

**AMENDMENT TO H.R. 4127, AS REPORTED BY THE
SUBCOMMITTEE**

OFFERED BY _____

[Amendment to the Committee Print showing the text of H.R. 4127 as reported by the Subcommittee on Commerce, Trade, and Consumer Protection, November 3, 2005]

Page 2, line 9, insert “under section 553 of title 5, United States Code,” after “regulations”.

Page 2, line 12, insert “, or contracts to have any third party entity maintain such data for such person,” after “information”.

Page 2, line 15, strike “that are consistent with” and insert “taking into consideration”.

Page 3, line 11, insert “, which shall include regular monitoring for a breach of security of such system” before the period.

Page 3, line 16, strike “encryption of such data,”.

Page 4, after line 2, insert the following:

1 (3) TREATMENT OF ENTITIES GOVERNED BY
2 OTHER LAW.—In promulgating the regulations
3 under this subsection, the Commission may deter-
4 mine to be in compliance with this subsection any



1 person who is required under any other Federal law
2 to maintain standards and safeguards for informa-
3 tion security and protection of personal information
4 that provide equal or greater protection than those
5 required under this subsection.

6 (b) DESTRUCTION OF OBSOLETE PAPER RECORDS
7 CONTAINING PERSONAL INFORMATION.—

8 (1) STUDY.—Not later than 1 year after the
9 date of enactment of this Act, the Commission shall
10 conduct a study on the practicality of requiring a
11 standard method or methods for the destruction of
12 obsolete paper documents and other non-electronic
13 data containing personal information by persons en-
14 gaged in interstate commerce who own or possess
15 such paper documents and non-electronic data. The
16 study shall consider the cost, benefit, feasibility, and
17 effect of a requirement of shredding or other perma-
18 nent destruction of such paper documents and non-
19 electronic data.

20 (2) REGULATIONS.—The Commission may pro-
21 mulgate regulations under section 553 of title 5,
22 United States Code, requiring a standard method or
23 methods for the destruction of obsolete paper docu-
24 ments and other non-electronic data containing per-
25 sonal information by persons engaged in interstate



1 commerce who own or possess such paper documents
2 and non-electronic data if the Commission finds
3 that—

4 (A) the improper disposal of obsolete paper
5 documents and other non-electronic data cre-
6 ates a reasonable risk of identity theft, fraud,
7 or other unlawful conduct;

8 (B) such a requirement would be effective
9 in preventing identity theft, fraud, or other un-
10 lawful conduct;

11 (C) the benefit in preventing identity theft,
12 fraud, or other unlawful conduct would out-
13 weigh the cost to persons subject to such a re-
14 quirement; and

15 (D) compliance with such a requirement
16 would be practicable.

17 In enforcing any such regulations, the Commission
18 may determine to be in compliance with such regula-
19 tions any person who is required under any other
20 Federal law to dispose of obsolete paper documents
21 and other non-electronic data containing personal in-
22 formation if such other Federal law provides equal
23 or greater protection or personal information than
24 the regulations promulgated under this subsection.



Page 4, line 3, redesignate subsection (b) as subsection (c).

Page 4, line 9, strike “security breach” and insert “breach of security”.

Page 4, after line 24, insert the following:

1 (3) VERIFICATION OF AND INDIVIDUAL ACCESS
2 TO PERSONAL INFORMATION.—

3 (A) VERIFICATION.—Each information
4 broker shall establish reasonable procedures to
5 verify the accuracy of the personal information
6 it collects, assembles, or maintains, and any
7 other information it collects, assembles, or
8 maintains that specifically identifies an indi-
9 vidual, other than information which merely
10 identifies an individual’s name or address.

11 (B) CONSUMER ACCESS TO INFORMA-
12 TION.—

13 (i) ACCESS.—Each information broker
14 shall—

15 (I) provide to each individual
16 whose personal information it main-
17 tains, at the individual’s request at
18 least 1 time per year and at no cost
19 to the individual, and after verifying



1 the identity of such individual, a
2 means for the individual to review any
3 personal information regarding such
4 individual maintained by the informa-
5 tion broker and any other information
6 maintained by the information broker
7 that specifically identifies such indi-
8 vidual, other than information which
9 merely identifies an individual's name
10 or address; and

11 (II) place a conspicuous notice on
12 its Internet website (if the informa-
13 tion broker maintains such a website)
14 instructing individuals how to request
15 access to the information required to
16 be provided under subclause (I).

