

105TH CONGRESS
2^D SESSION

H. R. 4151

IN THE SENATE OF THE UNITED STATES

OCTOBER 8 (legislative day, OCTOBER 2), 1998

Received

AN ACT

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”.

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

8 The constitutional authority upon which this Act

9 rests is the power of Congress to regulate commerce with

10 foreign nations and among the several States, and the au-

11 thority to make all laws which shall be necessary and prop-

12 er for carrying into execution the powers vested by the

13 Constitution in the Government of the United States or

14 in any department or officer thereof, as set forth in article

15 I, section 8 of the United States Constitution.

16 **SEC. 3. IDENTITY THEFT.**

17 (a) ESTABLISHMENT OF OFFENSE.—Section 1028(a)

18 of title 18, United States Code, is amended—

19 (1) in paragraph (5), by striking “or” at the

20 end;

21 (2) in paragraph (6), by adding “or” at the

22 end;

23 (3) in the flush matter following paragraph (6),

24 by striking “or attempts to do so,”; and

1 (4) by inserting after paragraph (6) the follow-
2 ing:

3 “(7) knowingly transfers or uses, without lawful
4 authority, a means of identification of another per-
5 son with the intent to commit, or to aid or abet, any
6 unlawful activity that constitutes a violation of Fed-
7 eral law, or that constitutes a felony under any ap-
8 plicable State or local law;”.

9 (b) PENALTIES.—Section 1028(b) of title 18, United
10 States Code, is amended—

11 (1) in paragraph (1)—

12 (A) in subparagraph (B), by striking “or”
13 at the end;

14 (B) in subparagraph (C), by adding “or”
15 at the end; and

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

17 “(D) an offense under paragraph (7) of
18 such subsection that involves the transfer or use
19 of 1 or more means of identification if, as a re-
20 sult of the offense, any individual committing
21 the offense obtains anything of value aggregat-
22 ing \$1,000 or more during any 1-year period;”;

23 (2) in paragraph (2)—

24 (A) in subparagraph (A), by striking “or
25 transfer of an identification document or” and

1 inserting “, transfer, or use of a means of iden-
2 tification, an identification document, or a”;
3 and

4 (B) in subparagraph (B), by inserting “or
5 (7)” after “(3)”;

6 (3) by amending paragraph (3) to read as fol-
7 lows:

8 “(3) a fine under this title or imprisonment for
9 not more than 20 years, or both, if the offense is
10 committed—

11 “(A) to facilitate a drug trafficking crime
12 (as defined in section 929(a)(2));

13 “(B) in connection with a crime of violence
14 (as defined in section 924(c)(3)); or

15 “(C) after a prior conviction under this
16 section becomes final;”;

17 (4) in paragraph (4), by striking “and” at the
18 end;

19 (5) by redesignating paragraph (5) as para-
20 graph (6); and

21 (6) by inserting after paragraph (4) the follow-
22 ing:

23 “(5) in the case of any offense under subsection
24 (a), forfeiture to the United States of any personal

1 property used or intended to be used to commit the
2 offense; and”.

3 (c) CIRCUMSTANCES.—Section 1028(c) of title 18,
4 United States Code, is amended by striking paragraph (3)
5 and inserting the following:

6 “(3) either—

7 “(A) the production, transfer, possession,
8 or use prohibited by this section is in or affects
9 interstate or foreign commerce; or

10 “(B) the means of identification, identifica-
11 tion document, false identification document, or
12 document-making implement is transported in
13 the mail in the course of the production, trans-
14 fer, possession, or use prohibited by this sec-
15 tion.”.

16 (d) DEFINITIONS.—Subsection (d) of section 1028 of
17 title 18, United States Code, is amended to read as fol-
18 lows:

19 “(d) In this section—

20 “(1) the term ‘document-making implement’
21 means any implement, impression, electronic device,
22 or computer hardware or software, that is specifi-
23 cally configured or primarily used for making an
24 identification document, a false identification docu-
25 ment, or another document-making implement;

1 “(2) the term ‘identification document’ means a
2 document made or issued by or under the authority
3 of the United States Government, a State, political
4 subdivision of a State, a foreign government, politi-
5 cal subdivision of a foreign government, an inter-
6 national governmental or an international quasi-gov-
7 ernmental organization which, when completed with
8 information concerning a particular individual, is of
9 a type intended or commonly accepted for the pur-
10 pose of identification of individuals;

11 “(3) the term ‘means of identification’ means
12 any name or number that may be used, alone or in
13 conjunction with any other information, to identify
14 a specific individual, including any—

