

Calendar No. 324

112TH CONGRESS
2D SESSION**S. 2111**

To enhance punishment for identity theft and other violations of data privacy
and security.

IN THE SENATE OF THE UNITED STATES

FEBRUARY 15, 2012

Mr. LEAHY introduced the following bill; which was read the first time

FEBRUARY 16, 2012

Read the second time and placed on the calendar

A BILL

To enhance punishment for identity theft and other violations
of data privacy and security.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Cyber Crime Protec-
5 tion Security Act”.

1 **SEC. 2. ORGANIZED CRIMINAL ACTIVITY IN CONNECTION**
 2 **WITH UNAUTHORIZED ACCESS TO PERSON-**
 3 **ALLY IDENTIFIABLE INFORMATION.**

4 Section 1961(1) of title 18, United States Code, is
 5 amended by inserting “section 1030 (relating to fraud and
 6 related activity in connection with computers) if the act
 7 is a felony,” before “section 1084”.

8 **SEC. 3. PENALTIES FOR FRAUD AND RELATED ACTIVITY IN**
 9 **CONNECTION WITH COMPUTERS.**

10 Section 1030(c) of title 18, United States Code, is
 11 amended to read as follows:

12 “(c) The punishment for an offense under subsection
 13 (a) or (b) of this section is—

14 “(1) a fine under this title or imprisonment for
 15 not more than 20 years, or both, in the case of an
 16 offense under subsection (a)(1) of this section;

17 “(2)(A) except as provided in subparagraph
 18 (B), a fine under this title or imprisonment for not
 19 more than 3 years, or both, in the case of an offense
 20 under subsection (a)(2); or

21 “(B) a fine under this title or imprisonment for
 22 not more than ten years, or both, in the case of an
 23 offense under paragraph (a)(2) of this section, if—

24 “(i) the offense was committed for pur-
 25 poses of commercial advantage or private finan-
 26 cial gain;

1 “(ii) the offense was committed in the fur-
2 therance of any criminal or tortious act in viola-
3 tion of the Constitution or laws of the United
4 States, or of any State; or

5 “(iii) the value of the information obtained,
6 or that would have been obtained if the offense
7 was completed, exceeds \$5,000;

8 “(3) a fine under this title or imprisonment for
9 not more than 1 year, or both, in the case of an of-
10 fense under subsection (a)(3) of this section;

11 “(4) a fine under this title or imprisonment of
12 not more than 20 years, or both, in the case of an
13 offense under subsection (a)(4) of this section;

14 “(5)(A) except as provided in subparagraph
15 (D), a fine under this title, imprisonment for not
16 more than 20 years, or both, in the case of an of-
17 fense under subsection (a)(5)(A) of this section, if
18 the offense caused—

19 “(i) loss to 1 or more persons during any
20 1-year period (and, for purposes of an inves-
21 tigation, prosecution, or other proceeding
22 brought by the United States only, loss result-
23 ing from a related course of conduct affecting
24 1 or more other protected computers) aggre-
25 gating at least \$5,000 in value;

1 “(ii) the modification or impairment, or
2 potential modification or impairment, of the
3 medical examination, diagnosis, treatment, or
4 care of 1 or more individuals;

5 “(iii) physical injury to any person;

6 “(iv) a threat to public health or safety;

7 “(v) damage affecting a computer used by,
8 or on behalf of, an entity of the United States
9 Government in furtherance of the administra-
10 tion of justice, national defense, or national se-
11 curity; or

12 “(vi) damage affecting 10 or more pro-
13 tected computers during any 1-year period;

14 “(B) a fine under this title, imprisonment for
15 not more than 10 years, or both, in the case of an
16 offense under subsection (a)(5)(B), if the offense
17 caused a harm provided in clause (i) through (vi) of
18 subparagraph (A) of this subsection;

19 “(C) if the offender attempts to cause or know-
20 ingly or recklessly causes death from conduct in vio-
21 lation of subsection (a)(5)(A), a fine under this title,
22 imprisonment for any term of years or for life, or
23 both; or

1 “(D) a fine under this title, imprisonment for
2 not more than 1 year, or both, for any other offense
3 under subsection (a)(5);

4 “(6) a fine under this title or imprisonment for
5 not more than 10 years, or both, in the case of an
6 offense under subsection (a)(6) of this section; or

7 “(7) a fine under this title or imprisonment for
8 not more than 10 years, or both, in the case of an
9 offense under subsection (a)(7) of this section..”.

10 **SEC. 4. TRAFFICKING IN PASSWORDS.**

11 Section 1030(a) of title 18, United States Code, is
12 amended by striking paragraph (6) and inserting the fol-
13 lowing:

14 “(6) knowingly and with intent to defraud traf-
15 fics (as defined in section 1029) in—

16 “(A) any password or similar information
17 or means of access through which a protected
18 computer as defined in subparagraphs (A) and
19 (B) of subsection (e)(2) may be accessed with-
20 out authorization; or

21 “(B) any means of access through which a
22 protected computer as defined in subsection
23 (e)(2)(A) may be accessed without authoriza-
24 tion..”.

1 **SEC. 5. CONSPIRACY AND ATTEMPTED COMPUTER FRAUD**
 2 **OFFENSES.**

3 Section 1030(b) of title 18, United States Code, is
 4 amended by inserting “for the completed offense” after
 5 “punished as provided”.

