

110<sup>TH</sup> CONGRESS  
1<sup>ST</sup> SESSION

# S. 2168

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## AN ACT

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,*

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Identity Theft En-  
3 forcement and Restitution Act of 2007”.

4 **SEC. 2. CRIMINAL RESTITUTION.**

5 Section 3663(b) of title 18, United States Code, is  
6 amended—

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

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

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

12 “(6) in the case of an offense under sections  
13 1028(a)(7) or 1028A(a) of this title, pay an amount  
14 equal to the value of the time reasonably spent by  
15 the victim in an attempt to remediate the intended  
16 or actual harm incurred by the victim from the of-  
17 fense.”.

18 **SEC. 3. PREDICATE OFFENSES FOR AGGRAVATED IDENTITY**  
19 **THEFT AND MISUSE OF IDENTIFYING INFOR-**  
20 **MATION OF ORGANIZATIONS.**

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

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

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

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

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

8           (2) in subsection (c)—

9           (A) in the matter preceding paragraph (1),  
10           by inserting “, or a conspiracy to commit such  
11           a felony violation,” after “any offense that is a  
12           felony violation”;

13           (B) by redesignating—

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

15           (ii) paragraphs (8) through (10) as  
16           paragraphs (10) through (12), respectively;  
17           and

18           (iii) paragraphs (1) through (7) as  
19           paragraphs (2) through (8), respectively;

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

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

24           (D) by inserting after paragraph (8), as so  
25           redesignated, the following:

1 “(9) section 1708 (relating to mail theft);”;  
2 (E) in paragraph (12), as so redesignated,  
3 by striking “; or” and inserting a semicolon;  
4 and  
5 (F) by inserting after paragraph (12), as  
6 so redesignated, the following:  
7 “(13) section 7201, 7206, or 7207 of title 26  
8 (relating to tax fraud); or”.

9 **SEC. 4. ENSURING JURISDICTION OVER THE THEFT OF**  
10 **SENSITIVE IDENTITY INFORMATION.**

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

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

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

17 (1) in subsection (a)(5)—  
18 (A) by striking subparagraph (B); and  
19 (B) in subparagraph (A)—  
20 (i) by striking “(A)(i) knowingly” and  
21 inserting “(A) knowingly”;  
22 (ii) by redesignating clauses (ii) and  
23 (iii) as subparagraphs (B) and (C), respec-  
24 tively; and

1 (iii) in subparagraph (C), as so reded-  
2 ignated—

3 (I) by inserting “and loss” after  
4 “damage”; and

5 (II) by striking “; and” and in-  
6 serting a period;

7 (2) in subsection (c)—

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

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

12 (C) by amending paragraph (4) to read as  
13 follows:

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

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

22 “(I) loss to 1 or more persons during  
23 any 1-year period (and, for purposes of an  
24 investigation, prosecution, or other pro-  
25 ceeding brought by the United States only,

1 loss resulting from a related course of con-  
2 duct affecting 1 or more other protected  
3 computers) aggregating at least \$5,000 in  
4 value;

5 “(II) the modification or impairment,  
6 or potential modification or impairment, of  
7 the medical examination, diagnosis, treat-  
8 ment, or care of 1 or more individuals;

9 “(III) physical injury to any person;

10 “(IV) a threat to public health or  
11 safety;

12 “(V) damage affecting a computer  
13 used by or for an entity of the United  
14 States Government in furtherance of the  
15 administration of justice, national defense,  
16 or national security; or

17 “(VI) damage affecting 10 or more  
18 protected computers during any 1-year pe-  
19 riod; or

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

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

1           “(i) an offense under subsection (a)(5)(A),  
2           which does not occur after a conviction for an-  
3           other offense under this section, if the offense  
4           caused (or, in the case of an attempted offense,  
5           would, if completed, have caused) a harm pro-  
6           vided in subclauses (I) through (VI) of subpara-  
7           graph (A)(i); or

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

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

13               “(i) an offense or an attempt to commit an  
14               offense under subparagraphs (A) or (B) of sub-  
15               section (a)(5) that occurs after a conviction for  
16               another offense under this section; or

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

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

21               “(i) an offense or an attempt to commit an  
22               offense under subsection (a)(5)(C) that occurs  
23               after a conviction for another offense under this  
24               section; or

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

3           “(E) if the offender attempts to cause or know-  
4           ingly or recklessly causes serious bodily injury from  
5           conduct in violation of subsection (a)(5)(A), a fine  
6           under this title, imprisonment for not more than 20  
7           years, or both;

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

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

15               “(i) any other offense under subsection  
16               (a)(5); or

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

19               (D) by striking paragraph (5); and  
20               (3) in subsection (g)—

21               (A) in the second sentence, by striking “in  
22               clauses (i), (ii), (iii), (iv), or (v) of subsection  
23               (a)(5)(B)” and inserting “in subclauses (I),  
24               (II), (III), (IV), or (V) of subsection  
25               (c)(4)(A)(i)”;



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

4 (b) CONFORMING CHANGES.—Section  
5 2332b(g)(5)(B)(i) of title 18, United States Code, is  
6 amended by striking “1030(a)(5)(A)(i) resulting in dam-  
7 age as defined in 1030(a)(5)(B)(ii) through (v)” and in-  
8 serting “1030(a)(5)(A) resulting in damage as defined in  
9 1030(c)(4)(A)(i)(II) through (VI)”.

