

111TH CONGRESS
1ST SESSION

S. 141

To amend title 18, United States Code, to limit the misuse of Social Security numbers, to establish criminal penalties for such misuse, and for other purposes.

IN THE SENATE OF THE UNITED STATES

JANUARY 6, 2009

Mrs. FEINSTEIN (for herself, Mr. GREGG, and Ms. SNOWE) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

A BILL

To amend title 18, United States Code, to limit the misuse of Social Security numbers, to establish criminal penalties for such misuse, 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; TABLE OF CONTENTS.**

4 (a) SHORT TITLE.—This Act may be cited as the
5 “Protecting the Privacy of Social Security Numbers Act”.

6 (b) TABLE OF CONTENTS.—The table of contents of
7 this Act is as follows:

Sec. 1. Short title; table of contents.

Sec. 2. Findings.

Sec. 3. Prohibition of the display, sale, or purchase of Social Security numbers.

- Sec. 4. Application of prohibition of the display, sale, or purchase of Social Security numbers to public records.
- Sec. 5. Rulemaking authority of the Attorney General.
- Sec. 6. Treatment of Social Security numbers on government documents.
- Sec. 7. Limits on personal disclosure of a Social Security number for consumer transactions.
- Sec. 8. Extension of civil monetary penalties for misuse of a Social Security number.
- Sec. 9. Criminal penalties for the misuse of a Social Security number.
- Sec. 10. Civil actions and civil penalties.
- Sec. 11. Federal injunctive authority.

1 **SEC. 2. FINDINGS.**

2 Congress makes the following findings:

3 (1) The inappropriate display, sale, or purchase
 4 of Social Security numbers has contributed to a
 5 growing range of illegal activities, including fraud,
 6 identity theft, and, in some cases, stalking and other
 7 violent crimes.

8 (2) While financial institutions, health care pro-
 9 viders, and other entities have often used Social Se-
 10 curity numbers to confirm the identity of an indi-
 11 vidual, the general display to the public, sale, or pur-
 12 chase of these numbers has been used to commit
 13 crimes, and also can result in serious invasions of in-
 14 dividual privacy.

15 (3) The Federal Government requires virtually
 16 every individual in the United States to obtain and
 17 maintain a Social Security number in order to pay
 18 taxes, to qualify for Social Security benefits, or to
 19 seek employment. An unintended consequence of
 20 these requirements is that Social Security numbers

1 have become one of the tools that can be used to fa-
2 cilitate crime, fraud, and invasions of the privacy of
3 the individuals to whom the numbers are assigned.
4 Because the Federal Government created and main-
5 tains this system, and because the Federal Govern-
6 ment does not permit individuals to exempt them-
7 selves from those requirements, it is appropriate for
8 the Federal Government to take steps to stem the
9 abuse of Social Security numbers.

10 (4) The display, sale, or purchase of Social Se-
11 curity numbers in no way facilitates uninhibited, ro-
12 bust, and wide-open public debate, and restrictions
13 on such display, sale, or purchase would not affect
14 public debate.

15 (5) No one should seek to profit from the dis-
16 play, sale, or purchase of Social Security numbers in
17 circumstances that create a substantial risk of phys-
18 ical, emotional, or financial harm to the individuals
19 to whom those numbers are assigned.

20 (6) Consequently, this Act provides each indi-
21 vidual that has been assigned a Social Security num-
22 ber some degree of protection from the display, sale,
23 and purchase of that number in any circumstance
24 that might facilitate unlawful conduct.

1 **SEC. 3. PROHIBITION OF THE DISPLAY, SALE, OR PUR-**
 2 **CHASE OF SOCIAL SECURITY NUMBERS.**

3 (a) PROHIBITION.—

4 (1) IN GENERAL.—Chapter 47 of title 18,
 5 United States Code, is amended by inserting after
 6 section 1028A the following:

7 **“§ 1028B. Prohibition of the display, sale, or purchase**
 8 **of Social Security numbers**

9 “(a) DEFINITIONS.—In this section:

10 “(1) DISPLAY.—The term ‘display’ means to in-
 11 tentiously communicate or otherwise make available
 12 (on the Internet or in any other manner) to the gen-
 13 eral public an individual’s Social Security number.

14 “(2) PERSON.—The term ‘person’ means any
 15 individual, partnership, corporation, trust, estate, co-
 16 operative, association, or any other entity.

17 “(3) PURCHASE.—The term ‘purchase’ means
 18 providing directly or indirectly, anything of value in
 19 exchange for a Social Security number.

20 “(4) SALE.—The term ‘sale’ means obtaining,
 21 directly or indirectly, anything of value in exchange
 22 for a Social Security number.

23 “(5) STATE.—The term ‘State’ means any
 24 State of the United States, the District of Columbia,
 25 Puerto Rico, the Northern Mariana Islands, the
 26 United States Virgin Islands, Guam, American

1 Samoa, and any territory or possession of the
2 United States.

3 “(b) LIMITATION ON DISPLAY.—Except as provided
4 in section 1028C, no person may display any individual’s
5 Social Security number to the general public without the
6 affirmatively expressed consent of the individual.

