

S. 2871

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. DEFINITION OF UNTAXED INCOME AND BENEFITS.

(a) AMENDMENT.—Section 480(b) of the Higher Education Act of 1965 (20 U.S.C. 1087vv(b)) is amended by striking paragraph (2) and inserting the following:

“(2) The term ‘untaxed income and benefits’ shall not include—

“(A) the amount of additional child tax credit claimed for Federal income tax purposes;

“(B) welfare benefits, including assistance under a State program funded under part A of title IV of the Social Security Act and aid to dependent children;

“(C) the amount of earned income credit claimed for Federal income tax purposes;

“(D) the amount of credit for Federal tax on special fuels claimed for Federal income tax purposes;

“(E) the amount of foreign income excluded for purposes of Federal income taxes; or

“(F) untaxed social security benefits.”.

(b) EFFECTIVE DATE.—This section and the amendment made by this section shall take effect on July 1, 2009.

SEC. 2. INCOME-BASED REPAYMENT FOR MARRIED BORROWERS FILING SEPARATELY.

Section 493C of the Higher Education Act of 1965 (20 U.S.C. 1098e) is amended by adding at the end the following:

“(d) SPECIAL RULE FOR MARRIED BORROWERS FILING SEPARATELY.—In the case of a married borrower who files a separate Federal income tax return, the Secretary shall calculate the amount of the borrower’s income-based repayment under this section solely on the basis of the borrower’s student loan debt and adjusted gross income.”.

EXECUTIVE SESSION

EXECUTIVE CALENDAR

NOMINATION DISCHARGED

Mr. SALAZAR. Mr. President, I ask unanimous consent that the Senate proceed to executive session to consider the National Oceanic and Atmosphere Administration nominations on the Secretary’s desk; that the nominations be confirmed, the motions to reconsider be laid on the table; that the Homeland Security Committee be discharged from further consideration of the nomination of Todd Zinser to be inspector general of the Department of Commerce and that he be placed on the calendar; that the President be immediately notified of the Senate’s action and the Senate then return to legislative session.

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

The nominations considered and confirmed are as follows:

NOMINATIONS PLACED ON THE SECRETARY’S DESK

NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION

PN982 NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION nominations (57) beginning Michael S. Gallagher, and ending Mark K. Frydrych, which nominations were received by the Senate and appeared in the Congressional Record of October 16, 2007.

LEGISLATIVE SESSION

The PRESIDING OFFICER. Under the previous order, the Senate will return to legislative session.

NAMING OF EMANCIPATION HALL

Mr. SALAZAR. Mr. President, I ask unanimous consent that the Rules Committee be discharged from further consideration of S. 1679 and that the Senate then proceed to its immediate consideration.

The PRESIDING OFFICER. Without objection, it is so ordered. The clerk will report the title of the bill.

The assistant legislative clerk read as follows:

A bill (S. 1679) to provide that the great hall of the Capitol Visitor Center shall be known as Emancipation Hall.

There being no objection, the Senate proceeded to consider the bill.

Mr. SALAZAR. Mr. President, I ask unanimous consent that the bill be read a third time, passed, and the motion to reconsider be laid upon the table; that any statements relating to the bill be printed in the RECORD, without intervening action or debate.

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

The bill (S. 1679) was ordered to be engrossed for a third reading, was read the third time, and passed, as follows:

S. 1679

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. DESIGNATION OF GREAT HALL OF THE CAPITOL VISITOR CENTER AS EMANCIPATION HALL.

(a) IN GENERAL.—The great hall of the Capitol Visitor Center shall be known and designated as “Emancipation Hall”, and any reference to the great hall in any law, rule, or regulation shall be deemed to be a reference to Emancipation Hall.

(b) EFFECTIVE DATE.—This section shall apply on and after the date of the enactment of this Act.

IDENTITY THEFT ENFORCEMENT AND RESTITUTION ACT OF 2007

Mr. SALAZAR. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of Calendar No. 459, S. 2168.

The PRESIDING OFFICER. The clerk will report the bill by title.

The assistant legislative clerk read as follows:

A bill (S. 2168) to amend title 18 United States Code to enable increased Federal prosecution of identity theft crimes and to allow for restitution for victims of identity theft.

There being no objection, the Senate proceeded to consider the bill, which had been reported from the committee on the Judiciary, with amendments, as follows:

(The parts of the bill intended to be stricken are shown in boldface brackets and the parts of the bill intended to be inserted are shown in italics.)

S. 2168

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the “Identity Theft Enforcement and Restitution Act of 2007”.

SEC. 2. CRIMINAL RESTITUTION.

Section 3663(b) of title 18, United States Code, is amended—

(1) in paragraph (4), by striking “; and” and inserting a semicolon;

(2) in paragraph (5), by striking the period at the end and inserting “; and”; and

(3) by adding at the end the following:

“(6) in the case of an offense under sections 1028(a)(7) or 1028A(a) of this title, pay an amount equal to the value of the time reasonably spent by the victim in an attempt to remediate the intended or actual harm incurred by the victim from the offense.”.

