

103^D CONGRESS
2^D SESSION

H. R. 5143

To amend the Fair Credit Reporting Act to provide for disclosures by consumer reporting agencies to the Federal Bureau of Investigation for counterintelligence purposes.

IN THE HOUSE OF REPRESENTATIVES

SEPTEMBER 30, 1994

Mr. BEREUTER introduced the following bill; which was referred to the Committee on Banking, Finance and Urban Affairs

OCTOBER 5, 1994

The Committee on Banking, Finance and Urban Affairs discharged, considered and passed

A BILL

To amend the Fair Credit Reporting Act to provide for disclosures by consumer reporting agencies to the Federal Bureau of Investigation for counterintelligence 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 “FBI Counterintel-
5 ligence Act of 1994”.

1 **SEC. 2. DISCLOSURE OF INFORMATION AND CONSUMER RE-**
2 **PORTS TO FBI FOR COUNTERINTELLIGENCE**
3 **PURPOSES.**

4 (a) IN GENERAL.—The Fair Credit Reporting Act
5 (15 U.S.C. 1681 et seq.) is amended by adding after sec-
6 tion 623 the following new section:

7 **“§624. Disclosures to FBI for counterintelligence**
8 **purposes**

9 “(a) IDENTITY OF FINANCIAL INSTITUTIONS.—Not-
10 withstanding section 604 or any other provision of this
11 title, a consumer reporting agency shall furnish to the
12 Federal Bureau of Investigation the names and addresses
13 of all financial institutions (as that term is defined in sec-
14 tion 1101 of the Right to Financial Privacy Act of 1978)
15 at which a consumer maintains or has maintained an ac-
16 count, to the extent that information is in the files of the
17 agency, when presented with a written request for that
18 information, signed by the Director of the Federal Bureau
19 of Investigation, or the Director’s designee, which certifies
20 compliance with this section. The Director or the Direc-
21 tor’s designee may make such a certification only if the
22 Director or the Director’s designee has determined in writ-
23 ing that—

24 “(1) such information is necessary for the con-
25 duct of an authorized foreign counterintelligence in-
26 vestigation; and

1 “(2) there are specific and articulable facts giving
2 reason to believe that the consumer—

3 “(A) is a foreign power (as defined in section
4 101 of the Foreign Intelligence Surveillance Act of 1978) or a person who is not a
5 United States person (as defined in such section
6 101) and is an official of a foreign power;
7 or
8 or

9 “(B) is an agent of a foreign power and is
10 engaging or has engaged in international terrorism
11 (as that term is defined in section 101(c)
12 of the Foreign Intelligence Surveillance Act of
13 1978) or clandestine intelligence activities that
14 involve or may involve a violation of criminal
15 statutes of the United States.

16 “(b) IDENTIFYING INFORMATION.—Notwithstanding
17 the provisions of section 604 or any other provision of this
18 title, a consumer reporting agency shall furnish identifying
19 information respecting a consumer, limited to name, address,
20 former addresses, places of employment, or former
21 places of employment, to the Federal Bureau of Investigation
22 when presented with a written request, signed by the
23 Director or the Director’s designee, which certifies compliance
24 with this subsection. The Director or the Director’s
25 designee may make such a certification only if the Director

1 or the Director's designee has determined in writing
2 that—

3 “(1) such information is necessary to the con-
4 duct of an authorized counterintelligence investiga-
5 tion; and

6 “(2) there is information giving reason to be-
7 lieve that the consumer has been, or is about to be,
8 in contact with a foreign power or an agent of a for-
9 eign power (as defined in section 101 of the Foreign
10 Intelligence Surveillance Act of 1978).

11 “(c) COURT ORDER FOR DISCLOSURE OF CONSUMER
12 REPORTS.—Notwithstanding section 604 or any other
13 provision of this title, if requested in writing by the Direc-
14 tor of the Federal Bureau of Investigation, or a designee
15 of the Director, a court may issue an order ex parte direct-
16 ing a consumer reporting agency to furnish a consumer
17 report to the Federal Bureau of Investigation, upon a
18 showing in camera that—

19 “(1) the consumer report is necessary for the
20 conduct of an authorized foreign counterintelligence
21 investigation; and

22 “(2) there are specific and articulable facts giv-
23 ing reason to believe that the consumer whose
24 consumer report is sought—

25 “(A) is an agent of a foreign power; and

1 “(B) is engaging or has engaged in inter-
2 national terrorism (as that term is defined in
3 section 101(c) of the Foreign Intelligence Sur-
4 veillance Act of 1978) or clandestine intel-
5 ligence activities that involve or may involve a
6 violation of criminal statutes of the United
7 States.

8 The terms of an order issued under this subsection shall
9 not disclose that the order is issued for purposes of a
10 counterintelligence investigation.

11 “(d) CONFIDENTIALITY.—No consumer reporting
12 agency or officer, employee, or agent of a consumer report-
13 ing agency shall disclose to any person, other than those
14 officers, employees, or agents of a consumer reporting
15 agency necessary to fulfill the requirement to disclose in-
16 formation to the Federal Bureau of Investigation under
17 this section, that the Federal Bureau of Investigation has
18 sought or obtained the identity of financial institutions or
19 a consumer report respecting any consumer under sub-
20 section (a), (b), or (c) and no consumer reporting agency
21 or officer, employee, or agent of a consumer reporting
22 agency shall include in any consumer report any informa-
23 tion that would indicate that the Federal Bureau of Inves-
24 tigation has sought or obtained such information or a
25 consumer report.

