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REPORT TO LAW & LEGISLATION COMMITTEE City of Sacramento

915 I Street, Sacramento, CA 95814-2671

STAFF REPORT
August 16, 2005

Honorable Members of the
Law and Legislation Committee

Subject: Support HR 1078 Relating to Identity Theft Penalties

Location/Council District:
Citywide.

Recommendation:

This report recommends that the Law and Legislation Committee support HR1078, co-sponsored by Representative Matsui, which will establish stiffer penalties for the unlawful buying and selling of Social Security numbers.

Contact: Patti Bisharat, Government Affairs Manager, 808-8197

Presenters: Patti Bisharat, Government Affairs Manager, 808-8197

Department: City Manager's Office

Organization No: 0310

Summary:

HR1078, co-sponsored by Representative Matsui, would strengthen the penalties for unlawful buying and selling of Social Security numbers. Staff is recommending that the Law & Legislation Committee HR1078.

Committee/Commission Action:

None.

Background Information:

Identity theft is one of the fastest growing crimes in America. Identity thieves open new accounts in other peoples' names and rack up debts on existing accounts, using consumers' Social Security numbers, bank account information, or addresses. All too often identity theft victims may spend years - and large sums of money - restoring their credit histories and their good names.

To combat this growing crime Congresswoman Matsui has co-sponsored various bills that will give consumers increased protections, force businesses to increase the security they give to your personal data and stiffen penalties to those convicted of data theft. These bills include H.R.1078, which if passed will establish strict criminal penalties for those unlawfully buying and selling Social Security numbers.

Financial Considerations:

None.

Environmental Considerations:

None.

Policy Considerations:

Staff recommends that the Law and Legislation Committee support HR1078.

Emerging Small Business Development (ESBD):

None.

Respectfully Submitted by: 
Patti Bisharat

Recommendation Approved:


KEN NISHIMOTO
Assistant City Manager

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August 16, 2005

August 16, 2005

Honorable Doris Matsui
House of Representatives
2310 Rayburn House Office Building
Washington, D.C. 20515

Subject: Support: HR1078 – Stricter Penalties for Sale & Purchase of Social Security Numbers

Dear Representative Matsui:

On behalf of the City of Sacramento, I am pleased to express the City's support of HR1078 relating to stricter penalties for those unlawfully buying and selling Social Security numbers.

Thank you for co-sponsoring legislation which will provide increased protections to consumers personal data.

Sincerely,

LAUREN HAMMOND, Chair
Law and Legislation Committee

CC: Senator Dianne Feinstein
Senator Barbara Boxer



In bill text the following has special meaning
underline denotes added text
~~struck-out text denotes deleted text~~

2005 US H 1078

AUTHOR: Markey

VERSION: Introduced

VERSION DATE: 03/03/2005

HR 1078 IH

109th CONGRESS

1st Session

H. R. 1078

To strengthen the authority of the Federal Government to protect individuals from certain acts and practices in the sale and purchase of Social Security numbers and Social Security account numbers, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

March 3, 2005

Mr. MARKEY (for himself, Mr. EMANUEL, Mrs. CAPPS, Mr. GEORGE MILLER of California, Mr. MCNULTY, and Mr. SANDERS) introduced the following bill; which was referred to the Committee on Energy and Commerce, and in addition to the Committee on Ways and Means, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

To strengthen the authority of the Federal Government to protect individuals from certain acts and practices in the sale and purchase of Social Security numbers and Social Security account numbers, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the 'Social Security Number Protection Act of 2005'.

SEC. 2. FINDINGS.

The Congress makes the following findings:

(1) The inappropriate sale or purchase of Social Security numbers is a significant factor in a growing range of illegal activities, including fraud, identity theft, and, in some cases, stalking and other violent crimes.

(2) While financial institutions, health care providers, and other entities have often used Social Security numbers to confirm the identity of an individual, the sale or purchase of these numbers often facilitates the commission of criminal activities, and also can result in serious invasions of individual privacy.

(3) The Federal Government requires virtually every individual in the United States to obtain and maintain a Social Security number in order to pay taxes, to qualify for Social Security benefits, or to seek employment. An unintended consequence of these requirements is that Social Security numbers have become tools that can be used to facilitate crime, fraud, and invasions of the privacy of the individuals to whom the numbers are assigned. Because the Federal Government created and maintains this system, and because the Federal Government does not permit persons to exempt themselves from those requirements, it is appropriate for the Government to take steps to stem the abuse of this system.

