

want to express my thanks and appreciation to both senior judges for the service they rendered for many years on the Federal bench in Knoxville.

I am confident that there is no one better qualified to fill the large hold left by Judge Jordan and Judge Jarvis than Judge Phillips. I am pleased to endorse Judge Phillips and urge my colleagues to support his nomination.

NOMINATION OF EUGENE SCALIA— MOTION TO PROCEED

Mr. GRASSLEY. Mr. President, I move to proceed to consider the nomination of Eugene Scalia to be solicitor for the Department of Labor.

The PRESIDING OFFICER. The question is on agreeing to the motion. The motion is not agreed to.

LEGISLATIVE SESSION

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

IDENTITY THEFT VICTIMS ASSISTANCE ACT OF 2002

Mr. REID. Mr. President, I ask unanimous consent that the Senate proceed to the consideration of Calendar No. 382, S. 1742.

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

The assistant legislative clerk read as follows:

A bill (S. 1742) to prevent the crime of identity theft, mitigate the harm to individuals victimized by identity theft, and for other purposes.

There being no objection, the Senate proceeded to consider the bill which had been reported from the Committee on the Judiciary with an amendment to strike all after the enacting clause and inserting in lieu thereof the following:

[Strike the part printed in black brackets and insert the part printed in italic.]

S. 1742

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 "Restore Your Identity Act of 2001".]

SEC. 2. FINDINGS.

[Congress finds that—

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

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

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

(4) the Federal Trade Commission estimates that the call volume to the Identity

Theft Hotline represents only 5 to 10 percent of the actual number of victims of identity theft;

(5) victims of identity theft often have extraordinary difficulty restoring their credit and regaining control of their identity because of the viral nature of identity theft;

(6) identity theft may be ruinous to the good name and credit of consumers whose identities are misappropriated, and victims of identity theft may be denied otherwise well-deserved credit, may have to spend enormous time, effort, and sums of money to remedy their circumstances, and may suffer extreme emotional distress including deep depression founded in profound frustration as they address the array of problems that may arise as a result of identity theft;

(7) victims are often required to contact numerous Federal, State, and local law enforcement agencies, consumer credit reporting agencies, and creditors over many years, as each event of fraud arises;

(8) the Government, business entities, and credit reporting agencies have a shared responsibility to assist identity theft victims, to mitigate the harm that results from fraud perpetrated in the victim's name;

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

(A) reporting identity theft to law enforcement, consumer credit reporting agencies, and business entities; and

(B) evidencing their true identity to business entities and credit reporting agencies;

(10) one of the greatest law enforcement challenges posed by identity theft is that stolen identities are often used to perpetrate crimes in many different localities in different States, and although identity theft is a Federal crime, most often, State and local law enforcement agencies are responsible for investigating and prosecuting the crimes; and

(11) the Federal Government should assist State and local law enforcement agencies to effectively combat identity theft and the associated fraud.

SEC. 3. DEFINITIONS.

[In this Act, the following definitions shall apply:

(1) BUSINESS ENTITY.—The term "business entity" means—

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

(B) any financial information repository;

(C) any financial service provider; and

(D) any corporation, trust, partnership, sole proprietorship, or unincorporated association (including telecommunications, utilities, and other service providers).

(2) CONSUMER.—The term "consumer" means an individual.

(3) FINANCIAL INFORMATION.—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) FINANCIAL INFORMATION REPOSITORY.—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) IDENTITY THEFT.—The term "identity theft" means an actual or potential violation of section 1028 of title 28, United States Code, or any other similar provision of Federal or State law.

(6) MEANS OF IDENTIFICATION.—The term "means of identification" has the meanings given the terms "identification document" and "means of identification" in section 1028 of title 18, United States Code.

(7) VICTIM.—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 to aid or abet, identity theft or any other violation of law.

SEC. 4. IDENTITY THEFT TREATED AS RACKETEERING ACTIVITY.

[Section 1961(1)(B) of title 18, United States Code, is amended by inserting ", or any similar offense chargeable under State law" after "identification documents").]

