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SENATE

{ REPORT
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THE IDENTITY THEFT AND ASSUMPTION DETERRENCE ACT

JULY 29, 1998.—Ordered to be printed

Mr. HATCH, from the Committee on the Judiciary,
submitted the following

REPORT

together with

ADDITIONAL VIEWS

[To accompany S. 512]

The Committee on the Judiciary, to which was referred the bill (S. 512) to amend provisions of chapter 47 of title 18, United States Code, relating to identity fraud, having considered the same, reports favorably thereon, with an amendment in the nature of a substitute, and recommends that the bill, as amended, do pass.

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The amendment is as follows:
Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the “Identity Theft and Assumption Deterrence Act of 1998”.

SEC. 2. IDENTITY THEFT.

(a) ESTABLISHMENT OF OFFENSE.—Section 1028(a) of title 18, United States Code, is amended—

- (1) in paragraph (5), by striking “or” at the end;
 - (2) in paragraph (6), by adding “or” at the end;
 - (3) in the flush matter following paragraph (6), by striking “or attempts to do so,”; and
 - (4) by inserting after paragraph (6) the following:
 - “(7) knowingly possesses, transfers, or uses, without lawful authority, a means of identification of another person with the intent to commit, or otherwise promote, carry on, or facilitate any unlawful activity that constitutes a violation of Federal law, or that constitutes a felony under any applicable State or local law;”.
- (b) PENALTIES.—Section 1028(b) of title 18, United States Code, is amended—
- (1) in paragraph (1)—
 - (A) in subparagraph (B), by striking “or” at the end
 - (B) in subparagraph (C), by adding “or” at the end; and
 - (C) by adding at the end the following:
 - “(D) an offense under paragraph (7) of such subsection that involves the transfer, possession, or use of 1 or more means of identification if, as a result of the offense, any individual committing the offense obtains anything of value aggregating \$1,000 or more during any 1-year period;”;
 - (2) in paragraph (2)(A), by striking “or transfer of an identification document or” and inserting “possession, transfer, or use of a means of identification, an identification document, or a”;
 - (3) by striking paragraphs (3) and (4) and inserting the following:
 - “(3) a fine under this title or imprisonment for not more than 20 years, or both, if the offense is committed—
 - “(A) to facilitate a drug trafficking crime (as defined in section 929(a)(2));
 - or
 - “(B) after a prior conviction under this section becomes final;
 - “(4) a fine under this title or imprisonment for not more than 25 years, or both, if the offense is committed—
 - “(A) to facilitate an act of international terrorism (as defined in section 2331(1)); or
 - “(B) in connection with a crime of violence (as defined in section 924(c)(3));”;
 - (4) by redesignating paragraph (5) as paragraph (6); and
 - (5) by inserting after paragraph (4) (as added by paragraph (3) of this subsection) the following:
 - “(5) in the case of any offense under subsection (a), forfeiture to the United States of any personal property used or intended to be used to commit the offense; and”.
- (c) CIRCUMSTANCES.—Section 1028(c) of title 18, United States Code, is amended by striking paragraph (3) and inserting the following:
- “(3) either—
 - “(A) the production, transfer, possession, or use prohibited by this section is in or affects interstate or foreign commerce; or
 - “(B) the means of identification, identification document, false identification document, or document-making implement is transported in the mail in the course of the production, transfer, possession, or use prohibited by this section.”.
- (d) DEFINITIONS.—Section 1028 of title 18, United States Code, is amended by striking subsection (d) and inserting the following:
- “(d) DEFINITIONS.—In this section:
- “(1) DOCUMENT-MAKING IMPLEMENT.—The term ‘document-making implement’ means any implement, impression, electronic device, or computer hardware or software, that is specifically configured or primarily used for making an identification document, a false identification document, or another document-making implement.
 - “(2) IDENTIFICATION DOCUMENT.—The term ‘identification document’ means a document made or issued by or under the authority of the United States Government, a State, political subdivision of a State, a foreign government, political subdivision of a foreign government, an international governmental or an international quasi-governmental organization which, when completed with information concerning a particular individual, is of a type intended or commonly accepted for the purpose of identification of individuals.
 - “(3) MEANS OF IDENTIFICATION.—The term ‘means of identification’ means any name or number that may be used, alone or in conjunction with any other information, to identify a specific individual, including any—

“(A) name, social security number, date of birth, official State or government issued driver’s license or identification number, alien registration number, government passport number, employer or taxpayer identification number;

“(B) unique biometric data, such as fingerprint, voice print, retina or iris image, or other unique physical representation;

“(C) unique electronic identification number, address, or routing code; or

“(D) telecommunication identifying information or access device (as defined in section 1029(e)).

“(4) PERSONAL IDENTIFICATION CARD.—The term ‘personal identification card’ means an identification document issued by a State or local government solely for the purpose of identification.

“(5) PRODUCE.—The term ‘produce’ includes alter, authenticate, or assemble.

“(6) STATE.—The term ‘State’ includes any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and any other commonwealth, possession, or territory of the United States.”.

(e) ATTEMPT AND CONSPIRACY.—Section 1028 of title 18, United States Code, is amended by adding at the end the following:

“(f) ATTEMPT AND CONSPIRACY.—Any person who attempts or conspires to commit any offense under this section shall be subject to the same penalties as those prescribed for the offense, the commission of which was the object of the attempt or conspiracy.”.

(f) RULE OF CONSTRUCTION.—Section 1028 of title 18, United States Code, is amended by adding at the end the following:

“(g) RULE OF CONSTRUCTION.—For purpose of subsection (a)(7), a single identification document or false identification document that contains 1 or more means of identification shall be construed to be 1 means of identification.”.

(g) CONFORMING AMENDMENTS.—Chapter 47 of title 18, United States Code, is amended—

(1) in section 1028, by striking “or attempts to do so.”;

(2) in the heading for section 1028, by adding “**and information**” at the end; and

(3) in the analysis for the chapter, in the item relating to section 1028, by adding “and information” at the end.

SEC. 3. RESTITUTION.

