

In the Senate of the United States,

July 30, 2008.

Resolved, That the bill from the House of Representatives (H.R. 5938) entitled “An Act to amend title 18, United States Code, to provide secret service protection to former Vice Presidents, and for other purposes.”, do pass with the following

AMENDMENTS:

1 **(1)**On page 2, strike lines 1 through 5, and insert the
2 following:

3 ***TITLE I—FORMER VICE***
4 ***PRESIDENT PROTECTION ACT***

5 ***SEC. 101. SHORT TITLE.***

6 *This title may be cited as the “Former Vice President*
7 *Protection Act of 2008”.*

8 ***SEC. 102. SECRET SERVICE PROTECTION FOR FORMER VICE***
9 ***PRESIDENTS AND THEIR FAMILIES.***

10 **(2)**On page 3, strike line 1 and insert the following:

1 **SEC. 103. EFFECTIVE DATE.**

2 **(3)**On page 3, after line 4, insert the following:

3 **TITLE II—IDENTITY THEFT EN-**
4 **FORCEMENT AND RESTITU-**
5 **TION ACT**

6 **SEC. 201. SHORT TITLE.**

7 *This title may be cited as the “Identity Theft Enforce-*
8 *ment and Restitution Act of 2008”.*

9 **SEC. 202. CRIMINAL RESTITUTION.**

10 *Section 3663(b) of title 18, United States Code, is*
11 *amended—*

12 *(1) in paragraph (4), by striking “; and” and*
13 *inserting a semicolon;*

14 *(2) in paragraph (5), by striking the period at*
15 *the end and inserting “; and”; and*

16 *(3) by adding at the end the following:*

17 *“(6) in the case of an offense under sections*
18 *1028(a)(7) or 1028A(a) of this title, pay an amount*
19 *equal to the value of the time reasonably spent by the*
20 *victim in an attempt to remediate the intended or ac-*
21 *tual harm incurred by the victim from the offense.”.*

1 **SEC. 203. ENSURING JURISDICTION OVER THE THEFT OF**
2 **SENSITIVE IDENTITY INFORMATION.**

3 *Section 1030(a)(2)(C) of title 18, United States Code,*
4 *is amended by striking “if the conduct involved an inter-*
5 *state or foreign communication”.*

6 **SEC. 204. MALICIOUS SPYWARE, HACKING AND**
7 **KEYLOGGERS.**

8 *(a) IN GENERAL.—Section 1030 of title 18, United*
9 *States Code, is amended—*

10 *(1) in subsection (a)(5)—*

11 *(A) by striking subparagraph (B); and*

12 *(B) in subparagraph (A)—*

13 *(i) by striking “(A)(i) knowingly” and*
14 *inserting “(A) knowingly”;*

15 *(ii) by redesignating clauses (ii) and*
16 *(iii) as subparagraphs (B) and (C), respec-*
17 *tively; and*

18 *(iii) in subparagraph (C), as so redес-*
19 *ignated—*

20 *(I) by inserting “and loss” after*
21 *“damage”; and*

22 *(II) by striking “; and” and in-*
23 *serting a period;*

24 *(2) in subsection (c)—*

25 *(A) in paragraph (2)(A), by striking*
26 *“(a)(5)(A)(iii),”;*

1 (B) in paragraph (3)(B), by striking
2 “(a)(5)(A)(iii),”;

3 (C) by amending paragraph (4) to read as
4 follows:

5 “(4)(A) except as provided in subparagraphs (E)
6 and (F), a fine under this title, imprisonment for not
7 more than 5 years, or both, in the case of—

8 “(i) an offense under subsection (a)(5)(B),
9 which does not occur after a conviction for an-
10 other offense under this section, if the offense
11 caused (or, in the case of an attempted offense,
12 would, if completed, have caused)—

13 “(I) loss to 1 or more persons during
14 any 1-year period (and, for purposes of an
15 investigation, prosecution, or other pro-
16 ceeding brought by the United States only,
17 loss resulting from a related course of con-
18 duct affecting 1 or more other protected
19 computers) aggregating at least \$5,000 in
20 value;

21 “(II) the modification or impairment,
22 or potential modification or impairment, of
23 the medical examination, diagnosis, treat-
24 ment, or care of 1 or more individuals;

25 “(III) physical injury to any person;

1 “(IV) a threat to public health or safe-
2 ty;

3 “(V) damage affecting a computer used
4 by or for an entity of the United States
5 Government in furtherance of the adminis-
6 tration of justice, national defense, or na-
7 tional security; or

8 “(VI) damage affecting 10 or more
9 protected computers during any 1-year pe-
10 riod; or

11 “(i) an attempt to commit an offense pun-
12 ishable under this subparagraph;

13 “(B) except as provided in subparagraphs (E)
14 and (F), a fine under this title, imprisonment for not
15 more than 10 years, or both, in the case of—

