

112TH CONGRESS
2D SESSION

S. 3432

To prevent identity theft and tax fraud.

IN THE SENATE OF THE UNITED STATES

JULY 25, 2012

Mr. NELSON of Florida (for himself and Mr. COBURN) introduced the following bill; which was read twice and referred to the Committee on Finance

A BILL

To prevent identity theft and tax fraud.

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 and Tax
5 Fraud Prevention Act”.

6 **SEC. 2. CRIMINAL PENALTY FOR USING A FALSE IDENTITY**

7 **IN CONNECTION WITH TAX FRAUD.**

8 (a) IN GENERAL.—Section 7206 of the Internal Rev-
9 enue Code of 1986 is amended—

10 (1) by striking “Any person” and inserting the
11 following:

12 “(a) IN GENERAL.—Any person”, and

1 (2) by adding at the end the following new sub-
2 section:

3 “(b) USE OF FALSE IDENTITY.—Any person who
4 willfully misappropriates another person’s taxpayer iden-
5 tity (as defined in section 6103(b)(6)) for the purpose of
6 making any list, return, account, statement, or other docu-
7 ment submitted to the Secretary under the provisions of
8 this title shall be guilty of a felony and, upon conviction
9 thereof, shall be fined not more than \$250,000 (\$500,000
10 in the case of a corporation) or imprisoned not more than
11 5 years, or both, together with the costs of prosecution.”.

12 (b) AGGRAVATED IDENTITY THEFT.—Section
13 1028A(c) of title 18, United States Code, is amended by
14 striking “or” at the end of paragraph (10), by striking
15 the period at the end of paragraph (11) and inserting “;
16 or”, and by adding at the end the following new para-
17 graph:

18 “(12) section 7206(b) of the Internal Revenue
19 Code of 1986 (relating to use of false identity in
20 connection with tax fraud).”.

21 (c) EFFECTIVE DATE.—The amendments made by
22 this section shall apply to offenses committed after the
23 date of the enactment of this Act.

1 **SEC. 3. INCREASED PENALTY FOR IMPROPER DISCLOSURE**
2 **OR USE OF INFORMATION BY PREPARERS OF**
3 **RETURNS.**

4 (a) IN GENERAL.—Section 6713(a) of the Internal
5 Revenue Code of 1986 is amended—

6 (1) by striking “\$250” and inserting “\$1,000”,
7 and

8 (2) by striking “\$10,000” and inserting
9 “\$50,000”.

10 (b) CRIMINAL PENALTY.—Section 7216(a) of the In-
11 ternal Revenue Code of 1986 is amended by striking
12 “\$1,000” and inserting “\$100,000”.

13 (c) EFFECTIVE DATE.—The amendments made by
14 this section shall apply to disclosures or uses after the date
15 of the enactment of this Act.

16 **SEC. 4. PIN SYSTEM FOR PREVENTION OF IDENTITY THEFT**
17 **TAX FRAUD.**

18 (a) IN GENERAL.—Not later than 1 year after the
19 date of the enactment of this Act, the Secretary of the
20 Treasury (or the Secretary’s delegate) shall implement an
21 identity theft tax fraud prevention program under which—

22 (1) a person who has filed an identity theft affi-
23 davit with the Secretary may elect—

24 (A) to be provided with a unique personal
25 identification number to be included on any
26 Federal tax return filed by such person, or

1 (B) to prevent the processing of any Fed-
2 eral tax return submitted in an electronic for-
3 mat by a person purporting to be such person,
4 and

5 (2) the Secretary will provide additional identity
6 verification safeguards for the processing of any
7 Federal tax return filed by a person described in
8 paragraph (1) in cases where a unique personal
9 identification number is not included on the return.