Section 3663A of title 18, United States Code, is amended—

(1) in subsection (c)(1)(A)—

(A) in clause (ii), by striking “or” at the end;

(B) in clause (iii), by striking “and” at the end and inserting “or”; and

(C) by adding at the end the following:

“(iv) an offense described in section 1028 (relating to fraud and related activity in connection with means of identification or identification documents); and”;

(2) by adding at the end the following:

“(e) FRAUD AND RELATED ACTIVITY IN CONNECTION WITH IDENTIFICATION DOCUMENTS AND INFORMATION.—Making restitution to a victim under this section for an offense described in section 1028 (relating to fraud and related activity in connection with means of identification or identification documents) may include payment for any costs, including attorney fees, incurred by the victim, including any costs incurred—

“(1) in clearing the credit history or credit rating of the victim; or

“(2) in connection with any civil or administrative proceeding to satisfy any debt, lien, or other obligation of the victim arising as a result of the actions of the defendant.”.

SEC. 4. AMENDMENT OF FEDERAL SENTENCING GUIDELINES FOR OFFENSES UNDER SECTION 1028.

(a) IN GENERAL.—Pursuant to its authority under section 994(p) of title 28, United States Code, the United States Sentencing Commission shall review and amend the Federal sentencing guidelines and the policy statements of the Commission, as appropriate, to provide an appropriate penalty for each offense under section 1028 of title 18, United States Code, as amended by this Act.

(b) FACTORS FOR CONSIDERATION.—In carrying out subsection (a), the United States Sentencing Commission shall consider, with respect to each offense described in subsection (a)—

(1) the extent to which the number of victims (as defined in section 3663A(a) of title 18, United States Code) involved in the offense, including harm to reputation, inconvenience, and other difficulties resulting from the offense, is an

adequate measure for establishing penalties under the Federal sentencing guidelines;

(2) the number of means of identification, identification documents, or false identification documents (as those terms are defined in section 1028(d) of title 18, United States Code, as amended by this Act) involved in the offense, is an adequate measure for establishing penalties under the Federal sentencing guidelines;

(3) the extent to which the value of the loss to any individual caused by the offense is an adequate measure for establishing penalties under the Federal sentencing guidelines;

(4) the range of conduct covered by the offense;

(5) the extent to which sentencing enhancements within the Federal sentencing guidelines and the court's authority to sentence above the applicable guideline range are adequate to ensure punishment at or near the maximum penalty for the most egregious conduct covered by the offense;

(6) the extent to which Federal sentencing guidelines sentences for the offense have been constrained by statutory maximum penalties;

(7) the extent to which Federal sentencing guidelines for the offense adequately achieve the purposes of sentencing set forth in section 3553(a)(2) of title 18, United States Code; and

(8) any other factor that the United States Sentencing Commission considers to be appropriate.

SEC. 5. CENTRALIZED COMPLAINT AND CONSUMER EDUCATION SERVICE FOR VICTIMS OF IDENTITY THEFT.

(a) IN GENERAL.—Not later than 1 year after the date of enactment of this Act, the Federal Trade Commission shall establish procedures to—

(1) log and acknowledge the receipt of complaints by individuals who certify that they have a reasonable belief that 1 or more of their means of identification (as defined in section 1028 of title 18, United States Code, as amended by this Act) have been assumed, stolen, or otherwise unlawfully acquired in violation of section 1028 of title 18, United States Code, as amended by this Act;

(2) provide informational materials to individuals described in paragraph (1); and

(3) refer complaints described in paragraph (1) to appropriate entities, which may include referral to—

(A) the 3 major national consumer reporting agencies; and

(B) appropriate law enforcement agencies for potential law enforcement action.

(b) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated such sums as may be necessary to carry out this section.

SEC. 6. TECHNICAL AMENDMENTS TO TITLE 18, UNITED STATES CODE.

(a) TECHNICAL CORRECTION RELATING TO CRIMINAL FORFEITURE PROCEDURES.—Section 982(b)(1) of title 18, United States Code, is amended to read as follows: “(1) The forfeiture of property under this section, including any seizure and disposition of the property and any related judicial or administrative proceeding, shall be governed by the provisions of section 413 (other than subsection (d) of that section) of the Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. 853).”.

(b) ECONOMIC ESPIONAGE AND THEFT OF TRADE SECRETS AS PREDICATE OFFENSES FOR WIRE INTERCEPTION.—Section 2516(1)(a) of title 18, United States Code, is amended by inserting “chapter 90 (relating to protection of trade secrets),” after “to espionage),”.

I. PURPOSE OF THE LEGISLATION

S. 512, as reported by the Committee, amends chapter 47 of title 18 of the United States Code, relating to identity theft and assumption. The bill has two primary purposes. First, to extend 18 U.S.C. 1028, which criminalizes fraud in connection with identification *documents*, to cover the unlawful transfer and use of identity *information*. Second, to recognize the individual victims of identity theft crimes, and establish their right to restitution to include all costs related to regaining good credit or reputation. The bill also es-

establishes a centralized complaint and education service at the Federal Trade Commission.

II. LEGISLATIVE HISTORY OF THE BILL

SUMMARY

On March 21, 1997, Senator Jon Kyl (R-Az) introduced S. 512, "The Identity Theft and Assumption Deterrence Act". S. 512 was referred to the Committee on the Judiciary. The bill criminalized the theft of identity information and set out restitution provisions for individual victims of identity theft. S. 512 was referred to the Subcommittee on Technology, Terrorism, and Government Information, of which Senator Kyl is Chairman, on March 29, 1998, and on May 20, 1998, the Subcommittee held a legislative hearing on the bill. On June 12, 1998, an amendment in the nature of a substitute of S. 512 was polled out of subcommittee with unanimous consent. Original cosponsors to S. 512 were Senators Kyl, Leahy, Hatch, Feinstein, DeWine, Faircloth, Harkin, D'Amato, Grassley and Abraham. The amended substitute was reported out of the full committee by unanimous consent on July 9, 1998.

