

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

# S. 1742

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## AN ACT

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

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

3 **SECTION 1. SHORT TITLE.**

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

1 **SEC. 2. FINDINGS.**

2 Congress finds that—

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

5 (2) victims of identity theft often have extraor-  
6 dinary difficulty restoring their credit and regaining  
7 control of their identity because of the viral nature  
8 of identity theft;

9 (3) identity theft may be ruinous to the good  
10 name and credit of consumers whose identities are  
11 misappropriated, and victims of identity theft may  
12 be denied otherwise well-deserved credit, may have  
13 to spend enormous time, effort, and sums of money  
14 to remedy their circumstances, and may suffer ex-  
15 treme emotional distress including deep depression  
16 founded in profound frustration as they address the  
17 array of problems that may arise as a result of iden-  
18 tity theft;

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

23 (5) the Government, business entities, and cred-  
24 it reporting agencies have a shared responsibility to  
25 assist identity theft victims, to mitigate the harm

1 that results from fraud perpetrated in the victim's  
2 name;

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

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

8 (B) evidencing their true identity and  
9 claim of identity theft to consumer credit re-  
10 porting agencies and business entities;

11 (7) one of the greatest law enforcement chal-  
12 lenges posed by identity theft is that stolen identities  
13 are often used to perpetrate crimes in many dif-  
14 ferent localities in different States, and although  
15 identity theft is a Federal crime, most often, State  
16 and local law enforcement agencies are responsible  
17 for investigating and prosecuting the crimes; and

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

21 **SEC. 3. TREATMENT OF IDENTITY THEFT MITIGATION.**

22 (a) IN GENERAL.—Chapter 47 title 18, United States  
23 Code, is amended by adding after section 1028 the fol-  
24 lowing:

1 **“§ 1028A. Treatment of identity theft mitigation**

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

3 “(1) the term ‘business entity’ means any cor-  
4 poration, trust, partnership, sole proprietorship, or  
5 unincorporated association, including any financial  
6 service provider, financial information repository,  
7 creditor (as that term is defined in section 103 of  
8 the Truth in Lending Act (15 U.S.C. 1602)), tele-  
9 communications, utilities, or other service provider;

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

11 “(3) the term ‘financial information’ means in-  
12 formation identifiable as relating to an individual  
13 consumer that concerns the amount and conditions  
14 of the assets, liabilities, or credit of the consumer,  
15 including—

16 “(A) account numbers and balances;

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

20 “(C) codes, passwords, social security  
21 numbers, tax identification numbers, State  
22 identifier numbers issued by a State depart-  
23 ment of licensing, and other information used  
24 for the purpose of account access or transaction  
25 initiation;

1           “(4) the term ‘financial information repository’  
2 means a person engaged in the business of providing  
3 services to consumers who have a credit, deposit,  
4 trust, stock, or other financial services account or  
5 relationship with that person;

6           “(5) the term ‘identity theft’ means an actual  
7 or potential violation of section 1028 or any other  
8 similar provision of Federal or State law;

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

11           “(7) the term ‘victim’ means a consumer whose  
12 means of identification or financial information has  
13 been used or transferred (or has been alleged to  
14 have been used or transferred) without the authority  
15 of that consumer with the intent to commit, or to  
16 aid or abet, identity theft or any other violation of  
17 law.

18           “(b) INFORMATION AVAILABLE TO VICTIMS.—

19           “(1) IN GENERAL.—A business entity that pos-  
20 sesses information relating to an alleged identity  
21 theft, or that has entered into a transaction, pro-  
22 vided credit, products, goods, or services, accepted  
23 payment, or otherwise done business with a person  
24 that has made unauthorized use of the means of  
25 identification of the victim, shall, not later than 20

1 days after the receipt of a written request by the vic-  
2 tim, meeting the requirements of subsection (c), pro-  
3 vide, without charge, a copy of all application and  
4 transaction information related to the transaction  
5 being alleged as an identity theft to—

6 “(A) the victim;

7 “(B) any Federal, State, or local governing  
8 law enforcement agency or officer specified by  
9 the victim; or

10 “(C) any law enforcement agency inves-  
11 tigating the identity theft and authorized by the  
12 victim to take receipt of records provided under  
13 this section.

14 “(2) RULE OF CONSTRUCTION.—

15 “(A) IN GENERAL.—No provision of Fed-  
16 eral or State law prohibiting the disclosure of  
17 financial information by a business entity to  
18 third parties shall be used to deny disclosure of  
19 information to the victim under this section.