SEC. 5. TREATMENT OF IDENTITY THEFT MITIGATION.

(a) INFORMATION AVAILABLE TO VICTIMS.—

(1) IN GENERAL.—A business entity possessing information relating to an identity theft, or who may have entered into a transaction, provided credit, products, goods, or services, accepted payment, or otherwise done business with a person that has made unauthorized use of the means of identification of the victim, shall, not later than 10 days after receipt of a written request by the victim, provide, without charge, to the victim or to any Federal, State, or local governing law enforcement agency or officer specified by the victim copies of all related application and transaction information and any information required pursuant to subsection (b).

(2) RULE OF CONSTRUCTION.—Nothing in this section requires a business entity to disclose information that the business entity is otherwise prohibited from disclosing under any other provision of Federal or State law, except that any such provision of law that prohibits the disclosure of financial information to third parties shall not be used to deny disclosure of information to the victim under this section.

(b) VERIFICATION OF IDENTITY.—

(1) IN GENERAL.—Unless a business entity is otherwise able to verify the identity of a victim making a request under subsection (a)(1), the victim shall provide to the business entity as proof of positive identification, 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 copy of a standardized affidavit of identity theft developed and made available by the Federal Trade Commission; or

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

(c) LIMITATION ON LIABILITY.—No business entity may be held liable for an action taken in good faith to provide information under this section with respect to an individual in connection with an identity theft to other financial information repositories, financial service providers, merchants, law enforcement authorities, victims, or any person alleging to be a victim, if—

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

(2) such action was taken—

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

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

(d) AUTHORITY TO DECLINE TO PROVIDE INFORMATION.—A business entity may decline

to provide information pursuant to subsection (a) if, in the exercise of good faith and reasonable judgment, the business entity believes that—

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

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

[(e) NO NEW RECORDKEEPING OBLIGATION.—Nothing in this section creates an obligation on the part of a business entity to retain or maintain information or records that are not otherwise required to be retained or maintained in the ordinary course of its business or under other applicable law.

SEC. 6. 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.—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 permanently 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, except as provided in paragraph (3).

[(“2) NOTIFICATION.—A consumer reporting agency shall promptly notify the furnisher of information identified by the consumer under paragraph (1) that the information may be a result of identity theft, that a police report has been filed, that a block has been requested under this subsection, and 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 believes 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 reinstitution of information pursuant to subsection (a)(5)(B).

[(“C) SIGNIFICANCE OF BLOCK.—For purposes of this paragraph, the prior presence of blocked information in the file of a consumer 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.”.

[(b) STATUTE OF LIMITATIONS.—Section 618 of the Fair Credit Reporting Act (15 U.S.C. 1681p) is amended by striking “jurisdiction” and all that follows through “years after” and inserting “jurisdiction, not later than 2 years after”.

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

[(a) MEMBERSHIP.—Section 2(b) of the Internet False Identification Prevention Act of 2000 (18 U.S.C. 1028 note) is amended by inserting “the Postmaster General, the Commissioner of the United States Customs Service,” after “Trade Commissioner”.

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

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

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

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

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

[(“G) a comprehensive description of coordination activities between Federal, State, and local law enforcement agencies in regard to addressing identity theft and recommendations, if any, for legislative changes that could facilitate more effective investigation and prosecution of the creation and distribution of false identification documents;

[(“H) a comprehensive description of how the Federal Government can best provide to State and local law enforcement agencies timely and current information regarding terrorists or terrorist activity where such information specifically relates to identity theft; and

[(“I) recommendations, if any, for legislative or administrative changes that would—

[(“i) facilitate more effective investigation and prosecution of cases involving identity theft;

[(“ii) improve the effectiveness of Federal assistance to State and local law enforcement agencies and coordination between Federal, State, and local law enforcement agencies;

[(“iii) simplify efforts by a person necessary to rectify the harm that results from the theft of the identity of the person; and

[(“iv) if deemed appropriate, provide for the establishment of a Federal identity theft and false identification office or agency.”.

SEC. 8. ENFORCEMENT BY STATE ATTORNEYS GENERAL.

