

110TH CONGRESS  
1ST SESSION

# S. 2168

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 SENATE OF THE UNITED STATES

OCTOBER 16, 2007

Mr. LEAHY (for himself, Mr. SPECTER, Mr. GRASSLEY, Mr. NELSON of Florida, and Mr. DURBIN) introduced the following bill; which was read twice and 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 2007”.

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

(2) in subsection (c)—

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

(B) by redesignating—

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

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

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

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

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

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

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

(E) in paragraph (12), as so redesignated, by striking “; or” and inserting a semicolon; 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 redес-  
 22 ignated, by striking “; and” and inserting  
 23 a period;

24 (2) in subsection (c)—

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

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

5 (C) by amending paragraph (4) to read as  
6 follows:

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

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

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

23 “(II) the modification or impairment,  
24 or potential modification or impairment, of

1 the medical examination, diagnosis, treat-  
2 ment, or care of 1 or more individuals;

3 “(III) physical injury to any person;

4 “(IV) a threat to public health or  
5 safety;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

8           “(i) any other offense under subsection  
 9           (a)(5); or

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

12           (D) by striking paragraph (5); and  
 13           (3) in subsection (g)—

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

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

22           (b)           CONFORMING           CHANGES.—Section  
 23           2332b(g)(5)(B)(i) of title 18, United States Code, is  
 24           amended by striking “1030(a)(5)(A)(i) resulting in dam-  
 25           age as defined in 1030(a)(5)(B)(ii) through (v)” and in-



1 setting “1030(a)(5)(A) resulting in damage as defined in  
 2 1030(c)(4)(A)(i)(II) through (VI)”.

3 **SEC. 6. CYBER-EXTORTION.**

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

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

10 “(A) threat to cause damage to a protected  
 11 computer;

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

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

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