

105TH CONGRESS  
2D SESSION

# H. R. 4151

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

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## IN THE HOUSE OF REPRESENTATIVES

JUNE 25, 1998

Mr. SHADEGG (for himself, Mr. CLEMENT, Ms. DeLauro, Mr. SANDERS, Mr. HOSTETTLER, Mr. HOEKSTRA, Mr. SOLOMON, Mr. COBURN, Mr. BLUNT, Ms. KILPATRICK, Mr. PASCRELL, Mr. WYNN, Ms. HOOLEY of Oregon, Mr. SANDLIN, Mr. SOUDER, Mr. FILNER, Mr. HINCHEY, Mr. MANTON, Mr. GUTIERREZ, Ms. SANCHEZ, Ms. PELOSI, Mrs. THURMAN, Mr. PITTS, Ms. STABENOW, Mr. STUMP, Mr. ALLEN, Mr. ENGEL, Mr. VENTO, Mr. KLECZKA, Mr. SALMON, Mr. HAYWORTH, Mr. McINTOSH, Mr. SESSIONS, Ms. DUNN, Mr. BASS, and Mr. LARGENT) introduced the following bill; which was referred to the Committee on Judiciary

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## 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 THEFT.**

8 (a) ESTABLISHMENT OF OFFENSE.—Section 1028(a)  
9 of title 18, United States Code, is amended—

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

12 (2) in paragraph (6), by adding “or” at the  
13 end; and

14 (3) by inserting after paragraph (6) the follow-  
15 ing:

16 “(7) knowingly and unlawfully—

17 “(A) obtains, possesses, or transfers 5 or  
18 more means of identification; or

19 “(B) uses 1 or more means of identifica-  
20 tion;”.

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

23 (1) in paragraph (1)—

24 (A) in subparagraph (A)—

25 (i) in the matter preceding clause (i),  
26 by striking “an identification document

1 or” and inserting “a means of identifica-  
2 tion, an identification document, or a”;  
3 and

4 (ii) in clause (i), by inserting “a  
5 means of identification or” before “identi-  
6 fication document”;

7 (B) in subparagraph (B), by striking  
8 “identification documents” and inserting  
9 “means of identification, identification docu-  
10 ments,”; and

11 (C) in subparagraph (C), by inserting “or  
12 (7)(B)” after “paragraph (5)”;

13 (2) in paragraph (2)(A), by striking “an identi-  
14 fication document or” and inserting “a means of  
15 identification, an identification document, or a”; and

16 (3) by striking paragraphs (3) and (4) and in-  
17 serting the following:

18 “(3) a fine under this title or imprisonment for  
19 not more than 20 years, or both—

20 “(A) if the offense is committed to facili-  
21 tate a drug trafficking crime (as defined in sec-  
22 tion 929(a)(2) of this title);

23 “(B) if the offense involves the abuse of a  
24 position of public or private trust, in a manner

1           that significantly facilitated the commission or  
2           concealment of the offense;

3           “(C) if the offense is committed in connec-  
4           tion with an offense under section 513 (relating  
5           to counterfeit or forged securities of the States  
6           and private entities), 514 (relating to fictitious  
7           obligations), 1029 (relating to fraud and related  
8           activity in connection with access devices), 1030  
9           (relating to fraud and related activity in con-  
10          nection with computers), 1341 (relating to mail  
11          frauds and swindles), 1342 (relating to the use  
12          of a fictitious name or address), 1343 (relating  
13          to fraud by wire, radio, or television), 1344 (re-  
14          lating to bank fraud), or 1708 (relating to theft  
15          or receipt of stolen mail matter) of this title, or  
16          any other provision of Federal law relating to  
17          fraud or mail fraud, as determined by the At-  
18          torney General; or

19          “(D) in the case of a second or subsequent  
20          conviction of an offense under this section;

21          “(4) a fine under this title or imprisonment for  
22          not more than 25 years, or both, if the offense—

23          “(A) is committed to facilitate an act of  
24          international terrorism (as defined in section  
25          2331(1) of this title); or

1           “(B) is committed in connection with a  
2           crime of violence (as defined in section 16);  
3           and”.

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

7           “(3) either—

8           “(A) the production, transfer, obtaining,  
9           possession, or use prohibited by this section is  
10          in or affects interstate or foreign commerce or  
11          involves the use of a communication facility; or

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

18          (d) DEFINITIONS.—Section 1028 of title 18, United  
19   States Code, is amended by striking subsection (d) and  
20   inserting the following:

21          “(d) DEFINITIONS.—In this section:

22          “(1) COMMUNICATION FACILITY.—The term  
23          ‘communication facility’ has the meaning given the  
24          term in section 403(b) of the Controlled Substances  
25          Act (21 U.S.C. 843(b)).

1           “(2) DOCUMENT-MAKING IMPLEMENT.—The  
2           term ‘document-making implement’ means any im-  
3           plement, impression, electronic device, or computer  
4           hardware or software, that is specifically configured  
5           or primarily used for making an identification docu-  
6           ment, a false identification document, or another  
7           document-making implement.

8           “(3) IDENTIFICATION DOCUMENT.—The term  
9           ‘identification document’ means a document made or  
10          issued by or under the authority of the United  
11          States Government, a State, political subdivision of  
12          a State, a foreign government, political subdivision  
13          of a foreign government, an international govern-  
14          mental or an international quasi-governmental orga-  
15          nization which, when completed with information  
16          concerning a particular individual, is of a type in-  
17          tended or commonly accepted for the purpose of  
18          identification of individuals.