10 **SEC. 5. AUTHORITY TO TRANSFER INTERNAL REVENUE**

11 **SERVICE APPROPRIATIONS TO USE FOR TAX**

12 **FRAUD ENFORCEMENT.**

13 For any fiscal year, the Commissioner of Internal
14 Revenue may transfer not more than \$10,000,000 to the
15 “Enforcement” account of the Internal Revenue Service
16 from amounts appropriated to other Internal Revenue
17 Service accounts. Any amounts so transferred shall be
18 used solely for the purposes of preventing and resolving
19 potential cases of tax fraud.

20 **SEC. 6. LOCAL LAW ENFORCEMENT LIAISON.**

21 (a) ESTABLISHMENT.—The Commissioner of Inter-
22 nal Revenue shall establish within the Criminal Investiga-
23 tion Division of the Internal Revenue Service the position
24 of Local Law Enforcement Liaison.

1 (b) DUTIES.—The Local Law Enforcement Liaison
2 shall serve as the primary source of contact for State and
3 local law enforcement authorities with respect to tax-re-
4 lated identity theft and other tax fraud matters, having
5 duties that may include—

6 (1) receiving information from State and local
7 law enforcement authorities;

8 (2) responding to inquiries from State and local
9 law enforcement authorities;

10 (3) administering authorized information-shar-
11 ing initiatives with State or local law enforcement
12 authorities; and

13 (4) any other duties as delegated by the Com-
14 missioner of Internal Revenue.

15 **SEC. 7. REPORT ON TAX FRAUD.**

16 Subsection (a) of section 7803 of the Internal Rev-
17 enue Code of 1986 is amended by adding at the end the
18 following new paragraph:

19 “(4) ANNUAL REPORT ON TAX FRAUD.—The
20 Commissioner shall submit to the Committee on Fi-
21 nance of the Senate and the Committee on Ways
22 and Means of the House of Representatives an an-
23 nual report detailing—

24 “(A) the number of reports of tax fraud
25 and suspected tax fraud received from State

1 and local law enforcement agencies in the pre-
2 ceding year, and

3 “(B) the actions taken in response to such
4 reports.”.

5 **SEC. 8. STUDY ON THE USE OF PREPAID DEBIT CARDS AND**
6 **COMMERCIAL TAX PREPARATION SOFTWARE**
7 **IN TAX FRAUD.**

8 (a) IN GENERAL.—The Comptroller General of the
9 United States shall conduct a study to examine the role
10 of prepaid debit cards and commercial tax preparation
11 software in facilitating fraudulent tax returns through
12 identity theft.

13 (b) REPORT.—Not later than 1 year after the date
14 of the enactment of this Act, the Comptroller General of
15 the United States shall submit to the Committee on Fi-
16 nance of the Senate and the Committee on Ways and
17 Means of the House of Representatives a report with the
18 results of the study conducted under subsection (a), to-
19 gether with any recommendations.

20 **SEC. 9. RESTRICTION ON ACCESS TO THE DEATH MASTER**
21 **FILE.**

22 (a) IN GENERAL.—The Secretary of Commerce shall
23 not disclose information contained on the Death Master
24 File to any person with respect to any individual who has
25 died at any time during the calendar year in which the

1 request for disclosure is made or the succeeding 2 calendar
2 years unless such person is certified under the program
3 established under subsection (b).

4 (b) CERTIFICATION PROGRAM.—

5 (1) IN GENERAL.—The Secretary of Commerce
6 shall establish a program—

7 (A) to certify persons who are eligible to
8 access the information described in subsection
9 (a) contained on the Death Master File, and

10 (B) to perform periodic and unscheduled
11 audits of certified persons to determine the
12 compliance by such certified persons with the
13 requirements of the program.

14 (2) CERTIFICATION.—A person shall not be cer-
15 tified nor remain certified under the program estab-
16 lished under paragraph (1) unless—

17 (A) the Secretary of Commerce determines
18 that access to the information described in sub-
19 section (a) is appropriate because such person
20 has—

21 (i) a legitimate fraud prevention inter-
22 est, or

23 (ii) a legitimate business purpose pur-
24 suant to a law, governmental rule, regula-
25 tion, or fiduciary duty, and

1 (B) the Secretary of Commerce verifies
2 that such person has facilities and procedures
3 in place to safeguard such information, and ex-
4 perience in maintaining the confidentiality, se-
5 curity, and appropriate use of such information.

