To mitigate the harm to individuals throughout the Nation who have been victimized by identity theft, to prevent identity theft, and for other purposes.

IN THE SENATE OF THE UNITED STATES

SEPTEMBER 3, 2003

Ms. CANTWELL (for herself and Mr. ENZI) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

A BILL

To mitigate the harm to individuals throughout the Nation who have been victimized by identity theft, to prevent identity theft, and for other purposes.

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

SECTION 1. SHORT TITLE.

This Act may be cited as the “Identity Theft Victims Assistance Act of 2003”.

SEC. 2. FINDINGS.

Congress finds the following:

(1) The crime of identity theft is the fastest growing crime in the United States. According to a recent estimate, 7,000,000 Americans were victims
of identity theft in the past year, a 79 percent increase over previous estimates.

(2) Stolen identities are often used to perpetuate crimes in many cities and States, making it more difficult for consumers to restore their respective identities.

(3) Identity theft cost consumers more than $745,000,000 in 1998 and has increased dramatically in the last few years. It has been estimated that identity theft victims within the business community lose an average of $17,000.

(4) Identity theft is ruinous to the good name and credit of consumers whose identities are misappropriated, and consumers may be denied otherwise deserved credit and may have to spend enormous time, effort, and money to restore their respective identities.

(5) As of the date of enactment of this Act, a national mechanism does not exist to assist identity theft victims to obtain evidence of identity theft, restore their credit, and regain control of their respective identities.

(6) Consumers who are victims of identity theft need a nationally standardized means of—
(A) establishing their true identities and claims of identity theft to all business entities, credit reporting agencies, and Federal and State law enforcement agencies;

(B) obtaining information documenting fraudulent transactions from business entities; and

(C) reporting identity theft to consumer credit reporting agencies.

(7) Business entities, credit reporting agencies, and government agencies have a shared responsibility to assist victims of identity theft to mitigate the harm caused by any fraud perpetrated in the name of the victims.

SEC. 3. TREATMENT OF IDENTITY THEFT MITIGATION.

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

“§ 1028A. Treatment of identity theft mitigation

“(a) DEFINITIONS.—As used in this section—

“(1) the term ‘business entity’ means any corporation, trust, partnership, sole proprietorship, or unincorporated association, including any financial service provider, financial information repository, creditor (as that term is defined in section 103 of
the Truth in Lending Act (15 U.S.C. 1602)), telecommunications, utilities, or other service provider;

“(2) the term ‘consumer’ means an individual;

“(3) the term ‘financial information’ means information identifiable as relating to an individual consumer that concerns the amount and conditions of the assets, liabilities, or credit of the consumer, including—

“(A) account numbers and balances;

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

“(C) codes, passwords, social security numbers, tax identification numbers, State identifier numbers issued by a State department of licensing, and other information used for the purpose of account access or transaction initiation;

“(4) the term ‘financial information repository’ means a person engaged in the business of providing services to consumers who have a credit, deposit, trust, stock, or other financial services account or relationship with that person;
“(5) the term ‘identity theft’ means a violation of section 1028 or any other similar provision of applicable Federal or State law;

“(6) the term ‘means of identification’ has the same meaning given the term in section 1028;

“(7) the term ‘victim’ means a consumer whose means of identification or financial information has been used or transferred (or has been alleged to have been used or transferred) without the authority of that consumer with the intent to commit, or with the intent to aid or abet, an identity theft; and

“(8) the terms not defined in this section or otherwise defined in section 3(s) of the Federal Deposit Insurance Act (12 U.S.C. 1813(s)) shall have the meaning given to them in section 1(b) of the International Banking Act of 1978 (12 U.S.C. 3101).

