

Union Calendar No. 306

108TH CONGRESS
2^D SESSION

H.R. 1731

[Report No. 108-528]

To amend title 18, United States Code, to establish penalties for aggravated identity theft, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

APRIL 10, 2003

Mr. CARTER (for himself and Mr. SCHIFF) introduced the following bill; which was referred to the Committee on the Judiciary

JUNE 8, 2004

Additional sponsors: Mr. GOODE, Mr. FRANK of Massachusetts, Mr. CASE, Mr. MORAN of Virginia, Mr. SPRATT, Mr. ROYCE, Mr. FROST, Mr. BARTON of Texas, Mr. ROSS, Mr. BACHUS, Ms. WATSON, Mrs. MCCARTHY of New York, Mr. NEUGEBAUER, Mr. OWENS, Mr. NUNES, Mr. SHERMAN, Mr. GREEN of Texas, Mr. NEY, Mr. HENSARLING, Ms. SCHAKOWSKY, Mr. BURGESS, Mr. SMITH of Texas, Mr. BAIRD, Mr. PORTER, and Mr. GALLEGLY

JUNE 8, 2004

Reported with an amendment, committed to the Committee of the Whole House on the State of the Union, and ordered to be printed

[Strike out all after the enacting clause and insert the part printed in italics]

[For text of introduced bill, see copy of bill as introduced on April 10, 2003]

A BILL

To amend title 18, United States Code, to establish penalties for aggravated 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 Penalty*
5 *Enhancement Act”.*

6 **SEC. 2. AGGRAVATED IDENTITY THEFT.**

7 *(a) IN GENERAL.—Chapter 47 of title 18, United*
8 *States Code, is amended by adding after section 1028, the*
9 *following:*

10 **“§ 1028A. Aggravated identity theft**

11 *“(a) OFFENSES.—*

12 *“(1) IN GENERAL.—Whoever, during and in re-*
13 *lation to any felony violation enumerated in sub-*
14 *section (c), knowingly transfers, possesses, or uses,*
15 *without lawful authority, a means of identification of*
16 *another person shall, in addition to the punishment*
17 *provided for such felony, be sentenced to a term of im-*
18 *prisonment of 2 years.*

19 *“(2) TERRORISM OFFENSE.—Whoever, during*
20 *and in relation to any felony violation enumerated in*
21 *section 2332b(g)(5)(B), knowingly transfers, possesses,*
22 *or uses, without lawful authority, a means of identi-*
23 *fication of another person or a false identification*
24 *document shall, in addition to the punishment pro-*

1 *vided for such felony, be sentenced to a term of im-*
2 *prisonment of 5 years.*

3 *“(b) CONSECUTIVE SENTENCE.—Notwithstanding any*
4 *other provision of law—*

5 *“(1) a court shall not place on probation any*
6 *person convicted of a violation of this section;*

7 *“(2) except as provided in paragraph (4), no*
8 *term of imprisonment imposed on a person under this*
9 *section shall run concurrently with any other term of*
10 *imprisonment imposed on the person under any other*
11 *provision of law, including any term of imprisonment*
12 *imposed for the felony during which the means of*
13 *identification was transferred, possessed, or used;*

14 *“(3) in determining any term of imprisonment*
15 *to be imposed for the felony during which the means*
16 *of identification was transferred, possessed, or used, a*
17 *court shall not in any way reduce the term to be im-*
18 *posed for such crime so as to compensate for, or other-*
19 *wise take into account, any separate term of impris-*
20 *onment imposed or to be imposed for a violation of*
21 *this section; and*

22 *“(4) a term of imprisonment imposed on a per-*
23 *son for a violation of this section may, in the discre-*
24 *tion of the court, run concurrently, in whole or in*
25 *part, only with another term of imprisonment that is*

1 *imposed by the court at the same time on that person*
2 *for an additional violation of this section, provided*
3 *that such discretion shall be exercised in accordance*
4 *with any applicable guidelines and policy statements*
5 *issued by the Sentencing Commission pursuant to sec-*
6 *tion 994 of title 28.*

7 *“(c) DEFINITION.—For purposes of this section, the*
8 *term ‘felony violation enumerated in subsection (c)’ means*
9 *any offense that is a felony violation of—*

10 *“(1) section 641 (relating to theft of public*
11 *money, property, or rewards), section 656 (relating to*
12 *theft, embezzlement, or misapplication by bank officer*
13 *or employee), or section 664 (relating to theft from*
14 *employee benefit plans);*

15 *“(2) section 911 (relating to false personation of*
16 *citizenship);*

17 *“(3) section 922(a)(6) (relating to false state-*
18 *ments in connection with the acquisition of a fire-*
19 *arm);*

20 *“(4) any provision contained in this chapter (re-*
21 *lating to fraud and false statements), other than this*
22 *section or section 1028(a)(7);*