AMENDMENT OF TITLE 18, UNITED STATES CODE, SECTION 1028

One of the key decisions of the Committee was to write S. 512 to amend current criminal code (18 U.S.C. 1028), rather than creating a new section 1036 in the criminal code as proposed in S. 512 as introduced. The reasoning was as follows: this bill makes fraud in connection with identification *information* a crime. Under 18 U.S.C. 1028, only fraud in connection with identification *documents* is a crime. According to the 1982 House report accompanying the creation of section 1028, a major purpose of this section is to criminalize offenses involving Federal identification documents used "to support the creation of a new identity". (House Conference Report No. 97-975, Dec. 17, 1982). Such offenses were found by an Attorney General report to facilitate drug trafficking, alien smuggling, credit card fraud, and unlawful flight from prosecution. (House Conference Report No. 97-975, Dec. 17, 1982). Today, criminals do not necessarily need a document to assume an identity; often they just need the information itself to facilitate these types of crimes. By amending section 1028, this statute can keep pace with criminals' technological advances.

In addition, an amended section 1028 (rather than the originally proposed new section 1036) eliminates the need for investigators and prosecutors to distinguish between identity takeover (S. 512) and false identification (S. 512 and section 1028). The Committee believes that an amended section 1028 will prove both more useful and efficient for prosecutors than a separate new offense.

The Committee also recommends enhanced penalties for aggravating circumstances often associated with identity theft crimes and a revised attempt and conspiracy section. Potentially costly provisions which were not shown to provide direct solutions for law enforcement or victims of identity theft were deleted, while real time relief for victims by way of a centralized complaint and education service at the Federal Trade Commission was added. In ad-

dition, the original bill's sentencing enhancements were changed to a directive to the Sentencing Commission to consider the nature and extent of the criminal activity involved in sentencing guidelines for all crimes listed in section 1028.

LEGISLATIVE HEARING ON S. 512

The Subcommittee met on May 20, 1998, for a legislative hearing on S. 512. Testimony was received from the U.S. Secret Service, and the Federal Trade Commission, and two victim advocates. All witnesses stated that identity theft was a proliferating problem which crossed State lines and thus required Federal action.

The U.S. Secret Service testified that law enforcement is currently frustrated that the unlawful use of personal information is not a crime since identity theft is often perpetrated by organized criminals who know these crimes can be committed with relative impunity.

The Federal Trade Commission testified that the identity theft victims "suffer real harm", with the effect of the theft being "significant and long-lasting". The "real harm" is exacerbated because consumer victims have difficulty obtaining help from law enforcement since the law does not recognize these individuals as victims. S. 512 rectifies these problems by recognizing consumer victims as crime victims and providing for restitution and recovery of incurred costs.

Two victim advocates also testified. The first witness, Arizona factory worker Bob Hartle, testified that the felon who stole his identity actually taunted him over the phone, stating that he would continue to pose as Hartle for as long as he wanted since using his identity was not a crime. This criminal caused Hartle to suffer over \$100,000 of credit card debt, and bought homes and motorcycles in Hartle's name before filing for bankruptcy, also in Hartle's name.

Mari Frank, a California attorney and victim, has helped hundreds of identity theft victims. She testified that because identity crimes occur across State lines, a Federal law making identity theft a crime is essential. Frank stated that S. 512 enables law enforcement to investigate these cases and encourages States to follow suit. In addition, she testified that provisions for restitution and a Federal complaint center provide practical and fair help to victims of identity theft.

III. BACKGROUND

In July 1996, Arizona became the first State to pass legislation making identity theft a felony, punishable with imprisonment of 1½ years, plus restitution and a fine of not more than \$150,000. (As of February 1998, 142 investigations cases forwarded by Arizona law enforcement to State prosecutors resulted in 89 court cases filed. As of May 1998, in Maricopa County alone, where Phoenix is located, 105 identity thieves had pled guilty or been convicted.) Later in 1997, California became the second State to pass identity theft legislation, effective in January 1998. Identity theft is a misdemeanor under the California statute, and limited to identity crimes connected to financial crimes such as credit card fraud.

S. 512 recognizes that Federal action is required to address identity theft to deter its proliferation. Financial crimes involving the misappropriation of individuals' identifying information such as names, birth dates, and Social Security numbers account for 95 percent of the financial crimes arrests made by the U.S. Secret Service last year. The Secret Service alone reported that they made nearly 9,500 arrests for such crimes in 1997 amounting to \$745 million in losses to individual victims and financial institutions. These losses have nearly doubled in the last 2 years. In addition, the U.S. Postal Inspectors and the Secret Service report that their investigations indicate that increasingly criminals involved with identity theft are part of international criminal syndicates committing financial, drug-related, immigration and violent crimes.

Anecdotal information shows that the results of the theft of identification information can be devastating for the victims. The fortunate victims are successful in clearing their credit or good name by expending extensive time or money. Victims who have had their identities misappropriated by criminals who commit crimes in their names tend not to be so fortunate, with criminal records remaining intact which cannot be expunged because the law currently recognizes neither the victim nor the crime. S. 512 does both.

On May 31, 1998, the General Accounting Office (GAO) released a briefing report on issues relating to identity fraud entitled "Identity Fraud: Information on Prevalence, Cost, and Internet Impact is Limited" (GGD-98-100BR, May 1998). The report's findings support the conclusion that identity theft crimes are a growing problem causing substantial harm to victims. The report also found that 18 U.S.C. 1028 (which S. 512 amends) appears to be "closely related to identity fraud" because it addresses fraud in connection with identification documents.

The GAO report was completed at the request of Senator Charles Grassley, Chairman, Special Committee on Aging; Representative Barbara Kennelly, Ranking Minority Member, Subcommittee on Social Security, Committee on Ways and Means; and Representative Gerald Kleczka. The report acknowledges that there exists no clear definition of identity fraud, but does explain the nature of identity fraud. (This Senate report uses the terms "identity fraud" and "identity theft" interchangeably).

Generally, identity fraud involves "stealing" another person's personal identifying information, e.g., Social Security number, date of birth, and mother's maiden name. Criminals use such information to fraudulently establish credit, run up debt, or to take over existing financial accounts. The methods used to obtain personal identifying information can range from basic street theft to sophisticated, organized crime schemes involving the use of computerized databases or the bribing of employees with access to personal information on customer or personnel records. (GGD-98-100BR, May 1998 at 1).