7 “(c) LIMITATION ON SALE OR PURCHASE.—Except
8 as otherwise provided in this section, no person may sell
9 or purchase any individual’s Social Security number with-
10 out the affirmatively expressed consent of the individual.

11 “(d) PREREQUISITES FOR CONSENT.—In order for
12 consent to exist under subsection (b) or (c), the person
13 displaying or seeking to display, selling or attempting to
14 sell, or purchasing or attempting to purchase, an individ-
15 ual’s Social Security number shall—

16 “(1) inform the individual of the general pur-
17 pose for which the number will be used, the types of
18 persons to whom the number may be available, and
19 the scope of transactions permitted by the consent;
20 and

21 “(2) obtain the affirmatively expressed consent
22 (electronically or in writing) of the individual.

23 “(e) EXCEPTIONS.—Nothing in this section shall be
24 construed to prohibit or limit the display, sale, or purchase
25 of a Social Security number—

1 “(1) required, authorized, or excepted under
2 any Federal law;

3 “(2) for a public health purpose, including the
4 protection of the health or safety of an individual in
5 an emergency situation;

6 “(3) for a national security purpose;

7 “(4) for a law enforcement purpose, including
8 the investigation of fraud and the enforcement of a
9 child support obligation;

10 “(5) if the display, sale, or purchase of the
11 number is for a use occurring as a result of an inter-
12 action between businesses, governments, or business
13 and government (regardless of which entity initiates
14 the interaction), including, but not limited to—

15 “(A) the prevention of fraud (including
16 fraud in protecting an employee’s right to em-
17 ployment benefits);

18 “(B) the facilitation of credit checks or the
19 facilitation of background checks of employees,
20 prospective employees, or volunteers;

21 “(C) the retrieval of other information
22 from other businesses, commercial enterprises,
23 government entities, or private nonprofit orga-
24 nizations; or

1 “(D) when the transmission of the number
2 is incidental to, and in the course of, the sale,
3 lease, franchising, or merger of all, or a portion
4 of, a business;

5 “(6) if the transfer of such a number is part of
6 a data matching program involving a Federal, State,
7 or local agency; or

8 “(7) if such number is required to be submitted
9 as part of the process for applying for any type of
10 Federal, State, or local government benefit or pro-
11 gram;

12 except that, nothing in this subsection shall be construed
13 as permitting a professional or commercial user to display
14 or sell a Social Security number to the general public.

15 “(f) LIMITATION.—Nothing in this section shall pro-
16 hibit or limit the display, sale, or purchase of Social Secu-
17 rity numbers as permitted under title V of the Gramm-
18 Leach-Bliley Act, or for the purpose of affiliate sharing
19 as permitted under the Fair Credit Reporting Act, except
20 that no entity regulated under such Acts may make Social
21 Security numbers available to the general public, as may
22 be determined by the appropriate regulators under such
23 Acts. For purposes of this subsection, the general public
24 shall not include affiliates or unaffiliated third-party busi-

1 ness entities as may be defined by the appropriate regu-
 2 lators.”.

3 (2) CONFORMING AMENDMENT.—The chapter
 4 analysis for chapter 47 of title 18, United States
 5 Code, is amended by inserting after the item relating
 6 to section 1028 the following:

“1028B. Prohibition of the display, sale, or purchase of Social Security num-
 bers.”.

7 (b) STUDY; REPORT.—

8 (1) IN GENERAL.—The Attorney General shall
 9 conduct a study and prepare a report on all of the
 10 uses of Social Security numbers permitted, required,
 11 authorized, or excepted under any Federal law. The
 12 report shall include a detailed description of the uses
 13 allowed as of the date of enactment of this Act, the
 14 impact of such uses on privacy and data security,
 15 and shall evaluate whether such uses should be con-
 16 tinued or discontinued by appropriate legislative ac-
 17 tion.

18 (2) REPORT.—Not later than 1 year after the
 19 date of enactment of this Act, the Attorney General
 20 shall report to Congress findings under this sub-
 21 section. The report shall include such recommenda-
 22 tions for legislation based on criteria the Attorney
 23 General determines to be appropriate.

1 (c) EFFECTIVE DATE.—The amendments made by
 2 this section shall take effect on the date that is 30 days
 3 after the date on which the final regulations promulgated
 4 under section 5 are published in the Federal Register.

5 **SEC. 4. APPLICATION OF PROHIBITION OF THE DISPLAY,**
 6 **SALE, OR PURCHASE OF SOCIAL SECURITY**
 7 **NUMBERS TO PUBLIC RECORDS.**

8 (a) PUBLIC RECORDS EXCEPTION.—

9 (1) IN GENERAL.—Chapter 47 of title 18,
 10 United States Code (as amended by section 3(a)(1)),
 11 is amended by inserting after section 1028B the fol-
 12 lowing:

13 **“§ 1028C. Display, sale, or purchase of public records**
 14 **containing Social Security numbers**

15 “(a) DEFINITION.—In this section, the term ‘public
 16 record’ means any governmental record that is made avail-
 17 able to the general public.

18 “(b) IN GENERAL.—Except as provided in sub-
 19 sections (c), (d), and (e), section 1028B shall not apply
 20 to a public record.