6 (3) FEES.—The Secretary of Commerce shall
7 establish under section 9701 of title 31, United
8 States Code, for the charge of fees sufficient to
9 cover all costs associated with evaluating applica-
10 tions for certification and auditing, inspecting, and
11 monitoring certified persons under the program.

12 (c) IMPOSITION OF PENALTY.—Any person who is
13 certified under the program established under subsection
14 (b), who receives information described in subsection (a),
15 and who during the period of time described in subsection
16 (a)—

17 (1) discloses such information to any other per-
18 son, or

19 (2) uses any such information for any purpose
20 not listed under subsection (b)(2)(A),

21 shall pay a penalty of \$1,000 for each such disclosure or
22 use, but the total amount imposed under this subsection
23 on such a person for any calendar year shall not exceed
24 \$50,000.

1 (d) EXEMPTION FROM FREEDOM OF INFORMATION
 2 ACT REQUIREMENT WITH RESPECT TO CERTAIN
 3 RECORDS OF DECEASED INDIVIDUALS.—

4 (1) IN GENERAL.—The Social Security Admin-
 5 istration shall not be compelled to disclose to any
 6 person who is not certified under the program estab-
 7 lished under subsection (b) the information de-
 8 scribed in subsection (a).

9 (2) TREATMENT OF INFORMATION.—For pur-
 10 poses of section 552 of title 5, United States Code,
 11 this section shall be considered a statute described
 12 in subsection (b)(3)(B) of such section 552.

13 **SEC. 10. PROHIBITING THE DISPLAY OF SOCIAL SECURITY**
 14 **ACCOUNT NUMBERS ON NEWLY ISSUED**
 15 **MEDICARE IDENTIFICATION CARDS AND**
 16 **COMMUNICATIONS PROVIDED TO MEDICARE**
 17 **BENEFICIARIES.**

18 (a) IN GENERAL.—Not later than 2 years after the
 19 date of enactment of this Act, the Secretary of Health and
 20 Human Services, in consultation with the Commissioner
 21 of Social Security, shall establish and begin to implement
 22 procedures to eliminate the unnecessary collection, use,
 23 and display of Social Security account numbers of Medi-
 24 care beneficiaries.

1 (b) NEWLY ISSUED MEDICARE CARDS AND COMMU-
2 NICATIONS PROVIDED TO BENEFICIARIES.—

3 (1) NEWLY ISSUED CARDS.—

4 (A) IN GENERAL.—Not later than 4 years
5 after the date of enactment of this Act, the Sec-
6 retary of Health and Human Services, in con-
7 sultation with the Commissioner of Social Secu-
8 rity, shall ensure that each newly issued Medi-
9 care identification card meets the requirements
10 described in subparagraph (B).

11 (B) REQUIREMENTS.—

12 (i) IN GENERAL.—Subject to clauses
13 (ii) and (iii), the requirements described in
14 this subparagraph are, with respect to a
15 Medicare identification card, that the card
16 does not display or electronically store (in
17 an unencrypted format) a Medicare bene-
18 ficiary's Social Security account number.

19 (ii) EXCEPTION.—The Secretary may
20 waive the requirements under clause (i) in
21 the case where the health insurance claim
22 number of a beneficiary is the Social Secu-
23 rity number of the beneficiary, the bene-
24 ficiary's spouse, or another individual.

1 (iii) USE OF PARTIAL ACCOUNT NUM-
2 BER.—The Secretary of Health and
3 Human Services, in consultation with the
4 Commissioner of Social Security, may pro-
5 vide for the use of a partial Social Security
6 account number on a Medicare identifica-
7 tion card if the Secretary determines that
8 such use does not allow an unacceptable
9 risk of fraudulent use.