SEC. 3. PREDICATE OFFENSES FOR AGGRAVATED IDENTITY THEFT AND MISUSE OF IDENTIFYING INFORMATION OF ORGANIZATIONS.

(a) IDENTITY THEFT.—Section 1028 of title 18, United States Code, is amended—

(1) in subsection (a)(7), by inserting “(including an organization as defined in section 18 of this title)” after “person”; and

(2) in subsection (d)(7), by inserting “or other person” after “specific individual”.

(b) AGGRAVATED IDENTITY THEFT.—Section 1028A of title 18, United States Code, is amended—

(1) in subsection (a)(1), by inserting “(including an organization as defined in section 18 of this title)” after “person”; and

(2) in subsection (c)—

(A) in the matter preceding paragraph (1), by inserting “, or a conspiracy to commit such a felony violation,” after “any offense that is a felony violation”;

(B) by redesignating—

(i) paragraph (11) as paragraph (14);

(ii) paragraphs (8) through (10) as paragraphs (10) through (12), respectively; and

(iii) paragraphs (1) through (7) as paragraphs (2) through (8), respectively;

(C) by inserting prior to paragraph (2), as so redesignated, the following:

“(1) section 513 (relating to making, uttering, or possessing counterfeited securities);”;

(D) by inserting after paragraph (8), as so redesignated, the following:

“(9) section 1708 (relating to mail theft);”;

(E) in paragraph (12), as so redesignated, by striking “; or” and inserting a semicolon; and

(F) by inserting after paragraph (12), as so redesignated, the following:

“(13) section 7201, 7206, or 7207 of title 26 (relating to tax fraud); or”.

SEC. 4. ENSURING JURISDICTION OVER THE THEFT OF SENSITIVE IDENTITY INFORMATION.

Section 1030(a)(2)(C) of title 18, United States Code, is amended by striking “if the conduct involved an interstate or foreign communication”.

SEC. 5. MALICIOUS SPYWARE, HACKING AND KEYLOGGERS.

(a) IN GENERAL.—Section 1030 of title 18, United States Code, is amended—

(1) in subsection (a)(5)—

(A) by striking subparagraph (B); and

(B) in subparagraph (A)—

(i) by striking “(A)(1) knowingly” and inserting “(A) knowingly”;

(ii) by redesignating clauses (ii) and (iii) as subparagraphs (B) and (C), respectively; and

(iii) in subparagraph (C), as so redesignated, by striking “; and” and inserting a period;]

(iii) in subparagraph (C), as so redesignated—

(I) by inserting “and loss” after “damage”; and

(II) by striking “; and” and inserting a period;

(2) in subsection (c)—

(A) in paragraph (2)(A), by striking “(a)(5)(A)(iii.”;

(B) in paragraph (3)(B), by striking “(a)(5)(A)(iii.”;

(C) by amending paragraph (4) to read as follows:

“(4)(A) except as provided in subparagraphs (E) and (F), a fine under this title, imprisonment for not more than 5 years, or both, in the case of—

“(i) an offense under subsection (a)(5)(B), which does not occur after a conviction for another offense under this section, if the offense caused (or, in the case of an attempted offense, would, if completed, have caused)—

“(I) loss to 1 or more persons during any 1-year period (and, for purposes of an investigation, prosecution, or other proceeding brought by the United States only, loss resulting from a related course of conduct affecting 1 or more other protected computers) aggregating at least \$5,000 in value;

“(II) the modification or impairment, or potential modification or impairment, of the medical examination, diagnosis, treatment, or care of 1 or more individuals;

“(III) physical injury to any person;

“(IV) a threat to public health or safety;

“(V) damage affecting a computer used by or for an entity of the United States Government in furtherance of the administration of justice, national defense, or national security; or

“(VI) damage affecting 10 or more protected computers during any 1-year period; or

“(ii) an attempt to commit an offense punishable under this subparagraph;

“(B) except as provided in subparagraphs (E) and (F), a fine under this title, imprisonment for not more than 10 years, or both, in the case of—

“(i) an offense under subsection (a)(5)(A), which does not occur after a conviction for another offense under this section, if the offense caused (or, in the case of an attempted offense, would, if completed, have caused) a harm provided in subclauses (I) through (VI) of subparagraph (A)(i); or

“(ii) an attempt to commit an offense punishable under this subparagraph;

“(C) except as provided in subparagraphs (E) and (F), a fine under this title, imprisonment for not more than 20 years, or both, in the case of—

“(i) an offense or an attempt to commit an offense under subparagraphs (A) or (B) of subsection (a)(5) that occurs after a conviction for another offense under this section; or

