identification that results in the perpetrator receiving anything of value aggregating $1,000 or more over a 1-year period, would carry a penalty of a fine or up to 15 years' imprisonment, or both. The use or transfer of another person's means of identification that does not satisfy those monetary and time period requirements, would carry a penalty of a fine and up to three years' imprisonment, or both.

Finally, again with the support of the Department of Justice, we specified the forfeiture procedure to be used in connection with offenses under section 1028. The bill as reported created a forfeiture penalty for these offenses; the addition of a procedure simply clarifies how that penalty is to be enforced.

I am glad that Senator KYL and I were able to join forces to craft legislation that both punishes the perpetrators of identity theft and helps the victims of this crime.

Mr. HATCH. Mr. President, it is with pleasure that I rise today in support of S. 512, the ''Identity Theft and Assumption Deterrence Act of 1998.'' This measure has bipartisan support, and I am pleased to be an original co-sponsor along with Senators LEAHY, FEINSTEIN, DEWINE, D'AMATO, GRASSLEY, ABRAHAM, FAIRCLOTH, HARKIN, WARNER, MURKOWSKI and ROBB.

Identity information theft is a crime that destroys the lives of thousands of innocent people each year. It occurs when an imposter, who has falsified or stolen personal information from another individual, uses the information to make financial transactions or conduct personal business in the name of another. This heinous crime often leaves victims with mountains of debt, ruins their credit history, and makes it difficult for the individuals to obtain employment. In short, it virtually takes over the lives of innocent citizens who find themselves trying to untangle an endless trail of obligations they did not make or actions they did not commit.

Many of you know individuals who have been victims of this crime. These are people whose lives have been destroyed because a con-artist gained access to and used their personal data, such as their address, date of birth, mother's maiden name, or social security number. This is information that you and I are asked to verify every day in our society. Once that information is obtained, these con-artists use it to open bank and credit card accounts and to obtain bank and mortgage loans. These fake business and personal commitments and obligations can ruin a lifetime of hard work.

Currently, the applicable federal statute, Title 18 United States Code Section 1028, only criminalizes the possession, transfer, or production of identity documents. In other words, you have to catch the culprit with the actual documents in order to bring a prosecution for fraud. Obviously, such criminals are not always going to keep these documents once they have acquired the information they need. Many times criminals simply misappropriate the information itself to facilitate their criminal activity.

As there is no specific statute criminalizing the theft of the information, when and if these criminals are prosecuted, law enforcement must pursue more indirect charges such as check fraud, credit card fraud, mail fraud, wire fraud, or money laundering. Unfortunately, these statutes do little to compensate the victim or address the horror suffered by the individual whose life has been invaded. Often these general criminal statutes treat only affected banks, credit bureaus, and other financial institutions as the victim, leaving the primary victim, the innocent person, without recourse to reclaim his or her life and identity.

S. 512 recognizes not only that it is a crime to steal personal information, and enhances penalties for such crimes, but it also recognizes the person, whose information has been stolen, as the real victim. Moreover, it gives the victim the ability to seek restitution and relief.

I believe this bill to be an important piece of legislation. It is supported by federal law enforcement agencies, credit bureaus, banking associations, and other private entities. I urge all of my colleagues to join us and support the passage of this bill.

Mrs. FEINSTEIN. Mr. President, I am proud to be an original cosponsor of the substitute version of S. 512, The Identity Theft and Assumption Deterrence Act of 1998, which the Senate is considering today.

On May 20, the Senate Judiciary Committee, Subcommittee on Technology, Terrorism, and Government Information, on which I serve as Ranking Member, heard from victims of identity theft from both Subcommittee Chairman KYL's and my home states. The victims told cautionary tales of lives suddenly, and without warning, turned upside down by the crime of identity theft.

Theirs are not isolated stories. The Secret Service last year made nearly 9,500 identity theft-related arrests, totaling three-quarters of a billion dollars in losses to individual victims and financial institutions. Such losses have nearly doubled in the last two years, and no end to the trend is in sight. In one out of every ten of these cases, identity theft is used to violate immigration laws, to illegally enter the country or to flee across international borders.

It used to be that identity theft required wading through dumpsters for discarded credit card receipts. Today, with a few keystrokes, a computer-savvy criminal can hack into databases and lift credit card numbers, social security numbers, and a myriad of personal information.

The Identity Theft and Assumption Deterrence Act does two critical things in the war on identity theft: it gives prosecutors the tools they need, and it recognizes that identity theft victimizes individuals.