“(b) INFORMATION AVAILABLE TO VICTIMS.—

“(1) IN GENERAL.—A business entity that has provided credit, provided, for consideration, products, goods, or services, accepted payment, otherwise entered into a commercial transaction for consideration with a person that has made unauthorized use of the means of identification of the victim, or possesses information relating to such transaction,

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shall, not later than 20 days after the receipt of a written request by the victim, meeting the requirements of subsection (c), provide, without charge, a copy of all application and business transaction information related to the transaction being alleged as an identity theft to—

“(A) the victim;

“(B) any Federal, State, or local governing law enforcement agency or officer specified by the victim in such a request; or

“(C) any law enforcement agency investigating the identity theft and authorized by the victim to take receipt of records provided under this section.

“(2) RULE OF CONSTRUCTION.—

“(A) IN GENERAL.—No provision of Federal or State law (except a law involving the non-disclosure of information related to a pending Federal criminal investigation) prohibiting the disclosure of financial information by a business entity to third parties shall be used to deny disclosure of information to the victim under this section.

“(B) LIMITATION.—Except as provided in subparagraph (A), nothing in this section per-
mits a business entity to disclose information
that the business entity is otherwise prohibited
from disclosing under any other applicable pro-
vision of Federal or State law.

“(c) VERIFICATION OF IDENTITY AND CLAIM.—Un-
less a business entity, at its discretion, is otherwise able
to verify the identity of a victim making a request under
subsection (b)(1), the victim shall provide to the business
entity—

“(1) as proof of positive identification, at the
election of the business entity—

“(A) the presentation of a government-
issued identification card;

“(B) personally identifying information of
the same type as was provided to the business
entity by the unauthorized person; or

“(C) personally identifying information
that the business entity typically requests from
new applicants or for new transactions at the
time of the victim’s request for information;

and

“(2) as proof of a claim of identity theft, at the
election of the business entity—

“(A) a copy of a police report evidencing
the claim of the victim of identity theft;
“(B) a properly completed copy of a standardized affidavit of identity theft developed and made available by the Federal Trade Commission; or

“(C) any properly completed affidavit of fact that is acceptable to the business entity for that purpose.

“(d) Verification Standard.—Prior to releasing records pursuant to subsection (b), a business entity shall take reasonable steps to verify the identity of the alleged victim requesting such records.

“(e) Limitation on Liability.—No business entity may be held liable for a disclosure, made in good faith and reasonable judgment pursuant to, and in compliance with, this section, where such disclosure is made—

“(1) for the purpose of detection, investigation, or prosecution of identity theft; or

“(2) to assist a victim in recovery of fines, restitution, rehabilitation of the credit of the victim, or such other relief as may be appropriate.

“(f) Authority To Decline To Provide Information.—A business entity may decline to provide information under subsection (b) if, in the exercise of good faith and reasonable judgment, the business entity determines that—
“(1) this section does not require disclosure of
the information;
“(2) the request for the information is based on
a misrepresentation of fact by the victim relevant to
the request for information; or
“(3) the information requested is Internet navi-
gational data or similar information about a person’s
visit to a website or online service.
“(g) No New Recordkeeping Obligation.—
Nothing in this section creates an obligation on the part
of a business entity to obtain, retain, or maintain informa-
tion or records that are not otherwise required to be ob-
tained, retained, or maintained in the ordinary course of
its business or under other applicable law.
“(h) Enforcement.—
“(1) Injunctive Actions by the Attorney
General.—
“(A) In general.—Whenever it appears
that a business entity to which this section ap-
plies has engaged, is engaged, or is about to en-
gage, in any act or practice constituting a viola-
tion of this section, the Attorney General of the
United States may bring a civil action in an ap-
propriate district court of the United States
to—
“(i) enjoin such act or practice;
“(ii) enforce compliance with this sec-
tion; and
“(iii) obtain such other equitable relief
as the court determines to be appropriate.
“(B) OTHER INJUNCTIVE RELIEF.—Upon
a proper showing in the action under subpara-
graph (A), the court shall grant a permanent
injunction or a temporary restraining order
without bond.
“(2) ADMINISTRATIVE ENFORCEMENT.—
“(A) FEDERAL TRADE COMMISSION.—
“(i) IN GENERAL.—Except to the ex-
tent that administrative enforcement is
specifically committed to another agency
under subparagraph (B), a violation of this
section shall be deemed an unfair or decept-
tive act or practice in violation of the Fed-
et seq.), for purposes of the exercise by the
Federal Trade Commission of its functions
and powers under that Act.
“(ii) AVAILABLE FUNCTIONS AND
POWERS.—All of the functions and powers
of the Federal Trade Commission under
the Federal Trade Commission Act are
available to the Commission to enforce
compliance by any person with this section.

