

# SJR 38 Identity Theft Issues Briefs

## Brief #1 - Social Security Numbers

### Concerns:

- Considered a number series that in and of itself is a personal identifier. As such, any indiscriminate use could increase a person's susceptibility to identity theft.
- Used as major identifier by variety of private and public entities.
  - Points for consideration:
    - ◆ There have been federal efforts to restrict use of social security numbers, with required verification of SSNs through the Social Security Administration (SSA). This is the process used by the Motor Vehicle Division and by the Secretary of State on Voter Registration.
    - ◆ There have been concerns about SSNs being used as a national identifier.
    - ◆ Private enterprises -- for example, credit reporting agencies -- use SSNs to identify people, providing a system to check on credit worthiness. The system does not require SSNs to be verified through the SSA process. Under 15 U.S.C. §1681s-2 there must be a process for consumers to verify information and providers of information have a duty to give accurate information.
- Subject of various federal laws, some that require and others that limit its use.
  - ▶ Tax Reform Act of 1976 authorizes use of SSNs for tax, public assistance, driver's license or motor vehicle registration.
  - ▶ Food Stamp Act of 1976 requires SSNs for participating in food stamp program.
  - ▶ Deficit Reduction Act of 1984 requires SSNs to participate in Medicaid and other federal benefit programs.
  - ▶ Comprehensive Omnibus Budget Reconciliation Act of 1986 requires students applying for federal student financial aid to provide SSNs.
  - ▶ Housing and Community Development Act of 1987 says Department of Housing and Urban Development can require SSNs for program eligibility.
  - ▶ Family Support Act of 1988 requires states to obtain parents' SSN before issuing a birth certificate unless there is good cause for not doing so.
  - ▶ Technical and Miscellaneous Revenue Act of 1988 allows states and local governments to require blood donors to provide SSNs.
  - ▶ Omnibus Budget Reconciliation Act of 1990 allows SSNs to be required of persons seeking eligibility for Veterans' Affairs compensation or pension benefits programs.
  - ▶ Social Security Independence and Program Improvements Act of 1994 allows states and local governments to use SSNs to determine eligibility of potential jurors.
  - ▶ Personal Responsibility and Work Opportunity Reconciliation Act of 1996 requires states to collect SSNs on applications for driver's and other licenses and use of SSN in relation to divorce decrees, child support orders, paternity determinations and death certificates.
  - ▶ Higher Education Act Amendments of 1998 allows Secretary of Education to request SSNs of parents whose dependent students are applying for federal student financial aid.
  - ▶ Internal Revenue code amendments authorize SSNs to be included on tax returns.
  - ▶ Fair and Accurate Credit Transactions Act (FACTA) allows consumer to request a credit bureau to truncate SSN when disclosing credit report.
  - ▶ False Identification Crime Control Act makes it a crime to produce or transfer ID document known to be false or stolen (document indicates physical data), amended by Internet False Identification Act of 0200.
  - ▶ 1974 Privacy Act - limits government's use of personal identifying information. Statute limits disclosure to cases where person concerned has consented in writing, or a court order is obtained, or the case is covered by exceptions provided in statute. Includes the following language as an enacted but not codified section in 5 U.S.C. §522a:

Sec. 7(a) (1) It shall be unlawful for any Federal, State, or local government agency to deny to any individual any right, benefit, or privilege provided by law because of such individual's refusal to disclose his social security account number.

(2) the provisions of paragraph (1) of this subsection shall not apply with respect to:

(A) any disclosure which is required by federal statute, or  
(B) any disclosure of a social security number to any Federal, State, or local agency maintaining a system of records in existence and operating before January 1, 1975, if such disclosure was required under statute or regulation adopted prior to such date to verify the identity of an individual.

(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.

- ▶ Gramm-Leach-Bliley Act regulates how financial institutions deal with customers' nonpublic personal information and requires initial and annual disclosure of privacy policies.
- ▶ Social Security Number Confidentiality Act of 2000 says SSNs are not to be visible on unopened mailings of checks or other Treasury issued drafts.
- ▶ Health Insurance Portability and Accountability Act requires specific authorization for most nonroutine disclosure or use of protected information.
- ▶ Patriot Act requires foreign nationals to obtain number similar to a SSN when opening accounts with domestic financial institutions. (No reference to SSN in Homeland Security Act.)