21 “(c) PUBLIC RECORDS ON THE INTERNET OR IN AN
 22 ELECTRONIC MEDIUM.—

23 “(1) IN GENERAL.—Section 1028B shall apply
 24 to any public record first posted onto the Internet
 25 or provided in an electronic medium by, or on behalf

1 of a government entity after the date of enactment
 2 of this section, except as limited by the Attorney
 3 General in accordance with paragraph (2).

4 “(2) EXCEPTION FOR GOVERNMENT ENTITIES
 5 ALREADY PLACING PUBLIC RECORDS ON THE INTER-
 6 NET OR IN ELECTRONIC FORM.—Not later than 60
 7 days after the date of enactment of this section, the
 8 Attorney General shall issue regulations regarding
 9 the applicability of section 1028B to any record of
 10 a category of public records first posted onto the
 11 Internet or provided in an electronic medium by, or
 12 on behalf of a government entity prior to the date
 13 of enactment of this section. The regulations will de-
 14 termine which individual records within categories of
 15 records of these government entities, if any, may
 16 continue to be posted on the Internet or in electronic
 17 form after the effective date of this section. In pro-
 18 mulgating these regulations, the Attorney General
 19 may include in the regulations a set of procedures
 20 for implementing the regulations and shall consider
 21 the following:

22 “(A) The cost and availability of tech-
 23 nology available to a governmental entity to re-
 24 daet Social Security numbers from public

1 records first provided in electronic form after
2 the effective date of this section.

3 “(B) The cost or burden to the general
4 public, businesses, commercial enterprises, non-
5 profit organizations, and to Federal, State, and
6 local governments of complying with section
7 1028B with respect to such records.

8 “(C) The benefit to the general public,
9 businesses, commercial enterprises, non-profit
10 organizations, and to Federal, State, and local
11 governments if the Attorney General were to
12 determine that section 1028B should apply to
13 such records.

14 Nothing in the regulation shall permit a public enti-
15 ty to post a category of public records on the Inter-
16 net or in electronic form after the effective date of
17 this section if such category had not been placed on
18 the Internet or in electronic form prior to such effec-
19 tive date.

20 “(d) HARVESTED SOCIAL SECURITY NUMBERS.—
21 Section 1028B shall apply to any public record of a gov-
22 ernment entity which contains Social Security numbers ex-
23 tracted from other public records for the purpose of dis-
24 playing or selling such numbers to the general public.

1 “(e) ATTORNEY GENERAL RULEMAKING ON PAPER
2 RECORDS.—

3 “(1) IN GENERAL.—Not later than 60 days
4 after the date of enactment of this section, the At-
5 torney General shall determine the feasibility and
6 advisability of applying section 1028B to the records
7 listed in paragraph (2) when they appear on paper
8 or on another nonelectronic medium. If the Attorney
9 General deems it appropriate, the Attorney General
10 may issue regulations applying section 1028B to
11 such records.

12 “(2) LIST OF PAPER AND OTHER NONELEC-
13 TRONIC RECORDS.—The records listed in this para-
14 graph are as follows:

15 “(A) Professional or occupational licenses.

16 “(B) Marriage licenses.

17 “(C) Birth certificates.

18 “(D) Death certificates.

19 “(E) Other short public documents that
20 display a Social Security number in a routine
21 and consistent manner on the face of the docu-
22 ment.

23 “(3) CRITERIA FOR ATTORNEY GENERAL RE-
24 VIEW.—In determining whether section 1028B

1 should apply to the records listed in paragraph (2),
 2 the Attorney General shall consider the following:

3 “(A) The cost or burden to the general
 4 public, businesses, commercial enterprises, non-
 5 profit organizations, and to Federal, State, and
 6 local governments of complying with section
 7 1028B.

8 “(B) The benefit to the general public,
 9 businesses, commercial enterprises, non-profit
 10 organizations, and to Federal, State, and local
 11 governments if the Attorney General were to
 12 determine that section 1028B should apply to
 13 such records.”.

14 (2) CONFORMING AMENDMENT.—The chapter
 15 analysis for chapter 47 of title 18, United States
 16 Code (as amended by section 3(a)(2)), is amended
 17 by inserting after the item relating to section 1028B
 18 the following:

“1028C. Display, sale, or purchase of public records containing Social Security
 numbers.”.

19 (b) STUDY AND REPORT ON SOCIAL SECURITY NUM-
 20 BERS IN PUBLIC RECORDS.—

21 (1) STUDY.—The Comptroller General of the
 22 United States shall conduct a study and prepare a
 23 report on Social Security numbers in public records.
 24 In developing the report, the Comptroller General

1 shall consult with the Administrative Office of the
2 United States Courts, State and local governments
3 that store, maintain, or disseminate public records,
4 and other stakeholders, including members of the
5 private sector who routinely use public records that
6 contain Social Security numbers.

