

# **SOCIAL SECURITY NUMBER PRIVACY AND IDENTITY THEFT PREVENTION ACT OF 2003**

## **Current Law**

## **Explanation of Provision**

## **Effective Date**

### **Title I: Provisions Relating to the Social Security Account Number in the Public and Private Sectors**

#### **Section 101: Restrictions on the Sale or Display to the General Public of Social Security Account Numbers by Governmental Agencies**

The Social Security Number (SSN) is required by law for the administration of a number of Federal programs. In addition, Federal law permits States to require the SSN in the administration of certain State programs, and in other cases Federal law requires the States to use the SSN in the administration of Federal or State programs. No Federal law regulates the overall use of SSNs by Federal, State or local governments. P.L. 106-346 amended the Driver's Privacy Protection Act to require States to obtain express consent of drivers before sharing or selling drivers' "highly restricted personal information" including SSNs except under very limited circumstances.

Would prohibit the sale or display of SSNs to the general public by Federal, State or local governmental agencies and their agents, or by a bankruptcy trustee.

Would provide for the following exceptions:

- (1) SSNs may be sold if the sale is specifically authorized by the Social Security Act.
- (2) SSNs may be sold or displayed to the general public for law enforcement or national security purposes, as determined by regulations issued by the Attorney General.
- (3) State departments of motor vehicles may sell SSNs for use by a government agency (or private person or entity acting on behalf of a Federal, State or local agency) in carrying out its functions; for use by an insurer in connection with claims investigation, anti-fraud rating or underwriting activities; and, for use by an employer or its agent or insurer to obtain or verify information relating to a holder of a commercial driver's license.

Would take effect one year after the Attorney General issues final regulations under Section 102. Applies to displays of SSNs to the general public originally occurring after such one-year period.

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(4) SSNs may be sold or made available to a consumer reporting agency under the Fair Credit Reporting Act, exclusively for use in accordance with such Act.

(5) SSNs may be sold or displayed to the general public as determined appropriate by the Attorney General in regulations.

Prohibition against the sale or display of Social Security numbers would not apply to SSNs of deceased persons.

Under the provision, the following definitions would apply:

“Sell” means to accept an item of material value in exchange for an SSN. “Display to the general public” means to intentionally place an SSN in a viewable manner on an Internet site that is available to the general public, or to make such number available in any other manner intended to provide access to that number by the general public. The term “social security account number” includes any derivative of the SSN.

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Section 102: Regulatory Authority of the Attorney General of the United States

No provision.

Would direct the Attorney General to issue regulations, after consultation with other designated agencies (Commissioner of Social Security, the Secretary of Homeland Security, the Federal Trade Commission, State attorneys general, and other entities as the Attorney General considers appropriate) regarding the sale, purchase or display to the general public of SSNs relative to national security, law enforcement, and other purposes as determined appropriate, in accordance with the Administrative Procedure Act. The Commissioner of Social Security would issue regulations for other exceptions to prohibitions on sale, purchase and display to the general public of SSNs.

When issuing regulations authorizing the sale, purchase, or display of SSNs for law enforcement or national security purposes, the Attorney General would have to find that the sale, purchase or display would serve a compelling public interest that cannot reasonably be served through alternative measures and would not pose an undue risk of bodily, emotional or financial harm to an individual.

Would take effect one year after enactment.

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When issuing regulations authorizing the sale, purchase, or display of SSNs for other purposes, the Attorney General would impose restrictions and conditions to reduce the likelihood of fraud, deception, or crime and to prevent an undue risk of bodily, emotional or financial harm to individuals. In addition, the Attorney General would consider relevant factors, including costs or burdens as well as benefits to the general public, businesses and governmental entities of complying with regulations.

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**Section 103: Prohibition of Display of Social Security Account Numbers on Checks Issued for Payment by Governmental Agencies**

No Federal law regulates the overall use of SSNs by Federal, State, or local governments. P.L. 106-433, however, specifically directed the Secretary of the Treasury to take necessary action to ensure that SSNs are not visible on or through unopened mailings of checks or other drafts.