Other findings of the report included:

In 1995, 93 percent of arrests made by the U.S. Secret Service Financial Crimes Division involved identity theft. In 1996 and 1997, 94 percent of financial crimes arrests involved identity theft. (GGD-98-100BR, May 1998 at 29).

The U.S. Secret Service stated that actual losses to individuals and financial institutions which the Secret Service had tracked involving identity fraud totaled \$442 million in fiscal year 1995, \$450 million in fiscal year 1996, and \$745 million in fiscal year 1997. (GGD-98-100BR, May 1998 at 29).

The Social Security Administration's Office of the Inspector General has stated that Social Security number misuse in connection with program fraud increased from 305 in fiscal year 1996 to 1,153 in fiscal year 1997. (GGD-98-100BR, May 1998 at 31).

Postal Inspection investigations show that identity fraud is perpetrated by organized crime syndicates, especially to support drug trafficking, and has a nationwide scope. (GGD-98-100BR, May 1998 at 35).

Trans Union Corporation, one of the three major national credit bureaus, states that two-thirds of its consumer inquiries to its fraud victim department involve identity fraud. Moreover, such inquiries have increased from an average of less than 3,000 inquiries per month in 1992 to over 43,000 a month in 1997. (GGD-98-100BR, May 1998 at 41).

VISA U.S.A., Inc., and MasterCard International, Inc. both stated that overall fraud losses from their member banks are in the hundreds of millions of dollars annually. (GGD-98-100BR, May 1998 at 42-45).

MasterCard stated that dollar losses relating to identity fraud represented about 96 percent of its member banks' overall fraud losses of \$407 million in 1997. (GGD-98-100BR, May 1998) at 45.

On an individual level, the "human" cost of identity fraud can be quite substantial. These costs include emotional costs, as well as various financial and/or opportunity costs. For example, the victims may be unable to obtain a job, purchase a car, or qualify for a mortgage. (GGD-98-100BR, May 1998) at 4.

While no specific data exists, anecdotal evidence suggests that Internet growth increases opportunities for criminal activity. (GGD-98-100BR, May 1998) at 4.

When S. 512 was polled out of the Subcommittee by unanimous consent on June 12, the bill was supported by interested entities in both the executive branch and the private sector, including: Department of Justice, Federal Bureau of Investigation, Federal Trade Commission, U.S. Postal Inspectors, American Bankers Association, Associated Credit Bureaus, VISA and MasterCard, PrivacyRights Clearinghouse, and the U.S. Public Interest Research Group.

IV. ADMINISTRATION POSITION

In testimony before the Subcommittee on Technology, Terrorism, and Government Information, the U.S. Secret Service voiced strong support for identity theft legislation. The Federal Trade Commission expressly supported S. 512 through testimony as well. The U.S. Postal Inspectors stated their support in a letter to the Subcommittee's Chairman, Senator Jon Kyl, dated May 19, 1998. Both the Federal Bureau of Investigation and the Treasury Department informally support S. 512.

Through a letter submitted to the Attorney General on May 5, 1998, Chairman Kyl requested formal comments on the Sub-

committee's first redraft of the bill as introduced. In a June 24, 1998, letter to Chairman Kyl, Acting Assistant Attorney General L. Anthony Sutin stated the following:

The Department supports the objective of the bill and its timely recognition of the burgeoning commercial exchange of financial and other personal information and the concomitant increase in opportunities to misappropriate that information for various illicit purposes. However, while we support the goals of S. 512, we believe that the bill is in need of refinements to address several problems.

The Subcommittee worked with the Department of Justice and resolved all outstanding concerns prior to receiving the Department's formal letter, including the language of the "prohibited conduct", "conspiracy", "forfeiture" sections, as well as the directives to the sentencing commission to revise sentencing guidelines' considerations in section 1028 cases.

V. CONCLUSION

S. 512, as reported, will fulfill its primary purposes of criminalizing the theft and misuse of personal information and providing legal recognition of individual victims. Identity thieves will no longer be able to act with impunity, and the law will have an unquantifiable value as a deterrent. Enhanced penalties and a requirement that the Sentencing Commission review their current sentencing guidelines to consider the nature and extent of the criminal activity, along with financial loss already factored into the guidelines, should result in a more equitable sentencing guideline for section 1028 crimes. Taken as a whole, S. 512's amendment to section 1028 will help this section keep pace with criminals' technological advances in committing identity theft crimes.

Federal legislation alone cannot eradicate identity theft. The Committee strongly encourages State and local governments and the private sector to complement the Federal role in this area with appropriate preventive and enforcement measures. The Committee also encourages individuals to take reasonable measures to prevent becoming a victim of identity theft.

VI. SECTION-BY-SECTION ANALYSIS

Section 1

Sets forth the title, "Identity Theft and Assumption Deterrence Act of 1998".

Section 2

(a) Establishment of offense.—S. 512 adds new section (a)(7) at the end of the prohibited conduct section in 18 U.S.C. § 1028 as follows:

Whoever, in a circumstance described in subsection (c) of this section—(7) knowingly transfers or uses, without lawful authority, a means of identification of another person with intent to commit or otherwise promote, carry on, or facilitate any unlawful activity that constitutes a violation of Federal law, or that constitutes a felony under applicable State or local law.

Section (a)(7) criminalizes the knowing transfer or use of one or more means of identification with the intent that any of them be used to violate any Federal law or any felony under State or local law. This provision specifically excludes State or local misdemeanor crimes as predicate offenses.

(b)(1) Fifteen-year penalty.—Under the S. 512 provision, defendants are subject to a fine and a maximum penalty of 15 years if the transfer or use of the means of identification occurs during any one year period and the value aggregated as a result of the offense is in the amount of \$1,000 or more, ensuring that only the more serious identity theft crimes are subject to the 15-year penalty.

(b)(2) Three-year penalty.—Identity theft crimes involving the use or transfer of a means of identification (but not subject to the 15-year penalty) are subject to a maximum of a fine and 3 years imprisonment, as currently listed under section 1028(b)(2).

