

109<sup>TH</sup> CONGRESS  
2<sup>D</sup> SESSION

# S. 3555

To establish the Office of Veterans Identity Protection Claims to reimburse injured persons for injuries suffered as a result of the unauthorized use, disclosure, or dissemination of identifying information stolen from the Department of Veterans Affairs, and for other purposes.

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IN THE SENATE OF THE UNITED STATES

JUNE 21, 2006

Mr. THUNE introduced the following bill; which was read twice and referred to the Committee on Veterans' Affairs

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## A BILL

To establish the Office of Veterans Identity Protection Claims to reimburse injured persons for injuries suffered as a result of the unauthorized use, disclosure, or dissemination of identifying information stolen from the Department of Veterans Affairs, 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 “Veterans Identity Pro-  
5       tection Act”, or the “VIP Act”.

6       **SEC. 2. PURPOSES.**

7       The purposes of this Act are—

1           (1) to reimburse injured persons for injuries  
2 suffered as a result of the unauthorized use, disclo-  
3 sure, or dissemination of identifying information sto-  
4 len from the home of an employee of the Depart-  
5 ment of Veterans Affairs on or around May 3, 2006;  
6 and

7           (2) to provide for the expeditious consideration  
8 and settlement of claims for those injuries.

9 **SEC. 3. DEFINITIONS.**

10 In this Act:

11           (1) **DIRECTOR.**—The term “Director” means  
12 the Director of the Office of Veterans Identity Pro-  
13 tection Claims.

14           (2) **INJURED PERSON.**—The term “injured per-  
15 son” means an individual—

16                   (A) whose name or other personal identi-  
17 fying information was part of the data of the  
18 Department of Veterans Affairs that was stolen  
19 from the home of an employee of the Depart-  
20 ment of Veterans Affairs on or around May 3,  
21 2006; and

22                   (B) who suffered an injury as a result of  
23 the unauthorized use, disclosure, or dissemina-  
24 tion of personal identifying information that



1           (3) may appoint and fix the compensation of  
2           such temporary personnel as may be necessary, with-  
3           out regard to the provisions of title 5, United States  
4           Code, governing appointments in competitive service;  
5           and

6           (4) upon the request of the Director, may re-  
7           quest that the head of any Federal department or  
8           agency detail, on a reimbursable basis, any of the  
9           personnel of that department or agency to the Office  
10          to assist it in carrying out its duties under this Act.

11 **SEC. 5. REIMBURSEMENT FOR INJURIES SUFFERED.**

12          (a) REIMBURSEMENT.—Each injured person shall be  
13          entitled to receive from the United States—

14               (1) reimbursement for any injuries suffered by  
15               the injured person as a result of the unauthorized  
16               use, disclosure, or dissemination of personal identi-  
17               fying information that was included in the data de-  
18               scribed in section 3(2)(A); and

19               (2) damages described in subsection (d)(3), as  
20               determined by the Director.

21          (b) SUBMISSION OF CLAIMS.—Not later than 2 years  
22          after the date on which regulations are first promulgated  
23          under subsection (f), an injured person may submit to the  
24          Director a written claim for one or more injuries suffered

1 by the injured person in accordance with such require-  
2 ments as the Director determines to be appropriate.

3 (c) INVESTIGATION OF CLAIMS.—

4 (1) APPLICABILITY OF STATE LAW.—Except as  
5 otherwise provided in this Act, the laws of the State  
6 in which the injured person resides shall apply to the  
7 calculation of damages under subsection (d)(3).

8 (2) EXTENT OF DAMAGES.—Any payment  
9 under this Act—

10 (A) shall be limited to actual compensatory  
11 damages measured by injuries suffered and in-  
12 terest before settlement or payment of a claim;  
13 and

14 (B) shall not include punitive damages.

15 (d) PAYMENT OF CLAIMS.—

16 (1) DETERMINATION AND PAYMENT OF  
17 AMOUNT.—

18 (A) IN GENERAL.—Not later than 180  
19 days after the date on which a claim is sub-  
20 mitted under this Act, the Director shall deter-  
21 mine and fix the amount, if any, to be paid for  
22 the claim.

23 (B) PARAMETERS OF DETERMINATION.—

24 In determining and settling a claim under this  
25 Act, the Director shall determine only—

1 (i) whether the claimant is an injured  
2 person;

3 (ii) whether the injury that is the sub-  
4 ject of the claim resulted from the unau-  
5 thorized use, disclosure, or dissemination  
6 of personal identifying information that  
7 was included in the data described in sec-  
8 tion 3(2)(A);

9 (iii) the amount, if any, to be allowed  
10 and paid to the injured person under this  
11 Act.