Would prohibit Federal, State or local governments, or bankruptcy trustees, from using the SSN on checks issued for payment or on any documents accompanying checks.

Would apply with respect to checks (and documents attached to or accompanying such checks) issued after one year after enactment.

**Section 104: Prohibition of the Display of Social Security Account Numbers on Driver's Licenses or Motor Vehicle Registrations**

Most States have acted voluntarily to prohibit display of SSNs on driver's licenses or other identification cards, but some States have made changing from an SSN to another number an option, but not a requirement.

Would prohibit States and their political subdivisions from placing a person's SSN on a driver's license, motor vehicle registration, or on any other document issued for purposes of identification of an individual.

Would apply to licenses, registrations, and other documents issued or reissued after one year after enactment.

**Section 105: Prohibition of the Display of Personal Identification Numbers on Employee Identification Cards or Tags**

No provision.

Would prohibit public or private employers, or a benefits plan offered by an employer, from displaying an employee's SSN on any identification card or tag.

Would apply with respect to cards or tags issued after one year after enactment.

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**Section 106: Prohibition of Inmate Access to Social Security Account Numbers**

No provision.

Would prohibit Federal, State or local governments from employing prisoners in any capacity that would allow prisoners access to the SSNs of other individuals.

Would apply with respect to employment or entry into contract for employment of prisoners after enactment. In the case of employment or contracts for employment in effect on the date of enactment, would take effect 90 days after enactment.

**Section 107: Prohibition of the Sale, Purchase, or Display to the General Public of the Social Security Account Number in the Private Sector**

No provision.

Would prohibit the sale, purchase or display to the general public of a SSN, and the display of a SSN derivative. Would prohibit using a SSN to find an individual with the intent to cause harm, or using the individual's identity for illegal purposes. A person who violates this section would be guilty of a felony, subject to fines under Title 18 of the United States Code and/or imprisonment for up to five years.

Would apply to violations that occur after one year after the Attorney General issues final regulations.

Would provide for the following exceptions to prohibitions on sale, purchase and display to the general public of SSNs:

- (1) Law enforcement (including child support enforcement), as determined by regulations issued by the Attorney General.
- (2) National security, as determined by regulations issued by the Attorney General.
- (3) Public health purposes.
- (4) Emergency situations to protect the health or safety of one or more individuals.

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- (5) Research, with assurances that SSNs will not be used to harass, target or publicly reveal information concerning any identifiable individuals; that information will not be used to directly affect the rights, benefits, or privileges of specific individuals; and appropriate safeguards are in place to protect the privacy and confidentiality of information about identifiable individuals.
- (6) With affirmative written consent of the individual.
- (7) As determined appropriate by the Attorney General in regulations.

This section would not apply to SSNs of deceased persons.

The following definitions would apply:

“Sell” means to accept an item of material value in exchange for an SSN. “Display to the general public” means to intentionally place an SSN in a viewable manner on an Internet site that is available to the general public, or to make such number available in any other manner intended to provide access to that number by the general public. The term “social security account number” includes any derivative of the SSN.

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Section 108: Confidential Treatment of Credit Header Information (Jurisdiction of the Committee on Financial Services)

The Fair Credit Reporting Act imposes certain restrictions on the disclosure of “consumer report” information. However, credit header information, which includes Social Security Numbers, is not subject to these restrictions.

Would prevent consumer reporting agencies from furnishing the SSN other than in a full consumer report, so that the SSN receives the same privacy protections as other consumer credit information.

Would take effect 90 days after enactment.

Section 109: Refusal to do Business Without Receipt of Social Security Account Number Considered Unfair or Deceptive Act or Practice (Jurisdiction of the Committee on Energy and Commerce)

No provision.

Would provide that it shall be an unfair or deceptive act or practice in violation of the Federal Trade Commission Act (15 U.S.C. § 45) for any person to refuse to do business with an individual because the individual will not provide his or her SSN.

Would apply to acts or practices committed after 180 days after enactment.