7 (2) REPORT.—Not later than 1 year after the
8 date of enactment of this Act, the Comptroller Gen-
9 eral of the United States shall submit to Congress
10 a report on the study conducted under paragraph
11 (1). The report shall include a detailed description
12 of the activities and results of the study and rec-
13 ommendations for such legislative action as the
14 Comptroller General considers appropriate. The re-
15 port, at a minimum, shall include—

16 (A) a review of the uses of Social Security
17 numbers in non-federal public records;

18 (B) a review of the manner in which public
19 records are stored (with separate reviews for
20 both paper records and electronic records);

21 (C) a review of the advantages or utility of
22 public records that contain Social Security
23 numbers, including the utility for law enforce-
24 ment, and for the promotion of homeland secu-
25 rity;

1 (D) a review of the disadvantages or draw-
2 backs of public records that contain Social Se-
3 curity numbers, including criminal activity,
4 compromised personal privacy, or threats to
5 homeland security;

6 (E) the costs and benefits for State and
7 local governments of removing Social Security
8 numbers from public records, including a review
9 of current technologies and procedures for re-
10 moving Social Security numbers from public
11 records; and

12 (F) an assessment of the benefits and
13 costs to businesses, their customers, and the
14 general public of prohibiting the display of So-
15 cial Security numbers on public records (with
16 separate assessments for both paper records
17 and electronic records).

18 (c) EFFECTIVE DATE.—The prohibition with respect
19 to electronic versions of new classes of public records
20 under section 1028C(b) of title 18, United States Code
21 (as added by subsection (a)(1)) shall not take effect until
22 the date that is 60 days after the date of enactment of
23 this Act.

1 **SEC. 5. RULEMAKING AUTHORITY OF THE ATTORNEY GEN-**
2 **ERAL.**

3 (a) IN GENERAL.—Except as provided in subsection
4 (b), the Attorney General may prescribe such rules and
5 regulations as the Attorney General deems necessary to
6 carry out the provisions of section 1028B(e)(5) of title 18,
7 United States Code (as added by section 3(a)(1)).

8 (b) DISPLAY, SALE, OR PURCHASE RULEMAKING
9 WITH RESPECT TO INTERACTIONS BETWEEN BUSI-
10 NESSES, GOVERNMENTS, OR BUSINESS AND GOVERN-
11 MENT.—

12 (1) IN GENERAL.—Not later than 1 year after
13 the date of enactment of this Act, the Attorney Gen-
14 eral, in consultation with the Commissioner of Social
15 Security, the Chairman of the Federal Trade Com-
16 mission, and such other heads of Federal agencies as
17 the Attorney General determines appropriate, shall
18 conduct such rulemaking procedures in accordance
19 with subchapter II of chapter 5 of title 5, United
20 States Code, as are necessary to promulgate regula-
21 tions to implement and clarify the uses occurring as
22 a result of an interaction between businesses, gov-
23 ernments, or business and government (regardless of
24 which entity initiates the interaction) permitted
25 under section 1028B(e)(5) of title 18, United States
26 Code (as added by section 3(a)(1)).

1 (2) FACTORS TO BE CONSIDERED.—In promul-
2 gating the regulations required under paragraph (1),
3 the Attorney General shall, at a minimum, consider
4 the following:

5 (A) The benefit to a particular business, to
6 customers of the business, and to the general
7 public of the display, sale, or purchase of an in-
8 dividual’s Social Security number.

9 (B) The costs that businesses, customers
10 of businesses, and the general public may incur
11 as a result of prohibitions on the display, sale,
12 or purchase of Social Security numbers.

13 (C) The risk that a particular business
14 practice will promote the use of a Social Secu-
15 rity number to commit fraud, deception, or
16 crime.

17 (D) The presence of adequate safeguards,
18 procedures, and technologies to prevent—

19 (i) misuse of Social Security numbers
20 by employees within a business; and

21 (ii) misappropriation of Social Secu-
22 rity numbers by the general public, while
23 permitting internal business uses of such
24 numbers.

1 (E) The presence of procedures to prevent
 2 identity thieves, stalkers, and other individuals
 3 with ill intent from posing as legitimate busi-
 4 nesses to obtain Social Security numbers.

5 (F) The impact of such uses on privacy.

6 **SEC. 6. TREATMENT OF SOCIAL SECURITY NUMBERS ON**
 7 **GOVERNMENT DOCUMENTS.**

8 (a) PROHIBITION OF USE OF SOCIAL SECURITY AC-
 9 COUNT NUMBERS ON CHECKS ISSUED FOR PAYMENT BY
 10 GOVERNMENTAL AGENCIES.—

11 (1) IN GENERAL.—Section 205(c)(2)(C) of the
 12 Social Security Act (42 U.S.C. 405(c)(2)(C)) is
 13 amended by adding at the end the following:

14 “(x) No Federal, State, or local agency may display
 15 the Social Security account number of any individual, or
 16 any derivative of such number, on any check issued for
 17 any payment by the Federal, State, or local agency.”.

18 (2) EFFECTIVE DATE.—The amendment made
 19 by this subsection shall apply with respect to viola-
 20 tions of section 205(c)(2)(C)(x) of the Social Secu-
 21 rity Act (42 U.S.C. 405(c)(2)(C)(x)), as added by
 22 paragraph (1), occurring after the date that is 3
 23 years after the date of enactment of this Act.

