

107TH CONGRESS
1ST SESSION

S. 1742

To prevent the crime of identity theft, mitigate the harm to individuals
victimized by identity theft, and for other purposes.

IN THE SENATE OF THE UNITED STATES

NOVEMBER 29, 2001

Ms. CANTWELL introduced the following bill; which was read twice and
referred to the Committee on the Judiciary

A BILL

To prevent the crime of identity theft, mitigate the harm
to individuals victimized by 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,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Restore Your Identity
5 Act of 2001”.

6 **SEC. 2. FINDINGS.**

7 Congress finds that—

8 (1) the crime of identity theft is the fastest
9 growing crime in the United States;

1 (2) the Federal Trade Commission reports that
2 between March and June of 2001, the total number
3 of identity theft victims in the Commission's Com-
4 plaint Clearinghouse System, tallied from November
5 1999, increased from 45,593 to 69,370;

6 (3) consumer inquiries and complaints to the
7 Federal Trade Commission Identity Theft Hotline
8 increased from 68,000 to over 97,000 over the same
9 3-month period, and consumer calls into the Hotline
10 increased in the same period from 1,800 calls per
11 week to over 2,000;

12 (4) the Federal Trade Commission estimates
13 that the call volume to the Identity Theft Hotline
14 represents only 5 to 10 percent of the actual number
15 of victims of identity theft;

16 (5) victims of identity theft often have extraor-
17 dinary difficulty restoring their credit and regaining
18 control of their identity because of the viral nature
19 of identity theft;

20 (6) identity theft may be ruinous to the good
21 name and credit of consumers whose identities are
22 misappropriated, and victims of identity theft may
23 be denied otherwise well-deserved credit, may have
24 to spend enormous time, effort, and sums of money
25 to remedy their circumstances, and may suffer ex-

1 treme emotional distress including deep depression
2 founded in profound frustration as they address the
3 array of problems that may arise as a result of iden-
4 tity theft;

5 (7) victims are often required to contact numer-
6 ous Federal, State, and local law enforcement agen-
7 cies, consumer credit reporting agencies, and credi-
8 tors over many years, as each event of fraud arises;

9 (8) the Government, business entities, and cred-
10 it reporting agencies have a shared responsibility to
11 assist identity theft victims, to mitigate the harm
12 that results from fraud perpetrated in the victim's
13 name;

14 (9) victims of identity theft need a nationally
15 standardized means of—

16 (A) reporting identity theft to law enforce-
17 ment, consumer credit reporting agencies, and
18 business entities; and

19 (B) evidencing their true identity to busi-
20 ness entities and credit reporting agencies;

21 (10) one of the greatest law enforcement chal-
22 lenges posed by identity theft is that stolen identities
23 are often used to perpetrate crimes in many dif-
24 ferent localities in different States, and although
25 identity theft is a Federal crime, most often, State

1 and local law enforcement agencies are responsible
2 for investigating and prosecuting the crimes; and

3 (11) the Federal Government should assist
4 State and local law enforcement agencies to effec-
5 tively combat identity theft and the associated fraud.

6 **SEC. 3. DEFINITIONS.**

7 In this Act, the following definitions shall apply:

8 (1) BUSINESS ENTITY.—The term “business
9 entity” means—

10 (A) a creditor, as that term is defined in
11 section 103 of the Truth in Lending Act (15
12 U.S.C. 1602);

13 (B) any financial information repository;

14 (C) any financial service provider; and

15 (D) any corporation, trust, partnership,
16 sole proprietorship, or unincorporated associa-
17 tion (including telecommunications, utilities,
18 and other service providers).

19 (2) CONSUMER.—The term “consumer” means
20 an individual.

21 (3) FINANCIAL INFORMATION.—The term “fi-
22 nancial information” means information identifiable
23 as relating to an individual consumer that concerns
24 the amount and conditions of the assets, liabilities,
25 or credit of the consumer, including—

1 (A) account numbers and balances;

2 (B) nonpublic personal information, as
3 that term is defined in section 509 of the
4 Gramm-Leach-Bliley Act (15 U.S.C. 6809); and

5 (C) codes, passwords, social security num-
6 bers, tax identification numbers, State identifier
7 numbers issued by a State department of li-
8 censing, and other information used for the
9 purpose of account access or transaction initi-
10 ation.

11 (4) FINANCIAL INFORMATION REPOSITORY.—

12 The term “financial information repository” means
13 a person engaged in the business of providing serv-
14 ices to consumers who have a credit, deposit, trust,
15 stock, or other financial services account or relation-
16 ship with that person.