12 (C) OTHER PAYMENTS OR SETTLE-  
13 MENTS.—In determining the amount of, and  
14 paying, a claim under this Act, to prevent re-  
15 covery by a claimant in excess of actual com-  
16 pensatory damages, the Director shall reduce  
17 the amount to be paid for the claim by an  
18 amount that is equal to the total of any pay-  
19 ments or settlements of any nature that were  
20 paid, or will be paid, to the injured person with  
21 respect to the claim.

22 (2) PARTIAL PAYMENT.—

23 (A) IN GENERAL.—At the request of a  
24 claimant, the Director may make one or more  
25 advance or partial payments before the final

1 settlement of a claim, including final settlement  
2 on any portion or aspect of a claim that is de-  
3 termined to be severable.

4 (B) JUDICIAL DECISION.—If a claimant re-  
5 ceives a partial payment on a claim under this  
6 Act, but further payment on the claim is subse-  
7 quently denied by the Director, the claimant  
8 may—

9 (i) seek judicial review under sub-  
10 section (i); and

11 (ii) keep any partial payment that the  
12 claimant received, unless the Director de-  
13 termines that the claimant—

14 (I) was not eligible to receive the  
15 reimbursement; or

16 (II) fraudulently procured the re-  
17 imbursement.

18 (3) ALLOWABLE DAMAGES.—A claim that is  
19 paid under this Act may include otherwise uncom-  
20 pensated damages for loss of property, business loss,  
21 or financial loss resulting from the unauthorized use,  
22 disclosure, or dissemination of personal identifying  
23 information that was included in the data described  
24 in section 3(2)(A).

1 (e) ACCEPTANCE OF AWARD.—The acceptance by a  
2 claimant of any payment under this Act, except an ad-  
3 vance or partial payment made under subsection (d)(2),  
4 shall—

5 (1) be final and conclusive on the claimant,  
6 with respect to all claims arising out of or relating  
7 to the same subject matter;

8 (2) constitute a complete release of all claims  
9 against the United States (including any agency or  
10 employee of the United States) under chapter 171 of  
11 title 28, United States Code (commonly known as  
12 the “Federal Tort Claims Act”), or any other Fed-  
13 eral or State law, arising out of or relating to the  
14 same subject matter; and

15 (3) shall include a certification by the claimant,  
16 made under penalty of perjury and subject to the  
17 provisions of section 1001 of title 18, United States  
18 Code, that such claim is true and correct.

19 (f) REGULATIONS AND PUBLIC INFORMATION.—

20 (1) REGULATIONS.—Notwithstanding any other  
21 provision of law, not later than 45 days after the  
22 date of the enactment of this Act, the Director shall  
23 promulgate and publish in the Federal Register in-  
24 terim final regulations for the processing and pay-  
25 ment of claims under this Act.

1 (2) PUBLIC INFORMATION.—

2 (A) IN GENERAL.—At the time at which  
3 the Director promulgates regulations under  
4 paragraph (1), the Director shall publish, in  
5 newspapers of general circulation in the each of  
6 the several States and the District of Columbia,  
7 a clear, concise, and easily understandable ex-  
8 planation, in English and Spanish, of—

9 (i) the rights conferred under this  
10 Act; and

11 (ii) the procedural and other require-  
12 ments of the regulations promulgated  
13 under paragraph (1).

14 (B) DISSEMINATION THROUGH OTHER  
15 MEDIA.—The Director shall disseminate the ex-  
16 planation published under subparagraph (A)  
17 through brochures, pamphlets, radio, television,  
18 and other media that the Director determines  
19 are likely to reach prospective claimants.

20 (g) CONSULTATION.—In administering this Act, the  
21 Director shall consult with the Attorney General, the Sec-  
22 retary of Veterans Affairs, the Secretary of the Defense,  
23 the Secretary of Commerce, other Federal agencies, and  
24 State and local authorities, as determined to be necessary  
25 by the Director to—

1           (1) ensure the efficient administration of the  
2 claims process; and

3           (2) provide for local concerns.