10 (2) COMMUNICATIONS PROVIDED TO BENE-
11 FICIARIES.—Not later than 4 years after the date of
12 enactment of this Act, the Secretary of Health and
13 Human Services shall prohibit the display of a Medi-
14 care beneficiary’s Social Security account number on
15 written or electronic communication provided to the
16 beneficiary unless the Secretary, in consultation with
17 the Commissioner of Social Security, determines
18 that inclusion of Social Security account numbers on
19 such communications is essential for the operation of
20 the Medicare program.

21 (c) MEDICARE BENEFICIARY DEFINED.—In this sec-
22 tion, the term “Medicare beneficiary” means an individual
23 who is entitled to, or enrolled for, benefits under part A
24 of title XVIII of the Social Security Act or enrolled under
25 part B of such title.

1 (d) CONFORMING AMENDMENTS.—

2 (1) REFERENCE IN THE SOCIAL SECURITY
3 ACT.—Section 205(c)(2)(C) of the Social Security
4 Act (42 U.S.C. 405(c)(2)(C)) is amended—

5 (A) by moving clause (x), as added by sec-
6 tion 1414(a)(2) of the Patient Protection and
7 Affordable Care Act (Public Law 111–148), 6
8 ems to the left;

9 (B) by redesignating clause (x), as added
10 by section 2(a)(1) of the Social Security Num-
11 ber Protection Act of 2010 (42 U.S.C. 1305
12 note), as clause (xii); and

13 (C) by adding after clause (xii), as redesign-
14 ated by subparagraph (B), the following new
15 clause:

16 “(xiii) Subject to section 203 of the Medicare and
17 Medicaid Fighting Fraud and Abuse to Save Taxpayers’
18 Dollars Act, social security account numbers shall not be
19 displayed on Medicare identification cards or on commu-
20 nications provided to Medicare beneficiaries.”.

21 (2) ACCESS TO INFORMATION.—Section 205(r)
22 of the Social Security Act (42 U.S.C. 405(r)) is
23 amended by adding at the end the following new
24 paragraph:

1 “(10) To prevent and identify fraudulent activity, the
2 Commissioner shall upon the request of the Attorney Gen-
3 eral or upon the request of the Secretary of Health and
4 Human Services enter into a reimbursable agreement with
5 the Attorney General or the Secretary to provide informa-
6 tion collected under paragraph (1) if—

7 “(A) the requirements of subparagraphs (A)
8 and (B) of paragraph (3) are met; and

9 “(B) such agreement includes appropriate pro-
10 visions to protect the confidentiality of information
11 provided by the Commissioner under such agree-
12 ment.”.

13 (e) PILOT PROGRAM.—

14 (1) ESTABLISHMENT.—The Secretary shall es-
15 tablish a pilot program utilizing smart card tech-
16 nology to evaluate—

17 (A) the applicability of smart card tech-
18 nology to the Medicare program under title
19 XVIII of the Social Security Act (42 U.S.C.
20 1395 et seq.), including the applicability of such
21 technology to Medicare beneficiaries or Medi-
22 care providers; and

23 (B) whether such cards would be effective
24 in preventing fraud under the Medicare pro-
25 gram.

1 (2) IMPLEMENTATION.—

2 (A) INITIAL IMPLEMENTATION.—The Sec-
3 retary shall implement the pilot program under
4 this subsection not later than 1 year after the
5 date of enactment of this Act.

6 (B) SCOPE AND DURATION.—The Sec-
7 retary shall conduct the pilot program—

8 (i) in not less than 2 States; and

9 (ii) for a period of not less than 180
10 days or more than 2 years.

