

110TH CONGRESS  
2D SESSION

# H. R. 6060

To amend title 18, United States Code, to enable increased federal prosecution of identity theft crimes and to allow for restitution to victims of identity theft.

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## IN THE HOUSE OF REPRESENTATIVES

MAY 14, 2008

Mr. SCHIFF (for himself, Mr. CHABOT, Mr. EMANUEL, and Mr. MURPHY of Connecticut) introduced the following bill; which was referred to the Committee on the Judiciary

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## A BILL

To amend title 18, United States Code, to enable increased federal prosecution of identity theft crimes and to allow for restitution to victims of identity theft.

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 En-  
5 forcement and Restitution Act of 2008”.

6 **SEC. 2. CRIMINAL RESTITUTION.**

7 Section 3663(b) of title 18, United States Code, is  
8 amended—

1 (1) in paragraph (4), by striking “; and” and  
2 inserting a semicolon;

3 (2) in paragraph (5), by striking the period at  
4 the end and inserting “; and”; and

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

6 “(6) in the case of an offense under sections  
7 1028(a)(7) or 1028A(a) of this title, pay an amount  
8 equal to the value of the time reasonably spent by  
9 the victim in an attempt to remediate the intended  
10 or actual harm incurred by the victim from the of-  
11 fense.”.

12 **SEC. 3. PREDICATE OFFENSES FOR AGGRAVATED IDENTITY**

13 **THEFT AND MISUSE OF IDENTIFYING INFOR-**  
14 **MATION OF ORGANIZATIONS.**

15 (a) **IDENTITY THEFT.**—Section 1028 of title 18,  
16 United States Code, is amended—

17 (1) in subsection (a)(7), by inserting “(includ-  
18 ing an organization as defined in section 18 of this  
19 title)” after “person”; and

20 (2) in subsection (d)(7), by inserting “or other  
21 person” after “specific individual”.

22 (b) **AGGRAVATED IDENTITY THEFT.**—Section 1028A  
23 of title 18, United States Code, is amended—

1 (1) in subsection (a)(1), by inserting “(includ-  
2 ing an organization as defined in section 18 of this  
3 title)” after “person”; and

4 (2) in subsection (c)—

5 (A) in the matter preceding paragraph (1),  
6 by inserting “, or a conspiracy to commit such  
7 a felony violation,” after “any offense that is a  
8 felony violation”;

9 (B) by redesignating—

10 (i) paragraph (11) as paragraph (14);

11 (ii) paragraphs (8) through (10) as  
12 paragraphs (10) through (12), respectively;

13 and

14 (iii) paragraphs (1) through (7) as  
15 paragraphs (2) through (8), respectively;

16 (C) by inserting prior to paragraph (2), as  
17 so redesignated, the following:

18 “(1) section 513 (relating to making, uttering,  
19 or possessing counterfeited securities);”;

20 (D) by inserting after paragraph (8), as so  
21 redesignated, the following:

22 “(9) section 1708 (relating to mail theft);”;

23 (E) in paragraph (12), as so redesignated,  
24 by striking “; or” and inserting a semicolon;  
25 and

1 (F) by inserting after paragraph (12), as  
2 so redesignated, the following:

3 “(13) section 7201, 7206, or 7207 of title 26  
4 (relating to tax fraud); or”.

5 **SEC. 4. ENSURING JURISDICTION OVER THE THEFT OF**  
6 **SENSITIVE IDENTITY INFORMATION.**

7 Section 1030(a)(2)(C) of title 18, United States  
8 Code, is amended by striking “if the conduct involved an  
9 interstate or foreign communication”.