17 (5) IDENTITY THEFT.—The term “identity
18 theft” means an actual or potential violation of sec-
19 tion 1028 of title 28, United States Code, or any
20 other similar provision of Federal or State law.

21 (6) MEANS OF IDENTIFICATION.—The term
22 “means of identification” has the meanings given
23 the terms “identification document” and “means of
24 identification” in section 1028 of title 18, United
25 States Code.

1 (7) VICTIM.—The term “victim” means a con-
2 sumer whose means of identification or financial in-
3 formation has been used or transferred (or has been
4 alleged to have been used or transferred) without the
5 authority of that consumer with the intent to com-
6 mit, or to aid or abet, identity theft or any other vio-
7 lation of law.

8 **SEC. 4. IDENTITY THEFT TREATED AS RACKETEERING AC-**
9 **TIVITY.**

10 Section 1961(1)(B) of title 18, United States Code,
11 is amended by inserting “, or any similar offense charge-
12 able under State law” after “identification documents”).

13 **SEC. 5. TREATMENT OF IDENTITY THEFT MITIGATION.**

14 (a) INFORMATION AVAILABLE TO VICTIMS.—

15 (1) IN GENERAL.—A business entity possessing
16 information relating to an identity theft, or who may
17 have entered into a transaction, provided credit,
18 products, goods, or services, accepted payment, or
19 otherwise done business with a person that has made
20 unauthorized use of the means of identification of
21 the victim, shall, not later than 10 days after receipt
22 of a written request by the victim, provide, without
23 charge, to the victim or to any Federal, State, or
24 local governing law enforcement agency or officer
25 specified by the victim copies of all related applica-

1 tion and transaction information and any informa-
2 tion required pursuant to subsection (b).

3 (2) RULE OF CONSTRUCTION.—Nothing in this
4 section requires a business entity to disclose infor-
5 mation that the business entity is otherwise prohib-
6 ited from disclosing under any other provision of
7 Federal or State law, except that any such provision
8 of law that prohibits the disclosure of financial infor-
9 mation to third parties shall not be used to deny dis-
10 closure of information to the victim under this sec-
11 tion.

12 (b) VERIFICATION OF IDENTITY.—

13 (1) IN GENERAL.—Unless a business entity is
14 otherwise able to verify the identity of a victim mak-
15 ing a request under subsection (a)(1), the victim
16 shall provide to the business entity as proof of posi-
17 tive identification, at the election of the business
18 entity—

19 (A) a copy of a police report evidencing the
20 claim of the victim of identity theft;

21 (B) a copy of a standardized affidavit of
22 identity theft developed and made available by
23 the Federal Trade Commission; or

24 (C) any affidavit of fact that is acceptable
25 to the business entity for that purpose.

1 (c) LIMITATION ON LIABILITY.—No business entity
2 may be held liable for an action taken in good faith to
3 provide information under this section with respect to an
4 individual in connection with an identity theft to other fi-
5 nancial information repositories, financial service pro-
6 viders, merchants, law enforcement authorities, victims, or
7 any person alleging to be a victim, if—

8 (1) the business entity complies with subsection
9 (b); and

10 (2) such action was taken—

11 (A) for the purpose of identification and
12 prosecution of identity theft; or

13 (B) to assist a victim in recovery of fines,
14 restitution, rehabilitation of the credit of the
15 victim, or such other relief as may be appro-
16 priate.

17 (d) AUTHORITY TO DECLINE TO PROVIDE INFORMA-
18 TION.—A business entity may decline to provide informa-
19 tion pursuant to subsection (a) if, in the exercise of good
20 faith and reasonable judgment, the business entity believes
21 that—

22 (1) this section does not require disclosure of
23 the information; or

1 (2) the request for the information is based on
2 a misrepresentation of fact by the victim relevant to
3 the request for information.

4 (e) NO NEW RECORDKEEPING OBLIGATION.—Noth-
5 ing in this section creates an obligation on the part of a
6 business entity to retain or maintain information or
7 records that are not otherwise required to be retained or
8 maintained in the ordinary course of its business or under
9 other applicable law.

