

AMENDMENT NO. _____ Calendar No. _____

Purpose: To enhance punishment for identity theft and other violations of data privacy and security.

IN THE SENATE OF THE UNITED STATES—112th Cong., 1st Sess.

(no.) _____

(title) _____

Referred to the Committee on _____ and ordered to be printed

Ordered to lie on the table and to be printed

AMENDMENT intended to be proposed by _____

Viz:

1 At the end, insert the following:

2 **DIVISION _____—IDENTITY**
3 **THEFT AND DATA PRIVACY**

4 **SEC. __01. ORGANIZED CRIMINAL ACTIVITY IN CONNEC-**
5 **TION WITH UNAUTHORIZED ACCESS TO PER-**
6 **SONALLY IDENTIFIABLE INFORMATION.**

7 Section 1961(1) of title 18, United States Code, is
8 amended by inserting “section 1030 (relating to fraud and
9 related activity in connection with computers) if the act
10 is a felony,” before “section 1084”.

1 **SEC. __02. PENALTIES FOR FRAUD AND RELATED ACTIVITY**
2 **IN CONNECTION WITH COMPUTERS.**

3 Section 1030(c) of title 18, United States Code, is
4 amended to read as follows:

5 “(c) The punishment for an offense under subsection
6 (a) or (b) of this section is—

7 “(1) a fine under this title or imprisonment for
8 not more than 20 years, or both, in the case of an
9 offense under subsection (a)(1) of this section;

10 “(2)(A) except as provided in subparagraph
11 (B), a fine under this title or imprisonment for not
12 more than 3 years, or both, in the case of an offense
13 under subsection (a)(2); or

14 “(B) a fine under this title or imprisonment for
15 not more than ten years, or both, in the case of an
16 offense under paragraph (a)(2) of this section, if—

17 “(i) the offense was committed for pur-
18 poses of commercial advantage or private finan-
19 cial gain;

20 “(ii) the offense was committed in the fur-
21 therance of any criminal or tortious act in viola-
22 tion of the Constitution or laws of the United
23 States, or of any State; or

24 “(iii) the value of the information obtained,
25 or that would have been obtained if the offense
26 was completed, exceeds \$5,000;

1 “(3) a fine under this title or imprisonment for
2 not more than 1 year, or both, in the case of an of-
3 fense under subsection (a)(3) of this section;

4 “(4) a fine under this title or imprisonment of
5 not more than 20 years, or both, in the case of an
6 offense under subsection (a)(4) of this section;

7 “(5)(A) except as provided in subparagraph
8 (D), a fine under this title, imprisonment for not
9 more than 20 years, or both, in the case of an of-
10 fense under subsection (a)(5)(A) of this section, if
11 the offense caused—

12 “(i) loss to 1 or more persons during any
13 1-year period (and, for purposes of an inves-
14 tigation, prosecution, or other proceeding
15 brought by the United States only, loss result-
16 ing from a related course of conduct affecting
17 1 or more other protected computers) aggre-
18 gating at least \$5,000 in value;

19 “(ii) the modification or impairment, or
20 potential modification or impairment, of the
21 medical examination, diagnosis, treatment, or
22 care of 1 or more individuals;

23 “(iii) physical injury to any person;

24 “(iv) a threat to public health or safety;

1 “(v) damage affecting a computer used by,
2 or on behalf of, an entity of the United States
3 Government in furtherance of the administra-
4 tion of justice, national defense, or national se-
5 curity; or

6 “(vi) damage affecting 10 or more pro-
7 tected computers during any 1-year period;

8 “(B) a fine under this title, imprisonment for
9 not more than 10 years, or both, in the case of an
10 offense under subsection (a)(5)(B), if the offense
11 caused a harm provided in clause (i) through (vi) of
12 subparagraph (A) of this subsection;

13 “(C) if the offender attempts to cause or know-
14 ingly or recklessly causes death from conduct in vio-
15 lation of subsection (a)(5)(A), a fine under this title,
16 imprisonment for any term of years or for life, or
17 both; or

18 “(D) a fine under this title, imprisonment for
19 not more than 1 year, or both, for any other offense
20 under subsection (a)(5);

21 “(6) a fine under this title or imprisonment for
22 not more than 10 years, or both, in the case of an
23 offense under subsection (a)(6) of this section; or

1 “(7) a fine under this title or imprisonment for
2 not more than 10 years, or both, in the case of an
3 offense under subsection (a)(7) of this section..”.