Prosecutors tell us that they lack effective tools to prosecute identity theft and to make victims whole. S. 512 has been drafted in consultation with prosecutors to give them the tools they need. S. 512 does so in a number of important ways:

It updates pre-computer age laws to criminalize electronic identity theft;

It stiffens penalties and adds sentencing enhancements that prosecutors tell us they need to effectively prosecute crimes; and

It allows law enforcement agents to seize equipment used to facilitate identity theft crimes.

Earlier this month, the Senate Judiciary Committee passed the Victim's Rights Amendment to the Constitution, of which I was also proud to be an original cosponsor. Similarly, S. 512 for the first time recognizes that individuals, and not just credit card companies, are victims of identity theft, and it provides them with proper restitution. It protects victims rights, fully recognizing individuals as victims of identity theft, establishing remedies and procedures for such victims, and requiring restitution for the individual victim.

I am proud to be an original cosponsor of this legislation, and I urge my Senate colleagues to pass it.

Mr. JEFFORDS. Mr. President, I ask unanimous consent that the amendment be agreed to.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment (No. 3480) was agreed to.

Mr. JEFFORDS. Mr. President, I ask unanimous consent that the committee amendment, as amended, be agreed to.

The PRESIDING OFFICER. Without objection, it is so ordered.

The committee amendment, as amended, was agreed to.

Mr. JEFFORDS. Mr. President, I ask unanimous consent that the bill be considered read a third time and passed, as amended; that the motion to reconsider be laid upon the table; and that any statements relating to the bill appear at the appropriate place in the RECORD.

The PRESIDING OFFICER. Without objection, it is so ordered.

The bill (S. 512), as amended, was considered read the third time and passed.

FEDERAL ACTIVITIES INVENTORY REFORM ACT OF 1998

Mr. JEFFORDS. Mr. President, I ask unanimous consent that the Senate now proceed to the consideration of Calendar No. 502, S. 314.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

A bill (S. 314) to require that the Federal Government procure from the private sector the goods and services necessary for the operations and management of certain Government agencies, and for other purposes.

The PRESIDING OFFICER. Is there objection to the immediate consideration of the bill?

There being no objection, the Senate proceeded to consider the bill, which had been reported from the Committee on Governmental Affairs, with an amendment to strike all after the enacting clause and insert in lieu there of the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Federal Activities Inventory Reform Act of 1998''.

SEC. 2. ANNUAL LISTS OF GOVERNMENT ACTIVITIES NOT INHERENTLY GOVERNMENTAL IN NATURE.

(a) LISTS REQUIRED.—Not later than the end of the third quarter of each fiscal year, the head of each executive agency shall submit to the Director of the Office of Management and Budget a list of activities performed by Federal Government sources for the executive agency that, in the judgment of the head of the executive agency, are not inherently governmental functions. The entry for an activity on the list shall include the following:

(1) The fiscal year for which the activity first appeared on a list prepared under this section.

(2) The number of full-time employees (or its equivalent) that are necessary for the performance of the activity by a Federal Government source.

(3) The name of a Federal Government employee responsible for the activity from whom additional information about the activity may be obtained.

(b) OMB REVIEW AND CONSULTATION.—The Director of the Office of Management and Budget shall review the executive agency's list for a fiscal year and consult with the head of the executive agency regarding the content of the final list for that fiscal year.

(c) PUBLIC AVAILABILITY OF LISTS.—

(1) PUBLICATION.—Upon the completion of the review and consultation regarding a list of an executive agency—

(A) the head of the executive agency shall promptly transmit a copy of the list to Congress and make the list available to the public; and

(B) the Director of the Office of Management and Budget shall promptly publish in the Federal Register a notice that the list is available to the public.

(2) CHANGES.—If the list changes after the publication of the notice as a result of the resolution of a challenge under section 3, the head of the executive agency shall promptly—

(A) make each such change available to the public and transmit a copy of the change to Congress; and

(B) publish in the Federal Register a notice that the change is available to the public.

(d) COMPETITION REQUIRED.—Within a reasonable time after the date on which a notice of the public availability of a list is published under subsection (c), the head of the executive agency concerned shall review the activities on the list. Each time that the head of the executive agency considers contracting with a private sector source for the performance of such an activity, the head of the executive agency shall use a competitive process to select the source (except as may otherwise be provided in a law other than this Act, an Executive order, regulations, or any Executive branch circular setting forth requirements or guidance that is issued by competent executive authority). The Director of the Office of Management and Budget shall issue guidance for the administration of this subsection.