17 (ii) DISPUTED INFORMATION.—When-
18 ever an individual whose information the
19 information broker maintains makes a
20 written request disputing the accuracy of
21 any such information, the information
22 broker, after verifying the identity of the
23 individual making such request and unless
24 there are reasonable grounds to believe



1 such request is frivolous or irrelevant,
2 shall—

3 (I) correct any inaccuracy; or

4 (II)(aa) in the case of informa-
5 tion that is public record information,
6 inform the individual of the source of
7 the information, and, if reasonably
8 available, where a request for correc-
9 tion may be directed; or

10 (bb) in the case of information
11 that is non-public information, note
12 the information that is disputed, in-
13 cluding the individual's statement dis-
14 puting such information, and take
15 reasonable steps to independently ver-
16 ify such information under the proce-
17 dures outlined in subparagraph (A) if
18 such information can be independently
19 verified.

20 (iii) LIMITATIONS.—An information
21 broker may limit the access to information
22 required under subparagraph (B) in the
23 following circumstances:



1 (I) If access of the individual to
2 the information is limited by law or
3 legally recognized privilege.

4 (II) If the information is used for
5 a legitimate governmental or fraud
6 prevention purpose that would be
7 compromised by such access.

8 (iv) RULEMAKING.—The Commission
9 shall issue regulations, as necessary, under
10 section 553 of title 5, United States Code,
11 on the application of the limitations in
12 clause (iii).

13 (C) TREATMENT OF ENTITIES GOVERNED
14 BY OTHER LAW.—The Commission may pro-
15 mulgate rules (under section 553 of title 5,
16 United States Code) to determine to be in com-
17 pliance with this paragraph any person who is
18 a consumer reporting agency, as defined in sec-
19 tion 603(f) of the Fair Credit Reporting Act,
20 with respect to those products and services that
21 are subject to and in compliance with the re-
22 quirements of that Act.

23 (4) REQUIREMENT OF AUDIT LOG OF ACCESSED
24 AND TRANSMITTED INFORMATION.—Not later than
25 1 year after the date of the enactment of this Act,



1 the Commission shall promulgate regulations under
2 section 553 of title 5, United States Code, to require
3 information brokers to establish measures which fa-
4 cilitate the auditing or retracing of any internal or
5 external access to, or transmissions of, any data in
6 electronic form containing personal information col-
7 lected, assembled, or maintained by such information
8 broker.

9 (5) PROHIBITION ON PRETEXTING BY INFOR-
10 MATION BROKERS.—

11 (A) PROHIBITION ON OBTAINING PER-
12 SONAL INFORMATION BY FALSE PRETENSES.—

13 It shall be unlawful for an information broker
14 to obtain or attempt to obtain, or cause to be
15 disclosed or attempt to cause to be disclosed to
16 any person, personal information or any other
17 information relating to any person by—

18 (i) making a false, fictitious, or fraud-
19 ulent statement or representation to any
20 person; or

21 (ii) providing any document or other
22 information to any person that the infor-
23 mation broker knows or should know to be
24 forged, counterfeit, lost, stolen, or fraudu-
25 lently obtained, or to contain a false, ficti-



1 tious, or fraudulent statement or represen-
2 tation.

3 (B) PROHIBITION ON SOLICITATION TO
4 OBTAIN PERSONAL INFORMATION UNDER FALSE
5 PRETENSES.—It shall be unlawful for an infor-
6 mation broker to request a person to obtain
7 personal information or any other information
8 relating to any other person, if the information
9 broker knew or should have known that the per-
10 son to whom such a request is made will obtain
11 or attempt to obtain such information in the
12 manner described in subsection (a).

13 (d) EXEMPTION FOR TELECOMMUNICATIONS CAR-
14 RIER, CABLE OPERATOR, INFORMATION SERVICE, OR
15 INTERACTIVE COMPUTER SERVICE.—Nothing in this sec-
16 tion shall apply to any electronic communication by a third
17 party stored by a telecommunications carrier, cable oper-
18 ator, or information service, as those terms are defined
19 in section 3 of the Communications Act of 1934 (47
20 U.S.C. 153), or an interactive computer service, as such
21 term is defined in section 230(f)(2) of such Act (47 U.S.C.
22 230(f)(2)).

Page 5, line 8, insert “who is a citizen or resident”
after “individual”.