19          “(4) MEANS OF IDENTIFICATION.—The term  
20          ‘means of identification’ means any name or number  
21          that may be used, alone or in conjunction with any  
22          other information, to assume the identity of an indi-  
23          vidual, including any—

24                 “(A) name, social security number, date of  
25                 birth, official State or government issued driv-

1           er’s license or identification number, alien reg-  
2           istration number, government passport number,  
3           employer or taxpayer identification number;

4           “(B) unique biometric data, such as finger-  
5           print, voice print, retina or iris image, or other  
6           unique physical representation;

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

9           “(D) telecommunication identifying infor-  
10          mation or access device (as defined in section  
11          1029(e)); or

12          “(E) other means of identification not  
13          issued lawfully to the user.

14          “(5) PERSONAL IDENTIFICATION CARD.—The  
15          term ‘personal identification card’ means an identi-  
16          fication document issued by a State or local govern-  
17          ment solely for the purpose of identification.

18          “(6) PRODUCE.—The term ‘produce’ includes  
19          alter, authenticate, or assemble.

20          “(7) SECOND OR SUBSEQUENT CONVICTION.—  
21          The term ‘second or subsequent conviction’ includes  
22          the finding of guilty by a judge or jury that nec-  
23          essarily precedes the entry of a final judgment of  
24          conviction.

1           “(8) STATE.—The term ‘State’ includes any  
2           State of the United States, the District of Columbia,  
3           the Commonwealth of Puerto Rico, and any other  
4           commonwealth, possession or territory of the United  
5           States.

6           “(9) VICTIM.—The term ‘victim’ means any  
7           identifiable individual whose means of identification  
8           has been assumed, stolen, or otherwise unlawfully  
9           acquired.”.

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

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

18          (f) CONFORMING AMENDMENTS.—Chapter 47 of title  
19          18, United States Code, is amended—

20                  (1) in section 1028, by striking “or attempts to  
21                  do so,”;

22                  (2) in the heading for section 1028, by adding  
23                  “**and information**” at the end; and



1           (3) in the analysis for the chapter, in the item  
 2           relating to section 1028, by adding “and informa-  
 3           tion” at the end.

4 **SEC. 4. RESTITUTION.**

5           Section 3663A of title 18, United States Code, is  
 6 amended—

7           (1) in subsection (c)(1)(A)—

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

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

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

13                   “(iv) an offense described in section 1028  
 14                   (relating to fraud and related activity in con-  
 15                   nection with means of identification or identi-  
 16                   fication documents); and”;

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

18           “(e) FRAUD AND RELATED ACTIVITY IN CONNEC-  
 19           TION WITH IDENTIFICATION DOCUMENTS AND INFORMA-  
 20           TION.—Making restitution to a victim under this section  
 21           for an offense described in section 1028 (relating to fraud  
 22           and related activity in connection with means of identifica-  
 23           tion or identification documents) may include payment for  
 24           any costs, including attorney fees, incurred by the victim,  
 25           including any costs incurred—

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

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

7 **SEC. 5. AMENDMENT OF FEDERAL SENTENCING GUIDE-**  
8 **LINES FOR OFFENSES UNDER SECTION 1028.**

9 (a) IN GENERAL.—Pursuant to its authority under  
10 section 994(p) of title 28, United States Code, the United  
11 States Sentencing Commission shall review and amend the  
12 Federal sentencing guidelines and the policy statements  
13 of the Commission, as appropriate, to provide an appro-  
14 priate penalty for each offense under section 1028 of title  
15 18, United States Code, as amended by this Act.

16 (b) FACTORS FOR CONSIDERATION.—In carrying out  
17 subsection (a), the United States Sentencing Commission  
18 shall consider, with respect to each offense described in  
19 subsection (a)—

20 (1) the extent to which the number of victims  
21 (as defined in section 1028(d) of title 18, United  
22 States Code, as amended by this Act) involved in the  
23 offense, including harm to reputation, inconvenience,  
24 and other difficulties resulting from the offense, is

1 an adequate measure for establishing penalties  
2 under the Federal sentencing guidelines;

3 (2) the number of means of identification, iden-  
4 tification documents, or false identification docu-  
5 ments (as defined in section 1028(d) of title 18,  
6 United States Code, as amended by this Act) in-  
7 volved in the offense, is an adequate measure for es-  
8 tablishing penalties under the Federal sentencing  
9 guidelines;

10 (3) the extent to which the value of the loss to  
11 any individual caused by the offense is an adequate  
12 measure for establishing penalties under the Federal  
13 sentencing guidelines;

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

15 (5) the extent to which sentencing enhance-  
16 ments within the Federal sentencing guidelines and  
17 the court's authority to sentence above the applica-  
18 ble guideline range are adequate to ensure punish-  
19 ment at or near the maximum penalty for the most  
20 egregious conduct covered by the offense;

21 (6) the extent to which Federal sentencing  
22 guidelines sentences for the offense have been con-  
23 strained by statutory maximum penalties;

24 (7) the extent to which Federal sentencing  
25 guidelines for the offense adequately achieve the

1 purposes of sentencing set forth in section  
2 3553(a)(2) of title 18, United States Code; and

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

5 **SEC. 6. CENTRALIZED COMPLAINT AND CONSUMER EDU-**  
6 **CATION SERVICE FOR VICTIMS OF IDENTITY**  
7 **THEFT.**

8 Not later than 1 year after the date of enactment  
9 of this Act, the Federal Trade Commission shall establish  
10 procedures to—

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

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

21 (3) refer complaints described in paragraph (1)  
22 to appropriate entities, which may include referral  
23 to—

24 (A) the 3 major national consumer report-  
25 ing agencies; and

- 1 (B) appropriate law enforcement agencies
- 2 for potential law enforcement action.