4 **SEC. _03. TRAFFICKING IN PASSWORDS.**

5 Section 1030(a) of title 18, United States Code, is
6 amended by striking paragraph (6) and inserting the fol-
7 lowing:

8 “(6) knowingly and with intent to defraud traf-
9 fics (as defined in section 1029) in—

10 “(A) any password or similar information
11 through which a protected computer as defined
12 in subparagraphs (A) and (B) of subsection
13 (e)(2) may be accessed without authorization;
14 or

15 “(B) any means of access through which a
16 protected computer as defined in subsection
17 (e)(2)(A) may be accessed without authoriza-
18 tion.”.

19 **SEC. _04. CONSPIRACY AND ATTEMPTED COMPUTER**
20 **FRAUD OFFENSES.**

21 Section 1030(b) of title 18, United States Code, is
22 amended by inserting “for the completed offense” after
23 “punished as provided”.

1 **SEC. __05. CRIMINAL AND CIVIL FORFEITURE FOR FRAUD**
2 **AND RELATED ACTIVITY IN CONNECTION**
3 **WITH COMPUTERS.**

4 Section 1030 of title 18, United States Code, is
5 amended by striking subsections (i) and (j) and inserting
6 the following:

7 “(i) CRIMINAL FORFEITURE.—

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

14 “(A) such person’s interest in any prop-
15 erty, real or personal, that was used, or in-
16 tended to be used, to commit or facilitate the
17 commission of such violation; and

18 “(B) any property, real or personal, consti-
19 tuting or derived from any gross proceeds, or
20 any property traceable to such property, that
21 such person obtained, directly or indirectly, as
22 a result of such violation.

23 “(2) The criminal forfeiture of property under
24 this subsection, including any seizure and disposition
25 of the property, and any related judicial or adminis-
26 trative proceeding, shall be governed by the provi-

1 sions of section 413 of the Comprehensive Drug
2 Abuse Prevention and Control Act of 1970 (21
3 U.S.C. 853), except subsection (d) of that section.

4 “(j) CIVIL FORFEITURE.—

5 “(1) The following shall be subject to forfeiture
6 to the United States and no property right, real or
7 personal, shall exist in them:

8 “(A) Any property, real or personal, that
9 was used, or intended to be used, to commit or
10 facilitate the commission of any violation of this
11 section, or a conspiracy to violate this section.

12 “(B) Any property, real or personal, con-
13 stituting or derived from any gross proceeds ob-
14 tained directly or indirectly, or any property
15 traceable to such property, as a result of the
16 commission of any violation of this section, or
17 a conspiracy to violate this section.

18 “(2) Seizures and forfeitures under this sub-
19 section shall be governed by the provisions in chap-
20 ter 46 of title 18, United States Code, relating to
21 civil forfeitures, except that such duties as are im-
22 posed on the Secretary of the Treasury under the
23 customs laws described in section 981(d) of title 18,
24 United States Code, shall be performed by such offi-
25 cers, agents and other persons as may be designated

1 for that purpose by the Secretary of Homeland Se-
2 curity or the Attorney General.”.

3 **SEC. __06. DAMAGE TO CRITICAL INFRASTRUCTURE COM-**
4 **PUTERS.**

5 (a) IN GENERAL.—Chapter 47 of title 18, United
6 States Code, is amended by inserting after section 1030
7 the following:

8 **“SEC. 1030A. AGGRAVATED DAMAGE TO A CRITICAL INFRA-**
9 **STRUCTURE COMPUTER.**

10 “(a) DEFINITIONS.—In this section—

11 “(1) the terms ‘computer’ and ‘damage’ have
12 the meanings given such terms in section 1030; and

13 “(2) the term ‘critical infrastructure computer’
14 means a computer that manages or controls systems
15 or assets vital to national defense, national security,
16 national economic security, public health or safety,
17 or any combination of those matters, whether pub-
18 licly or privately owned or operated, including—

19 “(A) gas and oil production, storage, and
20 delivery systems;

21 “(B) water supply systems;

22 “(C) telecommunication networks;

23 “(D) electrical power delivery systems;

24 “(E) finance and banking systems;

25 “(F) emergency services;

1 “(G) transportation systems and services;
2 and

3 “(H) government operations that provide
4 essential services to the public.

