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Economic Affairs Interim Committee

59th Montana Legislature

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February 13, 2006

The Honorable Brian Schweitzer
Governor of the State of Montana
Montana State Capitol Building
P.O. Box 200801
Helena MT 59620-0801

Dear Governor Schweitzer:

As you may be aware, the crime of identity theft is considered one of the fastest growing crimes in the nation. Montana has acted to address various forms of identity theft and has created an identity theft passport that helps victims in verifying their theft reports. As directed by Senate Joint Resolution 38, approved in the 2005 session, the Economic Affairs Interim Committee is studying issues related to identity theft prevention and mediation.

The Economic Affairs Interim Committee and a SJR 38 working group of private and public sector members are looking at what other states are doing and what gaps in practice or law may need to be filled to prevent identity theft. One area of focus is how state and local governments handle social security numbers.

Although many state and federal laws require the use of social security numbers, the working group noticed that compliance appears to be minimal with one federal law, the Privacy Act of 1974. In part, this act contains a notification requirement, Section 7(b) of 5 U.S.C. 522(a) [note]:

Sec. 7(b) Any Federal, State or local government agency which requests an individual to disclose his social security account number shall inform that individual whether that disclosure is mandatory or voluntary, by what statutory or other authority such number is solicited, and what uses will be made of it.

Case law (U.S. 9th Circuit Court of Appeals -- Dittman v. State of California) has determined that enforcement provisions in the Privacy Act apply only to the federal government. However, in order to increase consumer awareness of the integrity of social security numbers, the reasons for their use, and whether disclosure is mandatory, the Economic Affairs Interim Committee requests elected officials to direct their respective agencies to comply with Section 7(b) noted above.

(more)

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Although many state agencies are authorized or even mandated to request social security numbers, the Privacy Act of 1974 does not appear to exempt the authorized users from the notification provision. A "Dear Colleague" letter provided by the U.S. Department of Health and Human Services Administration for Children & Families indicates that even those authorized to request social security numbers still are to follow the Privacy Act disclosure requirement. The "Dear Colleague" letter is attached.

Further, the Economic Affairs Interim Committee requests that you ask your agencies to review and report to you on how they handle social security numbers within the requirements of Article II, Section 10 of the Montana Constitution, the Right of Privacy. It would be helpful to know if the request for the social security number is statutorily authorized and how these documents (electronic and paper) are treated for disposal or dissemination.

We have attached a briefing paper related to social security numbers. If you have questions on the briefing paper or attachments, please contact staff for the Economic Affairs Interim Committee, Pat Murdo, at 406-444-3594.

The SJR 38 working group has suggested to the Economic Affairs Interim Committee, and the Committee agrees, that existing law already provides requirements for all government entities to comply with the Privacy Act of 1974 notification requirements. Compliance would help increase an individual's awareness of the importance of providing social security numbers only when asked for legitimate purposes. Compliance also would help to make agencies more aware of the need for discretion in handling social security numbers.

Thank you for your assistance.

Sincerely,

Representative Jim Keane
Chair, Economic Affairs Committee

Enclosures

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