

*“Social Security Number Misuse Prevention Act of 2002”*  
*Chairman’s Mark*

**SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

*Short Title*

***Judiciary Committee Reported Bill***

Social Security Number Misuse Prevention Act of 2002.

***Chairman’s Mark***

Identical to the Judiciary Committee reported bill.

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***Judiciary Committee Reported Bill***

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## **SECTION 2. FINDINGS.**

### ***Judiciary Committee Reported Bill***

The Judiciary Committee reported bill contains six findings.

### ***Chairman's Mark***

This section of the Chairman's Mark supports many of the findings in the Judiciary Committee reported bill, with a few modifications and deletions.

The Chairman's Mark makes two slight modifications. First, the Mark reflects the belief that Social Security numbers are *one of many tools* that can be used to facilitate crime, fraud, and invasions of individual privacy. The Mark also makes a more realistic finding about the degree

of protection provided by the legislation from the display, sale, and purchase of a Social Security number that might facilitate unlawful conduct.

The Mark removes the Judiciary Committee finding that Social Security numbers do not contain, reflect or convey any public issue.

### **SECTION 3. PROHIBITION OF THE DISPLAY, SALE, OR PURCHASE OF SOCIAL SECURITY NUMBERS.**

#### *Prohibition on the display, sale, and purchase of Social Security numbers*

##### ***Current Law***

No provision.

##### ***Judiciary Committee Reported Bill***

The bill reported by the Judiciary Committee would generally prohibit the display, sale, or purchase of an individual's Social Security number to the general public without that individual's consent.

Exceptions to the general prohibition are provided for public health, national security, and law enforcement purposes. In addition, uses of Social Security numbers defined by specific Federal laws like the Privacy Act of 1974 and the Professional Boxing Safety Act of 1996 are exempted from this general prohibition.

This section also creates an exception for business-to-business and business-to-government uses of Social Security numbers including the retrieval of information from other businesses, the prevention of fraud, the facilitation of credit and background checks, and other uses to be determined by the Attorney General.

##### ***Chairman's Mark***

The overall policy reflected in the Chairman's Mark is the same as the policy reflected in the Judiciary Committee reported bill. However, the specific approach is different. The Judiciary Committee reported bill would have potentially allowed the Attorney General to prohibit the use of Social Security numbers under Federal laws that were not expressly cited in Section 3. In contrast, the Chairman's mark does not override any usage of Social Security numbers that is permitted, required, authorized or excepted under any Federal law, as may be determined by the appropriate regulator responsible for interpreting such law.

*Study and report on uses of Social Security numbers allowed by federal law*

***Current Law***

No provision.

***Judiciary Committee Reported Bill***

No provision.

***Chairman's Mark***

The Chairman's Mark instructs the Attorney General to conduct a study and prepare a report on the uses of Social Security allowed under current federal law. The report should include a detailed description of the uses of Social Security numbers permitted, required, authorized or excepted under any Federal law, and evaluate whether such uses should be continued or whether such uses should be discontinued by appropriate legislative action.

The Attorney General is to report findings under this subsection to Congress not later than one year after the date of enactment of this Act. The report should include recommendations for legislation based on criteria the Attorney General determines to be appropriate.

**SECTION 4. APPLICATION OF PROHIBITION OF THE DISPLAY, SALE, OR PURCHASE OF SOCIAL SECURITY NUMBERS TO PUBLIC RECORDS.**

*Redaction of Public Records*

***Current Law***

No provision.

***Judiciary Committee Reported Bill***

This section requires government entities to redact Social Security numbers on 11 categories of public records before these records are distributed to the general public (in either electronic or paper forms).

The 11 categories of documents are death certificates, professional and occupational licenses, property settlement documents; documents relating to birth certificates; land ownership records; marriage permits and licenses; documents related to bankruptcy; court judgments; child support documents, divorce petition and decrees, and tax liens. These documents were selected because they most frequently display Social Security numbers in a routine and consistent manner.

Under the section, a government entity would not have to redact Social Security numbers on these 11 public documents if:

- the requestor of the document is able to identify the Social Security number on the document;
- the requestor is a business or government entity seeking the document for a business-to-business use or business-to-government use
- the requestor is seeking the record for a law enforcement, national security, public health, or other purpose permitted by the bill.
- the document was produced before the date of enactment of the Act.