[(a) IN GENERAL.—

[(1) 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 or adversely affected by the engagement of any person in a practice that is prohibited under this Act or under any amendment made by this Act, 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—

[(A) enjoin that practice;

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

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

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

[(2) NOTICE.—

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

[(i) written notice of the action; and

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

[(B) EXEMPTION.—

[(1) IN GENERAL.—Subparagraph (A) shall not apply with respect to the filing of an action by an attorney general of a State under this subsection, if that attorney general determines that it is not feasible to provide the notice described in subparagraph (A) before the filing of the action.

[(ii) NOTIFICATION.—In an action described in clause (i), the attorney general of a State shall provide notice and a copy of the complaint to the Attorney General of the United States at the same time as the action is filed.

[(b) INTERVENTION.—

[(1) IN GENERAL.—On receiving notice of an action under subsection (a)(2), the Attorney General of the United States shall have the right to intervene in that action.

[(2) EFFECT OF INTERVENTION.—If the Attorney General of the United States intervenes in an action under subsection (a), the Attorney General shall have the right to be heard with respect to any matter that arises in that action.

[(c) CONSTRUCTION.—For purposes of bringing any civil action under subsection (a), nothing in this Act or the amendments made by this Act 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—

[(1) to conduct investigations;

[(2) to administer oaths or affirmations; or

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

[(d) ACTIONS BY THE ATTORNEY GENERAL OF THE UNITED STATES.—In any case in which an action is instituted by or on behalf of the Attorney General of the United States for violation of a practice that is prohibited under this Act or under any amendment made by this Act, no State may, during the pendency of that action, institute an action under subsection (a) against any defendant named in the complaint in that action for violation of that practice.

[(e) VENUE; SERVICE OF PROCESS.—

[(1) VENUE.—Any action brought under subsection (a) may be brought in the district court of the United States that meets applicable requirements relating to venue under section 1391 of title 28, United States Code.

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

[(A) is an inhabitant; or

[(B) may be found.]

SECTION 1. SHORT TITLE.

This Act may be cited as the “Identity Theft Victims Assistance Act of 2002”.

SEC. 2. FINDINGS.

Congress finds that—

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

(2) *victims of identity theft often have extraordinary difficulty restoring their credit and regaining control of their identity because of the viral nature of identity theft;*

(3) *identity theft may be ruinous to the good name and credit of consumers whose identities are misappropriated, and victims of identity theft may be denied otherwise well-deserved*

credit, may have to spend enormous time, effort, and sums of money to remedy their circumstances, and may suffer extreme emotional distress including deep depression founded in profound frustration as they address the array of problems that may arise as a result of identity theft;

(4) victims are often required to contact numerous Federal, State, and local law enforcement agencies, consumer credit reporting agencies, and creditors over many years, as each event of fraud arises;

(5) the Government, business entities, and credit reporting agencies have a shared responsibility to assist identity theft victims, to mitigate the harm that results from fraud perpetrated in the victim's name;

(6) victims of identity theft need a nationally standardized means of—

(A) reporting identity theft to consumer credit reporting agencies and business entities; and

(B) evidencing their true identity and claim of identity theft to consumer credit reporting agencies and business entities;

(7) one of the greatest law enforcement challenges posed by identity theft is that stolen identities are often used to perpetrate crimes in many different localities in different States, and although identity theft is a Federal crime, most often, State and local law enforcement agencies are responsible for investigating and prosecuting the crimes; and

(8) the Federal Government should assist State and local law enforcement agencies to effectively combat identity theft and the associated fraud.

SEC. 3. DEFINITIONS.

In this Act, the following definitions shall apply:

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

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

(B) any financial information repository;

(C) any financial service provider; and

(D) any corporation, trust, partnership, sole proprietorship, or unincorporated association (including telecommunications, utilities, and other service providers).

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

(3) **FINANCIAL INFORMATION.**—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) **FINANCIAL INFORMATION REPOSITORY.**—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) **IDENTITY THEFT.**—The term “identity theft” means an actual or potential violation of section 1028 of title 18, United States Code, or any other similar provision of Federal or State law.