Similarities in the nature and method of false document and false information crimes makes use of same 3-year and misdemeanor penalties reasonable. An added advantage of incorporating identity information crimes into the penalties set out in section 1028 is that such inclusion automatically makes identity information crimes subject to the exclusion (section 212(a)(2)) and deportation (section 237(a)(2)) provisions of the Immigration and Nationality Act.

In addition, criminal forfeiture is available for any personal property used or intended to be used to commit offenses under section 1028.

(b) (3) and (4). Enhanced penalties.—In 1996, section 1028(b) (3) and (4) were added to section 1028 providing enhanced penalties of up to 20 years if fraudulent documents are used to facilitate a drug-trafficking crime, and up to 25 years if the offense is used to facilitate an act of international terrorism. This bill enhances penalties against recidivists (20-year enhancement) and those who commit violent crime felonies in conjunction with a section 1028 violation (25-year enhancement).

The S. 512 language ensuring that recidivists are subject to the enhanced penalty of 20 years makes clear that the holding in *U.S. v. Deal*, 508 U.S. 129, does not apply to section 1028 offenses. *Deal* held that a second (or more) finding of guilt arising out of a single proceeding was sufficient to trigger enhanced penalties. (The law challenged in *Deal* required an enhanced penalty in a case of a second or subsequent conviction.) By contrast, S. 512 states that only those defendants who have had a prior final judgment of conviction entered against them under section 1028 will receive the enhanced penalty.

(c). Circumstances.—Section 1028 currently provides that document fraud is only a Federal crime when the production, transfer, or possession is in or affects interstate or foreign commerce, or is transported in the mails. S. 512 adds the “use” of a means of identification to the circumstances where section 1028 applies.

(d). Definitions.—Section 1028 already provides definitions for the terms “identification document”, “produce”, “document-making implement”, “personal identification card” and “State”. S. 512 adds a definition for “means of identification” and modifies “document-making implement” to include computers specifically configured or

primarily used to commit identity crimes. The definition of “means of identification” is:

(d)(4). Means of identification.—The term “means of identification” means any name or number that may be used, alone or in conjunction with any other information, to assume the identity of a specific individual, including any—

(A) name, social security number, date of birth, official State or government issued driver’s license or identification number, alien registration number, government passport number, employer or taxpayer identification number;

(B) unique biometric data, such as fingerprint, voice print, retina or iris image, or other unique physical representation;

(C) unique electronic identification number, address, or routing code; or

(D) telecommunication identifying information or access device (as defined in section 1029(e)).

“Means of identification” is a core definition in this bill, intended to capture the varieties of individual identification information technologically feasible which can be compromised and criminally transferred or used. The definition is intended to incorporate other means of identification which may be developed in the future, but are not currently available.

(e). Attempt and conspiracy.—S. 512 modifies the existing penalty in section 1028 for attempts and adds a penalty for conspiracies. Attempts and conspiracies are subject to the same penalties as those prescribed for the offense since the fortuity that the crime was not completed despite the defendant’s efforts to do so should not benefit the defendant. The new provision is practically identical to 21 U.S.C. 846.

(f). Conforming amendments.—This provision amends the title of section 1028 to conform to the addition of information-based crimes by this bill. Section 1028’s title shall read “Fraud and related activity in connection with identification documents *and information*”.

(g). Rule of construction.—This provision seeks to clarify that each means of identification in any one identification or fake identification document can not be treated as separate offenses under (a)(7). Without the clarification, it would be possible to prosecute offenses under the new (a)(7) with multiple counts. That option is not currently available under (a) (1)–(6), which would only permit (at maximum) one count per document.

Section 3

Restitution.—This provision legally acknowledges victims of identity theft by adding to section 1028 a requirement that victims who have suffered a pecuniary loss are entitled to mandatory restitution under 18 U.S.C. 3663A. The section makes clear that in determining restitution, any costs and attorney fees should be included. Specifically enumerated costs include those incurred for clearing credit history or rating and those costs in connection with civil or administrative proceedings to satisfy any debt, lien, or other obligations of the victim arising from a defendant’s criminal activity. *Note:* the definition of “victim” is set out in 18 U.S.C. 3663, which means “a

person directly or proximately harmed as a result of the commission of an offense for which restitution may be ordered”.

Section 4

Amendment of Federal sentencing guidelines for offenses under section 1028. This provision requires the Federal Sentencing Commission to review and amend, where appropriate, the Federal sentencing guidelines and policy statements of the Commission to provide for appropriate penalties for each offense under section 1028. In order to promote fairness and proportionality in sentencing throughout section 1028, the Sentencing Commission is to review the guidelines which apply to all prohibited conduct under section 1028.

This directive also requires the Sentencing Commission to consider certain factors when establishing penalties for section 1028 offenses. Many identity crimes include multiple victims and multiple numbers of means of identification or false identification. S. 512 requires the Sentencing Commission to take into consideration the number of victims and the number of means of identification, identification or false identification documents involved in the offense. In considering the number of victims (as defined in 18 U.S.C. 3663A(a)) involved in the offense, the Commission is to also consider the extent that “harm to reputation, inconvenience, and other difficulties resulting from the offense, is an adequate measure for establishing penalties”.

Section 5

Centralized complaint and consumer education service for victims of identity theft. This provision requires the Federal Trade Commission to formalize their current identity theft complaint and education service by establishing procedures within 1 year to set up a centralized complaint and consumer education service for victims of identity theft. The purpose of the service is to provide a Federal, central source of information for citizens who certify that they have a reasonable belief that their identity has been assumed or used without lawful authority. The center is to log and acknowledge the receipt of complaints, provide victims with informational materials, and then refer complaints to the three major national consumer reporting agencies as well as the appropriate law enforcement agencies for potential action. An authorization for necessary appropriations is included.

Section 6

Technical amendments to title 18, United States Code. The first amendment corrects a technical problem identified by the Department of Justice in enforcing the forfeiture provisions set out in 18 U.S.C. 982(b)(1), some of which currently permit forfeiture but fail to provide a procedure to seek the forfeiture. The Department considers that the provisions of 18 U.S.C. 982(b)(1) which do not have an attending procedure are, for practical purposes, unenforceable. This amendment states that all of the forfeiture provisions listed under section 982(b)(1) are to follow the procedures set out in section 413 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. 853).

