

107TH CONGRESS
2^D SESSION

H. R. 5424

To prevent the crime of identity theft, mitigate the harm to individuals
victimized by identity theft, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

SEPTEMBER 19, 2002

Mr. SMITH of Washington (for himself, Mr. GEKAS, Mr. CONYERS, and Ms. HARMAN) introduced the following bill; which was referred to the Committee on the Judiciary, and in addition to the Committee on Financial Services, 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 prevent the crime of identity theft, mitigate the harm
to individuals victimized by identity theft, 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 Victims
5 Assistance Act of 2002”.

6 **SEC. 2. FINDINGS.**

7 The Congress finds the following:

1 (1) The crime of identity theft is the fastest
2 growing crime in the United States.

3 (2) Victims of identity theft often have extraor-
4 dinary difficulty restoring their credit and regaining
5 control of their identity because of the viral nature
6 of identity theft.

7 (3) Identity theft may be ruinous to the good
8 name and credit of consumers whose identities are
9 misappropriated, and victims of identity theft may
10 be denied otherwise well-deserved credit, may have
11 to spend enormous time, effort, and sums of money
12 to remedy their circumstances, and may suffer ex-
13 treme emotional distress including deep depression
14 founded in profound frustration as they address the
15 array of problems that may arise as a result of iden-
16 tity theft.

17 (4) Victims are often required to contact nu-
18 merous Federal, State, and local law enforcement
19 agencies, consumer credit reporting agencies, and
20 creditors over many years, as each event of fraud
21 arises.

22 (5) The Federal Government, business entities,
23 and credit reporting agencies have a shared respon-
24 sibility to assist identity theft victims, to mitigate

1 the harm that results from fraud perpetrated in the
2 victim's name.

3 (6) Victims of identity theft need a nationally
4 standardized means of—

5 (A) reporting identity theft to consumer
6 credit reporting agencies and business entities;
7 and

8 (B) evidencing their true identity and
9 claim of identity theft to consumer credit re-
10 porting agencies and business entities.

11 (7) One of the greatest law enforcement chal-
12 lenges posed by identity theft is that stolen identities
13 are often used to perpetrate crimes in many dif-
14 ferent localities in different States, and although
15 identity theft is a Federal crime, most often, State
16 and local law enforcement agencies are responsible
17 for investigating and prosecuting the crimes.

18 (8) The Federal Government should assist
19 State and local law enforcement agencies to effec-
20 tively combat identity theft and the associated fraud.

21 **SEC. 3. TREATMENT OF IDENTITY THEFT MITIGATION.**

22 (a) IN GENERAL.—Chapter 47 of title 18, United
23 States Code, is amended by adding after section 1028 the
24 following new section:

1 **“§ 1028A. Treatment of identity theft mitigation**

2 “(a) DEFINITIONS.—In this section:

3 “(1) The term ‘business entity’ means any cor-
4 poration, trust, partnership, sole proprietorship, or
5 unincorporated association, including any financial
6 service provider, financial information repository,
7 creditor (as that term is defined in section 103 of
8 the Truth in Lending Act (15 U.S.C. 1602)), tele-
9 communications, utilities, or other service provider.

10 “(2) The term ‘consumer’ means an individual.

11 “(3) The term ‘financial information’ means in-
12 formation identifiable as relating to an individual
13 consumer that concerns the amount and conditions
14 of the assets, liabilities, or credit of the consumer,
15 including—

16 “(A) account numbers and balances;

17 “(B) nonpublic personal information, as
18 that term is defined in section 509 of the
19 Gramm-Leach-Bliley Act (15 U.S.C. 6809); and

20 “(C) codes, passwords, social security
21 numbers, tax identification numbers, State
22 identifier numbers issued by a State depart-
23 ment of licensing, and other information used
24 for the purpose of account access or transaction
25 initiation.

1 “(4) The term ‘financial information repository’
2 means a person engaged in the business of providing
3 services to consumers who have a credit, deposit,
4 trust, stock, or other financial services account or
5 relationship with that person.

6 “(5) The term ‘identity theft’ means an actual
7 or potential violation of section 1028 or any other
8 similar provision of Federal or State law.

9 “(6) The term ‘means of identification’ has the
10 same meaning given the term in section 1028.

11 “(7) The term ‘victim’ means a consumer whose
12 means of identification or financial information has
13 been used or transferred (or has been alleged to
14 have been used or transferred) without the authority
15 of that consumer with the intent to commit, or to
16 aid or abet, identity theft or any other violation of
17 law.