10 **SEC. 5. MALICIOUS SPYWARE, HACKING AND KEYLOGGERS.**

11 (a) IN GENERAL.—Section 1030 of title 18, United  
12 States Code, is amended—

13 (1) in subsection (a)(5)—

14 (A) by striking subparagraph (B); and

15 (B) in subparagraph (A)—

16 (i) by striking “(A)(i) knowingly” and  
17 inserting “(A) knowingly”;

18 (ii) by redesignating clauses (ii) and  
19 (iii) as subparagraphs (B) and (C), respec-  
20 tively; and

21 (iii) in subparagraph (C), as so redesi-  
22 gnated—

23 (I) by inserting “and loss” after  
24 “damage”; and

1 (II) by striking “; and” and in-  
2 serting a period;

3 (2) in subsection (c)—

4 (A) in paragraph (2)(A), by striking  
5 “(a)(5)(A)(iii),”;

6 (B) in paragraph (3)(B), by striking  
7 “(a)(5)(A)(iii),”;

8 (C) by amending paragraph (4) to read as  
9 follows:

10 “(4)(A) except as provided in subparagraphs  
11 (E) and (F), a fine under this title, imprisonment  
12 for not more than 5 years, or both, in the case of—

13 “(i) an offense under subsection (a)(5)(B),  
14 which does not occur after a conviction for an-  
15 other offense under this section, if the offense  
16 caused (or, in the case of an attempted offense,  
17 would, if completed, have caused)—

18 “(I) loss to 1 or more persons during  
19 any 1-year period (and, for purposes of an  
20 investigation, prosecution, or other pro-  
21 ceeding brought by the United States only,  
22 loss resulting from a related course of con-  
23 duct affecting 1 or more other protected  
24 computers) aggregating at least \$5,000 in  
25 value;

1           “(II) the modification or impairment,  
2           or potential modification or impairment, of  
3           the medical examination, diagnosis, treat-  
4           ment, or care of 1 or more individuals;

5           “(III) physical injury to any person;

6           “(IV) a threat to public health or  
7           safety;

8           “(V) damage affecting a computer  
9           used by or for an entity of the United  
10          States Government in furtherance of the  
11          administration of justice, national defense,  
12          or national security; or

13          “(VI) damage affecting 10 or more  
14          protected computers during any 1-year pe-  
15          riod; or

16          “(ii) an attempt to commit an offense pun-  
17          ishable under this subparagraph;

18          “(B) except as provided in subparagraphs (E)  
19          and (F), a fine under this title, imprisonment for  
20          not more than 10 years, or both, in the case of—

21                 “(i) an offense under subsection (a)(5)(A),  
22                 which does not occur after a conviction for an-  
23                 other offense under this section, if the offense  
24                 caused (or, in the case of an attempted offense,  
25                 would, if completed, have caused) a harm pro-

1           vided in subclauses (I) through (VI) of subpara-  
2           graph (A)(i); or

3           “(ii) an attempt to commit an offense pun-  
4           ishable under this subparagraph;

5           “(C) except as provided in subparagraphs (E)  
6           and (F), a fine under this title, imprisonment for  
7           not more than 20 years, or both, in the case of—

8           “(i) an offense or an attempt to commit an  
9           offense under subparagraphs (A) or (B) of sub-  
10          section (a)(5) that occurs after a conviction for  
11          another offense under this section; or

12          “(ii) an attempt to commit an offense pun-  
13          ishable under this subparagraph;

14          “(D) a fine under this title, imprisonment for  
15          not more than 10 years, or both, in the case of—

16          “(i) an offense or an attempt to commit an  
17          offense under subsection (a)(5)(C) that occurs  
18          after a conviction for another offense under this  
19          section; or

20          “(ii) an attempt to commit an offense pun-  
21          ishable under this subparagraph;

22          “(E) if the offender attempts to cause or know-  
23          ingly or recklessly causes serious bodily injury from  
24          conduct in violation of subsection (a)(5)(A), a fine

1 under this title, imprisonment for not more than 20  
2 years, or both;

3 “(F) if the offender attempts to cause or know-  
4 ingly or recklessly causes death from conduct in vio-  
5 lation of subsection (a)(5)(A), a fine under this title,  
6 imprisonment for any term of years or for life, or  
7 both; or

