insurance authority of the State in which the  
15 person is domiciled.

16 “(12) CONSUMER.—The term ‘consumer’  
17 means an individual who obtains, from a financial  
18 institution, financial products or services which are  
19 to be used primarily for personal, family, or house-  
20 hold purposes, and also means the legal representa-  
21 tive of such an individual.

22 “(13) CUSTOMER RELATIONSHIP.—The term  
23 ‘time of establishing a customer relationship’ shall  
24 be defined by the regulations prescribed under sec-  
25 tion 504.

1 **“SEC. 509. EFFECTIVE DATE.**

2 “This subtitle shall take effect 6 months after the  
3 date on which rules are required to be prescribed under  
4 section 504(a)(3), except—

5 “(1) to the extent that a later date is specified  
6 in the rules prescribed under section 504; and

7 “(2) that sections 504 and 506 shall be effec-  
8 tive upon enactment.

9 **“Subtitle B—Fraudulent Access to**  
10 **Financial Information**

11 **“SEC. 521. PRIVACY PROTECTION FOR CUSTOMER INFOR-**  
12 **MATION OF FINANCIAL INSTITUTIONS.**

13 “(a) PROHIBITION ON OBTAINING CUSTOMER INFOR-  
14 MATION BY FALSE PRETENSES.—It shall be a violation  
15 of this subtitle for any person to obtain or attempt to ob-  
16 tain, or cause to be disclosed or attempt to cause to be  
17 disclosed to any person, customer information of a finan-  
18 cial institution relating to another person—

19 “(1) by making a false, fictitious, or fraudulent  
20 statement or representation to an officer, employee,  
21 or agent of a financial institution;

22 “(2) by making a false, fictitious, or fraudulent  
23 statement or representation to a customer of a fi-  
24 nancial institution; or

25 “(3) by providing any document to an officer,  
26 employee, or agent of a financial institution, know-

1       ing that the document is forged, counterfeit, lost, or  
2       stolen, was fraudulently obtained, or contains a  
3       false, fictitious, or fraudulent statement or represen-  
4       tation.

5       “(b) PROHIBITION ON SOLICITATION OF A PERSON  
6 TO OBTAIN CUSTOMER INFORMATION FROM FINANCIAL  
7 INSTITUTION UNDER FALSE PRETENSES.—It shall be a  
8 violation of this subtitle to request a person to obtain cus-  
9 tomer information of a financial institution, knowing that  
10 the person will obtain, or attempt to obtain, the informa-  
11 tion from the institution in any manner described in sub-  
12 section (a).

13       “(c) NONAPPLICABILITY TO LAW ENFORCEMENT  
14 AGENCIES.—No provision of this section shall be con-  
15 strued so as to prevent any action by a law enforcement  
16 agency, or any officer, employee, or agent of such agency,  
17 to obtain customer information of a financial institution  
18 in connection with the performance of the official duties  
19 of the agency.

20       “(d) NONAPPLICABILITY TO FINANCIAL INSTITU-  
21 TIONS IN CERTAIN CASES.—No provision of this section  
22 shall be construed so as to prevent any financial institu-  
23 tion, or any officer, employee, or agent of a financial insti-  
24 tution, from obtaining customer information of such finan-  
25 cial institution in the course of—

1           “(1) testing the security procedures or systems  
2 of such institution for maintaining the confiden-  
3 tiality of customer information;

4           “(2) investigating allegations of misconduct or  
5 negligence on the part of any officer, employee, or  
6 agent of the financial institution; or

7           “(3) recovering customer information of the fi-  
8 nancial institution which was obtained or received by  
9 another person in any manner described in sub-  
10 section (a) or (b).

11       “(e) NONAPPLICABILITY TO INSURANCE INSTITU-  
12 TIONS FOR INVESTIGATION OF INSURANCE FRAUD.—No  
13 provision of this section shall be construed so as to prevent  
14 any insurance institution, or any officer, employee, or  
15 agency of an insurance institution, from obtaining infor-  
16 mation as part of an insurance investigation into criminal  
17 activity, fraud, material misrepresentation, or material  
18 nondisclosure that is authorized for such institution under  
19 State law, regulation, interpretation, or order.

20       “(f) NONAPPLICABILITY TO CERTAIN TYPES OF CUS-  
21 TOMER INFORMATION OF FINANCIAL INSTITUTIONS.—No  
22 provision of this section shall be construed so as to prevent  
23 any person from obtaining customer information of a fi-  
24 nancial institution that otherwise is available as a public

1 record filed pursuant to the securities laws (as defined in  
2 section 3(a)(47) of the Securities Exchange Act of 1934).

3 **“SEC. 522. ADMINISTRATIVE ENFORCEMENT.**

4       “(a) ENFORCEMENT BY FEDERAL TRADE COMMIS-  
5 SION.—Compliance with this subtitle shall be enforced by  
6 the Federal Trade Commission in the same manner and  
7 with the same power and authority as the Commission has  
8 under the title VIII, the Fair Debt Collection Practices  
9 Act, to enforce compliance with such title.