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

(7) **VICTIM.**—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 trans-

ferred) without the authority of that consumer with the intent to commit, or to aid or abet, identity theft or any other violation of law.

SEC. 4. TREATMENT OF IDENTITY THEFT MITIGATION.

Section 1028 of title 18, United States Code, is amended by adding at the end the following:

“(i) **TREATMENT OF IDENTITY THEFT MITIGATION.**—

“(1) **INFORMATION AVAILABLE TO VICTIMS.**—

“(A) **IN GENERAL.**—A business entity that possesses information relating to an alleged identity theft, or that has entered into a transaction, provided credit, products, goods, or services, accepted payment, or otherwise done business with a person that has made unauthorized use of the means of identification of the victim, shall, not later than 20 days after the receipt of a written request by the victim under paragraph (2), provide, without charge, a copy of all application and transaction information related to the transaction being alleged as a potential or actual identity theft to—

“(i) the victim;

“(ii) any Federal, State, or local governing law enforcement agency or officer specified by the victim; or

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

“(B) **RULE OF CONSTRUCTION.**—

“(i) **IN GENERAL.**—No provision of Federal or State law prohibiting the disclosure of financial information to third parties shall be used to deny disclosure of information to the victim under this subsection.

“(ii) **LIMITATION.**—Except as provided in clause (i), nothing in this subsection requires a business entity to disclose information that the business entity is otherwise prohibited from disclosing under any other provision of Federal or State law.

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

“(A) as proof of positive identification—

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

“(ii) if providing proof by mail, a copy of a government-issued identification card; or

“(iii) upon the request of the person seeking business records, the business entity may inform the requesting person of the categories of identifying information that the unauthorized person provided the business entity as personally identifying information, and may require the requesting person to provide identifying information in those categories; and

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

“(i) a copy of a police report evidencing the claim of the victim of identity theft;

“(ii) a copy of a standardized affidavit of identity theft developed and made available by the Federal Trade Commission; or

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

“(3) **LIMITATION ON LIABILITY.**—No business entity may be held liable for a disclosure, made in good faith and reasonable judgment, to provide information under this section with respect to an individual in connection with an identity theft to other financial information repositories, financial service providers, merchants, law enforcement authorities, victims, or any person alleging to be a victim, if—

“(A) the business entity complies with paragraph (2); and

“(B) such disclosure was made—

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

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

“(4) **AUTHORITY TO DECLINE TO PROVIDE INFORMATION.**—A business entity may decline to

provide information pursuant to paragraph (1) if, in the exercise of good faith and reasonable judgment, the business entity believes that—

“(A) this subsection does not require disclosure of the information; or

“(B) the request for the information is based on a misrepresentation of fact by the victim relevant to the request for information.

“(5) **NO NEW RECORDKEEPING OBLIGATION.**—Nothing in this subsection creates an obligation on the part of a business entity to obtain, retain, or maintain information or records that are not otherwise required to be retained or maintained in the ordinary course of its business or under other applicable law.

“(6) **NOTIFICATION SYSTEM.**—

“(A) **IN GENERAL.**—A business entity may establish and maintain a notification system for the business entity to comply with this subsection, including a toll-free telephone number and a mailing address.

“(B) **REQUIREMENTS.**—A notification system under subparagraph (A) shall permit any person to make a request to, or to correspond with, the business entity under this subsection, provided that—

“(i) the business entity informs the person—

“(I) that any person may request information under this subsection; and

“(II) of the address and toll-free telephone number established and maintained for this purpose; and

“(ii) a person representing the business entity—

“(I) responds to an information request through the toll-free number within 3 business days of receiving the request; and

“(II) facilitates the provision of such information to the person who initiated the request.”.

SEC. 5. 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 permanently 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, except as provided in paragraph (3).

“(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 believes 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 reinstatement of information under subsection (a)(5)(B).