10 **SEC. 6. CYBER-EXTORTION.**

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

13 “(7) with intent to extort from any person any  
14 money or other thing of value, transmits in inter-  
15 state or foreign commerce any communication con-  
16 taining any—

17 “(A) threat to cause damage to a protected  
18 computer;

19 “(B) threat to obtain information from a  
20 protected computer without authorization or in  
21 excess of authorization or to impair the con-  
22 fidentiality of information obtained from a pro-  
23 tected computer without authorization or by ex-  
24 ceeding authorized access; or

1           “(C) demand or request for money or  
2           other thing of value in relation to damage to a  
3           protected computer, where such damage was  
4           caused to facilitate the extortion;”.

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

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

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

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

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

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

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

23           “(A) such person’s interest in any personal  
24           property that was used or intended to be used to

1       commit or to facilitate the commission of such viola-  
2       tion; and

3               “(B) any property, real or personal, consti-  
4       tuting or derived from, any proceeds that such per-  
5       son obtained, directly or indirectly, as a result of  
6       such violation.

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

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

16               “(1) Any personal property used or intended to  
17      be used to commit or to facilitate the commission of  
18      any violation of this section, or a conspiracy to vio-  
19      late this section.

20               “(2) Any property, real or personal, which con-  
21      stitutes or is derived from proceeds traceable to any  
22      violation of this section, or a conspiracy to violate  
23      this section”.

1 **SEC. 10. DIRECTIVE TO UNITED STATES SENTENCING COM-**  
2 **MISSION.**

3 (a) **DIRECTIVE.**—Pursuant to its authority under  
4 section 994(p) of title 28, United States Code, and in ac-  
5 cordance with this section, the United States Sentencing  
6 Commission shall review its guidelines and policy state-  
7 ments applicable to persons convicted of offenses under  
8 sections 1028, 1028A, 1030, 2511, and 2701 of title 18,  
9 United States Code, and any other relevant provisions of  
10 law, in order to reflect the intent of Congress that such  
11 penalties be increased in comparison to those currently  
12 provided by such guidelines and policy statements.

13 (b) **REQUIREMENTS.**—In determining its guidelines  
14 and policy statements on the appropriate sentence for the  
15 crimes enumerated in subsection (a), the United States  
16 Sentencing Commission shall consider the extent to which  
17 the guidelines and policy statements may or may not ac-  
18 count for the following factors in order to create an effec-  
19 tive deterrent to computer crime and the theft or misuse  
20 of personally identifiable data:

21 (1) The level of sophistication and planning in-  
22 volved in such offense.

23 (2) Whether such offense was committed for  
24 purpose of commercial advantage or private financial  
25 benefit.

1           (3) The potential and actual loss resulting from  
2 the offense including—

3           (A) the value of information obtained from  
4 a protected computer, regardless of whether the  
5 owner was deprived of use of the information;  
6 and

7           (B) where the information obtained con-  
8 stitutes a trade secret or other proprietary in-  
9 formation, the cost the victim incurred devel-  
10 oping or compiling the information.

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

14          (5) The extent to which the offense violated the  
15 privacy rights of individuals.

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

19          (7) Whether the offense involved a computer  
20 used by the United States Government, a State, or  
21 a local government in furtherance of national de-  
22 fense, national security, or the administration of jus-  
23 tice.

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

4           (9) Whether the offense was intended to, or had  
5 the effect of, creating a threat to public health or  
6 safety, causing injury to any person, or causing  
7 death.

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

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

15           (12) Whether the term “victim” as used in  
16 USSG 2B1.1, should include individuals whose pri-  
17 vacy was violated as a result of the offense in addi-  
18 tion to individuals who suffered monetary harm as  
19 a result of the offense.

20           (13) Whether the defendant disclosed personal  
21 information obtained during the commission of the  
22 offense.

23           (c) ADDITIONAL REQUIREMENTS.—In carrying out  
24 this section, the United States Sentencing Commission  
25 shall—

1           (1) assure reasonable consistency with other  
2 relevant directives and with other sentencing guide-  
3 lines;

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

7           (3) make any conforming changes to the sen-  
8 tencing guidelines; and

9           (4) assure that the guidelines adequately meet  
10 the purposes of sentencing as set forth in section  
11 3553(a)(2) of title 18, United States Code.

Passed the Senate November 15, 2007.

Attest:

*Secretary.*

110<sup>TH</sup> CONGRESS  
1<sup>ST</sup> SESSION

**S. 2168**

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**AN ACT**

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.