10       “(b) NOTICE OF ACTIONS.—The Federal Trade Com-  
11 mission shall—

12               “(1) notify the Securities and Exchange Com-  
13 mission whenever the Federal Trade Commission ini-  
14 tiates an investigation with respect to a financial in-  
15 stitution subject to regulation by the Securities and  
16 Exchange Commission;

17               “(2) notify the Federal banking agency (as de-  
18 fined in section 3(z) of the Federal Deposit Insur-  
19 ance Act) whenever the Commission initiates an in-  
20 vestigation with respect to a financial institution  
21 subject to regulation by such Federal banking agen-  
22 cy; and

23               “(3) notify the appropriate State insurance reg-  
24 ulator whenever the Commission initiates an inves-

1       tigation with respect to a financial institution sub-  
2       ject to regulation by such regulator.

3       “(c) STATE ACTION FOR VIOLATIONS.—

4               “(1) AUTHORITY OF STATES.—In addition to  
5       such other remedies as are provided under State  
6       law, if the chief law enforcement officer of a State,  
7       or an official or agency designated by a State, has  
8       reason to believe that any person has violated or is  
9       violating this subtitle, the State—

10               “(A) may bring an action to enjoin such  
11       violation in any appropriate United States dis-  
12       trict court or in any other court of competent  
13       jurisdiction;

14               “(B) may bring an action on behalf of the  
15       residents of the State to recover damages of not  
16       more than \$1,000 for each violation; and

17               “(C) in the case of any successful action  
18       under subparagraph (A) or (B), shall be award-  
19       ed the costs of the action and reasonable attor-  
20       ney fees as determined by the court.

21       “(2) RIGHTS OF FEDERAL REGULATORS.—

22               “(A) PRIOR NOTICE.—The State shall  
23       serve prior written notice of any action under  
24       paragraph (1) upon the Federal Trade Commis-  
25       sion and provide the Federal Trade Commission

1 with a copy of its complaint, except in any case  
2 in which such prior notice is not feasible, in  
3 which case the State shall serve such notice im-  
4 mediately upon instituting such action.

5 “(B) RIGHT TO INTERVENE.—The Federal  
6 Trade Commission shall have the right—

7 “(i) to intervene in an action under  
8 paragraph (1);

9 “(ii) upon so intervening, to be heard  
10 on all matters arising therein;

11 “(iii) to remove the action to the ap-  
12 propriate United States district court; and

13 “(iv) to file petitions for appeal.

14 “(3) INVESTIGATORY POWERS.—For purposes  
15 of bringing any action under this subsection, no pro-  
16 vision of this subsection shall be construed as pre-  
17 venting the chief law enforcement officer, or an offi-  
18 cial or agency designated by a State, from exercising  
19 the powers conferred on the chief law enforcement  
20 officer or such official by the laws of such State to  
21 conduct investigations or to administer oaths or af-  
22 firmations or to compel the attendance of witnesses  
23 or the production of documentary and other evi-  
24 dence.



1           “(4) LIMITATION ON STATE ACTION WHILE  
2 FEDERAL ACTION PENDING.—If the Federal Trade  
3 Commission has instituted a civil action for a viola-  
4 tion of this subtitle, no State may, during the pend-  
5 ency of such action, bring an action under this sec-  
6 tion against any defendant named in the complaint  
7 of the Federal Trade Commission or such agency for  
8 any violation of this subtitle that is alleged in that  
9 complaint.

10 **“SEC. 523. CRIMINAL PENALTY.**

11           “(a) IN GENERAL.—Whoever knowingly and inten-  
12 tionally violates, or knowingly and intentionally attempts  
13 to violate, section 521 shall be fined in accordance with  
14 title 18, United States Code, or imprisoned for not more  
15 than 5 years, or both.

16           “(b) ENHANCED PENALTY FOR AGGRAVATED  
17 CASES.—Whoever violates, or attempts to violate, section  
18 521 while violating another law of the United States or  
19 as part of a pattern of any illegal activity involving more  
20 than \$100,000 in a 12-month period shall be fined twice  
21 the amount provided in subsection (b)(3) or (c)(3) (as the  
22 case may be) of section 3571 of title 18, United States  
23 Code, imprisoned for not more than 10 years, or both.

1 **“SEC. 524. RELATION TO STATE LAWS.**

2       “(a) IN GENERAL.—This subtitle shall not be con-  
3 strued as superseding, altering, or affecting the statutes,  
4 regulations, orders, or interpretations in effect in any  
5 State, except to the extent that such statutes, regulations,  
6 orders, or interpretations are inconsistent with the provi-  
7 sions of this subtitle, and then only to the extent of the  
8 inconsistency.