18 “(b) INFORMATION AVAILABLE TO VICTIMS.—

19 “(1) IN GENERAL.—A business entity that pos-
20 sesses information relating to an alleged identity
21 theft, or that has entered into a commercial trans-
22 action, provided credit, provided products, goods, or
23 services for consideration, accepted payment, or oth-
24 erwise done business for consideration with a person
25 that has made unauthorized use of the means of

1 identification of the victim, shall, not later than 20
2 days after the receipt of a written request by the vic-
3 tim, meeting the requirements of subsection (c), pro-
4 vide, without charge, a copy of all application and
5 business transaction information related to the
6 transaction being alleged as an identity theft to—

7 “(A) the victim;

8 “(B) any Federal, State, or local governing
9 law enforcement agency or officer specified by
10 the victim; or

11 “(C) any law enforcement agency inves-
12 tigating the identity theft and authorized by the
13 victim to take receipt of records provided under
14 this section.

15 “(2) RULE OF CONSTRUCTION.—

16 “(A) IN GENERAL.—If the social security
17 number of the victim receiving information pur-
18 suant to this section is identical to the social se-
19 curity number associated with the account or
20 business transaction about which the victim is
21 requesting information, no provision of Federal
22 or State law prohibiting the disclosure of finan-
23 cial information by a business entity to third
24 parties shall be used to deny disclosure of infor-
25 mation to the victim under this section.

1 “(B) LIMITATION.—Except as provided in
2 subparagraph (A), nothing in this section re-
3 quires a business entity to disclose information
4 that the business entity is otherwise prohibited
5 from disclosing under any other provision of
6 Federal or State law.

7 “(c) VERIFICATION OF IDENTITY AND CLAIM.—Un-
8 less a business entity, at its discretion, is otherwise able
9 to verify the identity of a victim making a request under
10 subsection (b)(1), the victim shall provide to the business
11 entity—

12 “(1) as proof of positive identification, at the
13 election of the business entity—

14 “(A) the presentation of a government-
15 issued identification card;

16 “(B) if providing proof by mail, a copy of
17 a government-issued identification card; or

18 “(C) upon the request of the person seek-
19 ing business records, the business entity may
20 inform the requesting person of the categories
21 of identifying information that the unauthorized
22 person provided the business entity as person-
23 ally identifying information, and may require
24 the requesting person to provide identifying in-
25 formation in those categories; and

1 “(2) as proof of a claim of identity theft, at the
2 election of the business entity—

3 “(A) a copy of a police report evidencing
4 the claim of the victim of identity theft;

5 “(B) a copy of a standardized affidavit of
6 identity theft developed and made available by
7 the Federal Trade Commission; or

8 “(C) any affidavit of fact that is acceptable
9 to the business entity for that purpose.

10 “(d) LIMITATION ON LIABILITY.—No business entity
11 may be held liable for a disclosure, made in good faith
12 and reasonable judgment, to provide information under
13 this section with respect to an individual in connection
14 with an identity theft to other business entities, law en-
15 forcement authorities, victims, or any person alleging to
16 be a victim, if—

17 “(1) the business entity complies with sub-
18 section (c); and

19 “(2) such disclosure was made

20 “(A) for the purpose of detection, inves-
21 tigation, or prosecution of identity theft; or

22 “(B) to assist a victim in recovery of fines,
23 restitution, rehabilitation of the credit of the
24 victim, or such other relief as may be appro-
25 priate.

1 “(e) **AUTHORITY TO DECLINE TO PROVIDE INFOR-**
2 **MATION.**—A business entity may decline to provide infor-
3 mation under subsection (b) if, in the exercise of good
4 faith and reasonable judgment, the business entity believes
5 that—

6 “(1) this section does not require disclosure of
7 the information;

8 “(2) the request for the information is based on
9 a misrepresentation of fact by the victim relevant to
10 the request for information; or

11 “(3) the information requested is Internet navi-
12 gational data or similar information about a person’s
13 visit to a website or online service.

14 “(f) **NO NEW RECORDKEEPING OBLIGATION.**—Noth-
15 ing in this section creates an obligation on the part of a
16 business entity to obtain, retain, or maintain information
17 or records that are not otherwise required to be obtained,
18 retained, or maintained in the ordinary course of its busi-
19 ness or under other applicable law.

20 “(g) **NOTIFICATION SYSTEM.**—

21 “(1) **IN GENERAL.**—A business entity may es-
22 tablish and maintain a notification system for the
23 business entity to comply with this subsection, in-
24 cluding a toll-free telephone number and a mailing
25 address.