24 (b) PROHIBITION OF INMATE ACCESS TO SOCIAL SE-
 25 CURITY ACCOUNT NUMBERS.—

1 (1) IN GENERAL.—Section 205(c)(2)(C) of the
 2 Social Security Act (42 U.S.C. 405(c)(2)(C)) (as
 3 amended by subsection (b)) is amended by adding at
 4 the end the following:

5 “(xi) No Federal, State, or local agency may employ,
 6 or enter into a contract for the use or employment of, pris-
 7 oners in any capacity that would allow such prisoners ac-
 8 cess to the Social Security account numbers of other indi-
 9 viduals. For purposes of this clause, the term ‘prisoner’
 10 means an individual confined in a jail, prison, or other
 11 penal institution or correctional facility pursuant to such
 12 individual’s conviction of a criminal offense.”.

13 (2) EFFECTIVE DATE.—The amendment made
 14 by this subsection shall apply with respect to em-
 15 ployment of prisoners, or entry into contract with
 16 prisoners, after the date that is 1 year after the date
 17 of enactment of this Act.

18 **SEC. 7. LIMITS ON PERSONAL DISCLOSURE OF A SOCIAL**
 19 **SECURITY NUMBER FOR CONSUMER TRANS-**
 20 **ACTIONS.**

21 (a) IN GENERAL.—Part A of title XI of the Social
 22 Security Act (42 U.S.C. 1301 et seq.) is amended by add-
 23 ing at the end the following:

1 **“SEC. 1150A. LIMITS ON PERSONAL DISCLOSURE OF A SO-**
 2 **CIAL SECURITY NUMBER FOR CONSUMER**
 3 **TRANSACTIONS.**

4 “(a) IN GENERAL.—A commercial entity may not re-
 5 quire an individual to provide the individual’s Social Secu-
 6 rity number when purchasing a commercial good or service
 7 or deny an individual the good or service for refusing to
 8 provide that number except—

9 “(1) for any purpose relating to—

10 “(A) obtaining a consumer report for any
 11 purpose permitted under the Fair Credit Re-
 12 porting Act;

13 “(B) a background check of the individual
 14 conducted by a landlord, lessor, employer, vol-
 15 untary service agency, or other entity as deter-
 16 mined by the Attorney General;

17 “(C) law enforcement; or

18 “(D) a Federal, State, or local law require-
 19 ment; or

20 “(2) if the Social Security number is necessary
 21 to verify the identity of the consumer to effect, ad-
 22 minister, or enforce the specific transaction re-
 23 quested or authorized by the consumer, or to prevent
 24 fraud.

1 “(b) APPLICATION OF CIVIL MONEY PENALTIES.—
 2 A violation of this section shall be deemed to be a violation
 3 of section 1129(a)(3)(F).

4 “(c) APPLICATION OF CRIMINAL PENALTIES.—A vio-
 5 lation of this section shall be deemed to be a violation of
 6 section 208(a)(8).

7 “(d) LIMITATION ON CLASS ACTIONS.—No class ac-
 8 tion alleging a violation of this section shall be maintained
 9 under this section by an individual or any private party
 10 in Federal or State court.

11 “(e) STATE ATTORNEY GENERAL ENFORCEMENT.—

12 “(1) IN GENERAL.—

13 “(A) CIVIL ACTIONS.—In any case in
 14 which the attorney general of a State has rea-
 15 son to believe that an interest of the residents
 16 of that State has been or is threatened or ad-
 17 versely affected by the engagement of any per-
 18 son in a practice that is prohibited under this
 19 section, the State, as *parens patriae*, may bring
 20 a civil action on behalf of the residents of the
 21 State in a district court of the United States of
 22 appropriate jurisdiction to—

23 “(i) enjoin that practice;

24 “(ii) enforce compliance with such
 25 section;

1 “(iii) obtain damages, restitution, or
2 other compensation on behalf of residents
3 of the State; or

4 “(iv) obtain such other relief as the
5 court may consider appropriate.

6 “(B) NOTICE.—

7 “(i) IN GENERAL.—Before filing an
8 action under subparagraph (A), the attor-
9 ney general of the State involved shall pro-
10 vide to the Attorney General—

11 “(I) written notice of the action;

12 and

13 “(II) a copy of the complaint for
14 the action.

15 “(ii) EXEMPTION.—

16 “(I) IN GENERAL.—Clause (i)
17 shall not apply with respect to the fil-
18 ing of an action by an attorney gen-
19 eral of a State under this subsection,
20 if the State attorney general deter-
21 mines that it is not feasible to provide
22 the notice described in such subpara-
23 graph before the filing of the action.

24 “(II) NOTIFICATION.—With re-
25 spect to an action described in sub-

1 clause (I), the attorney general of a
 2 State shall provide notice and a copy
 3 of the complaint to the Attorney Gen-
 4 eral at the same time as the State at-
 5 torney general files the action.

6 “(2) INTERVENTION.—

7 “(A) IN GENERAL.—On receiving notice
 8 under paragraph (1)(B), the Attorney General
 9 shall have the right to intervene in the action
 10 that is the subject of the notice.

11 “(B) EFFECT OF INTERVENTION.—If the
 12 Attorney General intervenes in the action under
 13 paragraph (1), the Attorney General shall have
 14 the right to be heard with respect to any matter
 15 that arises in that action.

