

105TH CONGRESS
2D SESSION

H. R. 3601

To amend chapter 47 of title 18, United States Code, relating to identity fraud, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

MARCH 30, 1998

Mr. SHADEGG (for himself, Mr. CLEMENT, Mrs. MYRICK, Mr. TIAHRT, Mr. CALVERT, Mr. MARTINEZ, Mr. FILNER, Mr. COBURN, Mr. HOSTETTLER, Mr. HOEKSTRA, Mr. ENGEL, Mr. ACKERMAN, Mr. HAYWORTH, and Mr. SOLOMON) introduced the following bill; which was referred to the Committee on the Judiciary, and in addition to the Committee on Transportation and Infrastructure, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

To amend chapter 47 of title 18, United States Code, relating to identity fraud, 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 “Identity Theft and As-
5 sumption Deterrence Act of 1998”.

1 **SEC. 2. CONSTITUTIONAL AUTHORITY TO ENACT THIS LEG-**
2 **ISLATION.**

3 The constitutional authority upon which this Act
4 rests is the power of Congress to regulate commerce with
5 foreign nations and among the several States, set forth
6 in article I, section 8 of the United States Constitution.

7 **SEC. 3. IDENTITY FRAUD.**

8 (a) ESTABLISHMENT OF OFFENSE.—

9 (1) IN GENERAL.—Chapter 47 of title 18,
10 United States Code, is amended by adding at the
11 end the following:

12 **“§ 1036. Identity fraud**

13 “(a) DEFINITIONS.—In this section—

14 “(1) the term ‘communication facility’ has the
15 meaning given that term in section 403(b) of the
16 Controlled Substances Act (21 U.S.C. 843(b));

17 “(2) the term ‘means of identification’ means
18 any name or number that may be used, alone or in
19 conjunction with any other information, to assume
20 the identity of an individual, including any—

21 “(A) personal identification card (as that
22 term is defined in section 1028); or

23 “(B) access device, counterfeit access de-
24 vice, or unauthorized access device (as those
25 terms are defined in section 1029);

26 “(3) the term ‘personal identifier’ means—

1 “(A) a name, social security number, date
2 of birth, official State or government issued
3 driver’s license or identification number, alien
4 registration number, government passport num-
5 ber, employer or taxpayer identification num-
6 ber, or any access device (as that term is de-
7 fined in section 1029);

8 “(B) any unique biometric data, such as a
9 fingerprint, voice print, retina or iris image, or
10 other unique physical representation;

11 “(C) any unique electronic identification
12 number, address, or routing code; or

13 “(D) any other means of identification not
14 lawfully issued to the user;

15 “(4) the term ‘identification device’ means any
16 physical, mechanical, or electronic representation of
17 a personal identifier or any personal information or
18 data; and

19 “(5) the term ‘personal information or data’
20 means any information that, when used in conjunc-
21 tion with a personal identifier or identification de-
22 vice, would facilitate a misrepresentation or assump-
23 tion of the identity of another.

24 “(b) PROHIBITION.—Whoever in interstate or foreign
25 commerce, or through the use of a communication facility,

1 knowingly, with intent to defraud, and in order to receive
2 payment or any other thing of value the aggregate value
3 of which is equal to or greater than \$1,000—

4 “(1) receives, acquires, obtains, purchases, sells,
5 transfers, traffics in, or steals, or attempts to re-
6 ceive, acquire, obtain, purchase, sell, transfer, traffic
7 in, or steal, or otherwise causes or solicits another
8 to do the same, any personal identifier, identification
9 device, personal information or data, or other docu-
10 ment or means of identification of any entity or per-
11 son;

12 “(2) possesses or uses, or attempts to possess
13 or use, or otherwise causes or solicits another to do
14 the same, any personal identifier, identification de-
15 vice, personal information or data, or other docu-
16 ment or means of identification of any entity or per-
17 son; or

18 “(3) assumes, adopts, takes, acquires, or uses,
19 or attempts to assume, adopt, take, acquire, or use,
20 or otherwise causes or solicits another to do the
21 same, the identity of any entity or person;

22 shall be fined under this title, imprisoned not more than
23 15 years, or both.

24 “(c) CONSPIRACY.—Whoever is a party to a conspir-
25 acy of 2 or more persons to commit an offense described

1 in subsection (b), if any of the parties engages in any con-
2 duct in furtherance of the offense, shall be fined in an
3 amount not to exceed the amount of the fine to which that
4 person would be subject for that offense under subsection
5 (b), imprisoned not more than 7.5 years, or both.”.

6 (2) INVESTIGATIVE AUTHORITY.—In addition to
7 any other agency having such authority, the United
8 States Secret Service may investigate any offense
9 under section 1036 of title 18, United States Code
10 (as added by this subsection), except that the exer-
11 cise of investigative authority under this paragraph
12 shall be subject to the terms of an agreement, which
13 shall be entered into by the Secretary of the Treas-
14 ury and the Attorney General.