“(B) OTHER FEDERAL AGENCIES.—Com-
pliance with any requirements under this sec-
tion may be enforced—

“(i) under section 8 of the Federal
Deposit Insurance Act (12 U.S.C. 1818)—

“(I) by the Office of the Com-
troller of the Currency, with respect
to national banks, and Federal
branches and Federal agencies of for-
eign banks (except brokers, dealers,
persons providing insurance, invest-
ment companies, and investment ad-
visers);

“(II) by the Board of Governors
of the Federal Reserve System, with
respect to member banks of the Fed-
eral Reserve System (other than na-
tional banks), branches and agencies
of foreign banks (other than Federal
branches, Federal agencies, and in-
sured State branches of foreign
banks), commercial lending companies
owned or controlled by foreign banks,
and organizations operating under
section 25 or 25A of the Federal Re-
serve Act (12 U.S.C. 601 et seq. and
611 et seq.);

“(III) by the Board of Directors
of the Federal Deposit Insurance Cor-
poration, with respect to banks in-
sured by the Federal Deposit Insur-
ance Corporation (other than mem-
biers of the Federal Reserve System),
insured State branches of foreign
banks, and any subsidiaries of such
entities (except brokers, dealers, per-
sons providing insurance, investment
companies, and investment advisers);
and

“(IV) by the Director of the Of-
office of Thrift Supervision, with re-
spect to savings associations, the de-
posits of which are insured by the
Federal Deposit Insurance Corpora-
tion, and any subsidiaries of such sav-
ings associations (except brokers,
dealers, persons providing insurance,
investment companies, and investment
advisers);

“(ii) by the Board of the National
Credit Union Administration, under the
Federal Credit Union Act (12 U.S.C. 1751
et seq.), with respect to any federally in-
sured credit union, and any subsidiaries of
such credit union;

“(iii) by the Securities and Exchange
Commission, under the Securities Ex-
change Act of 1934 (15 U.S.C. 78a et
seq.), with respect to any broker or dealer;

“(iv) by the Securities and Exchange
Commission, under the Investment Com-
pany Act of 1940 (15 U.S.C. 80a–1 et
seq.), with respect to investment compa-
nies;

“(v) by the Securities and Exchange
Commission, under the Investment Advis-
ers Act of 1940 (15 U.S.C. 80b–1 et seq.),
with respect to investment advisers reg-
istered with the Commission under such
Act;

“(vi) by the Secretary of Transpor-
tation, under subtitle IV of title 49, with
respect to all carriers subject to the jurisdiction of the Surface Transportation Board;

“(vii) by the Secretary of Transportation, under part A of subtitle VII of title 49, with respect to any air carrier or any foreign air carrier subject to that part; and

“(viii) by the Secretary of Agriculture, under the Packers and Stockyards Act, 1921 (7 U.S.C. 181 et seq.), except as provided in section 406 of that Act (7 U.S.C. 226, 2271), with respect to any activities subject to that Act.

“(C) AGENCY POWERS.—

“(i) IN GENERAL.—A violation of any requirement imposed under this section shall be deemed to be a violation of a requirement imposed under any Act referred to under subparagraph (B), for the purpose of the exercise by any agency referred to under subparagraph (B) of its powers under any such Act.