16 “(3) CONSTRUCTION.—For purposes of bring-
 17 ing any civil action under paragraph (1), nothing in
 18 this section shall be construed to prevent an attor-
 19 ney general of a State from exercising the powers
 20 conferred on such attorney general by the laws of
 21 that State to—

22 “(A) conduct investigations;

23 “(B) administer oaths or affirmations; or

1 “(C) compel the attendance of witnesses or
 2 the production of documentary and other evi-
 3 dence.

4 “(4) ACTIONS BY THE ATTORNEY GENERAL OF
 5 THE UNITED STATES.—In any case in which an ac-
 6 tion is instituted by or on behalf of the Attorney
 7 General for violation of a practice that is prohibited
 8 under this section, no State may, during the pend-
 9 ency of that action, institute an action under para-
 10 graph (1) against any defendant named in the com-
 11 plaint in that action for violation of that practice.

12 “(5) VENUE; SERVICE OF PROCESS.—

13 “(A) VENUE.—Any action brought under
 14 paragraph (1) may be brought in the district
 15 court of the United States that meets applicable
 16 requirements relating to venue under section
 17 1391 of title 28, United States Code.

18 “(B) SERVICE OF PROCESS.—In an action
 19 brought under paragraph (1), process may be
 20 served in any district in which the defendant—

21 “(i) is an inhabitant; or

22 “(ii) may be found.

23 “(f) SUNSET.—This section shall not apply on or
 24 after the date that is 6 years after the effective date of
 25 this section.”.

1 (b) EVALUATION AND REPORT.—Not later than the
 2 date that is 6 years and 6 months after the date of enact-
 3 ment of this Act, the Attorney General, in consultation
 4 with the chairman of the Federal Trade Commission, shall
 5 issue a report evaluating the effectiveness and efficiency
 6 of section 1150A of the Social Security Act (as added by
 7 subsection (a)) and shall make recommendations to Con-
 8 gress as to any legislative action determined to be nec-
 9 essary or advisable with respect to such section, including
 10 a recommendation regarding whether to reauthorize such
 11 section.

12 (c) EFFECTIVE DATE.—The amendment made by
 13 subsection (a) shall apply to requests to provide a Social
 14 Security number occurring after the date that is 1 year
 15 after the date of enactment of this Act.

16 **SEC. 8. EXTENSION OF CIVIL MONETARY PENALTIES FOR**
 17 **MISUSE OF A SOCIAL SECURITY NUMBER.**

18 (a) TREATMENT OF WITHHOLDING OF MATERIAL
 19 FACTS.—

20 (1) CIVIL PENALTIES.—The first sentence of
 21 section 1129(a)(1) of the Social Security Act (42
 22 U.S.C. 1320a–8(a)(1)) is amended—

23 (A) by striking “who” and inserting
 24 “who—”;

1 (B) by striking “makes” and all that fol-
2 lows through “shall be subject to” and inserting
3 the following:

4 “(A) makes, or causes to be made, a statement
5 or representation of a material fact, for use in deter-
6 mining any initial or continuing right to or the
7 amount of monthly insurance benefits under title II
8 or benefits or payments under title VIII or XVI,
9 that the person knows or should know is false or
10 misleading;

11 “(B) makes such a statement or representation
12 for such use with knowing disregard for the truth;
13 or

14 “(C) omits from a statement or representation
15 for such use, or otherwise withholds disclosure of, a
16 fact which the individual knows or should know is
17 material to the determination of any initial or con-
18 tinuing right to or the amount of monthly insurance
19 benefits under title II or benefits or payments under
20 title VIII or XVI and the individual knows, or
21 should know, that the statement or representation
22 with such omission is false or misleading or that the
23 withholding of such disclosure is misleading, shall be
24 subject to”;

(C) by inserting “or each receipt of such benefits while withholding disclosure of such fact” after “each such statement or representation”;

(D) by inserting “or because of such withholding of disclosure of a material fact” after “because of such statement or representation”; and

(E) by inserting “or such a withholding of disclosure” after “such a statement or representation”.

(2) ADMINISTRATIVE PROCEDURE FOR IMPOSING PENALTIES.—The first sentence of section 1129A(a) of the Social Security Act (42 U.S.C. 1320a–8a(a)) is amended—

(A) by striking “who” and inserting “who—”; and

(B) by striking “makes” and all that follows through “shall be subject to” and inserting the following:

“(1) makes, or causes to be made, a statement or representation of a material fact, for use in determining any initial or continuing right to or the amount of monthly insurance benefits under title II or benefits or payments under title VIII or XVI,

1 that the person knows or should know is false or
2 misleading;

3 “(2) makes such a statement or representation
4 for such use with knowing disregard for the truth;
5 or

6 “(3) omits from a statement or representation
7 for such use, or otherwise withholds disclosure of, a
8 fact which the individual knows or should know is
9 material to the determination of any initial or con-
10 tinuing right to or the amount of monthly insurance
11 benefits under title II or benefits or payments under
12 title VIII or XVI and the individual knows, or
13 should know, that the statement or representation
14 with such omission is false or misleading or that the
15 withholding of such disclosure is misleading, shall be
16 subject to”.