15 (3) SENTENCING ENHANCEMENT.—Pursuant to
16 its authority under section 994(p) of title 28, United
17 States Code, the United States Sentencing Commis-
18 sion shall amend the Federal sentencing guidelines
19 to provide for sentencing enhancements under chap-
20 ter 2 of the Federal sentencing guidelines for a de-
21 fendant who is convicted of an offense under section
22 1036 of title 18, United States Code, in connection
23 with an offense under section 513, 514, 1028, 1029,
24 1341, 1342, 1343, 1344, or 1708 of title 18, United
25 States Code, as follows:

- 1 (A) A sentencing enhancement of—
2 (i) 1 level, if the offense involves not
3 more than 1 victim;
4 (ii) 2 levels, if the offense involves not
5 less than 2 and not more than 4 victims;
6 or
7 (iii) 3 levels, if the offense involves 5
8 or more victims.

9 (B) An appropriate sentencing enhance-
10 ment, if the offense involves stealing or destroy-
11 ing a quantity of undelivered United States
12 mail, in violation of section 1702, 1703, 1708,
13 1709, 2114, or 2115 of title 18, United States
14 Code.

15 (C) An appropriate sentencing enhance-
16 ment based on the potential loss (as opposed to
17 the actual loss) that could have resulted from
18 an identity theft offense (i.e. the line of credit
19 of the access device, etc.).

20 (4) CLERICAL AMENDMENT.—The analysis for
21 chapter 47 of title 18, United States Code, is
22 amended by adding at the end the following:

“1036. Identity fraud.”.

23 (b) FORFEITURE OF CONTRABAND.—Section
24 80302(a) of title 49, United States Code, is amended—

1 (1) in paragraph (5), by striking “or” at the
2 end;

3 (2) in paragraph (6), by striking the period at
4 the end and inserting a semicolon; and

5 (3) by adding at the end the following:

6 “(7) an identification document, false identifica-
7 tion document, or a document-making implement (as
8 those terms are defined in sections 1028 and 1029
9 of title 18) involved in a violation of section 1028 or
10 1029 of title 18;

11 “(8) a counterfeit access device, device-making
12 equipment, or scanning receiver (as those terms are
13 defined in sections 1028 and 1029 of title 18); or

14 “(9) a means of identification (as that term is
15 defined in section 1036) involved in a violation of
16 section 1036.”.

17 (c) RESTITUTION.—Section 3663A of title 18, United
18 States Code, is amended—

19 (1) in subsection (c)(1)(A)—

20 (A) in clause (ii), by striking “or” at the
21 end;

22 (B) in clause (iii), by striking “and” at the
23 end and inserting “or”; and

24 (C) by adding at the end the following:

1 “(iv) an offense described in section 1036
2 (relating to identity fraud); and”;

3 (2) by adding at the end the following:

4 “(e) IDENTITY FRAUD.—Making restitution to a vic-
5 tim under this section for an offense described in section
6 1036 (relating to identity fraud) may include payment for
7 any costs, including attorney fees, incurred by the vic-
8 tim—

9 “(1) in clearing the credit history or credit rat-
10 ing of the victim; or

11 “(2) in connection with any civil or administra-
12 tive proceeding to satisfy any debt, lien, or other ob-
13 ligation of the victim arising as a result of the ac-
14 tions of the defendant.”.

15 (d) IDENTITY FRAUD INFORMATION AND STUDY; IN-
16 CLUSION IN SUSPICIOUS ACTIVITY REPORTS.—

17 (1) DEFINITIONS.—In this subsection—

18 (A) the term “financial institution” has
19 the same meaning as in section 20 of title 18,
20 United States Code; and

21 (B) the term “identity fraud” means an
22 offense described in section 1036 of title 18,
23 United States Code (as added by subsection (a)
24 of this section).

1 (2) IDENTITY FRAUD INFORMATION.—Begin-
2 ning not later than 60 days after the date of enact-
3 ment of this Act, the United States Secret Service
4 of the Department of the Treasury and the Federal
5 Bureau of Investigation of the Department of Jus-
6 tice, in consultation with financial institutions and
7 other interested private entities, shall collect and
8 maintain information and statistical data relating
9 to—

10 (A) the number of identity fraud offenses
11 investigated;

12 (B) the number of prosecutions and convic-
13 tions for identity fraud; and

14 (C) any information provided by State and
15 local law enforcement agencies relating to the
16 investigation of identity fraud.

17 (3) IDENTITY FRAUD STUDY.—Not later than
18 18 months after the date of enactment of this Act,
19 the Secretary of the Treasury, the Chairman of the
20 Federal Trade Commission, the Attorney General,
21 and the Postmaster General shall—

22 (A) conduct a comprehensive study of—

23 (i) the nature, extent, and causes of
24 identity fraud; and

1 (ii) the threat posed by identity fraud

2 to—

3 (I) financial institutions and pay-

4 ment systems; and

5 (II) consumer safety and privacy;

6 and

7 (B) based on the results of that study,
8 submit to Congress a report including an eval-
9 uation of the effectiveness of the provisions of
10 this Act and the amendments made by this Act
11 and, if necessary, specific recommendations for
12 legislation to address the problem of identity
13 fraud.

14 (4) SUSPICIOUS ACTIVITY REPORTS.—Not later
15 than 90 days after the date of enactment of this
16 Act, the Secretary of the Treasury shall promulgate
17 such regulations as may be necessary to include
18 identity fraud as a separate characterization of sus-
19 picious activity for purposes of reports by financial
20 institutions of suspicious transactions under section
21 5318(g) of title 31, United States Code.

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