115TH CONGRESS
1ST SESSION

S. 1900

To require all persons who acquire, maintain, or use personal information
to have in effect reasonable cybersecurity protections and practices when-
ever acquiring, maintaining, or using personal information in commerce,
and for other purposes.

IN THE SENATE OF THE UNITED STATES

SEPTEMBER 28, 2017

Mr. BLUMENTHAL introduced the following bill; which was read twice and
referred to the Committee on Commerce, Science, and Transportation

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A BILL

To require all persons who acquire, maintain, or use personal
information to have in effect reasonable cybersecurity
protections and practices whenever acquiring, maintain-
ing, or using personal information in commerce, and
for other purposes.

1   *Be it enacted by the Senate and House of Representa-*

2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4   This Act may be cited as the "Data Breach Account-

5 ability and Enforcement Act of 2017".

SEC. 2. REQUIREMENT TO IMPLEMENT REASONABLE CYBERSECURITY PROTECTIONS AND PRACTICES.

(a) REQUIREMENT.—No covered entity may acquire, maintain, or use personal information in commerce without having in effect reasonable cybersecurity protections and practices.

(b) ENFORCEMENT BY FEDERAL TRADE COMMISSION.—

(1) UNFAIR OR DECEPTIVE ACTS OR PRACTICES.—A violation of subsection (a) by a covered entity shall be treated as a violation of a rule defining an unfair or deceptive act or practice prescribed under section 18(a)(1)(B) of the Federal Trade Commission Act (15 U.S.C. 57a(a)(1)(B)).

(2) POWERS OF COMMISSION.—

(A) IN GENERAL.—Except as provided in subparagraph (C), the Federal Trade Commission shall enforce this section in the same manner, by the same means, and with the same jurisdiction, powers, and duties as though all applicable terms and provisions of the Federal Trade Commission Act (15 U.S.C. 41 et seq.) were incorporated into and made a part of this Act.

1   (B) PRIVILEGES AND IMMUNITIES.—Ex-
2   cept as provided in subparagraph (C), any per-
3   son who violates this section shall be subject to
4   the penalties and entitled to the privileges and
5   immunities provided in the Federal Trade Com-
6   mission Act (15 U.S.C. 41 et seq.).
7   (C) APPLICABILITY TO ALL COVERED EN-
8   TITIES.—
9   (i) IN GENERAL.—The Federal Trade
10   Commission shall enforce this section with
11   respect to a person described in clause (ii)
12   as if such person were a person over which
13   the Commission has authority pursuant to
14   section 5(a)(2) of the Federal Trade Com-
15   mission Act (15 U.S.C. 45(a)(2)) and, not-
16   withstanding sections 4, 5(a)(2), and 6 of
17   such Act (15 U.S.C. 44, 45(a)(2), and 46),
18   not jurisdictional limitation of the Commis-
19   sion with respect to a person described in
20   clause (ii) shall apply for purposes of this
21   section.
22   (ii) PERSONS DESCRIBED.—A person
23   described in this clause is—
24   (I) a bank, a savings and loan in-
25   stitution, a Federal credit union, a

1   common carrier, an air carrier or for-

2   eign air carrier, or a person, partner-

3   ship, or corporation insofar as it is

4   subject to the Packers and Stockyards

5   Act, 1921, as described in section

6   5(a)(2) of the Federal Trade Commis-

7   sion Act (15 U.S.C. 45(a)(2)); or

8   (II) an organization which is not

9   organized to carry on business for its

10   own profit or that of its members.

11   (3) REGULATIONS.—

12   (A) IN GENERAL.—The Federal Trade

13   Commission shall promulgate, in accordance

14   with section 553 of title 5, United States Code,

15   such regulations as may be necessary to carry

16   out this section.

17   (B) MINIMUM STANDARDS.—In promul-

18   gating any standards for cybersecurity protec-

19   tions and practices to carry out this section, the

20   Commission shall ensure that any such stand-

21   ards that would safeguard customer informa-

22   tion do so as well as or better than the stand-

23   ards set forth under part 314 of title 16, Code

24   of Federal Regulations, as in effect on the day

25   before the date of the enactment of this Act.