“(C) SIGNIFICANCE OF BLOCK.—For purposes of this paragraph, the prior presence of blocked information in the file of a consumer 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) EXCEPTION.—A consumer reporting agency shall not be required to comply with this subsection when the 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—

“(A) dishonored checks;

“(B) accounts closed for cause;

“(C) substantial overdrafts;

“(D) abuse of automated teller machines; or

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

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

“(j) Whoever 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 jurisdiction, not later than 2 years from the date of the defendant’s violation of any requirement under this title.

“(b) WILLFUL MISREPRESENTATION.—In any case in which the defendant has materially and willfully misrepresented any information required to be disclosed to an individual under this title, and the information misrepresented 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 discovery by the individual of the misrepresentation.

“(c) IDENTITY THEFT.—An action to enforce a liability created under this title may be brought not later than 5 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 misrepresented such a claim.”.

SEC. 6. COMMISSION 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” and inserting “6 years”.

(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.—The coordinating committee shall consult with interested parties, 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 2002), including telecommunications and utility companies, and organizations representing consumers.”.

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

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

(2) 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;

“(H) a comprehensive description of how the Federal Government can best provide State and local law enforcement agencies with timely and current information regarding terrorists or terrorist activity where such information specifically relates to identity theft; and

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

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

“(I) cases involving 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;

“(iii) simplify efforts by a person necessary to rectify the harm that results from the theft of the identity of such person; and

“(iv) if deemed appropriate, provide for the establishment of a Federal identity theft and false identification office or agency.”.

SEC. 7. ENFORCEMENT.

(a) IN GENERAL.—

(1) 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 section 4 of this Act 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—

(A) enjoin that practice;

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

(C) obtain damages—

(i) in the sum of actual damages, restitution, and other compensation on behalf of the residents of the State; and

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

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

(2) NOTICE.—Before filing an action under paragraph (1), the attorney general of the State involved shall provide to the Attorney General of the United States—

(A) written notice of the action; and

(B) a copy of the complaint for the action.

(b) INTERVENTION.—

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

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

(3) SERVICE OF PROCESS.—Upon request of the Attorney General of the United States, the attorney general of a State that has filed an action under subsection (a) shall, pursuant to Rule 4(d)(4) of the Federal Rules of Civil Procedure, serve the Government with—

(A) a copy of the complaint; and

(B) written disclosure of substantially all material evidence and information in the possession of the attorney general of the state.

(c) CONSTRUCTION.—For purposes of bringing any civil action under subsection (a), nothing in this Act or the amendments made by this Act 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—

(1) to conduct investigations;

(2) to administer oaths or affirmations; or

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

(d) ACTIONS BY THE ATTORNEY GENERAL OF THE UNITED STATES.—In any case in which an action is instituted by or on behalf of the Attorney General of the United States for a violation of section 4, no State may, during the pendency of that action, institute an action under subsection (a) against any defendant named in the complaint in that action for violation of that practice.

(e) VENUE; SERVICE OF PROCESS.—

(1) VENUE.—Any action brought under subsection (a) may be brought in the district court of the United States—

(A) where the defendant resides;

(B) where the defendant is doing business; or

(C) that meets applicable requirements relating to venue under section 1391 of title 28, United States Code.

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

(A) resides;

(B) is doing business; or

(B) may be found.

Mr. GRAMM. Madam President, the Senate today is considering S. 1742, the Identity Theft Victims Assistance Act of 2002. This is an important issue, and it is proper for the Senate to be giving it consideration. While the text of this bill is seriously flawed and needs careful work and refinement in order for it to have a significantly positive effect in curbing identity theft, I believe that passage of this legislation by the Senate will be seen as an indication of the importance that the Senate attaches to relieving the disruption caused in the lives of victims of these crimes.

When the Senate returns to this issue in the next Congress, I hope that the problems with this bill can be resolved, that the complexity of the issues involved can be adequately considered so that the legislation focuses on the real culprits without penalizing law-abiding citizens and businesses, and without the substantial confusion to the enforcement responsibilities of federal financial regulators that the draft before us would cause. The text in its current form would also expand opportunities for predatory lawsuits, creating new

victims, and we must avoid that. We do little good for the country that way.