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**Title II: Measures to Ensure the Integrity of Applications for Social Security Account Numbers and Replacement Social Security Cards**

Section 201: Independent Verification of Birth Records Provided in Support of Applications for Social Security Account Numbers and Replacement Social Security Cards

Section 205(c)(2)(B)(ii) of the Social Security Act directs the Commissioner to require persons applying for an SSN to provide documentary evidence necessary to establish the individual's age, true identity, U.S. citizenship or lawful alien status, and any previously assigned SSNs. Section 205(c)(2)(A) of the Social Security Act specifies that information obtained by or submitted to the Commissioner shall be subject to verification as the Commissioner deems necessary.

As of 2002, SSA policy requires field office staff to obtain independent third-party verification of birth records for U.S.-born citizens age one and older. SSA policy does not require independent verification of birth records for children under age one (in such cases birth records are subject to visual inspection only).

(In addition, SSA policy requires independent third-party verification of the immigration and work status of noncitizens before issuing an SSN.)

Would direct the Commissioner to require independent verification of birth records provided by individuals applying for a Social Security Number, except in cases of enumeration at birth. Would authorize the Commissioner to issue regulations to provide reasonable exceptions to this requirement in cases where the Commissioner determines there is minimal opportunity for fraud.

Also, would require the Commissioner to undertake a study to determine the feasibility and cost effectiveness of verifying all identification documents submitted by persons applying for a *replacement* Social Security card (including the feasibility and cost of developing electronic processes for third party verification of documents issued by Federal, State and local agencies).

Would require independent verification of birth records for applications filed after 180 days after enactment.

Would require the Commissioner to report the results of the study verifying all identification documents to the Committee on Ways and Means and the Committee on Finance no later than one year after enactment.

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**Section 202: Enumeration at Birth**

In States where the SSA has entered into an agreement, parents may request that the SSA assign an SSN to a newborn child as part of the official birth registration process (the parent need not fill out an SSN application form). In such cases, the State vital statistics office electronically transmits the request along with the child's name, date and place of birth, sex, mother's maiden name, father's name (if shown), address of the mother and birth certificate number to the SSA's central office in Baltimore. The SSA uses the birth registration information to establish the age, identity and U.S. citizenship of the newborn child. The SSA then assigns an SSN to the child and sends the Social Security card to the child at the mother's address. [20 CFR 422.103]

Would require the Commissioner to make improvements to the application process for SSNs issued to newborns. Specifically, the improvements would be designed to prevent (a) assignment of SSNs to unnamed children; (b) issuance of more than one Social Security number to the same child; and (c) other opportunities for obtaining an SSN fraudulently. Also, would require the Commissioner to undertake a study to determine options for ensuring the integrity of the enumeration at birth process, including an examination of methods available to reconcile hospital birth records with birth registrations submitted to State and local government agencies and information provided to the SSA.

Would require the Commissioner to report to Congress on the extent to which such improvements have been made no later than 180 days after enactment.

Would require the Commissioner to report the results of the enumeration at birth study to the Committee on Ways and Means and the Committee on Finance no later than 18 months after enactment.

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**Section 203: Study Relating to Use of Photographic Identification in Connection with Applications for Benefits, Social Security Account Numbers, and Social Security Cards**

Individuals must submit proof of age, U.S. citizenship or lawful alien status, and identity when applying for Social Security benefits or an SSN (additional evidence is required for benefit applications). Persons applying for a replacement Social Security card must submit proof of identity and may be required to submit proof of age and U.S. citizenship or lawful alien status. An in-person interview is required for SSN applicants age 12 and older and may be required for other applicants.

Examples of documents that may be submitted as proof of identity include a driver's license, marriage or divorce record, life insurance policy or passport. *Photo* identification is preferred but not required.

Would require the Commissioner to undertake a study to determine the best method by which to (a) require and obtain photo identification of persons applying for Social Security benefits, a Social Security number, or a replacement Social Security card and (b) provide reasonable exceptions to this requirement to promote efficient and effective administration.

In addition, the study would have to evaluate the costs and benefits of photo identification in such cases, including the degree to which the security and integrity of the Social Security program would be enhanced.

Would require the Commissioner to report the results of the study to the Committee on Ways and Means and the Committee on Finance no later than 270 days after enactment.