“(ii) an attempt to commit an offense punishable under this subparagraph;

“(D) a fine under this title, imprisonment for not more than 10 years, or both, in the case of—

“(i) an offense or an attempt to commit an offense under subsection (a)(5)(C) that occurs after a conviction for another offense under this section; or

“(ii) an attempt to commit an offense punishable under this subparagraph;

“(E) if the offender attempts to cause or knowingly or recklessly causes serious bodily injury from conduct in violation of subsection (a)(5)(A), a fine under this title, imprisonment for not more than 20 years, or both;

“(F) if the offender attempts to cause or knowingly or recklessly causes death from conduct in violation of subsection (a)(5)(A), a fine under this title, imprisonment for any term of years or for life, or both; or

“(G) a fine under this title, imprisonment for not more than 1 year, or both, for—

“(i) any other offense under subsection (a)(5); or

“(ii) an attempt to commit an offense punishable under this subparagraph.”; and

(D) by striking paragraph (5); and

(3) in subsection (g)—

(A) in the second sentence, by striking “in clauses (i), (ii), (iii), (iv), or (v) of subsection (a)(5)(B)” and inserting “in subclauses (I), (II), (III), (IV), (V), or (VI) (IV), or (V) of subsection (c)(4)(A)(i)”;

(B) in the third sentence, by striking “subsection (a)(5)(B)(i)” and inserting “subsection (c)(4)(A)(I)(I)”.

(b) CONFORMING CHANGES.—Section 2332b(g)(5)(B)(i) of title 18, United States Code, is amended by striking “1030(a)(5)(A)(i) resulting in damage as defined in 1030(a)(5)(B)(ii) through (v)” and inserting “1030(a)(5)(A) resulting in damage as defined in 1030(c)(4)(A)(i)(II) through (VI)”.

SEC. 6. CYBER-EXTORTION.

Section 1030(a)(7) of title 18, United States Code, is amended to read as follows:

“(7) with intent to extort from any person any money or other thing of value, transmits in interstate or foreign commerce any communication containing any—

“(A) threat to cause damage to a protected computer;

“(B) threat to obtain information from a protected computer without authorization or in excess of authorization or to impair the confidentiality of information obtained from a protected computer without authorization or by exceeding authorized access; or

“(C) demand or request for money or other thing of value in relation to damage to a protected computer, where such damage was caused to facilitate the extortion.”.

SEC. 7. CONSPIRACY TO COMMIT CYBER-CRIMES.

Section 1030(b) of title 18, United States Code, is amended by inserting “conspires to commit or” after “Whoever”.

SEC. 8. USE OF FULL INTERSTATE AND FOREIGN COMMERCE POWER FOR CRIMINAL PENALTIES.

Section 1030(e)(2)(B) of title 18, United States Code, is amended by inserting “or affecting” after “which is used in”.

SEC. 9. FORFEITURE FOR SECTION 1030 VIOLATIONS.

Section 1030 of title 18, United States Code, is amended by adding at the end the following:

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

“(A) such person’s interest in any personal property that was used or intended to be used to commit or to facilitate the commission of such violation; and

“(B) any property, real or personal, constituting or derived from, any proceeds that such person obtained, directly or indirectly, as a result of such violation.

“(2) The criminal forfeiture of property under this subsection, any seizure and disposition thereof, and any judicial proceeding in relation thereto, shall be governed by the provisions of section 413 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. 853), except subsection (d) of that section.

“(j) For purposes of subsection (i), the following shall be subject to forfeiture to the United States and no property right shall exist in them:

“(1) Any personal property used or intended to be used to commit or to facilitate the commission of any violation of this section, or a conspiracy to violate this section.

“(2) Any property, real or personal, which constitutes or is derived from proceeds traceable to any violation of this section, or a conspiracy to violate this section.”.

SEC. 10. DIRECTIVE TO UNITED STATES SENTENCING COMMISSION.

(a) DIRECTIVE.—Pursuant to its authority under section 994(p) of title 28, United States

Code, and in accordance with this section, the United States Sentencing Commission shall review its guidelines and policy statements applicable to persons convicted of offenses under sections 1028, 1028A, 1030, 2511, and 2701 of title 18, United States Code, and any other relevant provisions of law, in order to reflect the intent of Congress that such penalties be increased in comparison to those currently provided by such guidelines and policy statements.

(b) REQUIREMENTS.—In determining its guidelines and policy statements on the appropriate sentence for the crimes enumerated in subsection (a), the United States Sentencing Commission shall consider the extent to which the guidelines and policy statements may or may not account for the following factors in order to create an effective deterrent to computer crime and the theft or misuse of personally identifiable data:

(1) The level of sophistication and planning involved in such offense.

(2) Whether such offense was committed for purpose of commercial advantage or private financial benefit.

