

“(B) in electronic form, if the notice provided is consistent with the provisions regarding electronic records and signatures set forth in section 101 of the Electronic Signatures in Global and National Commerce Act (15 U.S.C. 7001);

“(C) if the Federal Trade Commission determines that the number of all customers affected by, or the cost of providing notifications relating to, a single breach or suspected breach would make other forms of notification prohibitive, or in any case in which the financial institution certifies in writing to the Federal Trade Commission that it does not have sufficient customer contact information to comply with other forms of notification, in the form of—

“(i) an e-mail notice, if the financial institution has access to an e-mail address for the affected customer that it has reason to believe is accurate;

“(ii) a conspicuous posting on the Internet website of the financial institution, if the financial institution maintains such a website; or

“(iii) notification through the media that a breach of personal information has occurred or is suspected that compromises the security, confidentiality, or integrity of customer information of the financial institution; or

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

“(2) to consumer reporting agencies and law enforcement agencies (where appropriate), in such form as the Federal Trade Commission may prescribe, by rule.

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

“(1) a statement that—

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

“(B) the credit report and file of the customer will contain a fraud alert to make creditors aware of the breach or suspected breach, and to inform creditors that the express authorization of the customer is required for any new issuance or extension of credit (in accordance with section 605(g) of the Fair Credit Reporting Act); and

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

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

“(1) the financial institution has established a comprehensive information security program that is consistent with the standards prescribed by the appropriate regulatory body under section 501(b);

“(2) the financial institution notifies affected customers and consumer reporting agencies in accordance with its own internal information security policies in the event of a breach or suspected breach of personal information; and

“(3) such internal security policies incorporate notification procedures that are consistent with the requirements of this section and the rules of the Federal Trade Commission under this section.

“(h) CIVIL PENALTIES.—

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

“(2) INJUNCTIONS.—Actions of a financial institution in violation or potential violation of this section may be enjoined.

“(3) CUMULATIVE EFFECT.—The rights and remedies available under this section are in addition to any other rights and remedies available under applicable law.

“(i) RULES OF CONSTRUCTION.—

“(1) IN GENERAL.—Compliance with this section by a financial institution shall not be construed to be a violation of any provision of subtitle (A), or any other provision of Federal or State law prohibiting the disclosure of financial information to third parties.

“(2) LIMITATION.—Except as specifically provided in this section, nothing in this section requires or authorizes a financial institution to disclose information that it is otherwise prohibited from disclosing under subtitle A or any other provision of Federal or State law.

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

SEC. 4. INCLUSION OF FRAUD ALERTS IN CONSUMER CREDIT REPORTS.

Section 605 of the Fair Credit Reporting Act (15 U.S.C. 1681c) is amended by adding at the end the following:

“(g) FRAUD ALERTS.—

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

“(A) the identity of the consumer may have been used, without the consent of the consumer, to fraudulently obtain goods or services in the name of the consumer; and

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

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

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

“(2) INCLUSION OF FRAUD ALERT IN CONSUMER FILE.—

“(A) UPON NOTIFICATION BY FINANCIAL INSTITUTION.—A consumer reporting agency shall include a fraud alert meeting the requirements of this subsection in the file of a consumer promptly upon receipt of a notice from a financial institution under section 526(b)(1)(B) of the Gramm-Leach-Bliley Act relating to the consumer.

“(B) UPON REQUEST OF CONSUMER.—A consumer reporting agency shall include a fraud alert meeting the requirements of this subsection in the file of a consumer promptly upon receipt of—

“(i) a request by the consumer; and

“(ii) appropriate evidence of—

“(I) the true identity of the person making the request; and

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

“(3) CONSUMER REPORTING AGENCY RESPONSIBILITIES.—A consumer reporting agency shall ensure that each person procuring consumer credit information with respect to a consumer is made aware of the existence of a fraud alert in the file of that consumer, regardless of whether a full credit report, credit score, or summary report is requested.

“(4) REMOVAL OF FRAUD ALERTS.—The Federal Trade Commission shall issue appropriate regulations to establish—

“(A) the duration of fraud alerts required by this subsection, which standard shall be applied consistently to all consumer reporting agencies, to the extent possible; and

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

“(5) VIOLATIONS.—

“(A) CONSUMER REPORTING AGENCY.—A consumer reporting agency that fails to notify any user of a consumer credit report of the existence of a fraud alert in that report shall be in violation of this section.

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

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

SEC. 5. ACCESS TO CREDIT REPORTS AND SCORES.

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

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

“(1) IN GENERAL.—Upon request of a consumer, and without charge to the consumer, a consumer reporting agency shall make all of the disclosures listed under section 609 to the consumer—

“(A) once during each calendar year; and

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

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

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

SEC. 6. REGULATIONS.

Not later than 180 days after the date of enactment of this Act, the Federal Trade Commission, after consultation with Federal banking agencies, the Securities and Exchange Commission, and other appropriate financial services regulatory agencies, shall issue final regulations to carry out the amendments made by this Act.

AMENDMENTS SUBMITTED AND PROPOSED

SA 1739. Mr. DASCHLE proposed an amendment to the bill H.R. 2691, making appropriations for the Department of the Interior and related agencies for the fiscal year ending September 30, 2004, and for other purposes.

TEXT OF AMENDMENTS

SA 1739. Mr. DASCHLE proposed an amendment to the bill H.R. 2691, making appropriations for the Department of the Interior and related agencies for the fiscal year ending September 30, 2004, and for other purposes; as follows:

On page 46, line 7, strike “: Provided, That” and insert the following: “, and of which