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S. 1742

IN THE HOUSE OF REPRESENTATIVES

NOVEMBER 14, 2002

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

AN ACT

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”.

1 **SEC. 2. FINDINGS.**

2 Congress finds that—

3 (1) the crime of identity theft is the fastest
4 growing crime in the United States;

5 (2) victims of identity theft often have extraor-
6 dinary difficulty restoring their credit and regaining
7 control of their identity because of the viral nature
8 of identity theft;

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

19 (4) victims are often required to contact numer-
20 ous Federal, State, and local law enforcement agen-
21 cies, consumer credit reporting agencies, and credi-
22 tors over many years, as each event of fraud arises;

23 (5) the Government, business entities, and cred-
24 it reporting agencies have a shared responsibility to
25 assist identity theft victims, to mitigate the harm

1 that results from fraud perpetrated in the victim's
2 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; and

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

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

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

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

2 “(a) DEFINITIONS.—As used 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; and

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 transaction, pro-
22 vided credit, products, goods, or services, accepted
23 payment, or otherwise done business with a person
24 that has made unauthorized use of the means of
25 identification of the victim, shall, not later than 20

1 days after the receipt of a written request by the vic-
2 tim, meeting the requirements of subsection (c), pro-
3 vide, without charge, a copy of all application and
4 transaction information related to the transaction
5 being alleged as an identity theft to—

6 “(A) the victim;

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

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

14 “(2) RULE OF CONSTRUCTION.—

15 “(A) IN GENERAL.—No provision of Fed-
16 eral or State law prohibiting the disclosure of
17 financial information by a business entity to
18 third parties shall be used to deny disclosure of
19 information to the victim under this section.

20 “(B) LIMITATION.—Except as provided in
21 subparagraph (A), nothing in this section re-
22 quires a business entity to disclose information
23 that the business entity is otherwise prohibited
24 from disclosing under any other provision of
25 Federal or State law.

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

6 “(1) as proof of positive identification—

7 “(A) the presentation of a government-
8 issued identification card;

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

11 “(C) upon the request of the person seek-
12 ing business records, the business entity may
13 inform the requesting person of the categories
14 of identifying information that the unauthorized
15 person provided the business entity as person-
16 ally identifying information, and may require
17 the requesting person to provide identifying in-
18 formation in those categories; and

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

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

23 “(B) a copy of a standardized affidavit of
24 identity theft developed and made available by
25 the Federal Trade Commission; or

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

3 “(d) LIMITATION ON LIABILITY.—No business entity
4 may be held liable for a disclosure, made in good faith
5 and reasonable judgment, to provide information under
6 this section with respect to an individual in connection
7 with an identity theft to other business entities, law en-
8 forcement authorities, victims, or any person alleging to
9 be a victim, if—

10 “(1) the business entity complies with sub-
11 section (c); and

12 “(2) such disclosure was made—

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

15 “(B) to assist a victim in recovery of fines,
16 restitution, rehabilitation of the credit of the
17 victim, or such other relief as may be appro-
18 priate.

19 “(e) AUTHORITY TO DECLINE TO PROVIDE INFOR-
20 MATION.—A business entity may decline to provide infor-
21 mation under subsection (b) if, in the exercise of good
22 faith and reasonable judgment, the business entity believes
23 that—

24 “(1) this section does not require disclosure of
25 the information; or

1 “(2) the request for the information is based on
2 a misrepresentation of fact by the victim relevant to
3 the request for information.

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

10 “(g) AFFIRMATIVE DEFENSE.—In any civil action
11 brought to enforce this section, it is an affirmative defense
12 (which the defendant must establish by a preponderance
13 of the evidence) for a business entity to file an affidavit
14 or answer stating that—

15 “(1) the business entity has made a reasonably
16 diligent search of its available business records; and

17 “(2) the records requested under this section do
18 not exist or are not available.

19 “(h) NO PRIVATE RIGHT OF ACTION.—Nothing in
20 this section shall be construed to provide a private right
21 of action or claim for relief.

22 “(i) ENFORCEMENT.—

23 “(1) CIVIL ACTIONS.—

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

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

8 “(i) enjoin that practice;

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

11 “(iii) obtain damages—

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

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

18 “(iv) obtain such other equitable relief
19 as the court may consider to be appro-
20 priate.

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

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

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

3 “(2) INTERVENTION.—

4 “(A) IN GENERAL.—On receiving notice of
5 an action under paragraph (1)(B), the Attorney
6 General of the United States shall have the
7 right to intervene in that action.

8 “(B) EFFECT OF INTERVENTION.—If the
9 Attorney General of the United States inter-
10 venes in an action under this subsection, the
11 Attorney General shall have the right to be
12 heard with respect to any matter that arises in
13 that action.

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

20 “(i) a copy of the complaint; and

21 “(ii) written disclosure of substan-
22 tially all material evidence and information
23 in the possession of the attorney general of
24 the State.