The second amendment amends 18 U.S.C. 2516(1)(a) by inserting “chapter 90 (relating to protection of trade secrets)” after, “chapter 37 (relating to espionage)”. The purpose of this amendment is to correct a drafting error in the Economic Espionage Act, whereby economic espionage and theft of trade secrets are not enumerated in section 2516 as predicate offenses for obtaining an electronic interception order. By amending the section, the Committee makes clear that economic espionage and theft of trade secrets are predicate offenses upon which a title III application may be based, as originally intended. (See House Conference Report 104–879, Jan. 2, 1997 accompanying “The Economic Espionage Act of 1996” (H.R. 3723).

VII. COST ESTIMATE

In accordance with paragraph 11(a) of rule XXVI of the Standing Rules of the Senate and section 404 of the Congressional Budget Act of 1974, the committee provides the following cost estimate, prepared by the Congressional Budget Office:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, July 14, 1998.

Hon. ORRIN G. HATCH,
Chairman, Committee on the Judiciary,
U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for S. 512, the Identity Theft and Assumption Deterrence Act of 1998.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contacts are Mark Hadley and Mark Grabowicz.

Sincerely,

JUNE E. O'NEILL, *Director.*

Enclosure.

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

S. 512—Identity Theft and Assumption Deterrence Act of 1998

Summary: S. 512 would establish a new federal crime relating to fraud through the use of identification information and would direct the Federal Trade Commission (FTC) to provide a centralized complaint and consumer education service for victims of identity theft. The bill would authorize such sums as may be necessary for providing that service. Based on information from FTC, CBO estimates that implementing the bill would cost \$17 million over the 1999–2003 period, assuming appropriation of the necessary amounts.

Because enactment of S. 512 could affect direct spending and receipts, pay-as-you-go procedures would apply to the bill. However, CBO estimates that any impact on direct spending and receipts would not be significant.

S. 512 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act (UMRA) and would not affect the budgets of state, local, or tribal governments.

Estimated cost to the Federal Government: For purposes of this estimate, CBO assumes S. 512 will be enacted by the end of fiscal year 1998, and that the estimated amounts necessary to implement the bill will be appropriated by the start of each fiscal year. Outlays have been estimated on the basis of historical spending patterns for FTC and information provided by the agency. The estimated budgetary impact of S. 512 is shown in the following table. The costs of this legislation fall within budget function 370 (commerce and housing credit).

	By fiscal years in millions of dollars—				
	1999	2000	2001	2002	2003
SPENDING SUBJECT TO APPROPRIATION					
Estimated Authorization Level	2	3	4	4	4
Estimated Outlays	2	3	4	4	4

In addition to the discretionary spending shown in the table, S. 512 could lead to increases in both revenues and direct spending from provisions relating to criminal fines and asset forfeiture; CBO estimates that any such increases would be less than \$500,000 in each year.

Basis of estimate: The vast majority of the estimated costs are for personnel to log complaints by victims of identity theft, provide information to such victims, and refer complaints to the appropriate authorities. Based on information from the FTC, CBO estimates that the agency will receive about 1,000 calls per day on average, resulting in an annual cost of \$3 million to \$4 million.

S. 512 also would establish a new federal crime related to fraud through the use of identification information. Violators would be subject to imprisonment, forfeiture of personal property, and fines. As a result, the federal government would be able to pursue cases that it otherwise would not be able to prosecute. CBO expects that the government probably would not pursue many such cases, so we estimate that any increase in federal costs for law enforcement, court proceedings, or prison operations would not be significant. Any such additional costs would be subject to the availability of appropriated funds.

Because those prosecuted and convicted under S. 512 could be subject to criminal fines, the federal government might collect additional fines if the bill is enacted. Collections of such fines are recorded in the budget as government receipts (revenues), which are deposited in the Crime Victims Fund and spent in the following year. CBO expects that any additional collections from enacting S. 512 would be negligible, however, because of the small number of cases likely to be involved. Because any increase in direct spending would equal the fines collected with a one-year lag, the additional direct spending also would be negligible.

Enacting S. 512 also could lead to more assets being seized and forfeited to the United States, but we estimate that any such increase would be less than \$500,000 annually in value. Proceeds from the sale of any such assets would be deposited as revenues into the assets forfeiture fund of the Department of Justice and spent out of that fund in the same year. Thus, the change in direct

spending from the assets forfeiture fund would match any increase in revenues to that fund.

Pay-as-you-go consideration: Section 252 of the Balanced Budget and Emergency Deficit Control Act sets up pay-as-you-go procedures for legislation affecting direct spending or receipts. Enacting S. 512 could affect direct spending and receipts, but CBO estimates that any such effects would be less than \$500,000 a year.

Intergovernmental and private-sector impact: S. 512 contains no intergovernmental or private-sector mandates as defined in UMRA and would not affect the budgets of state, local, or tribal governments.

Estimate prepared by: Mark Hadley and Mark Grabowicz.

Estimate approved by: Paul N. Van de Water, Assistant Director for Budget Analysis.

VIII. REGULATORY IMPACT STATEMENT

In compliance with paragraph 11(b)(1), rule XXVI of the Standing Rules of the Senate, the Committee, after due consideration, concludes that S. 512 will not have significant regulatory impact.

IX. ADDITIONAL VIEWS OF SENATOR LEAHY

I am submitting additional views to the Committee Report on the Kyl-Leahy substitute to S. 512, because I want to highlight the significant privacy concerns implicated by the crime of identity theft.

Protecting the privacy of our personal information is a challenge, especially in this information age. Every time we obtain or use a credit card, place a toll-free phone call, surf the Internet, get a driver's license or are featured in *Who's Who*, we are leaving virtual pieces of ourselves in the form of personal information, which can be used without our consent or even our knowledge. Too frequently, criminals are getting hold of this information and using the personal information of innocent individuals to carry out other crimes. Indeed, *U.S. News & World Report* has called identity theft "a crime of the 90's".