4       (h) ELECTION OF REMEDY.—

5           (1) IN GENERAL.—An injured person may elect  
6 to seek reimbursement from the United States for  
7 one or more injuries resulting from the unauthorized  
8 use, disclosure, or dissemination of personal identi-  
9 fying information that was included in the data de-  
10 scribed in section 3(2)(A) by—

11                   (A) submitting a claim under this Act;

12                   (B) filing a claim or bringing a civil action  
13 under chapter 171 of title 28, United States  
14 Code; or

15                   (C) bringing an authorized civil action  
16 under any other provision of law.

17       (2) EFFECT OF ELECTION.—An election by an  
18 injured person to seek reimbursement in any manner  
19 described in paragraph (1) shall be final and conclu-  
20 sive on the claimant with respect to all injuries re-  
21 sulting from the unauthorized use, disclosure, or dis-  
22 semination of personal identifying information that  
23 was included in the data described in section 3(2)(A)  
24 that are suffered by the claimant.

25       (3) ARBITRATION.—

1 (A) IN GENERAL.—Not later than 45 days  
2 after the date of the enactment of this Act, the  
3 Director shall establish by regulation proce-  
4 dures under which a dispute regarding a claim  
5 submitted under this Act may be settled by ar-  
6 bitration.

7 (B) ARBITRATION AS REMEDY.—On estab-  
8 lishment of arbitration procedures under sub-  
9 paragraph (A), an injured person that submits  
10 a disputed claim under this Act may elect to  
11 settle the claim through arbitration.

12 (C) BINDING EFFECT.—An election by an  
13 injured person to settle a claim through arbitra-  
14 tion under this paragraph shall—

15 (i) be binding; and

16 (ii) preclude any exercise by the in-  
17 jured person of the right to judicial review  
18 of a claim described in subsection (i).

19 (4) NO EFFECT ON ENTITLEMENTS.—Nothing  
20 in this Act affects any right of a claimant to file a  
21 claim for benefits under any Federal entitlement  
22 program.

23 (i) JUDICIAL REVIEW.—

24 (1) IN GENERAL.—Any claimant aggrieved by a  
25 final decision of the Director under this Act may,

1 not later than 60 days after the date on which the  
2 decision is issued, bring a civil action in the an ap-  
3 appropriate United States District Court, to modify or  
4 set aside the decision, in whole or in part.

5 (2) RECORD.—The court shall hear a civil ac-  
6 tion under paragraph (1) on the record made before  
7 the Director.

8 (3) STANDARD.—The decision of the Director  
9 incorporating the findings of the Director shall be  
10 upheld if the decision is supported by substantial  
11 evidence on the record considered as a whole.

12 (j) ATTORNEY'S AND AGENT'S FEES.—

13 (1) IN GENERAL.—No attorney or agent, acting  
14 alone or in combination with any other attorney or  
15 agent, shall charge, demand, receive, or collect, for  
16 services rendered in connection with a claim sub-  
17 mitted under this Act, fees in excess of 10 percent  
18 of the amount of any payment on the claim.

19 (2) VIOLATION.—An attorney or agent who vio-  
20 lates paragraph (1) shall be fined not more than  
21 \$10,000.

22 (k) APPLICABILITY OF DEBT COLLECTION REQUIRE-  
23 MENTS.—Section 3716 of title 31, United States Code,  
24 shall not apply to any payment under this Act.

1 **SEC. 6. REPORT; AUDIT.**

2 (a) Not later than 180 days after the date of promul-  
3 gation of regulations under section 5(f)(1), and semiannu-  
4 ally thereafter, the Director shall submit to the Commit-  
5 tees on Veterans Affairs, Energy and Commerce, and Ju-  
6 diciary of the House of Representatives, and the Commit-  
7 tees on Veterans Affairs, Commerce, Science and Trans-  
8 portation, and Judiciary of the Senate, a report that de-  
9 scribes the claims submitted under this Act during the six  
10 months preceding the date of submission of the report,  
11 including, for each claim—

12 (1) the amount claimed;

13 (2) a brief description of the nature of the  
14 claim; and

15 (3) the status or disposition of the claim, in-  
16 cluding the amount of any payment under this Act.

17 (b) The Comptroller General shall conduct an annual  
18 audit on the payment of all claims made under this Act,  
19 and shall report to the committees described in subsection  
20 (a) on the results of this audit beginning not later than  
21 the expiration of the 1-year period beginning on the date  
22 of the enactment of this Act.

1 **SEC. 7. AUTHORIZATION OF APPROPRIATIONS.**

2       There are authorized to be appropriated to the Direc-  
3 tor such sums as are necessary to carry out this Act, to  
4 remain available until expended.

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