1 “(2) REQUIREMENTS.—A notification system
2 under paragraph (1) shall permit any person to
3 make a request to, or to correspond with, the busi-
4 ness entity under this subsection if—

5 “(A) the business entity informs the per-
6 son—

7 “(i) that any person may request in-
8 formation under this subsection; and

9 “(ii) of the address and toll-free tele-
10 phone number established and maintained
11 for this purpose; and

12 “(B) a person representing the business
13 entity—

14 “(i) responds to an information re-
15 quest through the toll-free number within
16 3 business days after receiving the request;
17 and

18 “(ii) facilitates the provision of such
19 information to the person who initiated the
20 request.

21 “(h) ENFORCEMENT.—

22 “(1) ACTIONS BY STATES.—

23 “(A) IN GENERAL.—In any case in which
24 the attorney general of a State has reason to
25 believe that an interest of the residents of that

1 State has been, or is threatened to be, adversely
2 affected by a violation of this section by any
3 business entity, the State, as *parens patriae*,
4 may bring a civil action on behalf of the resi-
5 dents of the State in a district court of the
6 United States of appropriate jurisdiction—

7 “(i) to enjoin that practice;

8 “(ii) to enforce compliance of this sec-
9 tion;

10 “(iii) to obtain damages—

11 “(I) in the sum of actual dam-
12 ages, restitution, and other compensa-
13 tion on behalf of the residents of the
14 State; and

15 “(II) punitive damages, if the
16 violation is willful or intentional; and

17 “(iv) to obtain such other equitable
18 relief as the court may consider to be ap-
19 propriate.

20 “(B) NOTICE.—Before bringing an action
21 under subparagraph (A), the attorney general
22 of the State involved shall provide to the Attor-
23 ney General of the United States—

24 “(i) written notice of the action; and

1 “(ii) a copy of the complaint for the
2 action.

3 “(C) AFFIRMATIVE DEFENSE.—In any
4 civil action brought to enforce this section, it is
5 an affirmative defense (which the defendant
6 must establish by a preponderance of the evi-
7 dence) for a business entity to file an affidavit
8 or answer stating that—

9 “(i) the business entity has made a
10 reasonably diligent search of its available
11 business records; and

12 “(ii) the records requested under this
13 section do not exist or are not available.

14 “(2) NO PRIVATE RIGHT OF ACTION.—Nothing
15 in this section shall be construed to provide a private
16 right of action or claim for relief.

17 “(3) INTERVENTION.—

18 “(A) IN GENERAL.—On receiving notice of
19 an action under paragraph (1)(B), the Attorney
20 General of the United States shall have the
21 right to intervene in that action.

22 “(B) EFFECT OF INTERVENTION.—If the
23 Attorney General of the United States inter-
24 venes in an action under this subsection, the
25 Attorney General shall have the right to be

1 heard with respect to any matter that arises in
2 that action.

3 “(C) SERVICE OF PROCESS.—Upon request
4 of the Attorney General of the United States,
5 the attorney general of a State that has filed an
6 action under this subsection shall, pursuant to
7 Rule 4(d)(4) of the Federal Rules of Civil Pro-
8 cedure, serve the Government with—

9 “(i) a copy of the complaint; and

10 “(ii) written disclosure of substan-
11 tially all material evidence and information
12 in the possession of the attorney general of
13 the State.

14 “(D) RULE OF CONSTRUCTION.—For pur-
15 poses of bringing any civil action under this
16 subsection, nothing in this section shall be con-
17 strued to prevent an attorney general of a State
18 from exercising the powers conferred on such
19 attorney general by the laws of that State—

20 “(i) to conduct investigations;

21 “(ii) to administer oaths or affirma-
22 tions; or

23 “(iii) to compel the attendance of wit-
24 nesses or the production of documentary
25 and other evidence.

1 “(4) ACTIONS BY THE ATTORNEY GENERAL OF
 2 THE UNITED STATES.—In any case in which an ac-
 3 tion is instituted by or on behalf of the Attorney
 4 General of the United States for a violation of this
 5 section, no State may, during the pendency of that
 6 action, institute an action under this subsection
 7 against any defendant named in the complaint in
 8 that action for violation of that practice.”.

9 (b) CLERICAL AMENDMENT.—The table of sections
 10 at the beginning of chapter 47 of title 18, United States
 11 Code, is amended by inserting after the item relating to
 12 section 1028 the following new item:

“1028A. Treatment of identity theft mitigation.”.