20 “(B) LIMITATION.—Except as provided in  
21 subparagraph (A), nothing in this section re-  
22 quires a business entity to disclose information  
23 that the business entity is otherwise prohibited  
24 from disclosing under any other provision of  
25 Federal or State law.

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

6               “(1) as proof of positive identification—

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

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

11                      “(C) upon the request of the person seek-  
12 ing business records, the business entity may  
13 inform the requesting person of the categories  
14 of identifying information that the unauthorized  
15 person provided the business entity as person-  
16 ally identifying information, and may require  
17 the requesting person to provide identifying in-  
18 formation in those categories; and

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

21                      “(A) a copy of a police report evidencing  
22 the claim of the victim of identity theft;

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

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

3           “(d) LIMITATION ON LIABILITY.—No business entity  
4 may be held liable for a disclosure, made in good faith  
5 and reasonable judgment, to provide information under  
6 this section with respect to an individual in connection  
7 with an identity theft to other business entities, law en-  
8 forcement authorities, victims, or any person alleging to  
9 be a victim, if—

10                   “(1) the business entity complies with sub-  
11                   section (c); and

12                   “(2) such disclosure was made—

13                           “(A) for the purpose of detection, inves-  
14                           tigation, or prosecution of identity theft; or

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

19           “(e) AUTHORITY TO DECLINE TO PROVIDE INFOR-  
20 MATION.—A business entity may decline to provide infor-  
21 mation under subsection (b) if, in the exercise of good  
22 faith and reasonable judgment, the business entity believes  
23 that—

24                   “(1) this section does not require disclosure of  
25                   the information; or



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

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

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

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

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

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

22          “(i) ENFORCEMENT.—

23                 “(1) CIVIL ACTIONS.—

24                         “(A) IN GENERAL.—In any case in which  
25                         the attorney general of a State has reason to

1 believe that an interest of the residents of that  
2 State has been, or is threatened to be, adversely  
3 affected by a violation of this section by any  
4 business entity, the State, as *parens patriae*,  
5 may bring a civil action on behalf of the resi-  
6 dents of the State in a district court of the  
7 United States of appropriate jurisdiction to—

8 “(i) enjoin that practice;

9 “(ii) enforce compliance of this sec-  
10 tion;

11 “(iii) obtain damages—

12 “(I) in the sum of actual dam-  
13 ages, restitution, and other compensa-  
14 tion on behalf of the residents of the  
15 State; and

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

18 “(iv) obtain such other equitable relief  
19 as the court may consider to be appro-  
20 priate.

21 “(B) NOTICE.—Before bringing an action  
22 under subparagraph (A), the attorney general  
23 of the State involved shall provide to the Attor-  
24 ney General of the United States—

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

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

3                   “(2) INTERVENTION.—

4                   “(A) IN GENERAL.—On receiving notice of  
5                   an action under paragraph (1)(B), the Attorney  
6                   General of the United States shall have the  
7                   right to intervene in that action.

8                   “(B) EFFECT OF INTERVENTION.—If the  
9                   Attorney General of the United States inter-  
10                  venes in an action under this subsection, the  
11                  Attorney General shall have the right to be  
12                  heard with respect to any matter that arises in  
13                  that action.

14                  “(C) SERVICE OF PROCESS.—Upon request  
15                  of the Attorney General of the United States,  
16                  the attorney general of a State that has filed an  
17                  action under this subsection shall, pursuant to  
18                  Rule 4(d)(4) of the Federal Rules of Civil Pro-  
19                  cedure, serve the Government with—

20                               “(i) a copy of the complaint; and

21                               “(ii) written disclosure of substan-  
22                               tially all material evidence and information  
23                               in the possession of the attorney general of  
24                               the State.

1           “(3) CONSTRUCTION.—For purposes of bring-  
2           ing any civil action under this subsection, nothing in  
3           this section shall be construed to prevent an attor-  
4           ney general of a State from exercising the powers  
5           conferred on such attorney general by the laws of  
6           that State—

7                     “(A) to conduct investigations;

8                     “(B) to administer oaths or affirmations;

9                     or

10                    “(C) to compel the attendance of witnesses  
11                    or the production of documentary and other evi-  
12                    dence.

13           “(4) ACTIONS BY THE ATTORNEY GENERAL OF  
14           THE UNITED STATES.—In any case in which an ac-  
15           tion is instituted by or on behalf of the Attorney  
16           General of the United States for a violation of this  
17           section, no State may, during the pendency of that  
18           action, institute an action under this subsection  
19           against any defendant named in the complaint in  
20           that action for violation of that practice.