(3) The potential and actual loss resulting from the offense including—

(A) the value of information obtained from a protected computer, regardless of whether the owner was deprived of use of the information; and

(B) where the information obtained constitutes a trade secret or other proprietary information, the cost the victim incurred developing or compiling the information.

(4) Whether the defendant acted with intent to cause either physical or property harm in committing the offense.

(5) The extent to which the offense violated the privacy rights of individuals.

(6) The effect of the offense upon the operations of an agency of the United States Government, or of a State or local government.

(7) Whether the offense involved a computer used by the United States Government, a State, or a local government in furtherance of national defense, national security, or the administration of justice.

(8) Whether the offense was intended to, or had the effect of, significantly interfering with or disrupting a critical infrastructure.

(9) Whether the offense was intended to, or had the effect of, creating a threat to public health or safety, causing injury to any person, or causing death.

(10) Whether the defendant purposefully involved a juvenile in the commission of the offense.

(11) Whether the defendant’s intent to cause damage or intent to obtain personal information should be disaggregated and considered separately from the other factors set forth in USSG 2B1.1(b)(14).

(12) Whether the term “victim” as used in USSG 2B1.1, should include individuals whose privacy was violated as a result of the offense in addition to individuals who suffered monetary harm as a result of the offense.

(13) Whether the defendant disclosed personal information obtained during the commission of the offense.

(c) ADDITIONAL REQUIREMENTS.—In carrying out this section, the United States Sentencing Commission shall—

(1) assure reasonable consistency with other relevant directives and with other sentencing guidelines;

(2) account for any additional aggravating or mitigating circumstances that might justify exceptions to the generally applicable sentencing ranges;

(3) make any conforming changes to the sentencing guidelines; and

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

Mr. LEAHY. Mr. President, I am pleased that the Senate has taken an

important step to combat identity theft and to protect the privacy rights of all Americans by passing the Leahy-Specter Identity Theft Enforcement and Restitution Act of 2007. This bipartisan cyber crime bill will provide new tools to Federal prosecutors to combat identity theft and other computer crimes. Today's prompt action by the Senate brings us one step closer to providing these much-needed tools to Federal prosecutors and investigators who are on the front lines of the battle against identity theft and other cyber crimes.

I thank Senator SPECTER, who has been a valuable partner in combating the growing problem of identity theft for many years, for joining with me to introduce this important privacy bill. I also thank Senators DURBIN, GRASSLEY, SCHUMER, BILL NELSON, INOUYE, STEVENS and FEINSTEIN for joining with us as cosponsors of this important legislation.

I commend Senators BIDEN and HATCH for their important work in this area. I am pleased that several provisions that they have drafted to further strengthen this cyber crime legislation will be included in this bill, and that with those additions, they have also cosponsored it.

Senator SPECTER and I have worked closely with the Department of Justice in crafting this bill and the Leahy-Specter Identity Theft Enforcement and Restitution Act has the strong support of the Department of Justice and the Secret Service. This bill is also supported by a broad coalition of business, high tech and consumer groups, including Microsoft, Consumers Union, the Cyber Security Industry Alliance, the Business Software Alliance, AARP and the Chamber of Commerce.

The Identity Theft Enforcement and Restitution Act takes several important and long overdue steps to protect Americans from the growing and evolving threat of identity theft and other cyber crimes. First, to better protect American consumers, our bill provides the victims of identity theft with the ability to seek restitution in Federal court for the loss of time and money spent restoring their credit and remedying the harms of identity theft, so that identity theft victims can be made whole.

Second, because identity theft schemes are much more sophisticated and cunning in today's digital era, our bill also expands the scope of the Federal identity theft statutes so that the law keeps up with the ingenuity of today's identity thieves. Our bill adds three new crimes—passing counterfeit securities, mail theft, and tax fraud—to the list of predicate offenses for aggravated identity theft. And, in order to better deter this kind of criminal activity, our bill also significantly increases the criminal penalties for these crimes. To address the increasing number of computer hacking crimes that involve computers located within the same State, our bill also eliminates the

jurisdictional requirement that a computer's information must be stolen through an interstate or foreign communication in order to federally prosecute this crime.

Our bill also addresses the growing problem of the malicious use of spyware to steal sensitive personal information, by eliminating the requirement that the loss resulting from the damage to a victim's computer must exceed \$5,000 in order to federally prosecute this offense. The bill also carefully balances this necessary change with the legitimate need to protect innocent actors from frivolous prosecutions, and clarifies that the elimination of the \$5,000 threshold applies only to criminal cases. In addition, our bill addresses the increasing number of cyber attacks on multiple computers, by making it a felony to employ spyware or keyloggers to damage 10 or more computers, regardless of the aggregate amount of damage caused. By making this crime a felony, the bill ensures that the most egregious identity thieves will not escape with minimal punishment under Federal cyber crime laws.