According to the recent GAO report on "Identity Fraud," a myriad of methods are used to obtain personal identifying information. Such methods "can range from basic street theft to sophisticated organized crime schemes involving the use of computerized databases or the bribing of employees access to computerized information on customer or personnel records." GAO Briefing Report, "Identity Fraud: Information on Prevalence, Cost, and Internet Impact is Limited" (GGD-98-100BR, May 1998), at 1.

The consequences for the victims of identity theft can be severe. They can have their credit ratings ruined and be unable to get credit cards, student loans, or mortgages. They can be hounded by creditors or collection agencies to repay debts they never incurred, but were obtained in their name, at their address, with their social security number or driver's license number. It can take months or even years, and agonizing effort, to clear their good names and correct their credit histories. I understand that, in some instances, victims of identity theft have even been arrested for crimes they never committed when the actual perpetrators provided law enforcement officials with assumed names.

S. 512, as reported by the Committee, would provide important remedies for victims of identity fraud. Specifically, the bill would make clear that these victims are entitled to restitution, including payment for any costs and attorney's fees in clearing up their credit histories and having to engage in any civil or administrative proceedings to satisfy debts, liens or other obligations resulting from a defendant's theft of their identity. In addition, the bill would direct the Federal Trade Commission to keep track of consumer complaints of identity theft and provide information to victims of this crime on how to deal with its aftermath.

This is an important bill on an issue that has caused harm to many Americans. It has come a long way from its original formulation, which would have made it an offense, subject to 15 years' imprisonment, to possess "with intent to deceive" identity information

issued to another person. I was concerned that the scope of the proposed offense would have resulted in the federalization of the status offenses of underage teenagers using fake ID cards to gain entrance to bars or to buy cigarettes, or even the use of a borrowed ID card without any illegal purpose. This problem, and others, have been addressed in the Kyl-Leahy substitute, as reported out of the Committee, although there may be need to restrict the scope of the offense even further to ensure that it does not subject petty state offenses to federal felony liability.

In addition, we made efforts to ensure that this bill did not inappropriately and inadvertently raise to the felony offense level other federal petty and misdemeanor crimes. Further refinements to the bill may have to be made during consideration by the full Senate to ensure that this is the case.

I am glad that Senator Kyl and I were able to join forces to construct a substitute that punishes perpetrators of identity theft and helps victims of this crime to regain their privacy.

PATRICK LEAHY.

X. CHANGES IN EXISTING LAW

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, changes in existing law made by S. 512, as reported, are shown as follows (existing law which would be omitted is enclosed in bold brackets, new matter is printed in italic, and existing law in which no change is proposed is shown in roman type):

UNITED STATES CODE

* * * * *

TITLE 18—CRIMES AND CRIMINAL
PROCEDURE

* * * * *

PART I—CRIMES

* * * * *

CHAPTER 46—FOREFEITURE

* * * * *

§ 982. Criminal Forfeiture

(a)(1) The * * *

* * * * *

[(b)(1) Property subject to forfeiture under this section, any seizure and disposition thereof, and any administrative or judicial proceeding in relation thereto, shall be governed—

[(A) in the case of a forfeiture under subsection (a)(1) or (a)(6) of this section, by subsections (c) and (e) through (p) of section 413 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. 853); and

[(B) in the case of a forfeiture under subsection (a)(2) of this section, by subsections (b), (c), (e), and (g) through (p) of section 413 of such Act.]

(1) *The forfeiture of property under this section, including any seizure and disposition of the property and any related judicial or administrative proceeding, shall be governed by the provisions of section 413 (other than subsection (d) of that section) of the Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. 853).*

* * * * *

CHAPTER 47—FRAUD AND FALSE STATEMENTS

Sec.

[1008, 1009. Repealed.]

1024. Purchase or receipt of military, naval, or veteran's facilities property.

1028. Fraud and related activity in connection with identification documents *and information.*

* * * * *

§ 1028. Fraud and related activity in connection with identification documents *and information*

(a) Whoever, in a circumstance described in subsection (c) of this section—

(1) knowingly and without lawful authority produces an identification document or a false identification document;

* * * * *

(5) knowingly produces, transfers, or possesses a document-making implement with the intent such document-making implement will be used in the production of a false identification document or another document-making implement which will be so used; **[or]**

(6) knowingly possesses an identification document that is or appears to be an identification document of the United States which is stolen or produced without lawful authority knowing that such document was stolen or produced without such authority; *or*

(7) *knowingly possesses, transfers, or uses, without lawful authority, a means of identification of another person with the intent to commit, or otherwise promote, carry on, or facilitate any unlawful activity that constitutes a violation of Federal law, or that constitutes a felony under any applicable State or local law;*

[or attempts to do so,] shall be punished as provided in subsection (b) of this section.

(b) The punishment for an offense under subsection (a) of this section is—

(1) except as provided in paragraphs (3) and (4), a fine under this title or imprisonment for not more than 15 years, or both, if the offense is—

(A) the production or transfer of an identification document or false identification document that is or appears to be—

(i) an identification document issued by or under the authority of the United States; or

(ii) a birth certificate, or a driver's license or personal identification card;

(B) the production or transfer of more than five identification documents or false identification documents; **[or]**

(C) an offense under paragraph (5) of such subsection; or

(D) *an offense under paragraph (7) of such subsection that involves the transfer, possession, or use of 1 or more means of identification if, as a result of the offense, any individual committing the offense obtains anything of value aggregating \$1,000 or more during any 1-year period;*

(2) except as provided in paragraphs (3) and (4), a fine under this title or imprisonment for not more than three years, or both, if the offense is—

(A) any other production **【**or transfer of an identification document or**】** *possession, transfer, or use of a means of identification, an identification document, or a false identification document*; or

(B) an offense under paragraph (3) of such subsection;

【(3) a fine under this title or imprisonment for not more than 20 years, or both, if the offense is committed to facilitate a drug trafficking crime (as defined in section 929(a)(2) of this title);

【(4) a fine under this title or imprisonment for not more than 25 years, or both, if the offense is committed to facilitate an act of international terrorism (as defined in section 2331(1) of this title); and**】**

(3) a fine under this title or imprisonment for not more than 20 years, or both, if the offense is committed—

(A) to facilitate a drug trafficking crime (as defined in section 929(a)(2)); or

(B) after a prior conviction under this section becomes final;

(4) a fine under this title or imprisonment for not more than 25 years, or both, if the offense is committed—

(A) to facilitate an act of international terrorism (as defined in section 2331(1)); or

(B) in connection with a crime of violence (as defined in section 924(c)(3));

(5) in the case of any offense under subsection (a), forfeiture to the United States of any personal property used or intended to be used to commit the offense; and

【(5)**】** a fine under this title or imprisonment for not more than one year, or both, in any other case.