8 “(G) a fine under this title, imprisonment for  
9 not more than 1 year, or both, for—

10 “(i) any other offense under subsection  
11 (a)(5); or

12 “(ii) an attempt to commit an offense pun-  
13 ishable under this subparagraph.”; and

14 (D) by striking paragraph (5); and  
15 (3) in subsection (g)—

16 (A) in the second sentence, by striking “in  
17 clauses (i), (ii), (iii), (iv), or (v) of subsection  
18 (a)(5)(B)” and inserting “in subclauses (I),  
19 (II), (III), (IV), or (V) of subsection  
20 (c)(4)(A)(i)”;

21 (B) in the third sentence, by striking “sub-  
22 section (a)(5)(B)(i)” and inserting “subsection  
23 (c)(4)(A)(i)(I)”.

24 (b) CONFORMING CHANGES.—Section  
25 2332b(g)(5)(B)(i) of title 18, United States Code, is

1 amended by striking “1030(a)(5)(A)(i) resulting in dam-  
2 age as defined in 1030(a)(5)(B)(ii) through (v)” and in-  
3 serting “1030(a)(5)(A) resulting in damage as defined in  
4 1030(c)(4)(A)(i)(II) through (VI)”.

5 **SEC. 6. CYBER-EXTORTION.**

6 Section 1030(a)(7) of title 18, United States Code,  
7 is amended to read as follows:

8 “(7) with intent to extort from any person any  
9 money or other thing of value, transmits in inter-  
10 state or foreign commerce any communication con-  
11 taining any—

12 “(A) threat to cause damage to a protected  
13 computer;

14 “(B) threat to obtain information from a  
15 protected computer without authorization or in  
16 excess of authorization or to impair the con-  
17 fidentiality of information obtained from a pro-  
18 tected computer without authorization or by ex-  
19 ceeding authorized access; or

20 “(C) demand or request for money or  
21 other thing of value in relation to damage to a  
22 protected computer, where such damage was  
23 caused to facilitate the extortion;”.

1 **SEC. 7. CONSPIRACY TO COMMIT CYBER-CRIMES.**

2 Section 1030(b) of title 18, United States Code, is  
3 amended by inserting “conspires to commit or” after  
4 “Whoever”.

5 **SEC. 8. USE OF FULL INTERSTATE AND FOREIGN COM-**  
6 **MERCE POWER FOR CRIMINAL PENALTIES.**

7 Section 1030(e)(2)(B) of title 18, United States  
8 Code, is amended by inserting “or affecting” after “which  
9 is used in”.

10 **SEC. 9. FORFEITURE FOR SECTION 1030 VIOLATIONS.**

11 Section 1030 of title 18, United States Code, is  
12 amended by adding at the end the following:

13 “(i)(1) The court, in imposing sentence on any person  
14 convicted of a violation of this section, or convicted of con-  
15 spiracy to violate this section, shall order, in addition to  
16 any other sentence imposed and irrespective of any provi-  
17 sion of State law, that such person forfeit to the United  
18 States—

19 “(A) such person’s interest in any personal  
20 property that was used or intended to be used to  
21 commit or to facilitate the commission of such viola-  
22 tion; and

23 “(B) any property, real or personal, consti-  
24 tuting or derived from, any proceeds that such per-  
25 son obtained, directly or indirectly, as a result of  
26 such violation.

1       “(2) The criminal forfeiture of property under this  
2 subsection, any seizure and disposition thereof, and any  
3 judicial proceeding in relation thereto, shall be governed  
4 by the provisions of section 413 of the Comprehensive  
5 Drug Abuse Prevention and Control Act of 1970 (21  
6 U.S.C. 853), except subsection (d) of that section.

7       “(j) For purposes of subsection (i), the following shall  
8 be subject to forfeiture to the United States and no prop-  
9 erty right shall exist in them:

10           “(1) Any personal property used or intended to  
11 be used to commit or to facilitate the commission of  
12 any violation of this section, or a conspiracy to vio-  
13 late this section.