16 “(i) an offense under subsection (a)(5)(A),
17 which does not occur after a conviction for an-
18 other offense under this section, if the offense
19 caused (or, in the case of an attempted offense,
20 would, if completed, have caused) a harm pro-
21 vided in subclauses (I) through (VI) of subpara-
22 graph (A)(i); or

23 “(ii) an attempt to commit an offense pun-
24 ishable under this subparagraph;

1 “(C) except as provided in subparagraphs (E)
2 and (F), a fine under this title, imprisonment for not
3 more than 20 years, or both, in the case of—

4 “(i) an offense or an attempt to commit an
5 offense under subparagraphs (A) or (B) of sub-
6 section (a)(5) that occurs after a conviction for
7 another offense under this section; or

8 “(ii) an attempt to commit an offense pun-
9 ishable under this subparagraph;

10 “(D) a fine under this title, imprisonment for
11 not more than 10 years, or both, in the case of—

12 “(i) an offense or an attempt to commit an
13 offense under subsection (a)(5)(C) that occurs
14 after a conviction for another offense under this
15 section; or

16 “(ii) an attempt to commit an offense pun-
17 ishable under this subparagraph;

18 “(E) if the offender attempts to cause or know-
19 ingly or recklessly causes serious bodily injury from
20 conduct in violation of subsection (a)(5)(A), a fine
21 under this title, imprisonment for not more than 20
22 years, or both;

23 “(F) if the offender attempts to cause or know-
24 ingly or recklessly causes death from conduct in viola-
25 tion of subsection (a)(5)(A), a fine under this title,

1 *imprisonment for any term of years or for life, or*
2 *both; or*

3 “(G) *a fine under this title, imprisonment for*
4 *not more than 1 year, or both, for—*

5 “(i) *any other offense under subsection*
6 *(a)(5); or*

7 “(ii) *an attempt to commit an offense pun-*
8 *ishable under this subparagraph.”; and*

9 “(D) *by striking paragraph (5); and*
10 “(3) *in subsection (g)—*

11 “(A) *in the second sentence, by striking “in*
12 *clauses (i), (ii), (iii), (iv), or (v) of subsection*
13 *(a)(5)(B)” and inserting “in subclauses (I), (II),*
14 *(III), (IV), or (V) of subsection (c)(4)(A)(i)”;* and

15 “(B) *in the third sentence, by striking “sub-*
16 *section (a)(5)(B)(i)” and inserting “subsection*
17 *(c)(4)(A)(i)(I)”.*

18 (b) CONFORMING CHANGES.—*Section*
19 2332b(g)(5)(B)(i) *of title 18, United States Code, is amend-*
20 *ed by striking “1030(a)(5)(A)(i) resulting in damage as de-*
21 *fin ed in 1030(a)(5)(B)(ii) through (v)” and inserting*
22 *“1030(a)(5)(A) resulting in damage as defined in*
23 *1030(c)(4)(A)(i)(II) through (VI)”.*

1 **SEC. 205. CYBER-EXTORTION.**

2 *Section 1030(a)(7) of title 18, United States Code, is*
3 *amended to read as follows:*

4 *“(7) with intent to extort from any person any*
5 *money or other thing of value, transmits in interstate*
6 *or foreign commerce any communication containing*
7 *any—*

8 *“(A) threat to cause damage to a protected*
9 *computer;*

10 *“(B) threat to obtain information from a*
11 *protected computer without authorization or in*
12 *excess of authorization or to impair the confiden-*
13 *tiality of information obtained from a protected*
14 *computer without authorization or by exceeding*
15 *authorized access; or*

16 *“(C) demand or request for money or other*
17 *thing of value in relation to damage to a pro-*
18 *tected computer, where such damage was caused*
19 *to facilitate the extortion;”.*

20 **SEC. 206. CONSPIRACY TO COMMIT CYBER-CRIMES.**

21 *Section 1030(b) of title 18, United States Code, is*
22 *amended by inserting “conspires to commit or” after “Who-*
23 *ever”.*

1 **SEC. 207. USE OF FULL INTERSTATE AND FOREIGN COM-**
2 **MERCE POWER FOR CRIMINAL PENALTIES.**

3 *Section 1030(e)(2)(B) of title 18, United States Code,*
4 *is amended by inserting “or affecting” after “which is used*
5 *in”.*

6 **SEC. 208. FORFEITURE FOR SECTION 1030 VIOLATIONS.**

7 *Section 1030 of title 18, United States Code, is amend-*
8 *ed by adding at the end the following:*

9 *“(i)(1) The court, in imposing sentence on any person*
10 *convicted of a violation of this section, or convicted of con-*
11 *spiracy to violate this section, shall order, in addition to*
12 *any other sentence imposed and irrespective of any provi-*
13 *sion of State law, that such person forfeit to the United*
14 *States—*

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

18 *“(B) any property, real or personal, constituting*
19 *or derived from, any proceeds that such person ob-*
20 *tained, directly or indirectly, as a result of such vio-*
21 *lation.*

