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 whenever 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

A BILL

- To require all persons who acquire, maintain, or use personal information to have in effect reasonable cybersecurity protections and practices whenever acquiring, maintaining, 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".

1SEC. 2. REQUIREMENT TO IMPLEMENT REASONABLE CY-2BERSECURITY PROTECTIONS AND PRAC-3TICES.

4 (a) REQUIREMENT.—No covered entity may acquire,
5 maintain, or use personal information in commerce with6 out having in effect reasonable cybersecurity protections
7 and practices.

8 (b) ENFORCEMENT BY FEDERAL TRADE COMMIS-9 SION.—

10 (1) UNFAIR OR DECEPTIVE ACTS OR PRAC11 TICES.—A violation of subsection (a) by a covered
12 entity shall be treated as a violation of a rule defin13 ing an unfair or deceptive act or practice prescribed
14 under section 18(a)(1)(B) of the Federal Trade
15 Commission Act (15 U.S.C. 57a(a)(1)(B)).

16 (2) POWERS OF COMMISSION.—

17 (A) IN GENERAL.—Except as provided in 18 subparagraph (C), the Federal Trade Commis-19 sion shall enforce this section in the same man-20 ner, by the same means, and with the same ju-21 risdiction, powers, and duties as though all ap-22 plicable terms and provisions of the Federal 23 Trade Commission Act (15 U.S.C. 41 et seq.) 24 were incorporated into and made a part of this 25 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 $(15 \text{ U.S.C. } 45(a)(2))$ and, not-
16	with standing 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

 eign air carrier, or a person, parts ship, or corporation insofar as it subject to the Packers and Stockya Act, 1921, as described in sect 5 Act, 1921, as described in sect 5 (a)(2) of the Federal Trade Comm r sion Act (15 U.S.C. 45(a)(2)); or 8 (II) an organization which is 9 organized to carry on business for 10 own profit or that of its members. 11 (3) REGULATIONS.— 12 (A) IN GENERAL.—The Federal Trade 13 Commission shall promulgate, in accordation 14 with section 553 of title 5, United States Constrained and this section. 17 (B) MINIMUM STANDARDS.—In promotion 18 gating any standards for cybersecurity protions and practices to carry out this section, 20 Commission shall ensure that any such station and practices to carry out this section, 21 ards that would safeguard customer information and set of the station and set of the set	 eign air carrier, or a person, partner- ship, or corporation insofar as it is subject to the Packers and Stockyards Act, 1921, as described in section 5 Act, 1921, as described in section 5 (a)(2) of the Federal Trade Commis- sion Act (15 U.S.C. 45(a)(2)); or (II) an organization which is not organized to carry on business for its own profit or that of its members. (3) REGULATIONS.— (A) IN GENERAL.—The Federal Trade Commission shall promulgate, in accordance with section 553 of title 5, United States Code, such regulations as may be necessary to carry out this section. (B) MINIMUM STANDARDS.—In promul- gating any standards for cybersecurity protections and practices to carry out this section, the Commission shall ensure that any such stand- ards that would safeguard customer informa- tion do so as well as or better than the stand- ards set forth under part 314 of title 16, Code of Federal Regulations, as in effect on the day 		-
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	25 before the date of the enactment of this Act.	24	of Federal Regulations, as in effect on the day
25 before the date of the enactment of this Act.		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.—

6

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

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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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