17 (b) APPLICATION OF CIVIL MONEY PENALTIES TO
18 ELEMENTS OF CRIMINAL VIOLATIONS.—Section 1129(a)
19 of the Social Security Act (42 U.S.C. 1320a–8(a)), as
20 amended by subsection (a)(1), is amended—

21 (1) by redesignating paragraph (2) as para-
22 graph (4);

23 (2) by redesignating the last sentence of para-
24 graph (1) as paragraph (2) and inserting such para-
25 graph after paragraph (1); and

1 (3) by inserting after paragraph (2) (as so re-
2 designated) the following:

3 “(3) Any person (including an organization, agency,
4 or other entity) who—

5 “(A) uses a Social Security account number
6 that such person knows or should know has been as-
7 signed by the Commissioner of Social Security (in an
8 exercise of authority under section 205(c)(2) to es-
9 tablish and maintain records) on the basis of false
10 information furnished to the Commissioner by any
11 person;

12 “(B) falsely represents a number to be the So-
13 cial Security account number assigned by the Com-
14 missioner of Social Security to any individual, when
15 such person knows or should know that such number
16 is not the Social Security account number assigned
17 by the Commissioner to such individual;

18 “(C) knowingly alters a Social Security card
19 issued by the Commissioner of Social Security, or
20 possesses such a card with intent to alter it;

21 “(D) knowingly displays, sells, or purchases a
22 card that is, or purports to be, a card issued by the
23 Commissioner of Social Security, or possesses such
24 a card with intent to display, purchase, or sell it;

1 “(E) counterfeits a Social Security card, or pos-
2 sesses a counterfeit Social Security card with intent
3 to display, sell, or purchase it;

4 “(F) discloses, uses, compels the disclosure of,
5 or knowingly displays, sells, or purchases the Social
6 Security account number of any person in violation
7 of the laws of the United States;

8 “(G) with intent to deceive the Commissioner of
9 Social Security as to such person’s true identity (or
10 the true identity of any other person) furnishes or
11 causes to be furnished false information to the Com-
12 missioner with respect to any information required
13 by the Commissioner in connection with the estab-
14 lishment and maintenance of the records provided
15 for in section 205(c)(2);

16 “(H) offers, for a fee, to acquire for any indi-
17 vidual, or to assist in acquiring for any individual,
18 an additional Social Security account number or a
19 number which purports to be a Social Security ac-
20 count number; or

21 “(I) being an officer or employee of a Federal,
22 State, or local agency in possession of any individ-
23 ual’s Social Security account number, willfully acts
24 or fails to act so as to cause a violation by such
25 agency of clause (vi)(II) or (x) of section

1 205(c)(2)(C), shall be subject to, in addition to any
 2 other penalties that may be prescribed by law, a civil
 3 money penalty of not more than \$5,000 for each vio-
 4 lation. Such person shall also be subject to an as-
 5 sessment, in lieu of damages sustained by the
 6 United States resulting from such violation, of not
 7 more than twice the amount of any benefits or pay-
 8 ments paid as a result of such violation.”.

9 (c) CLARIFICATION OF TREATMENT OF RECOVERED
 10 AMOUNTS.—Section 1129(e)(2)(B) of the Social Security
 11 Act (42 U.S.C. 1320a–8(e)(2)(B)) is amended by striking
 12 “In the case of amounts recovered arising out of a deter-
 13 mination relating to title VIII or XVI,” and inserting “In
 14 the case of any other amounts recovered under this sec-
 15 tion,”.

16 (d) CONFORMING AMENDMENTS.—

17 (1) Section 1129(b)(3)(A) of the Social Secu-
 18 rity Act (42 U.S.C. 1320a–8(b)(3)(A)) is amended
 19 by striking “charging fraud or false statements”.

20 (2) Section 1129(c)(1) of the Social Security
 21 Act (42 U.S.C. 1320a–8(c)(1)) is amended by strik-
 22 ing “and representations” and inserting “, represen-
 23 tations, or actions”.

24 (3) Section 1129(e)(1)(A) of the Social Security
 25 Act (42 U.S.C. 1320a–8(e)(1)(A)) is amended by

1 striking “statement or representation referred to in
 2 subsection (a) was made” and inserting “violation
 3 occurred”.

4 (e) EFFECTIVE DATES.—

5 (1) IN GENERAL.—Except as provided in para-
 6 graph (2), the amendments made by this section
 7 shall apply with respect to violations of sections
 8 1129 and 1129A of the Social Security Act (42
 9 U.S.C. 1320–8 and 1320a–8a), as amended by this
 10 section, committed after the date of enactment of
 11 this Act.

12 (2) VIOLATIONS BY GOVERNMENT AGENTS IN
 13 POSSESSION OF SOCIAL SECURITY NUMBERS.—Sec-
 14 tion 1129(a)(3)(I) of the Social Security Act (42
 15 U.S.C. 1320a–8(a)(3)(I)), as added by subsection
 16 (b), shall apply with respect to violations of that sec-
 17 tion occurring on or after the effective date de-
 18 scribed in section 3(c).