“(ii) RULE OF CONSTRUCTION.—Nothing in this section shall be construed to prevent a Federal agency from exer-
cising the powers conferred upon such agency by Federal law to—

“(I) conduct investigations;

“(II) administer oaths or affirmations; or

“(III) compel the attendance of witnesses or the production of documentary or other evidence.

“(3) PARENS PATRIAE AUTHORITY.—

“(A) CIVIL ACTIONS.—In any case in which the attorney general of a State has reason to believe that an interest of the residents of that State has been, or is threatened to be, adversely affected by a violation of this section by any business entity, the State, as parens patriae, may bring a civil action on behalf of the residents of the State in a district court of the United States of appropriate jurisdiction to—

“(i) enjoin that practice;

“(ii) enforce compliance with this section;

“(iii) obtain damages—

“(I) in the sum of actual damages, restitution, and other compensa-
tion on behalf of the affected residents of the State; and

“(II) punitive damages, if the violation is willful or intentional; and

“(iv) obtain such other equitable relief as the court may consider to be appropriate.

“(B) Notice.—Before filing an action under subparagraph (A), the attorney general of the State involved shall, if practicable, provide to the Attorney General of the United States, and where applicable, to the appropriate Federal agency with the authority to enforce this section under paragraph (2)—

“(i) a written notice of the action; and

“(ii) a copy of the complaint for the action.

“(4) Intervention.—

“(A) In general.—On receiving notice of an action under paragraph (3), the Attorney General of the United States, and any Federal agency with authority to enforce this section under paragraph (2), shall have the right to intervene in that action.
“(B) Effect of intervention.—Any person or agency under subparagraph (A) that intervenes in an action under paragraph (2) shall have the right to be heard on all relevant matters arising therein.

“(C) Service of process.—Upon the request of the Attorney General of the United States or any Federal agency with the authority to enforce this section under paragraph (2), the attorney general of a State that has filed an action under this section shall, pursuant to rule 4(d)(4) of the Federal Rules of Civil Procedure, serve the Attorney General of the United States or the head of such Federal agency, with a copy of the complaint.

“(5) Construction.—For purposes of bringing any civil action under this subsection, nothing in this section shall be construed to prevent an attorney general of a State from exercising the powers conferred on such attorney general by the laws of that State to—

“(A) conduct investigations;

“(B) administer oaths or affirmations; or
“(C) compel the attendance of witnesses or
the production of documentary and other evi-
dence.

“(6) LIMITATION ON STATE ACTION WHILE
FEDERAL ACTION IS PENDING.—In any case in
which an action is instituted by or on behalf of the
Attorney General of the United States, or appro-
priate Federal regulator authorized under paragraph
(2), for a violation of this section, no State may,
during the pendency of that action, institute an ac-
tion under this section against any defendant named
in the complaint in that action for such violation.

“(7) VENUE; SERVICE OF PROCESS.—

“(A) VENUE.—Any action brought under
this subsection may be brought in the district
court of the United States—

“(i) where the defendant resides;

“(ii) where the defendant is doing
business; or

“(iii) that meets applicable require-
ments relating to venue under section 1391
of title 28.

“(B) SERVICE OF PROCESS.—In an action
brought under this subsection, process may be
served in any district in which the defendant—
“(i) resides;
“(ii) is doing business; or
“(iii) may be found.

“(8) AFFIRMATIVE DEFENSE.—In any civil action brought to enforce this section, it is an affirmative defense (which the defendant must establish by a preponderance of the evidence) for a business entity to file an affidavit or answer stating that—

“(A) the business entity has made a reasonably diligent search of its available business records; and

“(B) the records requested under this section do not exist or are not available.

“(9) NO PRIVATE RIGHT OF ACTION.—Nothing in this section shall be construed to provide a private right of action or claim for relief.”.

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 47 of title 18, United States Code, is amended by inserting after the item relating to section 1028 the following new item:

“1028A. Treatment of identity theft mitigation.”.

SEC. 4. AMENDMENTS TO THE FAIR CREDIT REPORTING ACT.