(c) The circumstances referred to in subsection (a) of this section is that—

* * * * *

【(3) the production, transfer, or possession prohibited by this section is in or affects interstate or foreign commerce, or the identification document, false identification document, or document-making implement is transported in the mail in the course of the production, transfer, or possession prohibited by this section.**】**

(3) either—

(A) the production, transfer possession, or use prohibited by this section is in or affects interstate or foreign commerce; or

(B) the means of identification, identification document, false identification document, or document-making implement is transported in the mail in the course of the production, transfer, possession, or use prohibited by this section.

【(d) As used in this section—

【(1) the term “identification document” means a document made or issued by or under the authority of the United States Government, a State, political subdivision of a State, a foreign government, political subdivision of a foreign government, an international governmental or an international quasi-governmental organization which, when completed with information

concerning a particular individual, is of a type intended or commonly accepted for the purpose of identification of individuals;

[(2) the term “produce” includes alter, authenticate, or assemble;

[(3) the term “document-making implement” means any implement or impression specially designed or primarily used for making an identification document, a false identification document, or another document-making implement;

[(4) the term “personal identification card” means an identification document issued by a State or local government solely for the purpose of identification; and

[(5) the term “State” includes any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and any other commonwealth, possession or territory of the United States.]

(d) *DEFINITIONS.—In this section:*

(1) *DOCUMENT-MAKING IMPLEMENT.—The term “document-making implement” means any implement, impression, electronic device, or computer hardware or software, that is specifically configured or primarily used for making an identification document, a false identification document, or another document-making implement.*

(2) *IDENTIFICATION DOCUMENT.—The term “identification document” means a document made or issued by or under the authority of the United States Government, a State, political subdivision of a State, a foreign government, political subdivision of a foreign government, an international governmental or an international quasi-governmental organization which, when completed with information concerning a particular individual, is of a type intended or commonly accepted for the purpose of identification of individuals.*

(3) *MEANS OF IDENTIFICATION.—The term “means of identification” means any name or number that may be used, along or in conjunction with any other information, to identify a specific individual, including any—*

(A) *name, social security number, date of birth, official State or government issued driver’s license or identification number, alien registration number, government passport number, employer or taxpayer identification number;*

(B) *unique biometric data, such as fingerprint, voice print, retina or iris image, or other unique physical representation;*

(C) *unique electronic identification number, address, or touring code; or*

(D) *telecommunication identifying information or access device (as defined in section 1029(e)).*

(4) *PERSONAL IDENTIFICATION CARD.—The term “personal identification card” means an identification document issued by a State or local government solely for the purpose of identification.*

(5) *PRODUCE.—The term “produce” includes alter, authenticate, or assemble.*

(6) *STATE*.—The term “State” includes any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and any other commonwealth, possession, or territory of the United States.

(e) This section does not prohibit any lawfully authorized investigative, protective, or intelligence activity of a law enforcement agency of the United States, a State, or a political subdivision of a State, or of an intelligence agency of the United States, or any activity authorized under chapter 224 of this title.

(f) *ATTEMPT AND CONSPIRACY*.—Any person who attempts or conspires to commit any offense under this section shall be subject to the same penalties as those prescribed for the offense, the commission of which was the object of the attempt or conspiracy.

(g) *RULE OF CONSTRUCTION*.—For purpose of subsection (a)(7), a single identification document or false identification document that contains 1 or more means of identification shall be construed to be 1 means of identification.

* * * * *

CHAPTER 119—WIRE INTERCEPTION AND INTERCEPTION OF ORAL COMMUNICATIONS

* * * * *

§ 2516. Authorization for interception of wire, oral, or electronic communications

(1) The Attorney * * *

(a) any offense punishable by death or by imprisonment for more than one year under sections 2274 through 2277 of title 42 of the United States Code (relating to the enforcement of the Atomic Energy Act of 1954), section 2284 of title 42 of the United States Code (relating to sabotage of nuclear facilities or fuel), or under the following chapters of this title: chapter 37 (relating to espionage), chapter 90 (relating to protection of trade secrets), chapter 105 (relating to sabotage), chapter 115 (relating to treason), chapter 102 (relating to riots), chapter 65 (relating to malicious mischief), chapter 111 (relating to destruction of vessels), or chapter 81 (relating to piracy);

* * * * *

PART II.—CRIMINAL PROCEDURE

* * * * *

CHAPTER 232—MISCELLANEOUS SENTENCING PROVISIONS

* * * * *

§ 3663A. Mandatory restitution to victims of certain crimes

* * * * *

(c)(1) This section shall apply in all sentencing proceedings for convictions of, or plea agreements relating to charges for, any offense—

(A) that is—

- (i) a crime of violence, as defined in section 16;
- (ii) an offense against property under this title, including any offense committed by fraud or deceit; **[or]**
- (iii) an offense described in section 1365 (relating to tampering with consumer products); **[and]** or
- (iv) *an offense described in section 1028 (relating to fraud and related activity in connection with means of identification or identification documents); and*

* * * * *

(d) An order of restitution under this section shall be issued and enforced in accordance with section 3664.

(e) FRAUD AND RELATED ACTIVITY IN CONNECTION WITH IDENTIFICATION DOCUMENTS AND INFORMATION.—Making restitution to a victim under this section for an offense described in section 1028 (relating to fraud and related activity in connection with means of identification or identification documents) may include payment for any costs, including attorney fees, incurred by the victim, including any costs incurred—

- (1) in clearing the credit history or credit rating of the victim;*
- or*
- (2) in connection with any civil or administrative proceeding to satisfy any debt, lien, or other obligation of the victim arising as a result of the actions of the defendant.*