

108TH CONGRESS  
2D SESSION

# H. R. 1731

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IN THE SENATE OF THE UNITED STATES

JUNE 24, 2005

Received

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## AN ACT

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,*

1 **SECTION 1. SHORT TITLE.**

2       This Act may be cited as the “Identity Theft Penalty  
3 Enhancement Act”.

4 **SEC. 2. AGGRAVATED IDENTITY THEFT.**

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

8 **“§ 1028A. Aggravated identity theft**

9       “(a) OFFENSES.—

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

17           “(2) TERRORISM OFFENSE.—Whoever, during  
18 and in relation to any felony violation enumerated in  
19 section 2332b(g)(5)(B), knowingly transfers, pos-  
20 sesses, or uses, without lawful authority, a means of  
21 identification of another person or a false identifica-  
22 tion document shall, in addition to the punishment  
23 provided for such felony, be sentenced to a term of  
24 imprisonment of 5 years.

25       “(b) CONSECUTIVE SENTENCE.—Notwithstanding  
26 any other provision of law—

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

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

11           “(3) in determining any term of imprisonment  
12 to be imposed for the felony during which the means  
13 of identification was transferred, possessed, or used,  
14 a court shall not in any way reduce the term to be  
15 imposed for such crime so as to compensate for, or  
16 otherwise take into account, any separate term of  
17 imprisonment imposed or to be imposed for a viola-  
18 tion of this section; and

19           “(4) a term of imprisonment imposed on a per-  
20 son for a violation of this section may, in the discre-  
21 tion of the court, run concurrently, in whole or in  
22 part, only with another term of imprisonment that  
23 is imposed by the court at the same time on that  
24 person for an additional violation of this section,  
25 provided that such discretion shall be exercised in

1       accordance with any applicable guidelines and policy  
2       statements issued by the Sentencing Commission  
3       pursuant to section 994 of title 28.

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

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

12              “(2) section 911 (relating to false personation  
13      of citizenship);

14              “(3) section 922(a)(6) (relating to false state-  
15      ments in connection with the acquisition of a fire-  
16      arm);

17              “(4) any provision contained in this chapter (re-  
18      lating to fraud and false statements), other than this  
19      section or section 1028(a)(7);

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

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

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

1 “(8) section 523 of the Gramm-Leach-Bliley  
 2 Act (15 U.S.C. 6823) (relating to obtaining cus-  
 3 tomer information by false pretenses);

4 “(9) section 243 or 266 of the Immigration and  
 5 Nationality Act (8 U.S.C. 1253 and 1306) (relating  
 6 to willfully failing to leave the United States after  
 7 deportation and creating a counterfeit alien registra-  
 8 tion card);

9 “(10) any provision contained in chapter 8 of  
 10 title II of the Immigration and Nationality Act (8  
 11 U.S.C. 1321 et seq.) (relating to various immigra-  
 12 tion offenses); or

13 “(11) section 208, 811, 1107(b), 1128B(a), or  
 14 1632 of the Social Security Act (42 U.S.C. 408,  
 15 1011, 1307(b), 1320a–7b(a), and 1383a) (relating  
 16 to false statements relating to programs under the  
 17 Act).”.

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

“1028A. Aggravated identity theft.”.

22 (c) APPLICATION OF DEFINITIONS FROM SECTION  
 23 1028.—Section 1028(d) of title 18, United States Code,  
 24 is amended by inserting “and section 1028A” after “In  
 25 this section”.

1 **SEC. 3. AMENDMENTS TO EXISTING IDENTITY THEFT PRO-**  
2 **HIBITION.**

3 Section 1028 of title 18, United States Code, is  
4 amended—

5 (1) in subsection (a)(7)—

6 (A) by striking “transfers” and inserting  
7 “transfers, possesses,”; and

8 (B) by striking “abet,” and inserting  
9 “abet, or in connection with,”;

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

12 (3) in subsection (b)(2), by striking “three  
13 years” and inserting “5 years”; and

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

17 **SEC. 4. AGGREGATION OF VALUE FOR PURPOSES OF SEC-**  
18 **TION 641.**

19 The penultimate paragraph of section 641 of title 18  
20 of the United States Code is amended by inserting “in  
21 the aggregate, combining amounts from all the counts for  
22 which the defendant is convicted in a single case,” after  
23 “value of such property” .

1 **SEC. 5. DIRECTIVE TO THE UNITED STATES SENTENCING**  
2 **COMMISSION.**

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

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

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

20 (2) Ensure reasonable consistency with other  
21 relevant directives, other sentencing guidelines, and  
22 statutory provisions.

23 (3) Make any necessary and conforming  
24 changes to the sentencing guidelines.

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

Attest: **JEFF TRANDAH**,  
*Clerk.*