21                    “(5) VENUE; SERVICE OF PROCESS.—

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

25                             “(i) where the defendant resides;

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

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

6 “(B) SERVICE OF PROCESS.—In an action  
7 brought under this subsection, process may be  
8 served in any district in which the defendant—

9 “(i) resides;

10 “(ii) is doing business; or

11 “(iii) may be found.”.

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

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

16 **SEC. 4. AMENDMENTS TO THE FAIR CREDIT REPORTING**  
17 **ACT.**

18 (a) CONSUMER REPORTING AGENCY BLOCKING OF  
19 INFORMATION RESULTING FROM IDENTITY THEFT.—  
20 Section 611 of the Fair Credit Reporting Act (15 U.S.C.  
21 1681i) is amended by adding at the end the following:

22 “(e) BLOCK OF INFORMATION RESULTING FROM  
23 IDENTITY THEFT.—

24 “(1) BLOCK.—Except as provided in paragraph  
25 (3) and not later than 30 days after the date of re-

1 ceipt of proof of the identity of a consumer and an  
2 official copy of a police report evidencing the claim  
3 of the consumer of identity theft, a consumer report-  
4 ing agency shall block the reporting of any informa-  
5 tion identified by the consumer in the file of the con-  
6 sumer resulting from the identity theft, so that the  
7 information cannot be reported.

8 “(2) NOTIFICATION.—A consumer reporting  
9 agency shall promptly notify the furnisher of infor-  
10 mation identified by the consumer under paragraph  
11 (1)—

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

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

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

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

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

19 “(A) IN GENERAL.—A consumer reporting  
20 agency may decline to block, or may rescind  
21 any block, of consumer information under this  
22 subsection if—

23 “(i) in the exercise of good faith and  
24 reasonable judgment, the consumer report-  
25 ing agency finds that—

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

5                   “(II) the consumer knowingly ob-  
6                   tained possession of goods, services, or  
7                   moneys as a result of the blocked  
8                   transaction or transactions, or the  
9                   consumer should have known that the  
10                  consumer obtained possession of  
11                  goods, services, or moneys as a result  
12                  of the blocked transaction or trans-  
13                  actions; or

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

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

23                  “(C) SIGNIFICANCE OF BLOCK.—For pur-  
24                  poses of this paragraph, if a consumer report-  
25                  ing agency rescinds a block, the presence of in-

1 formation in the file of a consumer prior to the  
2 blocking of such information is not evidence of  
3 whether the consumer knew or should have  
4 known that the consumer obtained possession of  
5 any goods, services, or monies as a result of the  
6 block.

7 “(4) EXCEPTIONS.—

8 “(A) NEGATIVE INFORMATION DATA.—A  
9 consumer reporting agency shall not be required  
10 to comply with this subsection when such agen-  
11 cy is issuing information for authorizations, for  
12 the purpose of approving or processing nego-  
13 tiable instruments, electronic funds transfers,  
14 or similar methods of payment, based solely on  
15 negative information, including—

16 “(i) dishonored checks;

17 “(ii) accounts closed for cause;

18 “(iii) substantial overdrafts;

19 “(iv) abuse of automated teller ma-  
20 chines; or

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

23 “(B) RESELLERS.—

24 “(i) NO RESELLER FILE.—The provi-  
25 sions of this subsection do not apply to a



1 consumer reporting agency if the consumer  
2 reporting agency—

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

6 “(II) is not, at the time of the re-  
7 quest of the consumer under para-  
8 graph (1), otherwise furnishing or re-  
9 selling a consumer report concerning  
10 the information identified by the con-  
11 sumer; and

12 “(III) informs the consumer, by  
13 any means, that the consumer may re-  
14 port the identity theft to the Federal  
15 Trade Commission to obtain consumer  
16 information regarding identity theft.

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

24 “(I) the consumer, in accordance  
25 with the provisions of paragraph (1),

1 identifies, to a consumer reporting  
2 agency, information in the file of the  
3 consumer that resulted from identity  
4 theft;

5 “(II) the consumer reporting  
6 agency is acting as a reseller of the  
7 identified information by assembling  
8 or merging information about that  
9 consumer which is contained in the  
10 database of not less than 1 other con-  
11 sumer reporting agency; and

12 “(III) the consumer reporting  
13 agency does not store or maintain a  
14 database of information obtained for  
15 resale from which new consumer re-  
16 ports are produced.

17 “(iii) NOTICE.—In carrying out its  
18 obligation under clause (ii), the consumer  
19 reporting agency shall provide a notice to  
20 the consumer of the decision to block the  
21 file. Such notice shall contain the name,  
22 address, and telephone number of each  
23 consumer reporting agency from which the  
24 consumer information was obtained for re-  
25 sale.”.