1   (4) CIVIL PENALTIES.—Notwithstanding sec-

2   tion 5(m) of the Federal Trade Commission Act (15

3   U.S.C. 45(m)), a civil penalty recovered under such

4   section may be in excess of amounts provided for in

5   such section as the court finds appropriate to deter

6   violations of subsection (a) of this section.

7   (c) DEFINITIONS.—In this section:

8   (1) BREACH OF SECURITY.—

9   (A) IN GENERAL.—The term "breach of

10   security" means compromise of the security,

11   confidentiality, or integrity of, or loss of, data

12   in electronic form that results in, or there is a

13   reasonable basis to conclude has resulted in,

14   unauthorized access to or acquisition of per-

15   sonal information from a covered entity.

16   (B) EXCLUSIONS.—The term "breach of

17   security" does not include—

18   (i) a good faith acquisition of personal

19   information by a covered entity, or an em-

20   ployee or agent of a covered entity, if the

21   personal information is not subject to fur-

22   ther use or unauthorized disclosure;

23   (ii) any lawfully authorized investiga-

24   tive, protective, or intelligence activity of a

25   law enforcement or an intelligence agency

1   of the United States, a State, or a political

2   subdivision of a State; or

3   (iii) the release of a public record not

4   otherwise subject to confidentiality or non-

5   disclosure requirements.

6   (2) COVERED ENTITY.—The term "covered en-

7   tity" means a sole proprietorship, partnership, cor-

8   poration, trust, estate, cooperative, association, or

9   other commercial entity, and any charitable, edu-

10   cational, or nonprofit organization, that acquires,

11   maintains, or utilizes personal information.

12   (3) DATA IN ELECTRONIC FORM.—The term

13   "data in electronic form" means any data stored

14   electronically or digitally on any computer system or

15   other database, including recordable tapes and other

16   mass storage devices.

17   (4) IDENTITY THEFT.—The term "identity

18   theft" means the unauthorized use of another per-

19   son's personal information for the purpose of engag-

20   ing in commercial transactions under the identity of

21   such other person, including any contact that vio-

22   lates section 1028A of title 18, United States Code.

23   (5) PERSONAL INFORMATION.—

1   (A) DEFINITION.—The term "personal in-
2 formation" means any information or compila-
3 tion of information that includes—

4   (i) a non-truncated Social Security
5   number;

6   (ii) a financial account number or
7   credit or debit card number in combination
8   with any security code, access code, or
9   password that is required for an individual
10   to obtain credit, withdraw funds, or engage
11   in a financial transaction; or

12   (iii) an individual's first and last
13   name or first initial and last name in com-
14   bination with—

15   (I) a driver's license number, a
16   passport number, or an alien registra-
17   tion number, or other similar number
18   issued on a government document
19   used to verify identity;

20   (II) unique biometric data such
21   as a fingerprint, voice print, retina or
22   iris image, or any other unique phys-
23   ical representation;

24   (III) a unique account identifier,
25   electronic identification number, user

1   name, or routing code in combination

2   with any associated security code, ac-

3   cess code, or password that is re-

4   quired for an individual to obtain

5   money, goods, services, or any other

6   thing of value; or

7   (IV) 2 of the following:

8   (aa) Home address or tele-

9   phone number.

10   (bb) Mother's maiden name,

11   if identified as such.

12   (cc) Month, day, and year of

13   birth.

14   (B) MODIFIED DEFINITION BY RULE-

15 MAKING.—If the Federal Trade Commission de-

16 termines that the definition under subpara-

17 graph (A) is not reasonably sufficient to protect

18 individuals from identity theft, fraud, or other

19 unlawful conduct, the Commission by rule pro-

20 mulgated under section 553 of title 5, United

21 States Code, may modify the definition of "per-

22 sonal information" under subparagraph (A) to

23 the extent the modification will not unreason-

24 ably impede interstate commerce.

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