AMENDMENT NO. ________ Calendar No. ________

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


S. 3414

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. **TITLE ____—CYBER CRIME PROTECTION SECURITY ACT**

3. **SEC. _01. SHORT TITLE.**

4. This title may be cited as the “Cyber Crime Protection Security Act”.

5. **SEC. _02. ORGANIZED CRIMINAL ACTIVITY IN CONNECTION WITH UNAUTHORIZED ACCESS TO PERSONALLY IDENTIFIABLE INFORMATION.**

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

7. **SEC. _03. PENALTY FOR VIOLATIONS.**

8. The maximum fine for any violation of this title may not exceed $10,000,000 for an individual and $25,000,000 for an organization, or imprisonment for not more than 20 years, or both. The punishment for an individual who violates this title with the intent to defraud a financial institution or a financial institution is a maximum fine of $5,000,000, or imprisonment for not more than 25 years, or both.

9. **SEC. _04. PROTECTION OF ELECTRONIC RECORDS.**

10. No person shall interfere with the operation or storage of electronic records, or access to or the use of electronic records, with the intent to cause harm to any person or property.

11. Any person who knowingly and intentionally accesses a computer without authorization and utilizes that access to obtain, alter, or degrade electronic information is guilty of a violation of this title.

12. Any person who knowingly and intentionally accesses a computer without authorization and utilizes that access to obtain, alter, or degrade electronic information is guilty of a violation of this title.

13. Any person who knowingly and intentionally accesses a computer without authorization and utilizes that access to obtain, alter, or degrade electronic information is guilty of a violation of this title.
SECTION 03. PENALTIES FOR FRAUD AND RELATED ACTIVITY IN CONNECTION WITH COMPUTERS.

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

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

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

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

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

“(i) the offense was committed for purposes of commercial advantage or private financial gain;

“(ii) the offense was committed in the furtherance of any criminal or tortious act in violation of the Constitution or laws of the United States, or of any State; or

“(iii) the value of the information obtained, or that would have been obtained if the offense was completed, exceeds $5,000;
“(3) a fine under this title or imprisonment for not more than 1 year, or both, in the case of an offense under subsection (a)(3) of this section;

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

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

“(i) loss to 1 or more persons during any 1-year period (and, for purposes of an investigation, prosecution, or other proceeding brought by the United States only, loss resulting from a related course of conduct affecting 1 or more other protected computers) aggregating at least $5,000 in value;

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

“(iii) physical injury to any person;

“(iv) a threat to public health or safety;
“(v) damage affecting a computer used by, or on behalf of, an entity of the United States Government in furtherance of the administration of justice, national defense, or national security; or

“(vi) damage affecting 10 or more protected computers during any 1-year period;

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

“(C) if the offender attempts to cause or knowingly or recklessly causes death from conduct in violation of subsection (a)(5)(A), a fine under this title, imprisonment for any term of years or for life, or both; or

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

“(6) a fine under this title or imprisonment for not more than 10 years, or both, in the case of an offense under subsection (a)(6) of this section; or
“(7) a fine under this title or imprisonment for
not more than 10 years, or both, in the case of an
offense under subsection (a)(7) of this section.”.

SEC. _04. TRAFFICKING IN PASSWORDS.

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

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

“(A) any password or similar information
or means of access through which a protected
computer as defined in subparagraphs (A) and
(B) of subsection (e)(2) may be accessed with-
out authorization; or

“(B) any means of access through which a
protected computer as defined in subsection
(e)(2)(A) may be accessed without authoriza-

SEC. _05. CONSPIRACY AND ATTEMPTED COMPUTER
FRAUD OFFENSES.

Section 1030(b) of title 18, United States Code, is
amended by inserting “for the completed offense” after
“punished as provided”.
Section 1030 of title 18, United States Code, is amended by striking subsections (i) and (j) and inserting the following:

“(i) CRIMINAL FORFEITURE.—

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

“(A) such person’s interest in any property, real or personal, that was used, or intended to be used, to commit or facilitate the commission of such violation; and

“(B) any property, real or personal, constituting or derived from any gross proceeds, or any property traceable to such property, that such person obtained, directly or indirectly, as a result of such violation.

“(2) The criminal forfeiture of property under this subsection, including any seizure and disposition of the property, and any related judicial or administrative proceeding, shall be governed by the provi-
sions of section 413 of the Comprehensive Drug
Abuse Prevention and Control Act of 1970 (21
U.S.C. 853), except subsection (d) of that section.

“(j) CIVIL FORFEITURE.—

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

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

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

“(2) Seizures and forfeitures under this sub-
section shall be governed by the provisions in chap-
ter 46 of title 18, United States Code, relating to
civil forfeitures, except that such duties as are im-
posed on the Secretary of the Treasury under the
customs laws described in section 981(d) of title 18,
United States Code, shall be performed by such offi-
cers, agents and other persons as may be designated
for that purpose by the Secretary of Homeland Security or the Attorney General.”.

SEC. 07. DAMAGE TO CRITICAL INFRASTRUCTURE COMPUTERS.

(a) In General.—Chapter 47 of title 18, United States Code, is amended by inserting after section 1030 the following:

“SEC. 1030A. AGGRAVATED DAMAGE TO A CRITICAL INFRASTRUCTURE COMPUTER.

“(a) Definitions.—In this section—

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

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

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

“(B) water supply systems;

“(C) telecommunication networks;

“(D) electrical power delivery systems;

“(E) finance and banking systems;

“(F) emergency services;
“(G) transportation systems and services;
and
“(H) government operations that provide essential services to the public.
“(b) OFFENSE.—It shall be unlawful to, during and in relation to a felony violation of section 1030, intentionally cause or attempt to cause damage to a critical infrastructure computer, and such damage results in (or, in the case of an attempt, would, if completed have resulted in) the substantial impairment—
“(1) of the operation of the critical infrastructure computer; or
“(2) of the critical infrastructure associated with the computer.
“(c) PENALTY.—Any person who violates subsection (b) shall be fined under this title, imprisoned for not less than 3 years nor more than 20 years, or both.
“(d) CONSECUTIVE SENTENCE.—Notwithstanding any other provision of law—
“(1) a court shall not place on probation any person convicted of a violation of this section;
“(2) except as provided in paragraph (4), no term of imprisonment imposed on a person under this section shall run concurrently with any other term of imprisonment, including any term of impris-
onment imposed on the person under any other provi-
vision of law, including any term of imprisonment
imposed for the felony violation section 1030;

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

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

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

“Sec. 1030A. Aggravated damage to a critical infrastructure computer.”.
SEC. 08. LIMITATION ON ACTIONS INVOLVING UNAUTHORIZED USE.

Section 1030(e)(6) of title 18, United States Code, is amended by striking “alter;” and inserting “alter, but does not include access in violation of a contractual obligation or agreement, such as an acceptable use policy or terms of service agreement, with an Internet service provider, Internet website, or non-government employer, if such violation constitutes the sole basis for determining that access to a protected computer is unauthorized;”.