1 “(e) PAYMENT OF FEES.—The Federal Bureau of
2 Investigation shall, subject to the availability of appropria-
3 tions, pay to the consumer reporting agency assembling
4 or providing reports or information in accordance with
5 procedures established under this section, a fee for reim-
6 bursement for such costs as are reasonably necessary and
7 which have been directly incurred in searching, reproduc-
8 ing, or transporting books, papers, records, or other data
9 required or requested to be produced under this section.

10 “(f) LIMIT ON DISSEMINATION.—The Federal Bu-
11 reau of Investigation may not disseminate information ob-
12 tained pursuant to this section outside of the Federal Bu-
13 reau of Investigation, except to the Department of Justice
14 as may be necessary for the approval or conduct of a for-
15 eign counterintelligence investigation, or, where the infor-
16 mation concerns a person subject to the Uniform Code of
17 Military Justice, to appropriate investigative authorities
18 within the military department concerned as may be nec-
19 essary for the conduct of a joint foreign counterintel-
20 ligence investigation.

21 “(g) RULES OF CONSTRUCTION.—Nothing in this
22 section shall be construed to prohibit information from
23 being furnished by the Federal Bureau of Investigation
24 pursuant to a subpoena or court order, or in connection
25 with a judicial or administrative proceeding to enforce the

1 provisions of this Act. Nothing in this section shall be con-
2 strued to authorize or permit the withholding or informa-
3 tion from the Congress.

4 “(h) REPORTS TO CONGRESS.—On a semiannual
5 basis, the Attorney General of the United States shall fully
6 inform the Permanent Select Committee on Intelligence
7 and the Committee on Banking, Finance and Urban Af-
8 fairs of the House of Representatives, and the Select Com-
9 mittee on Intelligence and the Committee on Banking,
10 Housing, and Urban Affairs of the Senate concerning all
11 requests made pursuant to subsections (a), (b), and (c).

12 “(i) DAMAGES.—Any agency or department of the
13 United States obtaining or disclosing any consumer re-
14 ports, records, or information contained therein in viola-
15 tion of this section is liable to the consumer to whom such
16 consumer reports, records, or information relate in an
17 amount equal to the sum of—

18 “(1) \$100, without regard to the volume of
19 consumer reports, records, or information involved;

20 “(2) any actual damages sustained by the
21 consumer as a result of the disclosure;

22 “(3) if the violation is found to have been will-
23 ful or intentional, such punitive damages as a court
24 may allow; and

1 “(4) in the case of any successful action to en-
2 force liability under this subsection, the costs of the
3 action, together with reasonable attorney fees, as de-
4 termined by the court.

5 “(j) DISCIPLINARY ACTIONS FOR VIOLATIONS.—If a
6 court determines that any agency or department of the
7 United States has violated any provision of this section
8 and the court finds that the circumstances surrounding
9 the violation raise questions of whether or not an officer
10 or employee of the agency or department acted willfully
11 or intentionally with respect to the violation, the agency
12 or department shall promptly initiate a proceeding to de-
13 termine whether or not disciplinary action is warranted
14 against the officer or employee who was responsible for
15 the violation.

16 “(k) GOOD-FAITH EXCEPTION.—Notwithstanding
17 any other provision of this title, any consumer reporting
18 agency or agent or employee thereof making disclosure of
19 consumer reports or identifying information pursuant to
20 this subsection in good-faith reliance upon a certification
21 of the Federal Bureau of Investigation pursuant to provi-
22 sions of this section shall not be liable to any person for
23 such disclosure under this title, the constitution of any
24 State, or any law or regulation of any State or any politi-
25 cal subdivision of any State.

1 “(l) LIMITATION OF REMEDIES.—Notwithstanding
2 any other provision of this title, the remedies and sanc-
3 tions set forth in this section shall be the only judicial
4 remedies and sanctions for violation of this section.

5 “(m) INJUNCTIVE RELIEF.—In addition to any other
6 remedy contained in this section, injunctive relief shall be
7 available to require compliance with the procedures of this
8 section. In the event of any successful action under this
9 subsection, costs together with reasonable attorney fees,
10 as determined by the court, may be recovered.”.

11 (b) CLERICAL AMENDMENT.—The table of sections
12 at the beginning of the Fair Credit Reporting Act (15
13 U.S.C. 1681a et seq.) is amended by adding after the item
14 relating to section 623 the following:

“624. Disclosures to FBI for counterintelligence purposes.”.

15 (c) REPEAL OF PROVISIONS.—

16 (1) REPEAL.—The following provisions of the
17 Fair Credit Reporting Act, as added by this section,
18 are repealed:

19 (A) Section 624.

20 (B) In the table of contents at the begin-
21 ning of the Fair Credit Reporting Act, the item
22 relating to section 624.

23 (2) EFFECTIVE DATE.—Paragraph (1) shall
24 take effect on the date that is 5 years after the date
25 of the enactment of this Act.

1 **SEC. 3. LIMITATION ON APPLICATION OF SECTION 2 AND**
2 **REPEAL OF ANY AMENDMENTS MADE.**

3 Section 2 shall not have any legal effect after the date
4 of the enactment of the Consumer Reporting Reform Act
5 of 1994. Any provisions of the Fair Credit Reporting Act
6 that were added to that Act by the amendments made by
7 section 2 of this Act are repealed effective on the date
8 of the enactment of the Consumer Reporting Reform Act
9 of 1994.

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