1 (b) FALSE CLAIMS.—Section 1028 of title 18, United  
 2 States Code, is amended by adding at the end the fol-  
 3 lowing:

4 “(j) Any person who knowingly falsely claims to be  
 5 a victim of identity theft for the purpose of obtaining the  
 6 blocking of information by a consumer reporting agency  
 7 under section 611(e)(1) of the Fair Credit Reporting Act  
 8 (15 U.S.C. 1681i(e)(1)) shall be fined under this title, im-  
 9 prisoned not more than 3 years, or both.”.

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

13 **“SEC. 618. JURISDICTION OF COURTS; LIMITATION ON AC-**  
 14 **TIONS.**

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

22 “(b) WILLFUL MISREPRESENTATION.—In any case  
 23 in which the defendant has materially and willfully mis-  
 24 represented any information required to be disclosed to an  
 25 individual under this title, and the information misrepre-

1 sented is material to the establishment of the liability of  
 2 the defendant to that individual under this title, an action  
 3 to enforce a liability created under this title may be  
 4 brought at any time within 2 years after the date of dis-  
 5 covery by the individual of the misrepresentation.

6 “(c) IDENTITY THEFT.—An action to enforce a liabil-  
 7 ity created under this title may be brought not later than  
 8 4 years from the date of the defendant’s violation if—

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

11 “(2) the plaintiff—

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

15 “(B) has not materially and willfully mis-  
 16 represented such a claim.”.

17 **SEC. 5. COORDINATING COMMITTEE STUDY OF COORDINA-**  
 18 **TION BETWEEN FEDERAL, STATE, AND LOCAL**  
 19 **AUTHORITIES IN ENFORCING IDENTITY**  
 20 **THEFT LAWS.**

21 (a) MEMBERSHIP; TERM.—Section 2 of the Internet  
 22 False Identification Prevention Act of 2000 (18 U.S.C.  
 23 1028 note) is amended—

24 (1) in subsection (b), by striking “and the Com-  
 25 missioner of Immigration and Naturalization” and

1 inserting “the Commissioner of Immigration and  
2 Naturalization, the Chairman of the Federal Trade  
3 Commission, the Postmaster General, and the Com-  
4 missioner of the United States Customs Service,”;  
5 and

6 (2) in subsection (c), by striking “2 years after  
7 the effective date of this Act.” and inserting “on De-  
8 cember 28, 2004.”.

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

12 (1) by redesignating subsection (d) as sub-  
13 section (e); and

14 (2) by inserting after subsection (c) the fol-  
15 lowing:

16 “(d) CONSULTATION.—In discharging its duties, the  
17 coordinating committee shall consult with interested par-  
18 ties, including State and local law enforcement agencies,  
19 State attorneys general, representatives of business enti-  
20 ties (as that term is defined in section 4 of the Identity  
21 Theft Victims Assistance Act of 2002), including tele-  
22 communications and utility companies, and organizations  
23 representing consumers.”.

24 (c) REPORT DISTRIBUTION AND CONTENTS.—Sec-  
25 tion 2(e) of the Internet False Identification Prevention

1 Act of 2000 (18 U.S.C. 1028 note) (as redesignated by  
2 subsection (b)) is amended—

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

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

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

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

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

16 “(D) the Committee on Financial Services  
17 of the House of Representatives.”;

18 (2) in subparagraph (E), by striking “and” at  
19 the end; and

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

22 “(F) a comprehensive description of Fed-  
23 eral assistance provided to State and local law  
24 enforcement agencies to address identity theft;

1           “(G) a comprehensive description of co-  
2           ordination activities between Federal, State,  
3           and local law enforcement agencies that address  
4           identity theft; and

5           “(H) recommendations in the discretion of  
6           the President, if any, for legislative or adminis-  
7           trative changes that would—

8                   “(i) facilitate more effective investiga-  
9                   tion and prosecution of cases involving—

10                           “(I) identity theft; and

11                                   “(II) the creation and distribu-  
12                                   tion of false identification documents;

13                           “(ii) improve the effectiveness of Fed-  
14                           eral assistance to State and local law en-  
15                           forcement agencies and coordination be-  
16                           tween Federal, State, and local law en-  
17                           forcement agencies; and

18                           “(iii) simplify efforts by a person nec-  
19                           essary to rectify the harm that results

1                   from the theft of the identity of such per-  
2                   son.”.

Passed the Senate November 14, 2002.

Attest:

*Secretary.*



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2D SESSION

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**AN ACT**

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