14           “(2) Any property, real or personal, which con-  
15 stitutes or is derived from proceeds traceable to any  
16 violation of this section, or a conspiracy to violate  
17 this section”.

18 **SEC. 10. DIRECTIVE TO UNITED STATES SENTENCING COM-**  
19 **MISSION.**

20       (a) **DIRECTIVE.**—Pursuant to its authority under  
21 section 994(p) of title 28, United States Code, and in ac-  
22 cordance with this section, the United States Sentencing  
23 Commission shall review its guidelines and policy state-  
24 ments applicable to persons convicted of offenses under  
25 sections 1028, 1028A, 1030, 2511, and 2701 of title 18,

1 United States Code, and any other relevant provisions of  
2 law, in order to reflect the intent of Congress that such  
3 penalties be increased in comparison to those currently  
4 provided by such guidelines and policy statements.

5 (b) REQUIREMENTS.—In determining its guidelines  
6 and policy statements on the appropriate sentence for the  
7 crimes enumerated in subsection (a), the United States  
8 Sentencing Commission shall consider the extent to which  
9 the guidelines and policy statements may or may not ac-  
10 count for the following factors in order to create an effec-  
11 tive deterrent to computer crime and the theft or misuse  
12 of personally identifiable data:

13 (1) The level of sophistication and planning in-  
14 volved in such offense.

15 (2) Whether such offense was committed for  
16 purpose of commercial advantage or private financial  
17 benefit.

18 (3) The potential and actual loss resulting from  
19 the offense including—

20 (A) the value of information obtained from  
21 a protected computer, regardless of whether the  
22 owner was deprived of use of the information;  
23 and

24 (B) where the information obtained con-  
25 stitutes a trade secret or other proprietary in-

1           formation, the cost the victim incurred devel-  
2           oping or compiling the information.

3           (4) Whether the defendant acted with intent to  
4           cause either physical or property harm in commit-  
5           ting the offense.

6           (5) The extent to which the offense violated the  
7           privacy rights of individuals.

8           (6) The effect of the offense upon the oper-  
9           ations of an agency of the United States Govern-  
10          ment, or of a State or local government.

11          (7) Whether the offense involved a computer  
12          used by the United States Government, a State, or  
13          a local government in furtherance of national de-  
14          fense, national security, or the administration of jus-  
15          tice.

16          (8) Whether the offense was intended to, or had  
17          the effect of, significantly interfering with or dis-  
18          rupting a critical infrastructure.

19          (9) Whether the offense was intended to, or had  
20          the effect of, creating a threat to public health or  
21          safety, causing injury to any person, or causing  
22          death.

23          (10) Whether the defendant purposefully in-  
24          volved a juvenile in the commission of the offense.

1           (11) Whether the defendant’s intent to cause  
2           damage or intent to obtain personal information  
3           should be disaggregated and considered separately  
4           from the other factors set forth in USSG  
5           2B1.1(b)(14).

6           (12) Whether the term “victim” as used in  
7           USSG 2B1.1, should include individuals whose pri-  
8           vacy was violated as a result of the offense in addi-  
9           tion to individuals who suffered monetary harm as  
10          a result of the offense.

11          (13) Whether the defendant disclosed personal  
12          information obtained during the commission of the  
13          offense.

14          (c) **ADDITIONAL REQUIREMENTS.**—In carrying out  
15          this section, the United States Sentencing Commission  
16          shall—

17                (1) assure reasonable consistency with other  
18                relevant directives and with other sentencing guide-  
19                lines;

20                (2) account for any additional aggravating or  
21                mitigating circumstances that might justify excep-  
22                tions to the generally applicable sentencing ranges;

23                (3) make any conforming changes to the sen-  
24                tencing guidelines; and

1           (4) assure that the guidelines adequately meet  
2           the purposes of sentencing as set forth in section  
3           3553(a)(2) of title 18, United States Code.

○