13 **SEC. 4. AMENDMENTS TO THE FAIR CREDIT REPORTING**
 14 **ACT.**

15 (a) CONSUMER REPORTING AGENCY BLOCKING OF
 16 INFORMATION RESULTING FROM IDENTITY THEFT.—
 17 Section 611 of the Fair Credit Reporting Act (15 U.S.C.
 18 1681i) is amended by adding at the end the following new
 19 subsection:

20 “(e) BLOCK OF INFORMATION RESULTING FROM
 21 IDENTITY THEFT.—

22 “(1) BLOCK.—Except as provided in paragraph
 23 (3) and not later than 30 days after the date of re-
 24 ceipt of proof of the identity of a consumer and an
 25 official copy of a police report evidencing the claim

1 of the consumer of identity theft, a consumer report-
2 ing agency shall block the reporting of any informa-
3 tion identified by the consumer in the file of the con-
4 sumer resulting from the identity theft, so that the
5 information cannot be reported.

6 “(2) NOTIFICATION.—A consumer reporting
7 agency shall promptly notify the furnisher of infor-
8 mation identified by the consumer under paragraph
9 (1)—

10 “(A) that the information may be a result
11 of identity theft;

12 “(B) that a police report has been filed;

13 “(C) that a block has been requested under
14 this subsection; and

15 “(D) of the effective date of the block.

16 “(3) AUTHORITY TO DECLINE OR RESCIND.—

17 “(A) IN GENERAL.—a consumer reporting
18 agency may decline to block, or may rescind
19 any block, of consumer information under this
20 subsection if

21 “(i) in the exercise of good faith and
22 reasonable judgment, the consumer report-
23 ing agency finds that

24 “(I) the information was blocked
25 due to a misrepresentation of fact by

1 the consumer relevant to the request
2 to block; or

3 “(II) the consumer knowingly ob-
4 tained possession of goods, services, or
5 moneys as a result of the blocked
6 transaction or transactions, or the
7 consumer should have known that the
8 consumer obtained possession of
9 goods, services, or moneys as a result
10 of the blocked transaction or trans-
11 actions; or

12 “(ii) the consumer agrees that the
13 blocked information or portions of the
14 blocked information were blocked in error.

15 “(B) NOTIFICATION TO CONSUMER.—If
16 the block of information is declined or rescinded
17 under this paragraph, the affected consumer
18 shall be notified promptly, in the same manner
19 as consumers are notified of the reinsertion of
20 information under subsection (a)(5)(B).

21 “(C) SIGNIFICANCE OF BLOCK.—For pur-
22 poses of this paragraph, if a consumer report-
23 ing agency rescinds a block, the presence of in-
24 formation in the file of a consumer prior to the
25 blocking of such information is not evidence of

1 whether the consumer knew or should have
2 known that the consumer obtained possession of
3 any goods, services, or monies as a result of the
4 block.

5 “(4) EXCEPTIONS.—A consumer reporting
6 agency shall not be required to comply with this sub-
7 section when such agency is issuing information for
8 authorizations, for the purpose of approving or proc-
9 essing negotiable instruments, electronic funds
10 transfers, or similar methods of payment, based sole-
11 ly on negative information, including—

12 “(A) dishonored checks;

13 “(B) accounts closed for cause;

14 “(C) substantial overdrafts;

15 “(D) abuse of automated teller machines;

16 or

17 “(E) other information which indicates a
18 risk of fraud occurring. ”.

19 (b) FALSE CLAIMS.—Section 1028 of title 18, United
20 States Code, is amended by adding at the end the fol-
21 lowing:

22 “(j) Any person who knowingly claims falsely to be
23 a victim of identity theft for the purpose of obtaining the
24 blocking of information by a consumer reporting agency
25 under section 611(e)(1) of the Fair Credit Reporting Act

1 (15 U.S.C. 1681i(e)(1)) shall be fined under this title, im-
2 prisoned not more than 3 years, or both.”.

3 (c) STATUTE OF LIMITATIONS.—Section 618 of the
4 Fair Credit Reporting Act (15 U.S.C. 1681p) is amended
5 to read as follows:

6 **“SEC. 618. JURISDICTION OF COURTS AND LIMITATION OF**
7 **ACTIONS.**

8 “(a) IN GENERAL.—Except as provided in sub-
9 sections (b) and (c), an action to enforce any liability cre-
10 ated under this title may be brought in any appropriate
11 United States district court without regard to the amount
12 in controversy, or in any other court of competent jurisdic-
13 tion, not later than 2 years from the date of a violation
14 of any requirement under this title.