10 **SEC. 6. AMENDMENTS TO THE FAIR CREDIT REPORTING**
11 **ACT.**

12 (a) CONSUMER REPORTING AGENCY BLOCKING OF
13 INFORMATION RESULTING FROM IDENTITY THEFT.—
14 Section 611 of the Fair Credit Reporting Act (15 U.S.C.
15 1681i) is amended by adding at the end the following:

16 “(e) BLOCK OF INFORMATION RESULTING FROM
17 IDENTITY THEFT.—

18 “(1) BLOCK.—Not later than 30 days after the
19 date of receipt of proof of the identity of a consumer
20 and an official copy of a police report evidencing the
21 claim of the consumer of identity theft, a consumer
22 reporting agency shall permanently block the report-
23 ing of any information identified by the consumer in
24 the file of the consumer resulting from the identity

1 theft, so that the information cannot be reported,
2 except as provided in paragraph (3).

3 “(2) NOTIFICATION.—A consumer reporting
4 agency shall promptly notify the furnisher of infor-
5 mation identified by the consumer under paragraph
6 (1) that the information may be a result of identity
7 theft, that a police report has been filed, that a
8 block has been requested under this subsection, and
9 the effective date of the block.

10 “(3) AUTHORITY TO DECLINE OR RESCIND.—

11 “(A) IN GENERAL.—A consumer reporting
12 agency may decline to block, or may rescind
13 any block, of consumer information under this
14 subsection if—

15 “(i) in the exercise of good faith and
16 reasonable judgment, the consumer report-
17 ing agency believes that—

18 “(I) the information was blocked
19 due to a misrepresentation of fact by
20 the consumer relevant to the request
21 to block; or

22 “(II) the consumer knowingly ob-
23 tained possession of goods, services, or
24 moneys as a result of the blocked
25 transaction or transactions, or the

1 consumer should have known that the
2 consumer obtained possession of
3 goods, services, or moneys as a result
4 of the blocked transaction or trans-
5 actions; or

6 “(ii) the consumer agrees that the
7 blocked information or portions of the
8 blocked information were blocked in error.

9 “(B) NOTIFICATION TO CONSUMER.—If
10 the block of information is declined or rescinded
11 under this paragraph, the affected consumer
12 shall be notified promptly, in the same manner
13 as consumers are notified of the reinsertion of
14 information pursuant to subsection (a)(5)(B).

15 “(C) SIGNIFICANCE OF BLOCK.—For pur-
16 poses of this paragraph, the prior presence of
17 blocked information in the file of a consumer is
18 not evidence of whether the consumer knew or
19 should have known that the consumer obtained
20 possession of any goods, services, or monies as
21 a result of the block.”.

22 (b) STATUTE OF LIMITATIONS.—Section 618 of the
23 Fair Credit Reporting Act (15 U.S.C. 1681p) is amended
24 by striking “jurisdiction” and all that follows through

1 “years after” and inserting “jurisdiction, not later than
2 2 years after”.

3 **SEC. 7. COMMISSION STUDY OF COORDINATION BETWEEN**
4 **FEDERAL, STATE, AND LOCAL AUTHORITIES**
5 **IN ENFORCING IDENTITY THEFT LAWS.**

6 (a) MEMBERSHIP.—Section 2(b) of the Internet
7 False Identification Prevention Act of 2000 (18 U.S.C.
8 1028 note) is amended by inserting “the Postmaster Gen-
9 eral, the Commissioner of the United States Customs
10 Service,” after “Trade Commissioner”.

11 (b) CONSULTATION.—Section 2 of the Internet False
12 Identification Prevention Act of 2000 (18 U.S.C. 1028
13 note) is amended—

14 (1) by redesignating subsection (d) as sub-
15 section (e); and

16 (2) by inserting after subsection (c) the fol-
17 lowing:

18 “(d) CONSULTATION.—The coordinating committee
19 shall consult with interested parties, including State and
20 local law enforcement agencies, State attorneys general,
21 representatives of business entities (as that term is defined
22 in section 4 of the Restore Your Identity Act of 2001),
23 including telecommunications and utility companies, and
24 organizations representing consumers.”.

1 (c) REPORT CONTENTS.—Section 2(e) of the Internet
2 False Identification Prevention Act of 2000 (18 U.S.C.
3 1028 note) (as redesignated by this section) is amended—

4 (1) in subparagraph (E), by striking “and” at
5 the end; and

6 (2) by striking subparagraph (F) and inserting
7 the following:

8 “(F) a comprehensive description of Fed-
9 eral assistance to address identity theft pro-
10 vided to State and local law enforcement agen-
11 cies;

12 “(G) a comprehensive description of co-
13 ordination activities between Federal, State,
14 and local law enforcement agencies in regard to
15 addressing identity theft and recommendations,
16 if any, for legislative changes that could facili-
17 tate more effective investigation and prosecu-
18 tion of the creation and distribution of false
19 identification documents;