(e) REALISTIC AND FAIR COST COMPARISONS.—For the purpose of determining whether to contract with a source in the private sector for the performance of an executive agency activity on the list on the basis of a comparison of the costs of procuring services from such a source with the costs of performing that activity by the executive agency, the head of the executive agency shall ensure that all costs (including the costs of quality assurance, technical monitoring of the performance of such function, liability insurance, employee retirement and disability benefits, and all other overhead costs) are considered and that the costs considered are realistic and fair.

SEC. 3. CHALLENGES TO THE LIST.

(a) CHALLENGE AUTHORIZED.—An interested party may submit to an executive agency a challenge of an omission of a particular activity from, or an inclusion of a particular activity on, a list for which a notice of public availability has been published under section 2.

(b) INTERESTED PARTY DEFINED.—For the purposes of this section, the term ''interested party'', with respect to an activity referred to in subsection (a), means the following:

(1) A private sector source that—

(A) is an actual or prospective offeror for any contract, or other form of agreement, to perform the activity; and

(B) has a direct economic interest in performing the activity that would be adversely affected by a determination not to procure the performance of the activity from a private sector source.

(2) A representative of any business or professional association that includes within its membership private sector sources referred to in paragraph (1).

(3) An officer or employee of an organization within an executive agency that is an actual or prospective offeror to perform the activity.

(4) The head of any labor organization referred to in section 7103(a)(4) of title 5, United States Code, that includes within its membership officers or employees of an organization referred to in paragraph (3).

(c) TIME FOR SUBMISSION.—A challenge to a list shall be submitted to the executive agency concerned within 30 days after the publication of the notice of the public availability of the list under section 2.

(d) INITIAL DECISION.—Within 28 days after an executive agency receives a challenge, an official designated by the head of the executive agency shall—

(1) decide the challenge; and

(2) transmit to the party submitting the challenge a written notification of the decision together with a discussion of the rationale for the decision and an explanation of the party's right to appeal under subsection (e).

(e) APPEAL.—

(1) AUTHORIZATION OF APPEAL.—An interested party may appeal an adverse decision of the official to the head of the executive agency within 10 days after receiving a notification of the decision under subsection (d).

(2) DECISION ON APPEAL.—Within 10 days after the head of an executive agency receives an appeal of a decision under paragraph (1), the head of the executive agency shall decide the appeal and transmit to the party submitting the appeal a written notification of the decision together with a discussion of the rationale for the decision.

SEC. 4. APPLICABILITY.

(a) EXECUTIVE AGENCIES COVERED.—Except as provided in subsection (b), this Act applies to the following executive agencies:

(1) EXECUTIVE DEPARTMENT.—An executive department named in section 101 of title 5, United States Code.

(2) MILITARY DEPARTMENT.—A military department named in section 102 of title 5, United States Code.

(3) INDEPENDENT ESTABLISHMENT.—An independent establishment, as defined in section 104 of title 5, United States Code.

(b) EXCEPTIONS.—This Act does not apply to or with respect to the following:

(1) GENERAL ACCOUNTING OFFICE.—The General Accounting Office.

(2) GOVERNMENT CORPORATION.—A Government corporation or a Government controlled corporation, as those terms are defined in section 103 of title 5, United States Code.

(3) NONAPPROPRIATED FUNDS INSTRUMENTALITY.—A part of a department or agency if all of the employees of that part of the department or agency are employees referred to in section 2105(c) of title 5, United States Code.

(4) CERTAIN DEPOT-LEVEL MAINTENANCE AND REPAIR.—Depot-level maintenance and repair of the Department of Defense (as defined in section 2460 of title 10, United States Code).

SEC. 5. DEFINITIONS.

In this Act:

(1) FEDERAL GOVERNMENT SOURCE.—The term ''Federal Government source'', with respect to performance of an activity, means any organization within an executive agency that uses Federal Government employees to perform the activity.

(2) INHERENTLY GOVERNMENTAL FUNCTION.—

(A) DEFINITION.—The term ''inherently governmental function'' means a function that is so intimately related to the public interest as to require performance by Federal Government employees.

(B) FUNCTIONS INCLUDED.—The term includes activities that require either the exercise of discretion in applying Federal Government authority or the making of value judgments in making decisions for the Federal Government, including judgments relating to monetary transactions and entitlements. An inherently governmental function involves, among other things, the interpretation and execution of the laws of the United States so as—

(i) to bind the United States to take or not to take some action by contract, policy, regulation, authorization, order, or otherwise;

(ii) to determine, protect, and advance United States economic, political, territorial, property, or other interests by military or diplomatic action, civil or criminal judicial proceedings, contract management, or otherwise;

(iii) to significantly affect the life, liberty, or property of private persons;

(iv) to commission, appoint, direct, or control officers or employees of the United States; or

(v) to exert ultimate control over the acquisition, use, or disposition of the property, real or personal, tangible or intangible, of the United States, including the collection, control, or disbursement of appropriated and other Federal funds.