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**Section 204: Restrictions on Issuance of Multiple Replacement Social Security Cards**

Federal regulations specify that, in the case of a lost or damaged Social Security card, a duplicate card bearing the same name and number may be issued. In the case of a name change, a corrected card bearing the same number and new name may be issued. [20 CFR 422.103]. SSA policy allows individuals to obtain up to 52 replacement cards per year, with no lifetime limit.

Would require the Commissioner to issue regulations to restrict issuance of multiple replacement Social Security cards to minimize fraud.

Would require the Commissioner to issue regulations no later than 180 days after enactment.

**Section 205: Study Relating to Modification of the Social Security Account Numbering System to Show Work Authorization Status**

Social Security cards issued to persons other than U.S. citizens or persons lawfully admitted to the U.S. with permanent work authorization from the Department of Homeland Security (DHS) are annotated to indicate the individual's work authorization status, as follows:

(1) Social Security cards issued to persons lawfully admitted to the U.S. on a temporary basis with DHS work authorization are inscribed "VALID FOR WORK ONLY WITH INS AUTHORIZATION."

Would require the Commissioner, in consultation with the Secretary of Homeland Security, to undertake a study to determine the best method by which to modify SSNs assigned to persons who (1) are not U.S. citizens, (2) have not been admitted for permanent residence, and (3) are not authorized by the Secretary of Homeland Security to work in the U.S. or are authorized to work in the U.S. with restrictions, to indicate the individual's work authorization status.

Would require the Commissioner to report the results of the study to the Committee on Ways and Means and the Committee on Finance no later than 270 days after enactment.

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(2) Social Security cards issued to persons lawfully admitted to the U.S. without DHS work authorization are inscribed “NOT VALID FOR EMPLOYMENT.” Such persons may be assigned a Social Security Number only for valid nonwork purposes, such as when Federal statute or regulation requires an SSN to receive Federally-funded benefits, or when a State or local law requires an SSN to receive general public assistance benefits.  
[20 CFR 422.104 and 20 CFR 422.107]

While Social Security cards (and SSA records) are annotated to indicate an individual’s work authorization status in cases described above, the current Social Security numbering system does not reflect an individual’s work authorization status.

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**Title III: Enforcement**

**Section 301: New Criminal Penalties for Misuse of Social Security Account Numbers**

Section 208 of the Social Security Act provides for criminal penalties for specific types of Social Security Number misuse. In such cases, Section 208 specifies that persons shall be guilty of a felony and upon conviction shall be fined under Title 18, United States Code, and/or imprisoned for up to five years.

Would expand the types of Social Security number misuse to which criminal penalties apply. Specifically, would provide for criminal penalties for persons who: (1) disclose, sell or transfer their own SSN with intent to deceive; (2) offer, for a fee, to improperly acquire or to assist in improperly acquiring an additional SSN or a fake SSN for an individual; (3) violate Section 105 of this Act; (4) violate Sections 101, 103, 104, 105 or 106 of this Act (with respect to officers or employees of any Federal, State or local agency); or (5) violate Sections 101 or 103 of this Act (with respect to bankruptcy trustees).

Would apply to violations that occur after enactment, except for violations under Title I of this Act.

In such cases, would apply to violations that occur on or after the effective date applicable to such sections under Title I, as specified above.

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Section 302: Extension of Civil Monetary Penalty Authority

Section 1129 of the Social Security Act authorizes the Commissioner to impose civil monetary penalties and assessments on any person who makes a false statement or representation of a material fact, or omits a material fact while providing a statement, for use in determining eligibility for Social Security or Supplemental Security Income (SSI) benefits or benefit amount. The Commissioner may impose a civil monetary penalty of up to \$5,000 for each violation and an assessment of up to twice the amount of benefits or payments paid as a result of such violation.

Currently, an individual who improperly obtains a SSN from SSA or misuses another person's SSN is not subject to civil monetary penalties and assessments under Section 1129, except in cases of SSN misuse related to the receipt of Social Security or SSI benefits.