15 “(A) name, social security number, date of
16 birth, official State or government issued driv-
17 er’s license or identification number, alien reg-
18 istration number, government passport number,
19 employer or taxpayer identification number;

20 “(B) unique biometric data, such as finger-
21 print, voice print, retina or iris image, or other
22 unique physical representation;

23 “(C) unique electronic identification num-
24 ber, address, or routing code; or

1 “(D) telecommunication identifying infor-
2 mation or access device (as defined in section
3 1029(e));

4 “(4) the term ‘personal identification card’
5 means an identification document issued by a State
6 or local government solely for the purpose of identi-
7 fication;

8 “(5) the term ‘produce’ includes alter, authen-
9 ticate, or assemble; and

10 “(6) the term ‘State’ includes any State of the
11 United States, the District of Columbia, the Com-
12 monwealth of Puerto Rico, and any other common-
13 wealth, possession, or territory of the United
14 States.”.

15 (e) ATTEMPT AND CONSPIRACY.—Section 1028 of
16 title 18, United States Code, is amended by adding at the
17 end the following:

18 “(f) ATTEMPT AND CONSPIRACY.—Any person who
19 attempts or conspires to commit any offense under this
20 section shall be subject to the same penalties as those pre-
21 scribed for the offense, the commission of which was the
22 object of the attempt or conspiracy.”.

23 (f) FORFEITURE PROCEDURES.—Section 1028 of
24 title 18, United States Code, is amended by adding at the
25 end the following:

1 “(g) FORFEITURE PROCEDURES.—The forfeiture of
2 property under this section, including any seizure and dis-
3 position of the property and any related judicial or admin-
4 istrative proceeding, shall be governed by the provisions
5 of section 413 (other than subsection (d) of that section)
6 of the Comprehensive Drug Abuse Prevention and Control
7 Act of 1970 (21 U.S.C. 853).”.

8 (g) RULE OF CONSTRUCTION.—Section 1028 of title
9 18, United States Code, is amended by adding at the end
10 the following:

11 “(h) RULE OF CONSTRUCTION.—For purpose of sub-
12 section (a)(7), a single identification document or false
13 identification document that contains 1 or more means of
14 identification shall be construed to be 1 means of identi-
15 fication.”.

16 (h) CONFORMING AMENDMENTS.—Chapter 47 of
17 title 18, United States Code, is amended—

18 (1) in the heading for section 1028, by adding

19 “**and information**” at the end; and

20 (2) in the table of sections at the beginning of

21 the chapter, in the item relating to section 1028, by

22 adding “and information” at the end.

1 **SEC. 4. AMENDMENT OF FEDERAL SENTENCING GUIDE-**
2 **LINES FOR OFFENSES UNDER SECTION 1028.**

3 (a) **IN GENERAL.**—Pursuant to its authority under
4 section 994(p) of title 28, United States Code, the United
5 States Sentencing Commission shall review and amend the
6 Federal sentencing guidelines and the policy statements
7 of the Commission, as appropriate, to provide an appro-
8 priate penalty for each offense under section 1028 of title
9 18, United States Code, as amended by this Act.

10 (b) **FACTORS FOR CONSIDERATION.**—In carrying out
11 subsection (a), the United States Sentencing Commission
12 shall consider, with respect to each offense described in
13 subsection (a)—

14 (1) the extent to which the number of victims
15 (as defined in section 3663A(a) of title 18, United
16 States Code) involved in the offense, including harm
17 to reputation, inconvenience, and other difficulties
18 resulting from the offense, is an adequate measure
19 for establishing penalties under the Federal sentenc-
20 ing guidelines;

21 (2) the number of means of identification, iden-
22 tification documents, or false identification docu-
23 ments (as those terms are defined in section 1028(d)
24 of title 18, United States Code, as amended by this
25 Act) involved in the offense, is an adequate measure

1 for establishing penalties under the Federal sentenc-
2 ing guidelines;

3 (3) the extent to which the value of the loss to
4 any individual caused by the offense is an adequate
5 measure for establishing penalties under the Federal
6 sentencing guidelines;

7 (4) the range of conduct covered by the offense;

8 (5) the extent to which sentencing enhance-
9 ments within the Federal sentencing guidelines and
10 the court's authority to sentence above the applica-
11 ble guideline range are adequate to ensure punish-
12 ment at or near the maximum penalty for the most
13 egregious conduct covered by the offense;

14 (6) the extent to which Federal sentencing
15 guidelines sentences for the offense have been con-
16 strained by statutory maximum penalties;

17 (7) the extent to which Federal sentencing
18 guidelines for the offense adequately achieve the
19 purposes of sentencing set forth in section
20 3553(a)(2) of title 18, United States Code; and

21 (8) any other factor that the United States
22 Sentencing Commission considers to be appropriate.