### ***Chairman's Mark***

The Chairman's Mark includes a complete substitute for Section 4 of S. 848 as reported by the Judiciary Committee. Section 4 concerns governmental entities who display, sell or purchase public records containing Social Security numbers. For purposes of this section, a public record is defined as any governmental record that is made available to the general public.

Section 4 *exempts* the sale, purchase, and display by governmental entities of Social Security numbers on *public records* from the general prohibition on display, sale, and purchase of Social Security numbers in *Section 3*, but with *three exceptions*. In other words, governmental entities *can* display, sell or purchase *public records* containing Social Security numbers, except in three cases.

The first exception is for Social Security numbers on public records first posted on the Internet (or provided in an electronic medium such as a CD-ROM) *after* the date of enactment of this Act by (or on behalf of) a government entity. In other words, posting these records on the Internet (or providing them in an electronic media) would be prohibited. There would be, however, three possible exceptions to this prohibition:

1. The entity may be allowed to post public records containing Social Security numbers (or provide electronic media that include such records) *after* the date of enactment of this Act *if* the records are in a category of records that has been posted on the Internet or provided in an electronic medium by *that* entity *prior* to the date of enactment. An example of a category of public records would be birth certificates or marriage licenses. Thus, as an illustration, an entity which posted marriage licenses containing Social Security numbers on the Internet before the date of enactment may be allowed to continue to do so after the date of enactment.

More specifically, within 60 days of the date of enactment, the Attorney General must issue regulations which determine whether (and under what circumstances) any records can continue to be posted on the Internet (or provided in an electronic medium) *after* the date of enactment by an entity, *if* the records are in categories of records that were posted on the Internet (or provided in an electronic medium) *before* the date of enactment. The Attorney General may include a set of implementing procedures in these regulations. In promulgating these regulations, the Attorney General must consider the costs and availability to governmental entities of technology to redact Social Security numbers from such records. The Attorney General must also consider the costs and benefits to the general public, businesses, commercial enterprises, non-profit organizations, and Federal, state, and local governments of prohibiting the display, sale, and purchase of such records.

2. A governmental entity may not display or sell public records containing Social Security numbers if the Social Security numbers were extracted from other public records for the purpose of displaying or selling such numbers to the general public.
3. The Attorney General shall determine the feasibility and advisability of prohibiting the display, sale, or purchase of certain public records that are provided on paper or other non-electronic media and that contain Social Security numbers. The records to which this prohibition may apply are professional or occupational licenses, marriage licenses, birth certificates, death certificates, and other short public documents which display Social Security numbers in a routine and consistent manner on the face of the document. The Attorney General may promulgate regulations applying such a prohibition to these records. In promulgating these regulations, the Attorney General shall consider the costs and benefits of such a prohibition to the general public, businesses, commercial enterprises, non-profit organizations, and Federal state, and local governments.

*Study and report on Social Security numbers in public records*

***Current Law***

No provision.

***Judiciary Committee Reported Bill***

This section directs the Attorney General to prepare a report, not later than one year after the enactment of the Act, on the cost and benefits of redacting Social Security numbers from certain public records. The Attorney General would specifically investigate the technologies available to facilitate cost-efficient redaction of all types of public records prior to public display of such documents.

### ***Chairman's Mark***

The Chairman's Mark requires a study of the inclusion of Social Security numbers in public records. The study is to be conducted by the Comptroller General of the General Accounting Office in consultation with other government entities and other stakeholders who use public records that contain Social Security numbers. A report – based on the study – shall be submitted to the Congress not later than one year after the date of enactment of the Act.

The report shall include a detailed description of the activities and results of the study and recommendations for legislative action the Comptroller General considers appropriate. The report, at a minimum, shall include: (A) a review of the uses of Social Security numbers in non-federal public records; (B) a review of the manner in which public records are stored (both paper records and electronic records); (C) a review of the advantages and utility allowing the display, sale, and purchase of public records that contain Social Security numbers, including the utility for law enforcement and the promotion of homeland security; (D) a review of the disadvantages and drawbacks of allowing the display, sale, or purchase of public records that contain Social Security numbers, including the impact on criminal activity, compromised personal privacy, and threats to homeland security; (E) the costs and benefits to local and state governments of removing Social Security numbers from public records, including a review of current technologies and procedures for removing Social Security numbers from public records; and (F) an assessment of the benefits and costs to businesses, their customers, and the general public of prohibiting the display of Social Security numbers on public records prospectively (separate assessments for both paper records and electronic records).