20 “(H) a comprehensive description of how
21 the Federal Government can best provide to
22 State and local law enforcement agencies timely
23 and current information regarding terrorists or
24 terrorist activity where such information specifi-
25 cally relates to identity theft; and

1 “(I) recommendations, if any, for legisla-
2 tive or administrative changes that would—

3 “(i) facilitate more effective investiga-
4 tion and prosecution of cases involving
5 identity theft;

6 “(ii) improve the effectiveness of Fed-
7 eral assistance to State and local law en-
8 forcement agencies and coordination be-
9 tween Federal, State, and local law en-
10 forcement agencies;

11 “(iii) simplify efforts by a person nec-
12 essary to rectify the harm that results
13 from the theft of the identity of the per-
14 son; and

15 “(iv) if deemed appropriate, provide
16 for the establishment of a Federal identity
17 theft and false identification office or agen-
18 cy.”.

19 **SEC. 8. ENFORCEMENT BY STATE ATTORNEYS GENERAL.**

20 (a) IN GENERAL.—

21 (1) CIVIL ACTIONS.—In any case in which the
22 attorney general of a State has reason to believe
23 that an interest of the residents of that State has
24 been or is threatened or adversely affected by the
25 engagement of any person in a practice that is pro-

1 hibited under this Act or under any amendment
2 made by this Act, the State, as *parens patriae*, may
3 bring a civil action on behalf of the residents of the
4 State in a district court of the United States of ap-
5 propriate jurisdiction to—

6 (A) enjoin that practice;

7 (B) enforce compliance with this Act or the
8 amendments made by this Act;

9 (C) obtain damage, restitution, or other
10 compensation on behalf of residents of the
11 State; or

12 (D) obtain such other relief as the court
13 may consider to be appropriate.

14 (2) NOTICE.—

15 (A) IN GENERAL.—Before filing an action
16 under paragraph (1), the attorney general of
17 the State involved shall provide to the Attorney
18 General of the United States—

19 (i) written notice of the action; and

20 (ii) a copy of the complaint for the ac-
21 tion.

22 (B) EXEMPTION.—

23 (i) IN GENERAL.—Subparagraph (A)
24 shall not apply with respect to the filing of
25 an action by an attorney general of a State

1 under this subsection, if that attorney gen-
2 eral determines that it is not feasible to
3 provide the notice described in subpara-
4 graph (A) before the filing of the action.

5 (ii) NOTIFICATION.—In an action de-
6 scribed in clause (i), the attorney general
7 of a State shall provide notice and a copy
8 of the complaint to the Attorney General
9 of the United States at the same time as
10 the action is filed.

11 (b) INTERVENTION.—

12 (1) IN GENERAL.—On receiving notice of an ac-
13 tion under subsection (a)(2), the Attorney General
14 of the United States shall have the right to intervene
15 in that action.

16 (2) EFFECT OF INTERVENTION.—If the Attor-
17 ney General of the United States intervenes in an
18 action under subsection (a), the Attorney General
19 shall have the right to be heard with respect to any
20 matter that arises in that action.

21 (c) CONSTRUCTION.—For purposes of bringing any
22 civil action under subsection (a), nothing in this Act or
23 the amendments made by this Act shall be construed to
24 prevent an attorney general of a State from exercising the

1 powers conferred on such attorney general by the laws of
2 that State—

3 (1) to conduct investigations;

4 (2) to administer oaths or affirmations; or

5 (3) to compel the attendance of witnesses or the
6 production of documentary and other evidence.

7 (d) ACTIONS BY THE ATTORNEY GENERAL OF THE
8 UNITED STATES.—In any case in which an action is insti-
9 tuted by or on behalf of the Attorney General of the
10 United States for violation of a practice that is prohibited
11 under this Act or under any amendment made by this Act,
12 no State may, during the pendency of that action, institute
13 an action under subsection (a) against any defendant
14 named in the complaint in that action for violation of that
15 practice.

16 (e) VENUE; SERVICE OF PROCESS.—

17 (1) VENUE.—Any action brought under sub-
18 section (a) may be brought in the district court of
19 the United States that meets applicable require-
20 ments relating to venue under section 1391 of title
21 28, United States Code.

22 (2) SERVICE OF PROCESS.—In an action
23 brought under subsection (a), process may be served
24 in any district in which the defendant—

25 (A) is an inhabitant; or

1

(B) may be found.