Lastly, our bill strengthens the protections for American businesses, which are more and more becoming the focus of identity thieves, by adding two new causes of action under the cyber extortion statute—threatening to obtain or release information from a protected computer and demanding money in relation to a protected computer—so that this bad conduct can be federally prosecuted. In addition, because a business as well as an individual can be a prime target for identity theft, our bill closes several gaps in the federal identity theft and the aggravated identity theft statutes to ensure that identity thieves who target a small business or a corporation can be prosecuted under these laws. The bill also adds the remedy of civil and criminal forfeiture to the arsenal of tools to combat cyber crime and our bill directs the United States Sentencing Commission to review its guidelines for identity theft and cyber crime offenses.

The Identity Theft Enforcement and Restitution Act is a good, bipartisan measure to help combat the growing threat of identity theft and other cyber crimes to all Americans. Just this week, FBI Director Robert Mueller reminded all Americans that cyber threats will continue to grow as our Nation becomes more dependent upon high technology. This carefully balanced bill protects the privacy rights of American consumers, the interests of business and the legitimate needs of law enforcement. This privacy bill also builds upon our prior efforts to enact comprehensive data privacy legislation. The Leahy-Specter Personal Data Privacy and Security Act, S. 495, which Senator SPECTER and I reintroduced earlier this year, would address the growing dangers of identity theft at its source—lax data security and inadequate breach notification. Protecting

the privacy and security of American consumers should be one of the Senate's top legislative priorities and I urge the majority leader to take up that measure at the earliest opportunity.

Again, I thank the bipartisan coalition of Senators who have joined Senator SPECTER and me in supporting this important privacy legislation, as well as the many consumer and business groups that support this bill. I ask unanimous consent that a copy of a support letter that I have received from the Chamber of Commerce regarding this bill be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

CHAMBER OF COMMERCE OF THE
UNITED STATES OF AMERICA,
Washington, DC, November 2, 2007.

Hon. PATRICK LEAHY,
Chairman, Committee on the Judiciary, U.S.
Senate, Washington, DC.

Hon. ARLEN SPECTER,
Ranking Member, Committee on the Judiciary,
U.S. Senate, Washington, DC.

DEAR CHAIRMAN LEAHY AND RANKING MEMBER SPECTER: The U.S. Chamber of Commerce, the world's largest business federation representing more than three million businesses and organizations of every size, sector, and region, thank you for your leadership on issues related to identity theft and other types of cyber crime. The Chamber strongly supports S. 2168, the "Identity Theft Enforcement and Restitution Act of 2007," and congratulates the Committee on the Judiciary for reporting favorably this important legislation.

The Internet today is a major engine of economic growth for the United States. Unfortunately, accompanying this amazing growth has been the continued rise of malicious cyber activity by very coordinated and clever criminal networks. S. 2168 will go a long way to address this very serious issue by giving law enforcement officials much needed tools and resources to combat these criminals.

Once again, the Chamber appreciates your leadership on these issues, and looks forward to working with the Committee to assure passage of S. 2168 by the full Senate.

Sincerely,

R. BRUCE JOSTEN.

Mr. SALAZAR. Mr. President, I ask unanimous consent that the committee amendments be agreed to, the bill as amended be read a third time and passed, the motions to reconsider be laid upon the table with no intervening action or debate, and any statements be printed in the RECORD.

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

The committee amendments were agreed to.

The bill (S. 2168), as amended, was ordered to be engrossed for a third reading, was read the third time, and passed, as follows:

S. 2168

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Identity Theft Enforcement and Restitution Act of 2007".

SEC. 2. CRIMINAL RESTITUTION.

Section 3663(b) of title 18, United States Code, is amended—

(1) in paragraph (4), by striking “; and” and inserting a semicolon;

(2) in paragraph (5), by striking the period at the end and inserting “; and”;

(3) by adding at the end the following:

“(6) in the case of an offense under sections 1028(a)(7) or 1028A(a) of this title, pay an amount equal to the value of the time reasonably spent by the victim in an attempt to remediate the intended or actual harm incurred by the victim from the offense.”.

SEC. 3. PREDICATE OFFENSES FOR AGGRAVATED IDENTITY THEFT AND MISUSE OF IDENTIFYING INFORMATION OF ORGANIZATIONS.

(a) **IDENTITY THEFT.**—Section 1028 of title 18, United States Code, is amended—

(1) in subsection (a)(7), by inserting “(including an organization as defined in section 18 of this title)” after “person”; and

(2) in subsection (d)(7), by inserting “or other person” after “specific individual”.