## **SECTION 5. RULEMAKING AUTHORITY OF THE ATTORNEY GENERAL.**

### ***Current Law***

No provision.

### ***Judiciary Committee Reported Bill***

This section outlines the rulemaking the Attorney General may use to define business-to-business and business-to-government uses of Social Security. Under section 3 of the bill, business-to-business and business-to-government uses are exempt from the general prohibition on the display, sale or purchase of Social Security numbers.

In conducting the rulemaking, the Attorney General must consult with the Commissioner of Social Security, the Federal Trade Commission, and other relevant Federal agencies. The Attorney General is directed to ensure that any rules promulgated are consistent, where possible, with other privacy laws, including title V of the Gramm-Leach-Bliley Act.

The section lists factors the Attorney General should consider in his rulemaking:

1. the benefits of the sale or purchase of a Social Security number,
2. the costs to small businesses,
3. the risk that a particular business practice will promote fraud,
4. the presence of adequate safeguards to prevent theft of Social Security numbers, and
5. the implementation of procedures to prevent identity thieves from posing as businesses to get access to Social Security numbers.

The Attorney General may promulgate such other rules and regulations as he deems necessary to carry out Section 3.

### **Chairman's Mark**

The Chairman's Mark also allows rulemaking by the Attorney General to carry out the provisions of subsection 5 of section 3 of the Mark.

More specifically, not later than one year after the date of enactment of the Act, the Attorney General, in consultation with the Commissioner of Social Security, the Federal Trade Commission, and such other Federal agencies as the Attorney General determines to be appropriate, may conduct rulemaking procedures he believes are necessary to implement and clarify the business-to-business, business-to-government, and government-to-business use exceptions from the prohibition of display, sale or purchase of Social Security numbers established by section 3 of the Mark.

The Mark, like the Judiciary Committee reported bill, also instructs the Attorney General to consider certain factors - at a minimum - when promulgating the regulations. The list of factors is not identical to the list in the Committee reported bill. The list in the Chairman's Mark is: (A) The benefit to a particular business, to its customers and to the general public of the display, sale or purchase of an individual's Social Security number; (B) the costs that businesses, their customers, and the general public may incur as a result of prohibitions on the display, sale, and purchase of Social Security numbers; (C) the risk that a particular business practice will promote the use of the Social Security number to commit fraud, deception, or crime; (D) the presence of adequate safeguards and procedures to prevent: 1) misuse of Social Security numbers by employees within a business (while permitting internal business uses of such numbers) and; 2) the misappropriation of Social Security numbers by the general public; and (E) the presence of procedures to prevent identity thieves, stalkers, and others with ill intent from posing as legitimate businesses to obtain Social Security numbers



The Attorney General may promulgate such other rules and regulations as he deems necessary to carry out Section 3.

## **SECTION 6. TREATMENT OF SOCIAL SECURITY NUMBERS ON GOVERNMENT DOCUMENTS.**

### *Social Security numbers on driver's licenses*

#### ***Current Law***

In some states and the District of Columbia, the Social Security number is the optional driver's license number.

#### ***Judiciary Committee Reported Bill***

This section would prohibit any State from displaying Social Security numbers on drivers' licenses or motor vehicle registration documents issued by that State. States would have one year to comply with this section.

#### ***Chairman's Mark***

Identical to the Judiciary Committee reported bill

### *Inmate access to Social Security numbers*

#### ***Current Law***

Currently, there is no legal prohibition on inmates working in prison-industries from having access to a customer's Social Security number.

#### ***Judiciary Committee Reported Bill***

This section would prohibit government entities from employing inmates in any type of prison-industry position that would allow prisoners access to the Social Security numbers of other individuals.