(C) FUNCTIONS EXCLUDED.—The term does not normally include—

(i) gathering information for or providing advice, opinions, recommendations, or ideas to Federal Government officials; or

(ii) any function that is primarily ministerial and internal in nature (such as building security, mail operations, operation of cafeterias, housekeeping, facilities operations and maintenance, warehouse operations, motor vehicle fleet management operations, or other routine electrical or mechanical services).

SEC. 6. EFFECTIVE DATE.

This Act shall take effect on October 1, 1998.

Mr. THOMPSON. Mr. President, S. 314, originally sponsored by Senators THOMAS, among others, and Congressman DUNCAN in the House, was ordered reported by the Governmental Affairs Committee on July 15, 1998. The original S. 314 has had long and contentious past. The bill reported by our Committee represents months of drafting and redrafting to create language which truly represents a consensus.

I commend the original sponsors of this bill for their dedication to this issue and their willingness to accommodate the Governmental Affairs Committee's changes in order to develop legislation which could be supported by all sides. Interested industry groups

have expressed their support of this legislation. And the Administration and the Federal employee unions, although opposed to the original S. 314, all have indicated they will not object to this legislation.

S. 314 would require Federal agencies prepare a list of activities that are not inherently governmental functions that are being performed by Federal employees, submit that list to OMB for review, and make the list publicly available. It also would establish an ''appeals'' process within each agency to challenge what is on the list or what is not included on the list. S. 314 also would create a statutory definition—identical to current regulation—for what is an ''inherently governmental function'' that must be performed by the government and not the private sector.

S. 314 adheres to the seven principles the Administration outlined in its testimony to this Committee. It reflects recommendations made by the General Accounting Office in testimony to this and other committees. And it provides a statutory basis for longstanding administrative policy.

Mr. JEFFORDS. Mr. President, I ask unanimous consent that the committee amendment be agreed to.

The PRESIDING OFFICER. Without objection, it is so ordered.

The committee amendment was agreed to.

Mr. JEFFORDS. Mr. President, I ask unanimous consent that the bill be considered read a third time and passed, as amended; that the motion to reconsider be laid upon the table; that the title amendment be agreed to; and that any statements relating to the bill appear at the appropriate place in the RECORD.

The PRESIDING OFFICER. Without objection, it is so ordered.

The bill (S. 314) was considered read the third time and passed.

The title was amended so as to read:

''A bill to provide a process for identifying the functions of the Federal Government that are not inherently governmental functions, and for other purposes.''.

BORDER IMPROVEMENT AND IMMIGRATION ACT OF 1998

Mr. JEFFORDS. Mr. President, I ask unanimous consent that the Senate now proceed to the consideration of calendar No. 342, S. 1360.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

A bill (S. 1360) to amend the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 to clarify and improve the requirements for the development of an automated entry-exit control system, to enhance land border control and enforcement, and for other purposes.

The PRESIDING OFFICER. Is there objection to the immediate consideration of the bill?

There being no objection, the Senate proceeded to consider the bill, which had been reported from the Committee on the Judiciary, with an amendment to strike all after the enacting clause and inserting in lieu thereof the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Border Improvement and Immigration Act of 1998''.

SEC. 2. AMENDMENT OF THE ILLEGAL IMMIGRATION REFORM AND IMMIGRANT RESPONSIBILITY ACT OF 1996.

(a) IN GENERAL.—Section 110(a) of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (8 U.S.C. 1221 note) is amended to read as follows:

''(a) SYSTEM.—

''(1) IN GENERAL.—Subject to paragraph (2), not later than 2 years after the date of enactment of this Act, the Attorney General shall develop an automated entry and exit control system that will—

''(A) collect a record of departure for every alien departing the United States and match the record of departure with the record of the alien's arrival in the United States; and

''(B) enable the Attorney General to identify, through on-line searching procedures, lawfully admitted nonimmigrants who remain in the United States beyond the period authorized by the Attorney General.

''(2) EXCEPTION.—The system under paragraph (1) shall not collect a record of arrival or departure—

''(A) at a land border or seaport of the United States for any alien; or

''(B) for any alien for whom the documentary requirements in section 212(a)(7)(B) of the Immigration and Nationality Act have been waived by the Attorney General and the Secretary of State under section 212(d)(4)(B) of the Immigration and Nationality Act.''.