23 *“(5) any provision contained in chapter 63 (re-*
24 *lating to mail, bank, and wire fraud);*

1 “(6) any provision contained in chapter 69 (re-
2 lating to nationality and citizenship);

3 “(7) any provision contained in chapter 75 (re-
4 lating to passports and visas);

5 “(8) section 523 of the Gramm-Leach-Bliley Act
6 (15 U.S.C. 6823) (relating to obtaining customer in-
7 formation by false pretenses);

8 “(9) section 243 or 266 of the Immigration and
9 Nationality Act (8 U.S.C. 1253 and 1306) (relating
10 to willfully failing to leave the United States after de-
11 portation and creating a counterfeit alien registration
12 card);

13 “(10) any provision contained in chapter 8 of
14 title II of the Immigration and Nationality Act (8
15 U.S.C. 1321 et seq.) (relating to various immigration
16 offenses); or

17 “(11) section 208, 811, 1107(b), 1128B(a), or
18 1632 of the Social Security Act (42 U.S.C. 408, 1011,
19 1307(b), 1320a–7b(a), and 1383a) (relating to false
20 statements relating to programs under the Act).”.

21 (b) AMENDMENT TO CHAPTER ANALYSIS.—The table
22 of sections for chapter 47 of title 18, United States Code,
23 is amended by inserting after the item relating to section
24 1028 the following new item:

“1028A. Aggravated identity theft.”.

1 (c) *APPLICATION OF DEFINITIONS FROM SECTION*
 2 *1028.—Section 1028(d) of title 18, United States Code, is*
 3 *amended by inserting “and section 1028A” after “In this*
 4 *section”.*

5 **SEC. 3. AMENDMENTS TO EXISTING IDENTITY THEFT PRO-**
 6 **HIBITION.**

7 *Section 1028 of title 18, United States Code, is amend-*
 8 *ed—*

9 (1) *in subsection (a)(7)—*

10 (A) *by striking “transfers” and inserting*
 11 *“transfers, possesses,”; and*

12 (B) *by striking “abet,” and inserting “abet,*
 13 *or in connection with,”;*

14 (2) *in subsection (b)(1)(D), by striking “trans-*
 15 *fer” and inserting “transfer, possession,”;*

16 (3) *in subsection (b)(2), by striking “three years”*
 17 *and inserting “5 years”;* and

18 (4) *in subsection (b)(4), by inserting after “fa-*
 19 *cilitate” the following: “an act of domestic terrorism*
 20 *(as defined under section 2331(5) of this title) or”.*

21 **SEC. 4. AGGREGATION OF VALUE FOR PURPOSES OF SEC-**
 22 **TION 641.**

23 *The penultimate paragraph of section 641 of title 18*
 24 *of the United States Code is amended by inserting “in the*
 25 *aggregate, combining amounts from all the counts for which*

1 *the defendant is convicted in a single case,” after “value*
2 *of such property” .*

3 **SEC. 5. DIRECTIVE TO THE UNITED STATES SENTENCING**
4 **COMMISSION.**

5 *(a) IN GENERAL.—Pursuant to its authority under*
6 *section 994(p) of title 28, United States Code, and in ac-*
7 *cordance with this section, the United States Sentencing*
8 *Commission shall review and amend its guidelines and its*
9 *policy statements to ensure that the guideline offense levels*
10 *and enhancements appropriately punish identity theft of-*
11 *fenses involving an abuse of position.*

12 *(b) REQUIREMENTS.—In carrying out this section, the*
13 *United States Sentencing Commission shall do the fol-*
14 *lowing:*

15 *(1) Amend U.S.S.G. section 3B1.3 (Abuse of Po-*
16 *sition of Trust of Use of Special Skill) to apply to*
17 *and punish offenses in which the defendant exceeds or*
18 *abuses the authority of his or her position in order*
19 *to obtain unlawfully or use without authority any*
20 *means of identification, as defined section 1028(d)(4)*
21 *of title 18, United States Code.*

22 *(2) Ensure reasonable consistency with other rel-*
23 *evant directives, other sentencing guidelines, and stat-*
24 *utory provisions.*

1 (3) *Make any necessary and conforming changes*
2 *to the sentencing guidelines.*

3 (4) *Ensure that the guidelines adequately meet*
4 *the purposes of sentencing set forth in section*
5 *3553(a)(2) of title 18, United States Code.*

6 **SEC. 6. AUTHORIZATION OF APPROPRIATIONS.**

7 *In addition to any other sums authorized to be appro-*
8 *riated for this purpose, there is authorized to be appro-*
9 *riated to the Department of Justice, for the investigation*
10 *and prosecution of identity theft and related credit card*
11 *and other fraud cases constituting felony violations of law,*
12 *\$2,000,000 for fiscal year 2005 and \$2,000,000 for each of*
13 *the 4 succeeding fiscal years.*

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