#### ***Chairman's Mark***

Identical to the Judiciary Committee reported bill

*Social Security numbers on government checks*

***Current Law***

Current law prohibits the Department of Treasury from placing Social Security numbers on checks to government beneficiaries (e.g., Social Security benefits) in a manner that permits the number to be visible through the glassine window of the envelope holding the check.

***Judiciary Committee Reported Bill***

This provision would prohibit any government entity from placing a Social Security number on any check issued by the agency. Government entities would have three years to comply with this provision.

***Chairman's Mark***

Identical to the Judiciary Committee reported bill

**SECTION 7. LIMITS ON PERSONAL DISCLOSURE OF A SOCIAL SECURITY NUMBER FOR CONSUMER TRANSACTIONS.**

*Prohibit a commercial entity from denying a good or service for refusal to disclose Social Security number*

***Current Law***

The Privacy Act of 1974 (see 5 USC 552a) generally prohibits a Federal, State or local government agency from denying any individual any right, benefit or privilege provided by law because of such individual's refusal to disclose his or her Social Security number. There are some very limited exceptions to this requirement. For example, the prohibition on disclosure does not apply if the disclosure is required by Federal statute.

Commercial entities currently have no such restrictions on asking for Social Security numbers, or denying goods or services to those who refuse to provide a Social Security number.

***Judiciary Committee Reported Bill***

This section would generally prohibit a commercial entity from denying an individual a good or service for refusing to disclose his or her Social Security number to the entity.

A commercial entity is exempted from this general prohibition if the entity needs the Social Security number to obtain a consumer credit report; to obtain a background check; to comply with a law enforcement requirement, or to comply with a Federal, State, or local law.

A commercial entity is also exempted from this requirement if it requires the Social Security number to prevent fraud or to verify the identity of the consumer with respect to the specific transaction requested by the consumer.

Finally, this section states that commercial entities would not be prohibited from requiring two other forms of identification that do not contain Social Security numbers.

### ***Chairman's Mark***

There are several differences between the Chairman's Mark and the bill reported by the Judiciary Committee.

First, the Chairman's mark would clarify that the exception for commercial entities applies to all activities related to the specific transaction. Business may request a Social Security number if the transaction requires a subsequent use of the Social Security number, not just an initial use. For example, businesses may require a Social Security number for customers not just to open a bank account, but to access their account in the future. Or, a business may require a Social Security number to sell an insurance policy even though they may not need to report the Social Security number to the IRS until some future date when a payment is made on the policy.

Second, the Chairman's Mark delete's language that allows commercial entities to require a customer to provide two forms of identification that do not contain Social Security numbers in view of the fact that businesses can already do so under current law.

### *Application of civil monetary penalties and criminal penalties*

#### ***Current Law***

No provision.

#### ***Judiciary Committee Reported Bill***

Any commercial entities violating this section would be subject to civil monetary penalties and criminal penalties.

#### ***Chairmen's Mark***

Same provision as Judiciary Committee Reported bill.

*Limitation on class action suits*

***Current Law***

No provision.

***Judiciary Committee Reported Bill***

No provision.

***Chairmen's Mark***

The Chairman's Mark limits class action suits as a possible remedy for violations of this section. This provision was added to address concerns about inconsistencies with Section 3. The scope of permissible uses under this section are somewhat different than those under Section 3. The Chairman's mark seeks to limit the possibility of frivolous law suits being filed against businesses that seek to obtain an individual's Social Security number for a legitimate use permitted under Section 3, but not allowed under Section 7.

*State Attorney General Enforcement*

***Current Law***

No provision.

***Judiciary Committee Reported Bill***

No provision.

***Chairmen's Mark***

The Chairman's Mark would allow a State Attorney General to bring civil action on behalf of State residents to mitigate the limitation on class action suits contained earlier in this section.

*Effective Date, Sunset, Evaluation and Report*

***Current Law***

No provision.

### ***Judiciary Committee Reported Bill***

The amendment made by this section would apply to requests to provide a Social Security number made on or after the date of enactment.

### ***Chairmen's Mark***

The effective date of the Chairman's Mark is one year after the date of enactment.

The Chairman's Mark would sunset this section at the end of six years after the effective date. The Mark requires the Attorney General, in consultation with the Federal Trade Commission, to issue a report evaluating the effectiveness and efficiency of this section and make recommendations to Congress with respect to reauthorizing this section.