15 “(b) WILLFUL MISREPRESENTATION.—In any case
16 in which the defendant has materially and willfully mis-
17 represented any information required to be disclosed to an
18 individual under this title, and the information misrepre-
19 sented is material to the establishment of the liability of
20 the defendant to that individual under this title, an action
21 to enforce a liability created under this title may be
22 brought at any time within 2 years after the date of dis-
23 covery by the individual of the misrepresentation.

1 “(c) IDENTITY THEFT.—An action to enforce a liabil-
2 ity created under this title may be brought not later than
3 5 years after the date of a violation if—

4 “(1) the plaintiff is the victim of an identity
5 theft; or

6 “(2) the plaintiff—

7 “(A) has reasonable grounds to believe
8 that the plaintiff is the victim of an identity
9 theft; and

10 “(B) has not materially and willfully mis-
11 represented such a claim.”.

12 **SEC. 5. COORDINATING COMMITTEE STUDY OF COORDINA-**
13 **TION BETWEEN FEDERAL, STATE, AND LOCAL**
14 **AUTHORITIES IN ENFORCING IDENTITY**
15 **THEFT LAWS.**

16 (a) MEMBERSHIP AND TERM.—Section 2 of the
17 Internet False Identification Prevention Act of 2000 (18
18 U.S.C. 1028 note) is amended—

19 (1) in subsection (b), by striking “and the Com-
20 missioner of Immigration and Naturalization” and
21 inserting “the Commissioner of Immigration and
22 Naturalization, the Chairman of the Federal Trade
23 Commission, the Postmaster General, and the Com-
24 missioner of the United States Customs Service,”;
25 and

1 (2) in subsection (c), by striking “2 years” and
2 inserting “6 years”.

3 (b) CONSULTATION.—Section 2 of the Internet False
4 Identification Prevention Act of 2000 (18 U.S.C. 1028
5 note) is amended—

6 (1) by redesignating subsection (d) as sub-
7 section (e); and

8 (2) by inserting after subsection (c) the fol-
9 lowing new subsection:

10 “(d) CONSULTATION.—In discharging its duties, the
11 coordinating committee shall consult with interested par-
12 ties, including State and local law enforcement agencies,
13 State attorneys general, representatives of business enti-
14 ties (as that term is defined in section 4 of the Identity
15 Theft Victims Assistance Act of 2002), including tele-
16 communications and utility companies, and organizations
17 representing consumers.”.

18 (c) REPORT DISTRIBUTION AND CONTENTS.—Sec-
19 tion 2(e) of the Internet False Identification Prevention
20 Act of 2000 (18 U.S.C. 1028 note) (as redesignated by
21 subsection (b) of this section) is amended—

22 (1) by amending paragraph (1) to read as fol-
23 lows:

24 “(1) IN GENERAL.—The Attorney General and
25 the Secretary of the Treasury, at the end of each

1 year of the existence of the coordinating committee,
2 shall report on the activities of the coordinating
3 committee to the Congress.”;

4 (2) in subparagraph (E), by striking “and” at
5 the end; and

6 (3) by striking subparagraph (F) and inserting
7 the following:

8 “(F) a comprehensive description of Fed-
9 eral assistance provided to State and local law
10 enforcement agencies to address identity theft;

11 “(G) a comprehensive description of co-
12 ordination activities between Federal, State,
13 and local law enforcement agencies that address
14 identity theft;

15 “(H) a comprehensive description of how
16 the Federal Government can best provide State
17 and local law enforcement agencies with timely
18 and current information regarding terrorists or
19 terrorist activity where such information specifi-
20 cally relates to identity theft; and

21 “(I) recommendations in the discretion of
22 the president, if any, for legislative or adminis-
23 trative changes that would—

24 “(i) facilitate more effective investiga-
25 tion and prosecution of cases involving—

1 “(I) identity theft; and
2 “(II) the creation and distribu-
3 tion of false identification documents;
4 “(i) improve the effectiveness of Fed-
5 eral assistance to State and local law en-
6 forcement agencies and coordination be-
7 tween Federal, State, and local law en-
8 forcement agencies; and
9 “(ii) simplify efforts by a person nec-
10 essary to rectify the harm that results
11 from the theft of the identity of such per-
12 son.”.

○