(4) A Social Security number is simply a sequence of numbers. In no meaningful sense can the number itself impart knowledge or ideas. Persons do not sell or transfer such numbers in order to convey any particularized message, nor to express to the purchaser any ideas, knowledge, or thoughts.

(5) A Social Security number does not contain, reflect, or convey any publicly significant information or concern any public issue. The sale of such numbers in no way facilitates uninhibited, robust and wide-open public debate; and restrictions on such sale would not affect public debate.

(6) No one should seek to profit from the sale of Social Security numbers in circumstances that create a substantial risk of physical, emotional, or financial harm to the individuals to whom those numbers are assigned.

(7) Consequently, Congress should enact legislation that will offer individuals assigned such numbers necessary protection from the sale and purchase of Social Security numbers in circumstances that might facilitate unlawful conduct or that might otherwise likely result in unfair and deceptive practices.

SEC. 3. DEFINITIONS.

In this Act:

(1) COMMISSION- The term 'Commission' means the Federal Trade Commission.

(2) PERSON- The term 'person' means any individual, partnership, corporation, trust, estate, cooperative, association, or any other entity.

(3) SALE- The term 'sale' means obtaining, directly or indirectly, anything of value in exchange for a Social Security number or Social Security account number. Such term does not include the submission of such numbers as part of the process for applying for any type of Government benefit or programs (such as grant or loan applications or welfare or other public assistance programs). Such term also does not include transfers of such numbers as part of a data matching program under the Computer Matching and Privacy Protection Act.

(4) PURCHASE- The term `purchase' means providing directly or indirectly, anything of value in exchange for a Social Security number or Social Security account number. Such term does not include the submission of such numbers as part of the process for applying for any type of Government benefit or programs (such as grant or loan applications or welfare or other public assistance programs). Such term also does not include transfers of such numbers as part of a data matching program under the Computer Matching and Privacy Protection Act.

(5) SOCIAL SECURITY NUMBER; SOCIAL SECURITY ACCOUNT NUMBER- The terms `Social Security number' and `Social Security account number' have the meaning given those terms in section 208 of the Social Security Act (42 U.S.C. 408).

(6) STATE- The term `State' means any State of the United States, the District of Columbia, Puerto Rico, the Northern Mariana Islands, the United States Virgin Islands, Guam, American Samoa, and any territory or possession of the United States.

SEC. 4. REGULATION OF THE SALE AND PURCHASE OF SOCIAL SECURITY NUMBERS AND SOCIAL SECURITY ACCOUNT NUMBERS.

(a) Prohibition- It shall be unlawful for any person to sell or purchase a Social Security number or Social Security account number in a manner that violates a regulation promulgated by the Commission under subsection (b) of this section.

(b) Regulations-

(1) RESTRICTIONS AUTHORIZED- The Commission, after consultation with the Commissioner of Social Security, the Attorney General, and other agencies as the Commission deems appropriate, shall promulgate regulations restricting the sale and purchase of Social Security numbers and Social Security account numbers and any unfair or deceptive acts or practices in connection with the sale and purchase of Social Security numbers and Social Security account numbers.

(2) LIMITATIONS ON RESTRICTIONS- In promulgating such regulations, the Commission shall impose restrictions and conditions on the sale and purchase of Social Security numbers and Social Security account numbers that are no broader than necessary--

(A) to provide reasonable assurance that Social Security numbers and Social Security account numbers will not be used to commit or facilitate fraud, deception, or crime; and

(B) to prevent an undue risk of bodily, emotional, or financial harm to individuals.

For purposes of subparagraph (B), the Commission shall consider the nature, likelihood, and severity of the anticipated harm; the nature, likelihood, and extent of any benefits that could be realized from the sale or purchase of the numbers; and any other relevant factors.

(3) EXCEPTIONS- The regulations promulgated pursuant to paragraph (1) shall include exceptions which permit the sale and purchase of Social Security numbers and Social Security account numbers--

(A) to the extent necessary for law enforcement or national security purposes;

(B) to the extent necessary for public health purposes;

(C) to the extent necessary in emergency situations to protect the health or safety of 1 or more

individuals;

(D) to the extent necessary for research conducted for the purpose of advancing public knowledge, on the condition that the researcher provides adequate assurances that--

(i) the Social Security numbers or Social Security account numbers will not be used to harass, target, or publicly reveal information concerning any identifiable individuals;

(ii) information about identifiable individuals obtained from the research will not be used to make decisions that directly affect the rights, benefits, or privileges of specific individuals; and

(iii) the researcher has in place appropriate safeguards to protect the privacy and confidentiality of any information about identifiable individuals;

(E) to the extent consistent with an individual's voluntary and affirmative written consent to the sale or purchase of a Social Security number or Social Security account number that has been assigned to that individual; and

(F) under other appropriate circumstances as the Commission may determine and as are consistent with the findings in section 2 and the principles in paragraph (2).