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall take effect as if included in the enactment of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (division C of Public Law 104–208; 110 Stat. 3009–546).

SEC. 3. REPORT ON AUTOMATED ENTRY-EXIT CONTROL SYSTEM.

(a) REQUIREMENT.—Not later than 2 years after the date of enactment of this Act, the Attorney General shall submit a report to the Committees on the Judiciary of the Senate and the House of Representatives on the feasibility of developing and implementing an automated entry-exit control system that would collect a record of departure for every alien departing the United States and match the record of departure with the record of the alien's arrival in the United States, including departures and arrivals at the land borders and seaports of the United States.

(b) CONTENTS OF REPORT.—Such report shall—

(1) assess the costs and feasibility of various means of operating such an automated entry-exit control system, including exploring—

(A) how, if the automated entry-exit control system were limited to certain aliens arriving at airports, departure records of those aliens could be collected when they depart through a land border or seaport; and

(B) the feasibility of the Attorney General, in consultation with the Secretary of State, negotiating reciprocal agreements with the governments of contiguous countries to collect such information on behalf of the United States and share it in an acceptable automated format;

(2) consider the various means of developing such a system, including the use of pilot projects if appropriate, and assess which means would be most appropriate in which geographical regions;

(3) evaluate how such a system could be implemented without increasing border traffic congestion and border crossing delays and, if any such system would increase border crossing delays, evaluate to what extent such congestion or delays would increase; and

(4) estimate the length of time that would be required for any such system to be developed and implemented.

SEC. 4. ANNUAL REPORTS ON ENTRY-EXIT CONTROL AND USE OF ENTRY-EXIT CONTROL DATA.

(a) ANNUAL REPORTS ON IMPLEMENTATION OF ENTRY-EXIT CONTROL AT AIRPORTS.—Not later than 30 days after the end of each fiscal year until the fiscal year in which Attorney General certifies to Congress that the entry-exit control system required by section 110(a) of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, as amended by section 2 of this Act, has been developed, the Attorney General shall submit to the Committees on the Judiciary of the Senate and the House of Representatives a report that—

(1) provides an accurate assessment of the status of the development of the entry-exit control system;

(2) includes a specific schedule for the development of the entry-exit control system that the Attorney General anticipates will be met; and

(3) includes a detailed estimate of the funding, if any, needed for the development of the entry-exit control system.

(b) ANNUAL REPORTS ON VISA OVERSTAYS IDENTIFIED THROUGH THE ENTRY-EXIT CONTROL SYSTEM.—Not later than June 30 of each year, the Attorney General shall submit to the Committees on the Judiciary of the House of Representatives and the Senate a report that sets forth—

(1) the number of arrival records of aliens and the number of departure records of aliens that were collected during the preceding fiscal year under the entry-exit control system under section 110(a) of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, as so amended, with a separate accounting of such numbers by country of nationality;

(2) the number of departure records of aliens that were successfully matched to records of such aliens' prior arrival in the United States, with a separate accounting of such numbers by country of nationality and by classification as immigrant or nonimmigrant; and

(3) the number of aliens who arrived as nonimmigrants, or as visitors under the visa waiver program under section 217 of the Immigration and Nationality Act, for whom no matching departure record has been obtained through the system, or through other means, as of the end of such aliens' authorized period of stay, with an accounting by country of nationality and approximate date of arrival in the United States.

(c) INCORPORATION INTO OTHER DATABASES.—Information regarding aliens who have remained in the United States beyond their authorized period of stay that is identified through the system referred to in subsection (a) shall be integrated into appropriate databases of the Immigration and Naturalization Service and the Department of State, including those used at ports-of-entry and at consular offices.

SEC. 5. LIMITATION ON CERTAIN BORDER CROSSING-RELATED VISA FEES.

(a) LIMITATION.—

(1) IN GENERAL.—Notwithstanding any other provision of law, the Secretary of State may not charge a fee in excess of the following amounts for the processing of any application for the issuance of a visa under section 101(a)(15)(B) of the Immigration and Nationality Act if the appropriate consular officer has reason to believe that the visa will be used only for travel in the United States within 25 miles of the international border between the United States and Mexico and for a period of less than 72 hours:

(i) In the case of any alien 18 years of age or older, $45.

(ii) In the case of any alien under 18 years of age, zero.

(2) PERIOD OF VALIDITY OF VISAS FOR CERTAIN MINOR CHILDREN.—If a consular officer has reason to believe that a visa issued under section