(b) **AGGRAVATED IDENTITY THEFT.**—Section 1028A of title 18, United States Code, is amended—

(1) in subsection (a)(1), by inserting “(including an organization as defined in section 18 of this title)” after “person”; and

(2) in subsection (c)—

(A) in the matter preceding paragraph (1), by inserting “, or a conspiracy to commit such a felony violation,” after “any offense that is a felony violation”;

(B) by redesignating—

(i) paragraph (11) as paragraph (14);

(ii) paragraphs (8) through (10) as paragraphs (10) through (12), respectively; and

(iii) paragraphs (1) through (7) as paragraphs (2) through (8), respectively;

(C) by inserting prior to paragraph (2), as so redesignated, the following:

“(1) section 513 (relating to making, uttering, or possessing counterfeited securities);”;

(D) by inserting after paragraph (8), as so redesignated, the following:

“(9) section 1708 (relating to mail theft);”;

(E) in paragraph (12), as so redesignated, by striking “; or” and inserting a semicolon; and

(F) by inserting after paragraph (12), as so redesignated, the following:

“(13) section 7201, 7206, or 7207 of title 26 (relating to tax fraud); or”.

SEC. 4. ENSURING JURISDICTION OVER THE THEFT OF SENSITIVE IDENTITY INFORMATION.

Section 1030(a)(2)(C) of title 18, United States Code, is amended by striking “if the conduct involved an interstate or foreign communication”.

SEC. 5. MALICIOUS SPYWARE, HACKING AND KEYLOGGERS.

(a) **IN GENERAL.**—Section 1030 of title 18, United States Code, is amended—

(1) in subsection (a)(5)—

(A) by striking subparagraph (B); and

(B) in subparagraph (A)—

(i) by striking “(A)(i) knowingly” and inserting “(A) knowingly”;

(ii) by redesignating clauses (ii) and (iii) as subparagraphs (B) and (C), respectively; and

(iii) in subparagraph (C), as so redesignated—

(I) by inserting “and loss” after “damage”; and

(II) by striking “; and” and inserting a period;

(2) in subsection (c)—

(A) in paragraph (2)(A), by striking “(a)(5)(A)(iii);”;

(B) in paragraph (3)(B), by striking “(a)(5)(A)(iii);”;

(C) by amending paragraph (4) to read as follows:

“(4)(A) except as provided in subparagraphs (E) and (F), a fine under this title, imprisonment for not more than 5 years, or both, in the case of—

“(i) an offense under subsection (a)(5)(B), which does not occur after a conviction for another offense under this section, if the offense caused (or, in the case of an attempted offense, would, if completed, have caused)—

“(I) loss to 1 or more persons during any 1-year period (and, for purposes of an investigation, prosecution, or other proceeding brought by the United States only, loss resulting from a related course of conduct affecting 1 or more other protected computers) aggregating at least \$5,000 in value;

“(II) the modification or impairment, or potential modification or impairment, of the medical examination, diagnosis, treatment, or care of 1 or more individuals;

“(III) physical injury to any person;

“(IV) a threat to public health or safety;

“(V) damage affecting a computer used by or for an entity of the United States Government in furtherance of the administration of justice, national defense, or national security; or

“(VI) damage affecting 10 or more protected computers during any 1-year period; or

“(ii) an attempt to commit an offense punishable under this subparagraph:

“(B) except as provided in subparagraphs (E) and (F), a fine under this title, imprisonment for not more than 10 years, or both, in the case of—

“(i) an offense under subsection (a)(5)(A), which does not occur after a conviction for another offense under this section, if the offense caused (or, in the case of an attempted offense, would, if completed, have caused) a harm provided in subclauses (I) through (VI) of subparagraph (A)(i); or

“(ii) an attempt to commit an offense punishable under this subparagraph;

“(C) except as provided in subparagraphs (E) and (F), a fine under this title, imprisonment for not more than 20 years, or both, in the case of—

“(i) an offense or an attempt to commit an offense under subparagraphs (A) or (B) of subsection (a)(5) that occurs after a conviction for another offense under this section; or

“(ii) an attempt to commit an offense punishable under this subparagraph;

“(D) a fine under this title, imprisonment for not more than 10 years, or both, in the case of—

“(i) an offense or an attempt to commit an offense under subsection (a)(5)(C) that occurs after a conviction for another offense under this section; or

“(ii) an attempt to commit an offense punishable under this subparagraph;

“(E) if the offender attempts to cause or knowingly or recklessly causes serious bodily injury from conduct in violation of subsection (a)(5)(A), a fine under this title, imprisonment for not more than 20 years, or both;

“(F) if the offender attempts to cause or knowingly or recklessly causes death from conduct in violation of subsection (a)(5)(A), a fine under this title, imprisonment for any term of years or for life, or both; or

“(G) a fine under this title, imprisonment for not more than 1 year, or both, for—

“(i) any other offense under subsection (a)(5); or

“(ii) an attempt to commit an offense punishable under this subparagraph.”; and

(D) by striking paragraph (5); and

(3) in subsection (g)—

(A) in the second sentence, by striking “in clauses (i), (ii), (iii), (iv), or (v) of subsection (a)(5)(B)” and inserting “in subclauses (I), (II), (III), (IV), or (V) of subsection (a)(5)(A)(i)”; and

(B) in the third sentence, by striking “subsection (a)(5)(B)(i)” and inserting “subsection (c)(4)(A)(i)(I)”.