1 “(3) CONSTRUCTION.—For purposes of bring-
2 ing any civil action under this subsection, nothing in
3 this section shall be construed to prevent an attor-
4 ney general of a State from exercising the powers
5 conferred on such attorney general by the laws of
6 that State—

7 “(A) to conduct investigations;

8 “(B) to administer oaths or affirmations;

9 or

10 “(C) to compel the attendance of witnesses
11 or the production of documentary and other evi-
12 dence.

13 “(4) ACTIONS BY THE ATTORNEY GENERAL OF
14 THE UNITED STATES.—In any case in which an ac-
15 tion is instituted by or on behalf of the Attorney
16 General of the United States for a violation of this
17 section, no State may, during the pendency of that
18 action, institute an action under this subsection
19 against any defendant named in the complaint in
20 that action for violation of that practice.

21 “(5) VENUE; SERVICE OF PROCESS.—

22 “(A) VENUE.—Any action brought under
23 this subsection may be brought in the district
24 court of the United States—

25 “(i) where the defendant resides;

1 “(ii) where the defendant is doing
2 business; or

3 “(iii) that meets applicable require-
4 ments relating to venue under section 1391
5 of title 28.

6 “(B) SERVICE OF PROCESS.—In an action
7 brought under this subsection, process may be
8 served in any district in which the defendant—

9 “(i) resides;

10 “(ii) is doing business; or

11 “(iii) may be found.”.

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

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

16 **SEC. 4. AMENDMENTS TO THE FAIR CREDIT REPORTING**
17 **ACT.**

18 (a) CONSUMER REPORTING AGENCY BLOCKING OF
19 INFORMATION RESULTING FROM IDENTITY THEFT.—
20 Section 611 of the Fair Credit Reporting Act (15 U.S.C.
21 1681i) is amended by adding at the end the following:

22 “(e) BLOCK OF INFORMATION RESULTING FROM
23 IDENTITY THEFT.—

24 “(1) BLOCK.—Except as provided in paragraph
25 (3) and not later than 30 days after the date of re-

1 ceipt of proof of the identity of a consumer and an
2 official copy of a police report evidencing the claim
3 of the consumer of identity theft, a consumer report-
4 ing agency shall block the reporting of any informa-
5 tion identified by the consumer in the file of the con-
6 sumer resulting from the identity theft, so that the
7 information cannot be reported.

8 “(2) NOTIFICATION.—A consumer reporting
9 agency shall promptly notify the furnisher of infor-
10 mation identified by the consumer under paragraph
11 (1)—

12 “(A) that the information may be a result
13 of identity theft;

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

15 “(C) that a block has been requested under
16 this subsection; and

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

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

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

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

1 “(I) the information was blocked
2 due to a misrepresentation of fact by
3 the consumer relevant to the request
4 to block; or

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

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

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

23 “(C) SIGNIFICANCE OF BLOCK.—For pur-
24 poses of this paragraph, if a consumer report-
25 ing agency rescinds a block, the presence of in-

1 formation in the file of a consumer prior to the
2 blocking of such information is not evidence of
3 whether the consumer knew or should have
4 known that the consumer obtained possession of
5 any goods, services, or monies as a result of the
6 block.

7 “(4) EXCEPTIONS.—

8 “(A) NEGATIVE INFORMATION DATA.—A
9 consumer reporting agency shall not be required
10 to comply with this subsection when such agen-
11 cy is issuing information for authorizations, for
12 the purpose of approving or processing nego-
13 tiable instruments, electronic funds transfers,
14 or similar methods of payment, based solely on
15 negative information, including—

16 “(i) dishonored checks;

17 “(ii) accounts closed for cause;

18 “(iii) substantial overdrafts;

19 “(iv) abuse of automated teller ma-
20 chines; or

21 “(v) other information which indicates
22 a risk of fraud occurring.

23 “(B) RESELLERS.—

24 “(i) NO RESELLER FILE.—The provi-
25 sions of this subsection do not apply to a

1 consumer reporting agency if the consumer
2 reporting agency—

3 “(I) does not maintain a file on
4 the consumer from which consumer
5 reports are produced;

6 “(II) is not, at the time of the re-
7 quest of the consumer under para-
8 graph (1), otherwise furnishing or re-
9 selling a consumer report concerning
10 the information identified by the con-
11 sumer; and

12 “(III) informs the consumer, by
13 any means, that the consumer may re-
14 port the identity theft to the Federal
15 Trade Commission to obtain consumer
16 information regarding identity theft.

17 “(ii) RESELLER WITH FILE.—The
18 sole obligation of the consumer reporting
19 agency under this subsection, with regard
20 to any request of a consumer under this
21 subsection, shall be to block the consumer
22 report maintained by the consumer report-
23 ing agency from any subsequent use if—

24 “(I) the consumer, in accordance
25 with the provisions of paragraph (1),

1 identifies, to a consumer reporting
2 agency, information in the file of the
3 consumer that resulted from identity
4 theft;

5 “(II) the consumer reporting
6 agency is acting as a reseller of the
7 identified information by assembling
8 or merging information about that
9 consumer which is contained in the
10 database of not less than 1 other con-
11 sumer reporting agency; and

12 “(III) the consumer reporting
13 agency does not store or maintain a
14 database of information obtained for
15 resale from which new consumer re-
16 ports are produced.