Mr. REID. Mr. President, Senators CANTWELL and GRASSLEY and others have an amendment at the desk. I ask that that amendment be considered and agreed to; that the committee substitute, as amended, be agreed to; the bill, as amended, be read the third time and passed, and the motion to reconsider be laid upon the table; and that any statements be printed in the RECORD, with no intervening action or debate.

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

The amendment (No. 4954) was agreed to.

(The amendment is printed in today's RECORD under "Text of Amendments.")

The committee amendment in the nature of a substitute, as amended, was agreed to.

The bill (S. 1742), as amended, was read the third time and passed, as follows:

(The bill will be printed in a future edition of the RECORD.)

Mr. REID. Mr. President, let me say I have been working in recent hours with the Senator from Washington, Ms. CANTWELL. She has worked tirelessly on this piece of legislation. She has given a number of statements on the floor related to this issue, dealing with what has taken place and what she knows regarding identity theft. I commend and applaud her for her diligence and perseverance. The burden is now on the House of Representatives. They are still in session. There is no reason in the world that they cannot pass this most important piece of legislation.

EXECUTIVE SESSION

PROMOTIONS DISCHARGED

Mr. REID. Mr. President, I ask unanimous consent the Senate proceed to executive session and the list of Coast Guard promotions which are at the desk be discharged from the Commerce Committee, the Senate proceed to their consideration, that the nominations be confirmed, the motions to reconsider be laid on the table, and that any statements appear at the appropriate place in the RECORD as if read, that the President be immediately notified of the Senate's action, and the Senate return to legislative session.

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

The nominations considered and confirmed are as follows:

U.S. COAST GUARD

To be lieutenant

Dana B. Reid, 9837

U.S. COAST GUARD RESERVE

To be captain

Douglas A. Ash, 9461
Salvatore Brillante, 9714
Timothy M. Butler, 8139
Jeanne Cassidy, 9266
Daniel R. Croce, 1488
Sidney J. Duck III, 0729

Wayne C. Dumas, 2968
Kendel D. Feilen, 0842
Doreen D. Fuller, 8883
Robert W. Grabb, 3388
William C. Hansen, 6687
Maureen B. Harkins, 0444
Stephen N. Jackson, 6687
Mark A. Jones, 2968
John W. Long, 7333
John J. Madeira, 4504
David A. Maes, 2808
David G. O'Brien, 4748
David W. Springer, 5912
Warren E. Soloduk, 3725