Page 5, line 14, strike “THIRD PARTY AGENTS.—
In the event” and insert “CERTAIN ENTITIES.—

1 (1) THIRD PARTY AGENTS.—In the event
Page 5, after line 22, insert the following:

2 (2) TELECOMMUNICATIONS CARRIERS, CABLE
3 OPERATORS, INFORMATION SERVICES, AND INTER-
4 ACTIVE COMPUTER SERVICES.—If a telecommuni-
5 cations carrier, cable operator, or information service
6 (as such terms are defined in section 3 of the Com-
7 munications Act of 1934 (47 U.S.C. 153)), or an
8 interactive computer service (as such term is defined
9 in section 230(f)(2) of such Act (47 U.S.C.
10 230(f)(2))), becomes aware of a breach of security
11 during the transmission of data in electronic form
12 containing personal information that is owned or
13 possessed by another person utilizing the means of
14 transmission of such telecommunications carrier,
15 cable operator, information service, or interactive
16 computer service, such telecommunications carrier,
17 cable operator, information service, or interactive
18 computer service shall be required only to notify the
19 person who initiated such transmission of such a
20 breach of security if such person can be reasonably
21 identified. Upon receiving such notification from a
22 telecommunications carrier, cable operator, informa-



1 tion service, or interactive computer service, such
2 person shall provide the notification required under
3 subsection (a).

4 (3) BREACH OF HEALTH INFORMATION.—If the
5 Commission receives a notification of a breach of se-
6 curity and determines that information included in
7 such breach is individually identifiable health infor-
8 mation (as such term is defined in section 1171(6)
9 of the Social Security Act (42 U.S.C. 1320d(6)), the
10 Commission shall send a copy of such notification to
11 the Secretary of Health and Human Services.

Page 7, line 13, strike “security breach” and insert
“breach of security”.

Page 7, after line 15, insert the following:

12 (iii) notice that the individual is enti-
13 tled to receive, at no cost to such indi-
14 vidual, consumer credit reports on a quar-
15 terly basis for a period of 2 years, and in-
16 structions to the individual on requesting
17 such reports from the person;

Page 7, line 16, redesignate clause (iii) as clause
(iv).

Page 7, line 19, redesignate clause (iv) as clause (v).



Page 8, line 20, strike “CONTENT” and insert “FORM”.

Page 9, line 6, strike “and broadcast” and insert “and to broadcast”.

Page 9, strike lines 11 through 15 and insert the following:

1 (C) CONTENT OF SUBSTITUTE NOTICE.—

2 Each form of substitute notice under this para-
3 graph shall include—

4 (i) notice that individuals whose per-
5 sonal information is included in the breach
6 of security are entitled to receive, at no
7 cost to the individuals, consumer credit re-
8 ports on a quarterly basis for a period of
9 2 years, and instructions on requesting
10 such reports from the person; and

11 (ii) a telephone number by which an
12 individual can, at no cost to such indi-
13 vidual, learn whether that individual’s per-
14 sonal information is included in the breach
15 of security.

Page 9, line 18, strike “270 days” and insert “1 year”.



Page 9, line 20, strike “regulation” and insert “regulations under section 553 of title 5, United States Code”.

Page 10, line 17, strike “provide or arrange for” and all that follows through “subsection (d)(1)” and insert “, upon request of an individual whose personal information was included in the breach of security, provide or arrange for the provision of, to each such individual”.

Page 10, line 23, strike “A person who” and all that follows through page 11, line 9, and insert the following:

1 (f) EXEMPTION.—

2 (1) GENERAL EXEMPTION.—A person shall be
3 exempt from the requirements under this section if,
4 following a breach of security, such person deter-
5 mines that there is no reasonable risk of identity
6 theft, fraud, or other unlawful conduct.

7 (2) PRESUMPTIONS.—

8 (A) ENCRYPTION.—The encryption of data
9 in electronic form shall establish a presumption
10 that no reasonable risk of identity theft, fraud,
11 or other unlawful conduct exists following a
12 breach of security of such data. Any such pre-
13 sumption may be rebutted by facts dem-



1 onstrating that the encryption has been or is
2 reasonably likely to be compromised.