5 “(b) OFFENSE.—It shall be unlawful to, during and
6 in relation to a felony violation of section 1030, inten-
7 tionally cause or attempt to cause damage to a critical
8 infrastructure computer, and such damage results in (or,
9 in the case of an attempt, would, if completed have re-
10 sulted in) the substantial impairment—

11 “(1) of the operation of the critical infrastruc-
12 ture computer; or

13 “(2) of the critical infrastructure associated
14 with the computer.

15 “(c) PENALTY.—Any person who violates subsection
16 (b) shall be fined under this title, imprisoned for not less
17 than 3 years nor more than 20 years, or both.

18 “(d) CONSECUTIVE SENTENCE.—Notwithstanding
19 any other provision of law—

20 “(1) a court shall not place on probation any
21 person convicted of a violation of this section;

22 “(2) except as provided in paragraph (4), no
23 term of imprisonment imposed on a person under
24 this section shall run concurrently with any other
25 term of imprisonment, including any term of impris-

1 onment imposed on the person under any other pro-
2 vision of law, including any term of imprisonment
3 imposed for the felony violation section 1030;

4 “(3) in determining any term of imprisonment
5 to be imposed for a felony violation of section 1030,
6 a court shall not in any way reduce the term to be
7 imposed for such crime so as to compensate for, or
8 otherwise take into account, any separate term of
9 imprisonment imposed or to be imposed for a viola-
10 tion of this section; and

11 “(4) a term of imprisonment imposed on a per-
12 son for a violation of this section may, in the discre-
13 tion of the court, run concurrently, in whole or in
14 part, only with another term of imprisonment that
15 is imposed by the court at the same time on that
16 person for an additional violation of this section,
17 provided that such discretion shall be exercised in
18 accordance with any applicable guidelines and policy
19 statements issued by the United States Sentencing
20 Commission pursuant to section 994 of title 28.”.

21 (b) TECHNICAL AND CONFORMING AMENDMENT.—
22 The table of sections for chapter 47 of title 18, United
23 States Code, is amended by inserting after the item relat-
24 ing to section 1030 the following:

“Sec. 1030A. Aggravated damage to a critical infrastructure computer.”.

1 **SEC. __07. LIMITATION ON CERTAIN ACTIONS INVOLVING**
2 **UNAUTHORIZED USE.**

3 Section 1030(a)(2) of title 18, United States Code,
4 is amended by striking subsection (a)(2) and inserting the
5 following:

6 “(2) intentionally accesses a computer —

7 “(A) without authorization, and thereby
8 obtains—

9 “(i) information contained in a finan-
10 cial record of a financial institution, or of
11 a card issuer as defined in section 1602(n)
12 of title 15, or contained in a file of a con-
13 sumer reporting agency on a consumer, as
14 such terms are defined in the Fair Credit
15 Reporting Act (15 U.S.C. 1681 et seq.);

16 “(ii) information from any department
17 or agency of the United States; or

18 “(iii) information from any protected
19 computer; or

20 “(B) in excess of authorization, thereby
21 obtains—

22 “(i) information defined in subpara-
23 graph (A) (i) through (iii); and

24 “(ii) the offense involves—

25 “(I) information that exceeds
26 \$5,000 in value;

1 “(II) sensitive or private informa-
2 tion involving an identifiable indi-
3 vidual or entity (including such infor-
4 mation in the possession of a third
5 party), including medical records,
6 wills, diaries, private correspondence,
7 government-issued identification num-
8 bers, unique biometric data, financial
9 records, photographs of a sensitive or
10 private nature, trade secrets, commer-
11 cial business information, or other
12 similar information;

13 “(III) information that has been
14 properly classified by the United
15 States Government pursuant to an
16 Executive Order or statute, or deter-
17 mined by the United States Govern-
18 ment pursuant to an Executive order
19 or statute to require protection
20 against unauthorized disclosure for
21 reasons of national security, national
22 defense, or foreign relations, or any
23 restricted data, as defined in para-
24 graph y of section 11 of the Atomic
25 Energy Act of 1954; or

1 “(IV) information obtained from
2 a computer used by, or on behalf of,
3 a government entity.”.

4 **SEC. __08. REPORTING OF CERTAIN CRIMINAL CASES.**

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

7 “(k) REPORTING CERTAIN CRIMINAL CASES.—Not
8 later than 1 year after the date of the enactment of this
9 Act, and annually thereafter, the Attorney General shall
10 report to the Committee on the Judiciary of the Senate
11 and the Committee on the Judiciary of the House of Rep-
12 resentatives the number of criminal cases brought under
13 subsection (a)(2)(B), as amended by this Act.”.