U.S. COAST GUARD

To be lieutenant commander

Anthony J. Alarid, 1412
Michael S. Antonellis, 5030
Michael A. Arguelles, 4343
Hector A. Avella, 8261
Paul E. Baker, 7988
Barbara J. Barata, 8450
Christopher M. Barrows, 8561
Edward K. Beale, 7399
Scott A. Beauregard, 6053
William D. Bellatty, 1168
Bryan R. Bender, 4002
Ralph L. Benhart, 0506
Benjamin A. Benson, 3424
David F. Berliner, 6106
Paul R. Bissillon, 4694
Ronald E. Brahm, 9793
John A. Brenner, 3111
Donald L. Brown, 7391
Timothy J. Buchanan, 2428
Russell S. Burnside, 9517
William Carter, 5270
Anthony J. Ceraolo, 2139
Patrick W. Clark, 4993
Leslie W. Clayborne, 8504
Rocky L. Cole, 3491
Richard W. Condit, 6705
Vernon E. Craig, 0980
Michael W. Cribbs, 3103
Christopher Curatilo, 4587
Gregory J. Czerwonka, 4516
Christel A. Dahl, 5351
Bryan E. Dailey, 2760
James W. Dalitsch, 0853
Timothy E. Darley, 3406
Joseph E. Deer, 4579
Ann B. Deyoung, 0150
Edwin Diazrosario, 7357
Timothy E. Dickerson, 7061
Douglas C. Dixon, 8495
Jean T. Donaldson, 8896
Charlene L. Downey, 1428
Patrick J. Dugan, 5898
Kathryn C. Dunbar, 0745
John C. Durbin, 5587
Bryan L. Durr, 0817
Brian E. Edmiston, 0038
David M. Ehlers, 8010
Thomas M. Emerick, 0148
Dennis C. Evans, 2583
Rendall B. Farley, 5226
Dale C. Folsom, 4148
Christopher W. Forando, 4062
Gregory T. Fuller, 3143
Eric J. Gandee, 6250
George D. Ganoung, 2083
Christian J. Glander, 3589
Michael W. Glander, 8276
Gene G. Gonzales, 1117
Jeffrey W. Good, 7748
Mark D. Gordon, 0616
Samuel J. Goswellen, 6588
Thomas A. Griffiths, 2199
Jason R. Hamilton, 9913
Kevin J. Hanson, 3914
James A. Healy, 7844
Joseph J. Healy, 3174
Michael L. Hershberger, 5328
Joseph P. Higgins, 4706
Daniel J. Higman, 6624
Russell E. Holmes, 0974
Katherine A. Howard, 5315
Jerry A. Hubbard, 8249
David A. Husted, 3248
Jeffrey A. Janszen, 4464
Terrence M. Johns, 9778
Eugene E. Johnson, 2742
Lamar V. Johnson, 7091
Richard L. Jung, 5143
Stephen D. Jutras, 5925
Robert M. Keith, 1055
Quentin C. Kent, 7468
Ian R. Kieman, 2030
Scott H. Kim, 9552
Erich F. Klein, 4294
Nicholas R. Koester, 0771
Joseph E. Kramek, 8464
Miriam L. Lafferty, 4744
Burt A. Lahn, 9390
Robert J. Landolfi, 7916
Steven A. Lang, 7316
James R. Langevin, 7045
Scott E. Langum, 2954
Keith H. Laplant, 5221
Scott X. Larson, 4589
Stephen G. Lefave, 1917
Michael R. Leonguerrero, 7974
Michael C. Long, 8213
Jess P. Lopez, 9464
Juan Lopez, 7254
Tung T. Ly, 3465
Lisa K. Mack, 9536
William J. Makell, 6745
Joseph P. Malinauskas, 1645
August T. Martin, 6627
Carol L. McCarther, 8206
Thomas W. McDevitt, 4910
Steven P. McGee, 9864
Patrick W. McMahon, 5758
Jason A. Merriweather, 1212
James F. Miller, 6437
James W. Mitchell, 1953
Kevin G. Morgan, 3889
Patrick J. Murphy, 4093
Nicole S. Nancarrow, 2108
Randall J. Navarro, 3988
Jack C. Neve, 2871
Anthony J. Nygra, 9006
Robert R. Oatman, 3261
Stephen H. Ober, 8546
Steven F. Osgood, 0310
Keith A. Overstreet, 4897
Geoffrey D. Owen, 3140
Kim J. Pacsai, 2821
John K. Park, 9448
Edwin W. Parkinson, 7735
Vincent E. Patterson, 8433
Kevin Y. Pekarek, 3307
Daryl R. Peloquin, 5796
Matthew F. Perciak, 6792
Cornell I. Perry, 7094
Mark G. Phipps, 8278
Zachary H. Pickett, 2955
Kenneth A. Pierro, 6696
Michael E. Platt, 3176
Nathan A. Podoll, 7508
Gary K. Polaski, 2160
Ronald P. Poole, 6332
Kenneth U. Potalicchio, 7762
Steven J. Prunyn, 5380
Lee S. Putnam, 9334
Gregory M. Rainey, 6693
Jeffrey K. Randall, 7612
Sean P. Regan, 7012
Francisco S. Rego, 9178
James M. Reilly, 9209
Joshua D. Reynolds, 0674
Rodd M. Ricklefs, 6519
Ronald L. Riedinger, 6390
James V. Rocco, 2868
Stanley T. Romanowicz, 5552
Shannon D. Rooney, 9051
Charles A. Roskam, 3977
Kiley R. Ross, 0559
Aaron E. Roth, 9026
Warren J. Russell, 5602
Matthew A. Rymer, 9954
Kristina E. Saliceti, 6117
Christopher S. Schubert, 2470
James W. Seeman, 7067