11 (3) REPORT.—Not later than 12 months after
12 the completion of the pilot program under this sub-
13 section, the Secretary shall submit to the appro-
14 priate committees of Congress and make available to
15 the public a report that includes the following:

16 (A) A summary of the pilot program and
17 findings, including—

18 (i) the costs or savings to the Medi-
19 care program as a result of the implemen-
20 tation of the pilot program;

21 (ii) whether the use of smart card
22 technology resulted in improvements in the
23 quality of care provided to Medicare bene-
24 ficiaries under the pilot program; and

1 (iii) whether such technology was use-
2 ful in preventing or detecting fraud, waste,
3 and abuse in the Medicare program.

4 (B) Recommendations regarding whether
5 the use of smart card technology should be ex-
6 panded under the Medicare program.

7 (4) DEFINITIONS.—In this subsection:

8 (A) MEDICARE BENEFICIARY.—The term
9 “Medicare beneficiary” means an individual en-
10 titled to, or enrolled for, benefits under part A
11 of title XVIII of the Social Security Act (42
12 U.S.C. 1395c et seq.) or enrolled for benefits
13 under part B of such title (42 U.S.C. 1395j et
14 seq.).

15 (B) MEDICARE PROVIDER.—The term
16 “Medicare provider” includes a provider of serv-
17 ices (as defined in section 1861(u) of the Social
18 Security Act (42 U.S.C. 1395x(u))) and a sup-
19 plier (as defined in section 1861(d) of such Act
20 (42 U.S.C. 1395x(d))).

21 (C) SECRETARY.—The term “Secretary”
22 means the Secretary of Health and Human
23 Services.

24 (D) SMART CARD.—The term “smart
25 card” means identification used by a Medicare

1 beneficiary or a Medicare provider that includes
2 anti-fraud attributes. Such a card—

3 (i) may rely on existing commercial
4 data transfer networks or on a network of
5 proprietary card readers or databases; and

6 (ii) may include—

7 (I) cards using technology adapt-
8 ed from the financial services indus-
9 try;

10 (II) cards containing individual
11 biometric identification, provided that
12 such identification is encrypted and
13 not contained in any central database;

14 (III) cards adapting technology
15 and processes utilized in the
16 TRICARE program under chapter 55
17 of title 10, United States Code, or by
18 the Veterans' Administration; or

19 (IV) such other technology as the
20 Secretary determines appropriate.

1 **SEC. 11. IMPROVE AND MAKE PERMANENT THE PROVISION**
2 **AUTHORIZING THE INTERNAL REVENUE**
3 **SERVICE TO DISCLOSE CERTAIN RETURNS**
4 **AND RETURN INFORMATION TO CERTAIN**
5 **PRISON OFFICIALS.**

6 (a) **IN GENERAL.**—Paragraph (10) of section
7 6103(k) of the Internal Revenue Code of 1986 is amended
8 to read as follows:

9 “(10) **DISCLOSURE OF CERTAIN RETURNS AND**
10 **RETURN INFORMATION TO CERTAIN PRISON OFFI-**
11 **CIALS.**—

12 “(A) **IN GENERAL.**—Under such proce-
13 dures as the Secretary may prescribe, the Sec-
14 retary may disclose to officers and employees of
15 the Federal Bureau of Prisons and of any State
16 agency charged with the responsibility for ad-
17 ministration of prisons any returns or return
18 information with respect to individuals incarcer-
19 ated in Federal or State prison systems whom
20 the Secretary has determined may have filed or
21 facilitated the filing of a false or fraudulent re-
22 turn to the extent that the Secretary deter-
23 mines that such disclosure is necessary to per-
24 mit effective Federal tax administration.

25 “(B) **DISCLOSURE TO CONTRACTOR-RUN**
26 **PRISONS.**—Under such procedures as the Sec-

1 retary may prescribe, the disclosures authorized
2 by subparagraph (A) may be made to contrac-
3 tors responsible for the operation of a Federal
4 or State prison on behalf of such Bureau or
5 agency.