17 “(iii) NOTICE.—In carrying out its
18 obligation under clause (ii), the consumer
19 reporting agency shall provide a notice to
20 the consumer of the decision to block the
21 file. Such notice shall contain the name,
22 address, and telephone number of each
23 consumer reporting agency from which the
24 consumer information was obtained for re-
25 sale.”.

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

4 “(j) Any person who knowingly falsely claims to be
5 a victim of identity theft for the purpose of obtaining the
6 blocking of information by a consumer reporting agency
7 under section 611(e)(1) of the Fair Credit Reporting Act
8 (15 U.S.C. 1681i(e)(1)) shall be fined under this title, im-
9 prisoned not more than 3 years, or both.”.

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

13 **“SEC. 618. JURISDICTION OF COURTS; LIMITATION ON AC-**
14 **TIONS.**

15 “(a) IN GENERAL.—Except as provided in sub-
16 sections (b) and (c), an action to enforce any liability cre-
17 ated under this title may be brought in any appropriate
18 United States district court without regard to the amount
19 in controversy, or in any other court of competent jurisdic-
20 tion, not later than 2 years from the date of the defend-
21 ant’s violation of any requirement under this title.

22 “(b) WILLFUL MISREPRESENTATION.—In any case
23 in which the defendant has materially and willfully mis-
24 represented any information required to be disclosed to an
25 individual under this title, and the information misrepre-

1 sented is material to the establishment of the liability of
 2 the defendant to that individual under this title, an action
 3 to enforce a liability created under this title may be
 4 brought at any time within 2 years after the date of dis-
 5 covery by the individual of the misrepresentation.

6 “(c) IDENTITY THEFT.—An action to enforce a liabil-
 7 ity created under this title may be brought not later than
 8 4 years from the date of the defendant’s violation if—

9 “(1) the plaintiff is the victim of an identity
 10 theft; or

11 “(2) the plaintiff—

12 “(A) has reasonable grounds to believe
 13 that the plaintiff is the victim of an identity
 14 theft; and

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

17 **SEC. 5. COORDINATING COMMITTEE STUDY OF COORDINA-**
 18 **TION BETWEEN FEDERAL, STATE, AND LOCAL**
 19 **AUTHORITIES IN ENFORCING IDENTITY**
 20 **THEFT LAWS.**

21 (a) MEMBERSHIP; TERM.—Section 2 of the Internet
 22 False Identification Prevention Act of 2000 (18 U.S.C.
 23 1028 note) is amended—

24 (1) in subsection (b), by striking “and the Com-
 25 missioner of Immigration and Naturalization” and

1 inserting “the Commissioner of Immigration and
2 Naturalization, the Chairman of the Federal Trade
3 Commission, the Postmaster General, and the Com-
4 missioner of the United States Customs Service,”;
5 and

6 (2) in subsection (c), by striking “2 years after
7 the effective date of this Act.” and inserting “on De-
8 cember 28, 2004.”.

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

12 (1) by redesignating subsection (d) as sub-
13 section (e); and

14 (2) by inserting after subsection (c) the fol-
15 lowing:

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

24 (c) REPORT DISTRIBUTION AND CONTENTS.—Sec-
25 tion 2(e) of the Internet False Identification Prevention

1 Act of 2000 (18 U.S.C. 1028 note) (as redesignated by
2 subsection (b)) is amended—

3 (1) by striking paragraph (1) and inserting the
4 following:

5 “(1) IN GENERAL.—The Attorney General and
6 the Secretary of the Treasury, at the end of each
7 year of the existence of the coordinating committee,
8 shall report on the activities of the coordinating
9 committee to—

10 “(A) the Committee on the Judiciary of
11 the Senate;

12 “(B) the Committee on the Judiciary of
13 the House of Representatives;

14 “(C) the Committee on Banking, Housing,
15 and Urban Affairs of the Senate; and

16 “(D) the Committee on Financial Services
17 of the House of Representatives.”;

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

20 (3) by striking subparagraph (F) and inserting
21 the following:

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

1 “(G) a comprehensive description of co-
2 ordination activities between Federal, State,
3 and local law enforcement agencies that address
4 identity theft; and

5 “(H) recommendations in the discretion of
6 the President, if any, for legislative or adminis-
7 trative changes that would—

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

10 “(I) identity theft; and

11 “(II) the creation and distribu-
12 tion of false identification documents;

13 “(ii) improve the effectiveness of Fed-
14 eral assistance to State and local law en-
15 forcement agencies and coordination be-
16 tween Federal, State, and local law en-
17 forcement agencies; and

18 “(iii) simplify efforts by a person nec-
19 essary to rectify the harm that results

1 from the theft of the identity of such per-
2 son.”.

Passed the Senate November 14, 2002.

Attest: JERI THOMSON,
Secretary.