1 **SEC. 5. CENTRALIZED COMPLAINT AND CONSUMER EDU-**
2 **CATION SERVICE FOR VICTIMS OF IDENTITY**
3 **THEFT.**

4 (a) **IN GENERAL.**—Not later than 1 year after the
5 date of enactment of this Act, the Federal Trade Commis-
6 sion shall establish procedures to—

7 (1) log and acknowledge the receipt of com-
8 plaints by individuals who certify that they have a
9 reasonable belief that 1 or more of their means of
10 identification (as defined in section 1028 of title 18,
11 United States Code, as amended by this Act) have
12 been assumed, stolen, or otherwise unlawfully ac-
13 quired in violation of section 1028 of title 18, United
14 States Code, as amended by this Act;

15 (2) provide informational materials to individ-
16 uals described in paragraph (1); and

17 (3) refer complaints described in paragraph (1)
18 to appropriate entities, which may include referral
19 to—

20 (A) the 3 major national consumer report-
21 ing agencies; and

22 (B) appropriate law enforcement agencies
23 for potential law enforcement action.

24 (b) **AUTHORIZATION OF APPROPRIATIONS.**—There
25 are authorized to be appropriated such sums as may be
26 necessary to carry out this section.

1 **SEC. 6. TECHNICAL AMENDMENTS TO TITLE 18, UNITED**
2 **STATES CODE.**

3 (a) **TECHNICAL CORRECTION RELATING TO CRIMI-**
4 **NAL FORFEITURE PROCEDURES.**—Section 982(b)(1) of
5 title 18, United States Code, is amended to read as fol-
6 lows: “(1) The forfeiture of property under this section,
7 including any seizure and disposition of the property and
8 any related judicial or administrative proceeding, shall be
9 governed by the provisions of section 413 (other than sub-
10 section (d) of that section) of the Comprehensive Drug
11 Abuse Prevention and Control Act of 1970 (21 U.S.C.
12 853).”.

13 (b) **ECONOMIC ESPIONAGE AND THEFT OF TRADE**
14 **SECRETS AS PREDICATE OFFENSES FOR WIRE INTER-**
15 **CEPTION.**—Section 2516(1)(a) of title 18, United States
16 Code, is amended by inserting “chapter 90 (relating to
17 protection of trade secrets),” after “to espionage,”.

18 **SEC. 7. REDACTION OF ETHICS REPORTS FILED BY JUDI-**
19 **CIAL OFFICERS AND EMPLOYEES.**

20 Section 105(b) of the Ethics in Government Act of
21 1978 (5 U.S.C. App) is amended by adding at the end
22 the following new paragraph:

23 “(3)(A) This section does not require the immediate
24 and unconditional availability of reports filed by an indi-
25 vidual described in section 109(8) or 109(10) of this Act
26 if a finding is made by the Judicial Conference, in con-

1 sultation with United States Marshall Service, that reveal-
2 ing personal and sensitive information could endanger that
3 individual.

4 “(B) A report may be redacted pursuant to this para-
5 graph only—

6 “(i) to the extent necessary to protect the indi-
7 vidual who filed the report; and

8 “(ii) for as long as the danger to such individ-
9 ual exists.

10 “(C) The Administrative Office of the United States
11 Courts shall submit to the Committees on the Judiciary
12 of the House of Representatives and of the Senate an an-
13 nual report with respect to the operation of this paragraph
14 including—

15 “(i) the total number of reports redacted pursu-
16 ant to this paragraph;

17 “(ii) the total number of individuals whose re-
18 ports have been redacted pursuant to this para-
19 graph; and

20 “(iii) the types of threats against individuals
21 whose reports are redacted, if appropriate.

22 “(D) The Judicial Conference, in consultation with
23 the Department of Justice, shall issue regulations setting
24 forth the circumstances under which redaction is appro-

1 piate under this paragraph and the procedures for redac-
2 tion.

3 “(E) This paragraph shall expire on December 31,
4 2001, and apply to filings through calendar year 2001.”.

Passed the House of Representatives October 7,
1998.

Attest:

ROBIN H. CARLE,
Clerk.