6 “(C) RESTRICTIONS ON USE OF DIS-
7 CLOSED INFORMATION.—Any return or return
8 information received under this paragraph shall
9 be used only for the purposes of and to the ex-
10 tent necessary in taking administrative action
11 to prevent the filing of false and fraudulent re-
12 turns, including administrative actions to ad-
13 dress possible violations of administrative rules
14 and regulations of the prison facility and in ad-
15 ministrative and judicial proceedings arising
16 from such administrative actions.

17 “(D) RESTRICTIONS ON REDISCLOSURE
18 AND DISCLOSURE TO LEGAL REPRESENTA-
19 TIVES.—Notwithstanding subsection (h)—

20 “(i) RESTRICTIONS ON REDISCLO-
21 SURE.—Except as provided in clause (ii),
22 any officer, employee, or contractor of the
23 Federal Bureau of Prisons or of any State
24 agency charged with the responsibility for
25 administration of prisons shall not disclose

1 any information obtained under this para-
2 graph to any person other than an officer
3 or employee or contractor of such Bureau
4 or agency personally and directly engaged
5 in the administration of prison facilities on
6 behalf of such Bureau or agency.

7 “(ii) DISCLOSURE TO LEGAL REP-
8 REPRESENTATIVES.—The returns and return
9 information disclosed under this paragraph
10 may be disclosed to the duly authorized
11 legal representative of the Federal Bureau
12 of Prisons, State agency, or contractor
13 charged with the responsibility for admin-
14 istration of prisons, or of the incarcerated
15 individual accused of filing the false or
16 fraudulent return who is a party to an ac-
17 tion or proceeding described in subpara-
18 graph (C), solely in preparation for, or for
19 use in, such action or proceeding.”.

20 (b) CONFORMING AMENDMENTS.—

21 (1) Paragraph (3) of section 6103(a) of the In-
22 ternal Revenue Code of 1986 is amended by insert-
23 ing “subsection (k)(10),” after “subsection
24 (e)(1)(D)(iii),”.

1 (2) Paragraph (4) of section 6103(p) of such
2 Code is amended—

3 (A) by inserting “subsection (k)(10),” be-
4 fore “subsection (l)(10),” in the matter pre-
5 ceding subparagraph (A),

6 (B) by inserting “subsection (k)(10) or”
7 before “subsection (l)(10),” in subparagraph
8 (F)(i), and

9 (C) by inserting “subsection (k)(10) or”
10 before “subsection (l)(10),” both places it ap-
11 pears in the matter following subparagraph
12 (F)(iii).

13 (3) Paragraph (2) of section 7213(a) of such
14 Code is amended by inserting “(k)(10),” before
15 “(l)(6),”.

16 (c) EFFECTIVE DATE.—The amendments made by
17 this section shall take effect on the date of the enactment
18 of this Act.

19 **SEC. 12. TREASURY REPORT ON INFORMATION SHARING**
20 **BARRIERS WITH RESPECT TO IDENTITY**
21 **THEFT.**

22 (a) REVIEW.—

23 (1) IN GENERAL.—The Secretary of the Treas-
24 ury (or the Secretary’s delegate) shall review wheth-
25 er current Federal tax laws and regulations related

1 to the confidentiality and disclosure of return infor-
2 mation prevent the effective enforcement of local,
3 State, and Federal identity theft statutes. The re-
4 view shall consider whether greater information
5 sharing between the Internal Revenue Service and
6 State and local law enforcement authorities would
7 improve the enforcement of criminal laws at all lev-
8 els of government.

9 (2) CONSULTATION.—In conducting the review
10 under paragraph (1), the Secretary of the Treasury
11 (or the Secretary’s delegate) shall solicit the views
12 of, and consult with, State and local law enforce-
13 ment officials.

14 (b) REPORT.—Not later than 180 days after the date
15 of enactment of this Act, the Secretary of the Treasury
16 (or the Secretary’s delegate) shall submit a report with
17 the results of the review conducted under subsection (a),
18 along with any legislative recommendations, to the Com-
19 mittee on Finance of the Senate and the Committee on
20 Ways and Means of the House of Representatives.

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