(b) **CONFORMING CHANGES.**—Section 2332b(g)(5)(B)(i) of title 18, United States Code, is amended by striking “1030(a)(5)(A)(i) resulting in damage as defined in 1030(a)(5)(B)(ii) through (v)” and inserting “1030(a)(5)(A) resulting in damage as defined in 1030(c)(4)(A)(i)(II) through (VI)”.

SEC. 6. CYBER-EXTORTION.

Section 1030(a)(7) of title 18, United States Code, is amended to read as follows:

“(7) with intent to extort from any person any money or other thing of value, transmits in interstate or foreign commerce any communication containing any—

“(A) threat to cause damage to a protected computer;

“(B) threat to obtain information from a protected computer without authorization or in excess of authorization or to impair the confidentiality of information obtained from a protected computer without authorization or by exceeding authorized access; or

“(C) demand or request for money or other thing of value in relation to damage to a protected computer, where such damage was caused to facilitate the extortion.”

SEC. 7. CONSPIRACY TO COMMIT CYBER-CRIMES.

Section 1030(b) of title 18, United States Code, is amended by inserting “conspires to commit or” after “Whoever”.

SEC. 8. USE OF FULL INTERSTATE AND FOREIGN COMMERCE POWER FOR CRIMINAL PENALTIES.

Section 1030(e)(2)(B) of title 18, United States Code, is amended by inserting “or affecting” after “which is used in”.

SEC. 9. FORFEITURE FOR SECTION 1030 VIOLATIONS.

Section 1030 of title 18, United States Code, is amended by adding at the end the following:

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

“(A) such person’s interest in any personal property that was used or intended to be used to commit or to facilitate the commission of such violation; and

“(B) any property, real or personal, constituting or derived from, any proceeds that such person obtained, directly or indirectly, as a result of such violation.

“(2) The criminal forfeiture of property under this subsection, any seizure and disposition thereof, and any judicial proceeding in relation thereto, shall be governed by the provisions of section 413 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. 853), except subsection (d) of that section.

“(j) For purposes of subsection (i), the following shall be subject to forfeiture to the United States and no property right shall exist in them:

“(1) Any personal property used or intended to be used to commit or to facilitate the commission of any violation of this section, or a conspiracy to violate this section.

“(2) Any property, real or personal, which constitutes or is derived from proceeds traceable to any violation of this section, or a conspiracy to violate this section”.

SEC. 10. DIRECTIVE TO UNITED STATES SENTENCING COMMISSION.

(a) **DIRECTIVE.**—Pursuant to its authority under section 994(p) of title 28, United States Code, and in accordance with this section, the United States Sentencing Commission shall review its guidelines and policy statements applicable to persons convicted of offenses under sections 1028, 1028A, 1030, 2511, and 2701 of title 18, United States Code, and any other relevant provisions of law, in order

to reflect the intent of Congress that such penalties be increased in comparison to those currently provided by such guidelines and policy statements.

(b) REQUIREMENTS.—In determining its guidelines and policy statements on the appropriate sentence for the crimes enumerated in subsection (a), the United States Sentencing Commission shall consider the extent to which the guidelines and policy statements may or may not account for the following factors in order to create an effective deterrent to computer crime and the theft or misuse of personally identifiable data:

(1) The level of sophistication and planning involved in such offense.

(2) Whether such offense was committed for purpose of commercial advantage or private financial benefit.

(3) The potential and actual loss resulting from the offense including—

(A) the value of information obtained from a protected computer, regardless of whether the owner was deprived of use of the information; and

(B) where the information obtained constitutes a trade secret or other proprietary information, the cost the victim incurred developing or compiling the information.

(4) Whether the defendant acted with intent to cause either physical or property harm in committing the offense.

(5) The extent to which the offense violated the privacy rights of individuals.

(6) The effect of the offense upon the operations of an agency of the United States Government, or of a State or local government.

(7) Whether the offense involved a computer used by the United States Government, a State, or a local government in furtherance of national defense, national security, or the administration of justice.

(8) Whether the offense was intended to, or had the effect of, significantly interfering with or disrupting a critical infrastructure.

(9) Whether the offense was intended to, or had the effect of, creating a threat to public health or safety, causing injury to any person, or causing death.

(10) Whether the defendant purposefully involved a juvenile in the commission of the offense.

(11) Whether the defendant's intent to cause damage or intent to obtain personal information should be disaggregated and considered separately from the other factors set forth in USSG 2B1.1(b)(14).

(12) Whether the term "victim" as used in USSG 2B1.1, should include individuals whose privacy was violated as a result of the offense in addition to individuals who suffered monetary harm as a result of the offense.