Would expand types of activities to which civil monetary penalties and assessments apply. Specifically, would authorize the Commissioner to impose (in addition to any other penalties that may apply) civil monetary penalties and assessments on persons who: (1) use an SSN obtained through false information; (2) falsely represent an SSN to be their own with intent to deceive; (3) alter a Social Security card; (4) buy or sell a real or fake Social Security card; (5) counterfeit a Social Security card or possess a counterfeit; (6) disclose, use or compel the disclosure of the SSN of any person in violation of any Federal law; (7) provide false information to the Commissioner in connection with the establishment and maintenance of records; (8) offer to acquire, for a fee, an additional SSN or a fake SSN for an individual; (9) disclose, sell or transfer own SSN with intent to deceive; (10) violate Section 105 of this Act; (11) violate Sections 101, 103, 104, 105 or 106 of this Act (with respect to officers or employees of a Federal, State or local agency); (12) violate Sections 101 or 103 of this Act (with respect to bankruptcy trustees); (13) violate Section 107 of this Act; or (14) violate Section 303 of this Act (with respect to SSA employees).

Would apply to violations that occur after enactment, except with respect to violations under items numbered 10, 11, and 12.

In such cases, would apply to violations that occur on or after the effective date applicable to such sections under Title I, as specified above.

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**Section 303: Criminal Penalties for Employees of the Social Security Administration Who Knowingly and Fraudulently Issue Social Security Cards or Social Security Account Numbers**

SSA employees who fraudulently sell SSNs to third parties may be tried under a number of criminal statutes, including but not limited to 18 U.S.C. § 371 (conspiracy) and 18 U.S.C. § 641 (theft of government property).

Would provide for mandatory minimum criminal penalties for SSA employees (including contract workers, State Disability Determination Service workers and volunteers in an SSA facility) who knowingly and fraudulently sell or transfer SSNs or Social Security cards, with the penalty based on the number of SSNs or Social Security cards fraudulently issued, as follows: 1 to 50 SSNs or cards - 1-5 years imprisonment; 51 to 100 SSNs or cards - 5-10 years imprisonment; 101 or more SSNs or cards - 10-20 years imprisonment.

In addition, would apply the same penalties to an SSA employee who attempts or conspires to commit a violation of this section.

Would apply to violations that occur on or after enactment.

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**Section 304: Enhanced Penalties in Cases of Terrorism, Drug Trafficking, Crimes of Violence, or Prior Offenses**

Sections 208, 811 and 1632 of the Social Security Act (regarding Social Security benefits, Special Benefits for Certain WWII Veterans and SSI benefits, respectively) provide that persons who willingly and knowingly commit fraud shall be guilty of a felony and upon conviction shall be fined under Title 18, United States Code, and/or imprisoned for up to five years.

Examples of violations to which penalties apply include making false statements or representations of fact to obtain benefits or increase benefit payments; failing to disclose an event that affects an individual's initial or continued right to receive benefits; and engaging in various types of SSN misuse (such as using an SSN obtained on the basis of false information; falsely representing an SSN to be one's own with intent to deceive; buying or selling a Social Security card; counterfeiting a Social Security card; or disclosing, using or compelling the disclosure of the SSN of any person in violation of any Federal law).

Penalties apply to violations committed by individuals (or organizations) acting in the capacity of a representative payee (or prospective representative payee) for a beneficiary other than the individual's spouse. If the court determines that the violation also includes willful misuse of funds, the court may require full or partial restitution of funds to the beneficiary.

Would enhance criminal penalties under Sections 208, 811 and 1632 of the Social Security Act with respect to (a) repeat offenders and (b) violations committed to facilitate a drug trafficking crime, a crime of violence, or an act of international or domestic terrorism.

Specifically, would provide for (1) fines and/or imprisonment for up to five years for first offenders; (2) fines and/or imprisonment for up to 10 years for repeat offenders; (3) fines or imprisonment for up to 20 years for persons convicted of violations for the purpose of facilitating a drug trafficking crime or a crime of violence; and (4) fines or imprisonment for up to 25 years for persons convicted of violations for the purpose of facilitating an act of international or domestic terrorism.

Would apply to violations that occur after enactment.