3 (B) ADDITIONAL METHODOLOGIES OR
4 TECHNOLOGIES.—Not later than 270 days after
5 the date of the enactment of this Act, the Com-
6 mission shall, by rule pursuant to section 553
7 of title 5, United States Code, identify any ad-
8 ditional security methodology or technology,
9 other than encryption, which renders data in
10 electronic form unreadable or indecipherable,
11 that shall, if applied to such data, establish a
12 presumption that no reasonable risk of identity
13 theft, fraud, or other unlawful conduct exists
14 following a breach of security of such data. Any
15 such presumption may be rebutted by facts
16 demonstrating that any such methodology or
17 technology has been or is reasonably likely to be
18 compromised. In promulgating such a rule, the
19 Commission shall consult with relevant indus-
20 tries, consumer organizations, and data security
21 and identity theft prevention experts and estab-
22 lished standards setting bodies.

23 (3) FTC GUIDANCE.—Not later than 1 year
24 after the date of the enactment of this Act, the



1 Commission shall issue guidance regarding the appli-
2 cation of the exemption in paragraph (1).

3 (g) WEBSITE NOTICE OF FEDERAL TRADE COMMIS-
4 SION.—If the Commission, upon receiving notification of
5 any breach of security that is reported to the Commission
6 under subsection (a)(2), finds that notification of such a
7 breach of security via the Commission’s Internet website
8 would be in the public interest or for the protection of
9 consumers, the Commission shall place such a notice in
10 a clear and conspicuous location on its Internet website.

11 (h) FTC STUDY ON NOTIFICATION IN LANGUAGES
12 IN ADDITION TO ENGLISH.—Not later than 1 year after
13 the date of enactment of this Act, the Commission shall
14 conduct a study on the practicality and cost effectiveness
15 of requiring the notification required by subsection (d)(1)
16 to be provided in a language in addition to English to indi-
17 viduals known to speak only such other language.

Page 11, strike line 10 through page 12, line 12,
and insert the following:

18 **SEC. 4. ENFORCEMENT.**

19 (a) ENFORCEMENT BY THE FEDERAL TRADE COM-
20 MISSION.—

21 (1) UNFAIR OR DECEPTIVE ACTS OR PRAC-
22 TICES.—A violation of section 2 or 3 shall be treated
23 as an unfair and deceptive act or practice in viola-



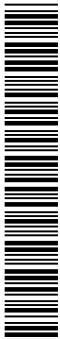
1 tion of a regulation under section 18(a)(1)(B) of the
2 Federal Trade Commission Act (15 U.S.C.
3 57a(a)(1)(B)) regarding unfair or deceptive acts or
4 practices.

5 (2) POWERS OF COMMISSION.—The Commis-
6 sion shall enforce this Act in the same manner, by
7 the same means, and with the same jurisdiction,
8 powers, and duties as though all applicable terms
9 and provisions of the Federal Trade Commission Act
10 (15 U.S.C. 41 et seq.) were incorporated into and
11 made a part of this Act. Any person who violates
12 such regulations shall be subject to the penalties and
13 entitled to the privileges and immunities provided in
14 that Act. Nothing in this Act shall be construed to
15 limit the authority of the Commission under any
16 other provision of law.

17 (3) LIMITATION.—In promulgating rules under
18 this Act, the Commission shall not require the de-
19 ployment or use of any specific products or tech-
20 nologies, including any specific computer software or
21 hardware.

22 (b) ENFORCEMENT BY STATE ATTORNEYS GEN-
23 ERAL.—

24 (1) CIVIL ACTION.—In any case in which the
25 attorney general of a State, or an official or agency



1 of a State, has reason to believe that an interest of
 2 the residents of that State has been or is threatened
 3 or adversely affected by any person who violates sec-
 4 tion 2 or 3 of this Act, the attorney general, official,
 5 or agency of the State, as *parens patriae*, may bring
 6 a civil action on behalf of the residents of the State
 7 in a district court of the United States of appro-
 8 priate jurisdiction—

9 (A) to enjoin further violation of such sec-
 10 tion by the defendant;

11 (B) to compel compliance with such sec-
 12 tion; or

13 (C) to obtain civil penalties in the amount
 14 determined under paragraph (2).

15 (2) CIVIL PENALTIES.—

16 (A) CALCULATION.—

17 (i) TREATMENT OF VIOLATIONS OF
 18 SECTION 2.—For purposes of paragraph
 19 (1)(C) with regard to a violation of section
 20 2, the amount determined under this para-
 21 graph is the amount calculated by multi-
 22 plying the number of violations of such
 23 section by an amount not greater than
 24 \$11,000. Each day that a person is not in
 25 compliance with the requirements of such



1 section shall be treated as a separate viola-
2 tion. The maximum civil penalty calculated
3 under this clause shall not exceed
4 \$5,000,000.