## **SECTION 8. EXTENSION OF CIVIL MONETARY PENALTIES FOR MISUSE OF A SOCIAL SECURITY NUMBER.**

### ***Current Law***

Criminal penalties for Social Security numbers misuse are already permitted under the Social Security Act. There are only very limited provisions, however, for civil penalties.

### ***Judiciary Committee Reported Bill***

This section would permit the Social Security Administration to issue civil penalties of up to \$5,000 per violation if the individual: (1) knowingly uses a SSN obtained with false information; (2) knowingly and falsely represents a number to be his SSN; (3) knowingly alters a Social Security card; (4) sells or buys a Social Security card; or compels disclosure of a Social Security card in violation of the laws of the United States, or (5) counterfeits a Social Security card with intent to display, sell, or purchase it.

This provision will enable the employees of the Office of the Social Security Inspector General around the country to assist U.S. Attorneys in prosecuting identity theft and other forms of fraud involving Social Security numbers. Historically, Federal prosecutors have given Social Security number misuse a lower priority than other crimes because the typical case involves relatively small financial losses (e.g., under \$25,000). The Office of the Social Security Inspector General has requested the provisions in this section.

### ***Chairman's Mark***

Essentially identical to the Judiciary Committee reported bill.

## **SECTION 9. CRIMINAL PENALTIES FOR THE MISUSE OF A SOCIAL SECURITY NUMBER.**

### ***Current Law***

No provision.

### ***Judiciary Committee Reported Bill***

Relevant provision is included in Section 3.

This provision prohibits the display, sale or purchase of an individual's Social Security number without the individual's expressed consent, unless otherwise permitted by the Act. The section also prohibits a person from obtaining another person's Social Security number for purposes of locating or identifying that individual with the intent to physically injure or harm that person. The maximum penalty for such an offense is 5 years in Federal prison.

### ***Chairman's Mark***

Identical to the provision in Section 3 of the Judiciary Committee reported bill

## **SECTION 10. CIVIL ACTIONS AND CIVIL PENALTIES.**

### ***Current Law***

No provision.

### ***Judiciary Committee Reported Bill (in Section 3)***

This section provides that individuals whose Social Security numbers are misused can file a claim in state court (typically a small claims court) to seek an injunction, or the greater of \$500 or their actual monetary losses. Businesses sued under the statute have an affirmative defense if they have established reasonable steps to comply with the Act. This limited right of civil action is directly modeled on the Telephone Consumer Protection Act of 1991, which puts limits on unsolicited telemarketing calls to personal residences.

This section further empowers the Attorney General to issue civil penalties for violating the provisions contained in this section against the display, sale, or purchase of Social Security numbers. The penalties can be up to \$5,000 for individual violations, and up to \$50,000 when the violations have occurred with such frequency that they constitute a general business practice.

***Chairman's Mark***

Essentially identical provision moved from Section 3 in the Judiciary Committee reported bill to Section 10 in the Chairman's mark.

**SECTION 11. TRUNCATION OF CREDIT CARD ACCOUNT NUMBERS.**

***Current Law***

Currently, there is no Federal law requiring the truncation of credit card account numbers printed on credit card receipts. However, California, Washington, and a number of other states require such truncation of credit card receipts.

***Judiciary Committee Reported Bill (Section 9)***

This section would require all new credit card payment processing machines to truncate any credit card number printed on a customer receipt. Thus, when a store gives a customer a receipt from a credit card purchase, only the last five digits of the credit card number will show.

Existing machines would have to be reprogrammed to truncate credit card numbers on receipts by 2006.

The section would not apply to transactions in which the sole means of record of the customer's credit card account number is by handwriting or by an imprint or copy of the credit card.

***Chairman's Mark***

Identical to Section 9 of the Judiciary Committee reported bill

## **SECTION 12. FEDERAL INJUNCTIVE AUTHORITY.**

### ***Current Law***

Not provision.

### ***Judiciary Committee Reported Bill***

No provision.

### ***Chairman's Mark***

With this section, the Chairman's Mark clarifies that the Attorney General can seek an injunction (i.e. court orders that compel a person or entity to act or not to act) to ensure that states, localities, and other government entities comply with their obligations under the law as amended by this Act.

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