22 *“(2) The criminal forfeiture of property under this*
23 *subsection, any seizure and disposition thereof, and any ju-*
24 *dicial proceeding in relation thereto, shall be governed by*
25 *the provisions of section 413 of the Comprehensive Drug*

1 *Abuse Prevention and Control Act of 1970 (21 U.S.C. 853),*
2 *except subsection (d) of that section.*

3 “(j) *For purposes of subsection (i), the following shall*
4 *be subject to forfeiture to the United States and no property*
5 *right shall exist in them:*

6 “(1) *Any personal property used or intended to*
7 *be used to commit or to facilitate the commission of*
8 *any violation of this section, or a conspiracy to vio-*
9 *late this section.*

10 “(2) *Any property, real or personal, which con-*
11 *stitutes or is derived from proceeds traceable to any*
12 *violation of this section, or a conspiracy to violate*
13 *this section”.*

14 **SEC. 209. DIRECTIVE TO UNITED STATES SENTENCING**
15 **COMMISSION.**

16 (a) *DIRECTIVE.*—*Pursuant to its authority under sec-*
17 *tion 994(p) of title 28, United States Code, and in accord-*
18 *ance with this section, the United States Sentencing Com-*
19 *mission shall review its guidelines and policy statements*
20 *applicable to persons convicted of offenses under sections*
21 *1028, 1028A, 1030, 2511, and 2701 of title 18, United*
22 *States Code, and any other relevant provisions of law, in*
23 *order to reflect the intent of Congress that such penalties*
24 *be increased in comparison to those currently provided by*
25 *such guidelines and policy statements.*

1 **(b) REQUIREMENTS.**—*In determining its guidelines*
2 *and policy statements on the appropriate sentence for the*
3 *crimes enumerated in subsection (a), the United States Sen-*
4 *tencing Commission shall consider the extent to which the*
5 *guidelines and policy statements may or may not account*
6 *for the following factors in order to create an effective deter-*
7 *rent to computer crime and the theft or misuse of personally*
8 *identifiable data:*

9 (1) *The level of sophistication and planning in-*
10 *volved in such offense.*

11 (2) *Whether such offense was committed for pur-*
12 *pose of commercial advantage or private financial*
13 *benefit.*

14 (3) *The potential and actual loss resulting from*
15 *the offense including—*

16 (A) *the value of information obtained from*
17 *a protected computer, regardless of whether the*
18 *owner was deprived of use of the information;*
19 *and*

20 (B) *where the information obtained con-*
21 *stitutes a trade secret or other proprietary infor-*
22 *mation, the cost the victim incurred developing*
23 *or compiling the information.*

1 (4) *Whether the defendant acted with intent to*
2 *cause either physical or property harm in committing*
3 *the offense.*

4 (5) *The extent to which the offense violated the*
5 *privacy rights of individuals.*

6 (6) *The effect of the offense upon the operations*
7 *of an agency of the United States Government, or of*
8 *a State or local government.*

9 (7) *Whether the offense involved a computer used*
10 *by the United States Government, a State, or a local*
11 *government in furtherance of national defense, na-*
12 *tional security, or the administration of justice.*

13 (8) *Whether the offense was intended to, or had*
14 *the effect of, significantly interfering with or dis-*
15 *rupting a critical infrastructure.*

16 (9) *Whether the offense was intended to, or had*
17 *the effect of, creating a threat to public health or safe-*
18 *ty, causing injury to any person, or causing death.*

19 (10) *Whether the defendant purposefully involved*
20 *a juvenile in the commission of the offense.*

21 (11) *Whether the defendant's intent to cause*
22 *damage or intent to obtain personal information*
23 *should be disaggregated and considered separately*
24 *from the other factors set forth in USSG*
25 *2B1.1(b)(14).*

1 (12) *Whether the term “victim” as used in*
2 *USSG 2B1.1, should include individuals whose pri-*
3 *vacy was violated as a result of the offense in addi-*
4 *tion to individuals who suffered monetary harm as a*
5 *result of the offense.*

6 (13) *Whether the defendant disclosed personal in-*
7 *formation obtained during the commission of the of-*
8 *fense.*

9 (c) *ADDITIONAL REQUIREMENTS.—In carrying out*
10 *this section, the United States Sentencing Commission*
11 *shall—*

12 (1) *assure reasonable consistency with other rel-*
13 *evant directives and with other sentencing guidelines;*

14 (2) *account for any additional aggravating or*
15 *mitigating circumstances that might justify excep-*
16 *tions to the generally applicable sentencing ranges;*

17 (3) *make any conforming changes to the sen-*
18 *tencing guidelines; and*

19 (4) *assure that the guidelines adequately meet*
20 *the purposes of sentencing as set forth in section*
21 *3553(a)(2) of title 18, United States Code.*

Attest:

Secretary.

110TH CONGRESS
2^D SESSION

H.R. 5938

AMENDMENTS