6 **SEC. 6. CRIMINAL AND CIVIL FORFEITURE FOR FRAUD AND**
 7 **RELATED ACTIVITY IN CONNECTION WITH**
 8 **COMPUTERS.**

9 Section 1030 of title 18, United States Code, is
 10 amended by striking subsections (i) and (j) and inserting
 11 the following:

12 “(i) CRIMINAL FORFEITURE.—

13 “(1) The court, in imposing sentence on any
 14 person convicted of a violation of this section, or
 15 convicted of conspiracy to violate this section, shall
 16 order, in addition to any other sentence imposed and
 17 irrespective of any provision of State law, that such
 18 person forfeit to the United States—

19 “(A) such person’s interest in any prop-
 20 erty, real or personal, that was used, or in-
 21 tended to be used, to commit or facilitate the
 22 commission of such violation; and

23 “(B) any property, real or personal, consti-
 24 tuting or derived from any gross proceeds, or
 25 any property traceable to such property, that

1 such person obtained, directly or indirectly, as
2 a result of such violation.

3 “(2) The criminal forfeiture of property under
4 this subsection, including any seizure and disposition
5 of the property, and any related judicial or adminis-
6 trative proceeding, shall be governed by the provi-
7 sions of section 413 of the Comprehensive Drug
8 Abuse Prevention and Control Act of 1970 (21
9 U.S.C. 853), except subsection (d) of that section.

10 “(j) CIVIL FORFEITURE.—

11 “(1) The following shall be subject to forfeiture
12 to the United States and no property right, real or
13 personal, shall exist in them:

14 “(A) Any property, real or personal, that
15 was used, or intended to be used, to commit or
16 facilitate the commission of any violation of this
17 section, or a conspiracy to violate this section.

18 “(B) Any property, real or personal, con-
19 stituting or derived from any gross proceeds ob-
20 tained directly or indirectly, or any property
21 traceable to such property, as a result of the
22 commission of any violation of this section, or
23 a conspiracy to violate this section.

24 “(2) Seizures and forfeitures under this sub-
25 section shall be governed by the provisions in chap-

1 ter 46 of title 18, United States Code, relating to
 2 civil forfeitures, except that such duties as are im-
 3 posed on the Secretary of the Treasury under the
 4 customs laws described in section 981(d) of title 18,
 5 United States Code, shall be performed by such offi-
 6 cers, agents and other persons as may be designated
 7 for that purpose by the Secretary of Homeland Se-
 8 curity or the Attorney General.”.

9 **SEC. 7. DAMAGE TO CRITICAL INFRASTRUCTURE COM-**
 10 **PUTERS.**

11 (a) IN GENERAL.—Chapter 47 of title 18, United
 12 States Code, is amended by inserting after section 1030
 13 the following:

14 **“SEC. 1030A. AGGRAVATED DAMAGE TO A CRITICAL INFRA-**
 15 **STRUCTURE COMPUTER.**

16 “(a) DEFINITIONS.—In this section—

17 “(1) the terms ‘computer’ and ‘damage’ have
 18 the meanings given such terms in section 1030; and

19 “(2) the term ‘critical infrastructure computer’
 20 means a computer that manages or controls systems
 21 or assets vital to national defense, national security,
 22 national economic security, public health or safety,
 23 or any combination of those matters, whether pub-
 24 licly or privately owned or operated, including—

1 “(A) gas and oil production, storage, and
2 delivery systems;

3 “(B) water supply systems;

4 “(C) telecommunication networks;

5 “(D) electrical power delivery systems;

6 “(E) finance and banking systems;

7 “(F) emergency services;

8 “(G) transportation systems and services;

9 and

10 “(H) government operations that provide
11 essential services to the public.

12 “(b) OFFENSE.—It shall be unlawful to, during and
13 in relation to a felony violation of section 1030, inten-
14 tionally cause or attempt to cause damage to a critical
15 infrastructure computer, and such damage results in (or,
16 in the case of an attempt, would, if completed have re-
17 sulted in) the substantial impairment—

18 “(1) of the operation of the critical infrastruc-
19 ture computer; or

20 “(2) of the critical infrastructure associated
21 with the computer.

22 “(c) PENALTY.—Any person who violates subsection
23 (b) shall be fined under this title, imprisoned for not less
24 than 3 years nor more than 20 years, or both.

1 “(d) CONSECUTIVE SENTENCE.—Notwithstanding
2 any other provision of law—

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

5 “(2) except as provided in paragraph (4), no
6 term of imprisonment imposed on a person under
7 this section shall run concurrently with any other
8 term of imprisonment, including any term of impris-
9 onment imposed on the person under any other pro-
10 vision of law, including any term of imprisonment
11 imposed for the felony violation section 1030;

12 “(3) in determining any term of imprisonment
13 to be imposed for a felony violation of section 1030,
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 United States Sentencing
3 Commission pursuant to section 994 of title 28.”.

4 (b) TECHNICAL AND CONFORMING AMENDMENT.—
5 The table of sections for chapter 47 of title 18, United
6 States Code, is amended by inserting after the item relat-
7 ing to section 1030 the following:

 “Sec. 1030A. Aggravated damage to a critical infrastructure computer.”.

8 **SEC. 8. LIMITATION ON ACTIONS INVOLVING UNAUTHOR-**
9 **IZED USE.**

10 Section 1030(e)(6) of title 18, United States Code,
11 is amended by striking “alter;” and inserting “alter, but
12 does not include access in violation of a contractual obliga-
13 tion or agreement, such as an acceptable use policy or
14 terms of service agreement, with an Internet service pro-
15 vider, Internet website, or non-government employer, if
16 such violation constitutes the sole basis for determining
17 that access to a protected computer is unauthorized;”.

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