(13) Whether the defendant disclosed personal information obtained during the commission of the offense.

(c) ADDITIONAL REQUIREMENTS.—In carrying out this section, the United States Sentencing Commission shall—

(1) assure reasonable consistency with other relevant directives and with other sentencing guidelines;

(2) account for any additional aggravating or mitigating circumstances that might justify exceptions to the generally applicable sentencing ranges;

(3) make any conforming changes to the sentencing guidelines; and

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

SUPPORTING THE GOALS OF NATIONAL ADOPTION DAY AND NATIONAL ADOPTION MONTH

Mr. SALAZAR. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of S. Res. 384, submitted earlier today.

The PRESIDING OFFICER. The clerk will report the resolution by title.

The assistant legislative clerk read as follows:

A resolution (S. Res. 384) expressing support for the goals of National Adoption Day and National Adoption Month by promoting national awareness of adoption and the children awaiting families, celebrating children and families involved in adoption, and encouraging Americans to secure safety, permanency, and well-being for all children.

There being no objection, the Senate proceeded to consider the resolution.

Ms. LANDRIEU. Mr. President, I rise today in honor of National Adoption Day and National Adoption Month. Senator COLEMAN and I understand that later today the Senate will consider our resolution recognizing National Adoption Day and National Adoption Month.

Every child should have a loving and permanent family. The Hague Convention recognizes "that the child, for the full and harmonious development of his or her personality, should grow up in a family environment, in an atmosphere of happiness, love and understanding." Unfortunately, not all children have a family of their own. However, through adoption a child can have a "forever family."

President Bush has recognized the importance of adoption to children and our Nation. Thus, he has declared November to be National Adoption Month. Nearly half of all Americans have been touched by adoption.

In 2002, 151,332 children found "forever families," a significant increase from 119,766 in 1996. 21,063 of these children were born in another country and adopted by American families. Public agency adoptions have more than doubled since 1995. The National Council for Adoption attributes the increase "in part to the Adoption and Safe Families Act of 1997's Adoption Incentive Program, which awards financial incentives to States for placing foster children into adoptive homes." Seven States: Arizona, Hawaii, Iowa, Kentucky, North Carolina, Oklahoma, and Wyoming, quadrupled the annual number of public agency adoptions from 1995 to 2005. Over 7,000 children who are part of the public child welfare system are adopted every year in California, which is the highest number of all 50 States. However, only 10 percent of the 513,000 children in foster care will ever be adopted.

National Adoption Day occurs on November 17 as a part of National Adoption Month. National Adoption Day is an event to raise awareness of the 114,000 children in foster care who are waiting for permanent families. Since

the first National Adoption Day in 2000, nearly 17,000 children have joined "forever families" on this special day. This year we hope to have events in all 50 States, the District of Columbia, and Puerto Rico. Over 190 events in 48 States, the District of Columbia, and Puerto Rico are planned for this Saturday to finalize the adoption of over 3,000 foster children and youth.

I want you to picture what happens on this fall day, children running, laughing, and playing with their new parent. Think about a girl or boy planning their special outfit and joyously awaiting the family celebration. Imagine the excitement welling up inside of a child as she looks into her new parent's eyes and knows she is finally part of a family. She will never dread the sound of a car coming to take her away again or wonder where she will lay her head or which school she will be moved to.

Now picture the other dramatically different reality. In 2005, there were 514,000 children in foster care and 115,000 of them were waiting to be adopted. The following States have the largest number of children in their foster care system: California, Florida, Michigan, New York, Pennsylvania, and Texas. Between fiscal years 2000 and 2005, States made progress in reducing the number of children in their foster care systems, such as Illinois, 34 percent reduction, and New York, 35 percent reduction. These children have not had the luxury of their own room, a stable school environment, or a constant adult in their lives. Though the average percentage of children in foster care who are waiting to be adopted is 24 percent, some States have percentages as low as 5 percent—California—and as high as 38 percent—New Jersey and South Carolina.

Of the 52,000 foster children who were adopted, 60 percent of them were adopted by their foster parents. According to a recent survey by the Dave Thomas Foundation for Adoption, many potential adoptive parents have considered foster care adoption, but "a majority of Americans hold misperceptions about the foster care adoption process and the children who are eligible for adoption. For example, "two-thirds of those considering foster care adoption are unnecessarily concerned that biological parents can return to claim their children and nearly half of all Americans mistakenly believe that foster care adoption is expensive, when in reality adopting from foster care is without substantial cost."

In Louisiana there are 4,541 children in foster care and 1,162 of them are waiting to be adopted. I would like to tell you about some of the foster children in Louisiana who are looking for their "forever families."

Natalyia is a cute, outgoing and loveable 8-year-old who is bright and energetic. She is in the second grade and she is an above average student. She loves to read books, ride her bike, complete crossword puzzles, and play