(c) Rulemaking-

(1) DEADLINE FOR ACTION- Not later than 1 year after the date of enactment of this Act, the Commission shall promulgate the regulations under subsection (b) of this section, in accordance with section 553 of title 5, United States Code.

(2) EFFECTIVE DATES- Subsection (a) and the regulations promulgated under subsection (b) shall take effect 30 days after the date on which the final regulations issued under this section are published in the Federal Register.

(d) Enforcement- Any violation of a regulation promulgated under subsection (b) of this section shall be treated as a violation of a regulation under section 18(a)(1)(B) of the Federal Trade Commission Act (15 U.S.C. 57a(a)(1)(B)) regarding unfair or deceptive acts or practices.

(e) Administration and Applicability of Act-

(1) THE COMMISSION- The Commission shall prevent any person from violating this section, and any regulation promulgated thereunder, in the same manner, by the same means, and with the same jurisdiction, powers, and duties as though all applicable terms and provisions of the Federal Trade Commission Act (15 U.S.C. 41 et seq.) were incorporated into and made a part of this Act. Any person who violates such regulation shall be subject to the penalties and entitled to the privileges and immunities provided in the Federal Trade Commission Act (15 U.S.C. 41 et seq.) as though all applicable terms and provisions of the Federal Trade Commission Act (15 U.S.C. 41 et seq.) were incorporated into and made a part of this Act. Nothing contained in this Act shall be construed to limit the authority of the Commission under any other provision of law.

(2) ACTIONS BY STATES-

(A) CIVIL ACTIONS- In any case in which the attorney general of a State has reason to believe that an interest of the residents of that State has been or is threatened or adversely affected by an act or

practice that violates any regulation of the Commission promulgated under subsection (b), the State, as *parens patriae*, may bring a civil action on behalf of the residents of the State in a district court of the United States of appropriate jurisdiction, to--

- (i) enjoin that act or practice;
- (ii) enforce compliance with the regulation;
- (iii) obtain damages, restitution, or other compensation on behalf of residents of the State; or
- (iv) obtain such other legal and equitable relief as the district court may consider to be appropriate.

Before filing an action under this subsection, the attorney general of the State involved shall provide to the Commission and to the Attorney General a written notice of that action and a copy of the complaint for that action. If the State attorney general determines that it is not feasible to provide the notice described in this subparagraph before the filing of the action, the State attorney general shall provide the written notice and the copy of the complaint to the Commission and to the Attorney General as soon after the filing of the complaint as practicable.

(B) COMMISSION AND ATTORNEY GENERAL AUTHORITY- On receiving notice under subparagraph (A), the Commission and the Attorney General each shall have the right--

- (i) to move to stay the action, pending the final disposition of a pending Federal matter as described in subparagraph (C);
- (ii) to intervene in an action under clause (i);
- (iii) upon so intervening, to be heard on all matters arising therein; and
- (iv) to file petitions for appeal.

(C) PENDING CRIMINAL PROCEEDINGS- If the Attorney General has instituted a criminal proceeding or the Commission has instituted a civil action for a violation of this Act or any regulations thereunder, no State may, during the pendency of such proceeding or action, bring an action under this section against any defendant named in the criminal proceeding or civil action for any violation of this section that is alleged in that proceeding or action.

(D) RULE OF CONSTRUCTION- For purposes of bringing any civil action under subparagraph (A), nothing in this Act shall be construed to prevent an attorney general of a State from exercising the powers conferred on the attorney general by the laws of that State to conduct investigations, administer oaths and affirmations, or compel the attendance of witnesses or the production of documentary and other evidence.

(E) VENUE; SERVICE OF PROCESS- Any action brought under this section may be brought in any district court of the United States that meets applicable requirements relating to venue under section 1391 of title 28, United States Code. In an action brought under this section, process may be served in any district in which the defendant is an inhabitant or may be found.