5 (ii) TREATMENT OF VIOLATIONS OF
6 SECTION 3.—For purposes of paragraph
7 (1)(C) with regard to a violation of section
8 3, the amount determined under this para-
9 graph is the amount calculated by multi-
10 plying the number of violations of such
11 section by an amount not greater than
12 \$11,000. Each failure to send notification
13 as required under section 3 to a resident of
14 the State shall be treated as a separate
15 violation. The maximum civil penalty cal-
16 culated under this clause shall not exceed
17 \$5,000,000.

18 (B) ADJUSTMENT FOR INFLATION.—Be-
19 ginning on the date that the Consumer Price
20 Index is first published by the Bureau of Labor
21 Statistics that is after 1 year after the date of
22 enactment of this Act, and each year thereafter,
23 the amounts specified in clauses (i) and (ii) of
24 subparagraph (A) shall be increased by the per-
25 centage increase in the Consumer Price Index



1 published on that date from the Consumer
2 Price Index published the previous year.

3 (3) INTERVENTION BY THE FTC.—

4 (A) NOTICE AND INTERVENTION.—The
5 State shall provide prior written notice of any
6 action under paragraph (1) to the Commission
7 and provide the Commission with a copy of its
8 complaint, except in any case in which such
9 prior notice is not feasible, in which case the
10 State shall serve such notice immediately upon
11 instituting such action. The Commission shall
12 have the right—

13 (i) to intervene in the action;

14 (ii) upon so intervening, to be heard
15 on all matters arising therein; and

16 (iii) to file petitions for appeal.

17 (B) LIMITATION ON STATE ACTION WHILE
18 FEDERAL ACTION IS PENDING.—If the Commis-
19 sion has instituted a civil action for violation of
20 this Act, no State attorney general, or official
21 or agency of a State, may bring an action under
22 this subsection during the pendency of that ac-
23 tion against any defendant named in the com-
24 plaint of the Commission for any violation of
25 this Act alleged in the complaint.



1 (4) CONSTRUCTION.—For purposes of bringing
2 any civil action under paragraph (1), nothing in this
3 Act shall be construed to prevent an attorney gen-
4 eral of a State from exercising the powers conferred
5 on the attorney general by the laws of that State
6 to—

7 (A) conduct investigations;

8 (B) administer oaths or affirmations; or

9 (C) compel the attendance of witnesses or
10 the production of documentary and other evi-
11 dence.

12 (c) AFFIRMATIVE DEFENSE FOR A VIOLATION OF
13 SECTION 3.—It shall be an affirmative defense to an en-
14 forcement action brought under subsection (a), or a civil
15 action brought under subsection (b), based on a violation
16 of section 3, that all of the personal information contained
17 in the data in electronic form that was acquired as a result
18 of a breach of security of the defendant is public record
19 information that is lawfully made available to the general
20 public from Federal, State, or local government records
21 and was acquired by the defendant from such records.

Page 12, line 18, strike “that establishes” and all
that follows through page 13, line 3, and insert a period.

Page 13, line 13, strike “an encryption algorithm”
and all that follows through “rendering” and insert “an



encryption technology that has been adopted by an established standards setting body which renders”.

Page 13, line 24, strike “assumption of another person’s identity” and insert “use of another person’s personal information”.

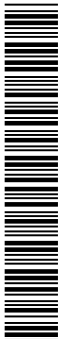
Page 14, line 6, strike “customers” and all that follows through “any third party” and insert “current or former customers of such entity in order to sell such information or provide access to such information to any nonaffiliated third party in exchange for consideration”.

Page 15, after line 13, insert the following:

1 (9) PUBLIC RECORD INFORMATION.—The term
2 “public record information” means information
3 about an individual which has been obtained origi-
4 nally from records of a Federal, State, or local gov-
5 ernment entity that are available for public inspec-
6 tion.

7 (10) NON-PUBLIC INFORMATION.—The term
8 “non-public information” means information about
9 an individual that is of a private nature and neither
10 available to the general public nor obtained from a
11 public record.

Page 16, after line 18, insert the following:



1 (d) PRESERVATION OF FTC AUTHORITY.—Nothing
2 in this Act may be construed in any way to limit or affect
3 the Commission’s authority under any other provision of
4 law, including the authority to issue advisory opinions
5 (under part 1 of volume 16 of the Code of Federal Regula-
6 tions), policy statements, or guidance regarding this Act.