9       “(b) GREATER PROTECTION UNDER STATE LAW.—  
10 For purposes of this section, a State statute, regulation,  
11 order, or interpretation is not inconsistent with the provi-  
12 sions of this subtitle if the protection such statute, regula-  
13 tion, order, or interpretation affords any person is greater  
14 than the protection provided under this subtitle as deter-  
15 mined by the Commission, on its own motion or upon the  
16 petition of any interested party.

17 **“SEC. 525. AGENCY GUIDANCE.**

18       “*In furtherance of the objectives of this subtitle, each*  
19 *Federal banking agency (as defined in section 3(z) of the*  
20 *Federal Deposit Insurance Act) and the Securities and*  
21 *Exchange Commission or self-regulatory organizations, as*  
22 *appropriate, shall review regulations and guidelines appli-*  
23 *cable to financial institutions under their respective juris-*  
24 *dictions and shall prescribe such revisions to such regula-*  
25 *tions and guidelines as may be necessary to ensure that*  
26 *such financial institutions have policies, procedures, and*

1 controls in place to prevent the unauthorized disclosure  
2 of customer financial information and to deter and detect  
3 activities proscribed under section 521.

4 **“SEC. 526. REPORTS.**

5       “(a) REPORT TO THE CONGRESS.—Before the end of  
6 the 18-month period beginning on the date of the enact-  
7 ment of this Act, the Comptroller General, in consultation  
8 with the Federal Trade Commission, Federal banking  
9 agencies, the Securities and Exchange Commission, appro-  
10 priate Federal law enforcement agencies, and appropriate  
11 State insurance regulators, shall submit to the Congress  
12 a report on the following:

13               “(1) The efficacy and adequacy of the remedies  
14 provided in this subtitle in addressing attempts to  
15 obtain financial information by fraudulent means or  
16 by false pretenses.

17               “(2) Any recommendations for additional legis-  
18 lative or regulatory action to address threats to the  
19 privacy of financial information created by attempts  
20 to obtain information by fraudulent means or false  
21 pretenses.

22       “(b) ANNUAL REPORT BY ADMINISTERING AGEN-  
23 CIES.—The Federal Trade Commission and the Attorney  
24 General shall submit to Congress an annual report on

1 number and disposition of all enforcement actions taken  
2 pursuant to this subtitle.

3 **“SEC. 527. DEFINITIONS.**

4 “For purposes of this subtitle, the following defini-  
5 tions shall apply:

6 “(1) CUSTOMER.—The term ‘customer’ means,  
7 with respect to a financial institution, any person (or  
8 authorized representative of a person) to whom the  
9 financial institution provides a product or service,  
10 including that of acting as a fiduciary.

11 “(2) CUSTOMER INFORMATION OF A FINANCIAL  
12 INSTITUTION.—The term ‘customer information of a  
13 financial institution’ means any information main-  
14 tained by or for a financial institution which is de-  
15 rived from the relationship between the financial in-  
16 stitution and a customer of the financial institution  
17 and is identified with the customer.

18 “(3) DOCUMENT.—The term ‘document’ means  
19 any information in any form.

20 “(4) FINANCIAL INSTITUTION.—

21 “(A) IN GENERAL.—The term ‘financial  
22 institution’ means any institution engaged in  
23 the business of providing financial services to  
24 customers who maintain a credit, deposit, trust,

1 or other financial account or relationship with  
2 the institution.

3 “(B) CERTAIN FINANCIAL INSTITUTIONS  
4 SPECIFICALLY INCLUDED.—The term ‘financial  
5 institution’ includes any depository institution  
6 (as defined in section 19(b)(1)(A) of the Fed-  
7 eral Reserve Act), any broker or dealer, any in-  
8 vestment adviser or investment company, any  
9 insurance company, any loan or finance com-  
10 pany, any credit card issuer or operator of a  
11 credit card system, and any consumer reporting  
12 agency that compiles and maintains files on  
13 consumers on a nationwide basis (as defined in  
14 section 603(p)).

15 “(C) SECURITIES INSTITUTIONS.—For  
16 purposes of subparagraph (B)—

17 “(i) the terms ‘broker’ and ‘dealer’  
18 have the meanings provided in section 3 of  
19 the Securities Exchange Act of 1934 (15  
20 U.S.C. 78c);

21 “(ii) the term ‘investment adviser’ has  
22 the meaning provided in section 202(a)(11)  
23 of the Investment Advisers Act of 1940  
24 (15 U.S.C. 80b-2(a)); and

1                   “(iii) the term ‘investment company’  
2                   has the meaning provided in section 3 of  
3                   the Investment Company Act of 1940 (15  
4                   U.S.C. 80a-3).

5                   “(D) FURTHER DEFINITION BY REGULA-  
6                   TION.—The Federal Trade Commission, after  
7                   consultation with Federal banking agencies and  
8                   the Securities and Exchange Commission, may  
9                   prescribe regulations clarifying or describing  
10                  the types of institutions which shall be treated  
11                  as financial institutions for purposes of this  
12                  subtitle.

○