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

“(e) Block of Information Resulting From Identity Theft.—

“(1) Block.—Except as provided in paragraph (3) and not later than 30 days after the date of receipt of proof of the identity of a consumer and an official copy of a police report evidencing the claim of the consumer of identity theft, a consumer reporting agency shall block the reporting of any information identified by the consumer in the file of the consumer resulting from the identity theft, so that the information cannot be reported.

“(2) Notification.—A consumer reporting agency shall promptly notify the furnisher of information identified by the consumer under paragraph (1)—

“(A) that the information may be a result of identity theft;

“(B) that a police report has been filed;

“(C) that a block has been requested under this subsection; and

“(D) of the effective date of the block.

“(3) Authority to Decline or Rescind.—
“(A) IN GENERAL.—A consumer reporting agency may decline to block, or may rescind any block, of consumer information under this subsection if—

“(i) in the exercise of good faith and reasonable judgment, the consumer reporting agency finds that—

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

“(II) the consumer knowingly obtained possession of goods, services, or moneys as a result of the blocked transaction or transactions, or the consumer should have known that the consumer obtained possession of goods, services, or moneys as a result of the blocked transaction or transactions; or

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

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

“(C) SIGNIFICANCE OF BLOCK.—For purposes of this paragraph, if a consumer reporting agency rescinds a block, the presence of information in the file of a consumer prior to the blocking of such information is not evidence of whether the consumer knew or should have known that the consumer obtained possession of any goods, services, or monies as a result of the block.

“(4) EXCEPTIONS.—

“(A) NEGATIVE INFORMATION DATA.—A consumer reporting agency shall not be required to comply with this subsection when such agency is issuing information for authorizations, for the purpose of approving or processing negotiable instruments, electronic funds transfers, or similar methods of payment, based solely on negative information, including—

“(i) dishonored checks;

“(ii) accounts closed for cause;

“(iii) substantial overdrafts;
“(iv) abuse of automated teller machines; or

“(v) other information which indicates a risk of fraud occurring.

“(B) RESELLERS.—

“(i) NO RESELLER FILE.—The provisions of this subsection do not apply to a consumer reporting agency if the consumer reporting agency—

“(I) does not maintain a file on the consumer from which consumer reports are produced;

“(II) is not, at the time of the request of the consumer under paragraph (1), otherwise furnishing or reselling a consumer report concerning the information identified by the consumer; and

“(III) informs the consumer, by any means, that the consumer may report the identity theft to the Federal Trade Commission to obtain consumer information regarding identity theft.

“(ii) RESELLER WITH FILE.—The sole obligation of the consumer reporting
agency under this subsection, with regard to any request of a consumer under this subsection, shall be to block the consumer report maintained by the consumer reporting agency from any subsequent use if—

“(I) the consumer, in accordance with the provisions of paragraph (1), identifies, to a consumer reporting agency, information in the file of the consumer that resulted from identity theft;

“(II) the consumer reporting agency is acting as a reseller of the identified information by assembling or merging information about that consumer which is contained in the database of not less than 1 other consumer reporting agency; and

“(III) the consumer reporting agency does not store or maintain a database of information obtained for resale from which new consumer reports are produced.

“(iii) NOTICE.—In carrying out its obligation under clause (ii), the consumer
reporting agency shall provide a notice to the consumer of the decision to block the file. Such notice shall contain the name, address, and telephone number of each consumer reporting agency from which the consumer information was obtained for resale.”.

(b) FALSE CLAIMS.—Section 1028 of title 18, United States Code, is amended by adding at the end the following:

“(j) Any person who knowingly falsely claims to be a victim of identity theft for the purpose of obtaining the blocking of information by a consumer reporting agency under section 611(e)(1) of the Fair Credit Reporting Act (15 U.S.C. 1681i(e)(1)) shall be fined under this title, imprisoned not more than 3 years, or both.”.