19 (f) REPEAL.—Section 201 of the Social Security Pro-
 20 tection Act of 2004 is repealed.

21 **SEC. 9. CRIMINAL PENALTIES FOR THE MISUSE OF A SO-**
 22 **CIAL SECURITY NUMBER.**

23 (a) PROHIBITION OF WRONGFUL USE AS PERSONAL
 24 IDENTIFICATION NUMBER.—No person may obtain any
 25 individual’s Social Security number for purposes of locat-

1 ing or identifying an individual with the intent to phys-
 2 ically injure, harm, or use the identity of the individual
 3 for any illegal purpose.

4 (b) CRIMINAL SANCTIONS.—Section 208(a) of the
 5 Social Security Act (42 U.S.C. 408(a)) is amended—

6 (1) in paragraph (8), by inserting “or” after
 7 the semicolon; and

8 (2) by inserting after paragraph (8) the fol-
 9 lowing:

10 “(9) except as provided in subsections (e) and
 11 (f) of section 1028B of title 18, United States Code,
 12 knowingly and willfully displays, sells, or purchases
 13 (as those terms are defined in section 1028B(a) of
 14 title 18, United States Code) any individual’s Social
 15 Security account number without having met the
 16 prerequisites for consent under section 1028B(d) of
 17 title 18, United States Code; or

18 “(10) obtains any individual’s Social Security
 19 number for the purpose of locating or identifying the
 20 individual with the intent to injure or to harm that
 21 individual, or to use the identity of that individual
 22 for an illegal purpose;”.

23 **SEC. 10. CIVIL ACTIONS AND CIVIL PENALTIES.**

24 (a) CIVIL ACTION IN STATE COURTS.—

1 (1) IN GENERAL.—Any individual aggrieved by
2 an act of any person in violation of this Act or any
3 amendments made by this Act may, if otherwise per-
4 mitted by the laws or rules of the court of a State,
5 bring in an appropriate court of that State—

6 (A) an action to enjoin such violation;

7 (B) an action to recover for actual mone-
8 tary loss from such a violation, or to receive up
9 to \$500 in damages for each such violation,
10 whichever is greater; or

11 (C) both such actions.

12 It shall be an affirmative defense in any action
13 brought under this paragraph that the defendant
14 has established and implemented, with due care, rea-
15 sonable practices and procedures to effectively pre-
16 vent violations of the regulations prescribed under
17 this Act. If the court finds that the defendant will-
18 fully or knowingly violated the regulations prescribed
19 under this subsection, the court may, in its discre-
20 tion, increase the amount of the award to an amount
21 equal to not more than 3 times the amount available
22 under subparagraph (B).

23 (2) STATUTE OF LIMITATIONS.—An action may
24 be commenced under this subsection not later than
25 the earlier of—

1 (A) 5 years after the date on which the al-
2 leged violation occurred; or

3 (B) 3 years after the date on which the al-
4 leged violation was or should have been reason-
5 ably discovered by the aggrieved individual.

6 (3) NONEXCLUSIVE REMEDY.—The remedy pro-
7 vided under this subsection shall be in addition to
8 any other remedies available to the individual.

9 (b) CIVIL PENALTIES.—

10 (1) IN GENERAL.—Any person who the Attor-
11 ney General determines has violated any section of
12 this Act or of any amendments made by this Act
13 shall be subject, in addition to any other penalties
14 that may be prescribed by law—

15 (A) to a civil penalty of not more than
16 \$5,000 for each such violation; and

17 (B) to a civil penalty of not more than
18 \$50,000, if the violations have occurred with
19 such frequency as to constitute a general busi-
20 ness practice.

21 (2) DETERMINATION OF VIOLATIONS.—Any
22 willful violation committed contemporaneously with
23 respect to the Social Security numbers of 2 or more
24 individuals by means of mail, telecommunication, or

1 otherwise, shall be treated as a separate violation
 2 with respect to each such individual.

3 (3) ENFORCEMENT PROCEDURES.—The provi-
 4 sions of section 1128A of the Social Security Act
 5 (42 U.S.C. 1320a–7a), other than subsections (a),
 6 (b), (f), (h), (i), (j), (m), and (n) and the first sen-
 7 tence of subsection (c) of such section, and the pro-
 8 visions of subsections (d) and (e) of section 205 of
 9 such Act (42 U.S.C. 405) shall apply to a civil pen-
 10 alty action under this subsection in the same man-
 11 ner as such provisions apply to a penalty or pro-
 12 ceeding under section 1128A(a) of such Act (42
 13 U.S.C. 1320a–7a(a)), except that, for purposes of
 14 this paragraph, any reference in section 1128A of
 15 such Act (42 U.S.C. 1320a–7a) to the Secretary
 16 shall be deemed to be a reference to the Attorney
 17 General.

18 **SEC. 11. FEDERAL INJUNCTIVE AUTHORITY.**

19 In addition to any other enforcement authority con-
 20 ferred under this Act or the amendments made by this
 21 Act, the Federal Government shall have injunctive author-
 22 ity with respect to any violation by a public entity of any
 23 provision of this Act or of any amendments made by this
 24 Act.

○