(c) STATUTE OF LIMITATIONS.—Section 618 of the Fair Credit Reporting Act (15 U.S.C. 1681p) is amended to read as follows:

“SEC. 618. JURISDICTION OF COURTS; LIMITATION ON ACTIONS.

“(a) IN GENERAL.—Except as provided in subsections (b) and (c), an action to enforce any liability created under this title may be brought in any appropriate United States district court without regard to the amount
in controversy, or in any other court of competent jurisdic-
tion, not later than 2 years from the date of the defend-
ant’s violation of any requirement under this title.

“(b) WILLFUL MISREPRESENTATION.—In any case
in which the defendant has materially and willfully mis-
represented any information required to be disclosed to an
individual under this title, and the information misrepre-
sented is material to the establishment of the liability of
the defendant to that individual under this title, an action
to enforce a liability created under this title may be
brought at any time within 2 years after the date of dis-
covery by the individual of the misrepresentation.

“(c) IDENTITY THEFT.—An action to enforce a liabil-
ity created under this title may be brought not later than
4 years from the date of the defendant’s violation if—

“(1) the plaintiff is the victim of an identity
theft; or

“(2) the plaintiff—

“(A) has reasonable grounds to believe
that the plaintiff is the victim of an identity
theft; and

“(B) has not materially and willfully mis-
represented such a claim.”.
SEC. 5. COORDINATING COMMITTEE STUDY OF COORDINATION BETWEEN FEDERAL, STATE, AND LOCAL AUTHORITIES IN ENFORCING IDENTITY THEFT LAWS.

(a) MEMBERSHIP; TERM.—Section 2 of the Internet False Identification Prevention Act of 2000 (18 U.S.C. 1028 note) is amended—

(1) in subsection (b), by striking “and the Commissioner of Immigration and Naturalization” and inserting “the Commissioner of Immigration and Naturalization, the Chairman of the Federal Trade Commission, the Postmaster General, and the Commissioner of the United States Customs Service,”; and

(2) in subsection (c), by striking “2 years after the effective date of this Act.” and inserting “on December 28, 2005.”.

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

(1) by redesignating subsection (d) as subsection (e); and

(2) by inserting after subsection (c) the following:

“(d) CONSULTATION.—In discharging its duties, the coordinating committee shall consult with interested par-
ties, including State and local law enforcement agencies, State attorneys general, representatives of business entities (as that term is defined in section 4 of the Identity Theft Victims Assistance Act of 2003), including telecommunications and utility companies, and organizations representing consumers.”.

(e) REPORT DISTRIBUTION AND CONTENTS.—Section 2(e) of the Internet False Identification Prevention Act of 2000 (18 U.S.C. 1028 note) (as redesignated by subsection (b)) is amended—

(1) by striking paragraph (1) and inserting the following:

“(1) IN GENERAL.—The Attorney General and the Secretary of the Treasury, at the end of each year of the existence of the coordinating committee, shall report on the activities of the coordinating committee to—

“(A) the Committee on the Judiciary of the Senate;

“(B) the Committee on the Judiciary of the House of Representatives;

“(C) the Committee on Banking, Housing, and Urban Affairs of the Senate; and

“(D) the Committee on Financial Services of the House of Representatives.”;
(2) in subparagraph (E), by striking “and” at the end; and

(3) by striking subparagraph (F) and inserting the following:

“(F) a comprehensive description of Federal assistance provided to State and local law enforcement agencies to address identity theft;

“(G) a comprehensive description of coordination activities between Federal, State, and local law enforcement agencies that address identity theft; and

“(H) recommendations in the discretion of the President, if any, for legislative or administrative changes that would—

“(i) facilitate more effective investigation and prosecution of cases involving—

“(I) identity theft; and

“(II) the creation and distribution of false identification documents;

“(ii) improve the effectiveness of Federal assistance to State and local law enforcement agencies and coordination between Federal, State, and local law enforcement agencies; and
“(iii) simplify efforts by a person necessary to rectify the harm that results from the theft of the identity of such person.”.