■ **Regulated by various state laws, some require use, others note confidentiality.**

- ▶ Title 2 regulates use of social security numbers on government websites (2-17-551,2-17-552).
- ▶ Title 13 requires secretary of state to have an agreement for verifying voter registration information (13-2-107, 13-2-108, 13-2-110, 13-2-123 (only last four digits of SSN)).
- ▶ Title 15 requires SSNs on tax returns, on applications for family education savings accounts (15-30-1102, 15-30-1113, 15-62-201, 15-62-208). Identifying information in family education savings accounts exempt under 15-62-209 from public copying, etc. of 2-6-102 and 2-6-104.
- ▶ Title 19 requires SSN on retirement information (19-17-402, 19-20-208, 19-20-305, 19-20-806)
- ▶ Title 20 requires SSN under debtor data for guaranteed student loan program (20-26-1101)
- ▶ Title 23 requires SSNs for registering personal watercraft, snowmobile, and off-highway vehicle dealerships (23-2-540, 23-2-619, 23-2-818)
- ▶ Title 30 requires sellers or telemarketers to register SSNs of managers and telemarketers and others employed by sellers (30-14-1404). Also, Title 30 provides for SSNs as personal information under ID theft laws (30-14-1702 and 30-14-1704) and prohibits using SSN under verification procedures for credit card/telephone accounts (30-14-1722)
- ▶ Title 31 requires title loan agreements to include SSN of borrower (31-1-821)
- ▶ Title 32 prohibits use of SSN as financial institution PIN.
- ▶ Title 33 includes SSN as personal information for insurance computer breach (33-19-321)
- ▶ Title 37 requires professional or occupational licensing boards to obtain applicant's SSN for license. Requires confidentiality except for Title IV-D of the Social Security Act (the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, as used by the Child Support Enforcement Division.)
- ▶ Title 39 requires a construction contractor and an independent contractor registrant to provide SSN (39-9-201 and 39-71-417).
- ▶ Title 40 requires SSN for a marriage license application, decree of dissolution, support order and order of paternity or district court judgment but the SSN may not be on the license or certificate. The SSN may be used for Title IV-D of SSA. (40-1-107 and 40-1-4-105 - which says the person subject to dissolution decree/support order must request confidentiality of

- SSN, and 40-4-204). Support orders, parentage documents, and income withholding orders must include SSN as far as known (40-5-171, 40-5-185) Child support enforcement (Title IV-D of the SSA) requires providing SSN if requested of obligor or obligee (40-5-206). Reference in 40-5-226, 40-5-431, 40-5-432, 40-5-443, 40-5-701, 40-5-907, 40-5-924. In 40-5-922 there's a requirement to report new hires or rehires with SSN. Confidentiality of SSNs provided under 40-5-923 for case registry and processing unit with exceptions for courts, public assistance, child support agencies, workers' compensation, employment security programs, the subject obligor or obligee, the vital statistics agency, and the Dept. of Revenue. Judgment or order, which must list SSN, for parent/child relationship confidential except for Title IV-D of SSA (40-6-116). Putative father registration requires SSN (42-2-205, 42-2-216).
- ▶ Title 45 lists identity theft as theft of SSN, among other personal identifying information (45-6-332) and requires SSN on application for concealed weapon permit (45-8-322).
  - ▶ Title 50 allows access by anyone with SSN and other data to living will data (50-9-503). References use of deceased person's SSN in death or fetal death (50-15-403).
  - ▶ Title 61 requires motor vehicle dealer or wholesaler to provide SSN of owners (61-4-101, 61-4-125). Requires applicants for instruction permit, driver's license, commercial driver's license or motorcycle endorsement to include SSN (61-5-107). SSN is to be kept confidential except for Title IV-D of SSA. Motor Vehicle Division may not use SSN on driver's license unless expressly authorized (61-5-111). SSN is highly restricted personal information per 61-11-503, with disclosure prohibited under 61-11-506 unless required under 61-11-508 (available to person who is subject of motor vehicle record, person representing federal, state, or local government agency or if person to whom information pertains gives express consent).
  - ▶ Title 70 requires report for abandoned property to contain SSN of apparent owner. (70-9-808)
  - ▶ Title 72 requires secretary of state to establish registry of international wills that may contain SSN. Amendment in 2005 removed SSN requirement under statutory form of power of attorney. (72-31-201)
  - ▶ Title 75 requires applicant for air quality or hazardous waste permit to list SSN for applicant and each principal (75-2-232, 75-10-426).
  - ▶ Title 87 requires applicant for fishing, hunting, trapping, wildlife conservation license to provide SSN (87-2-106 and 87-2-202), provides for confidentiality except for Title IV-D of SSA use and for deletion after 5 years of most recent application.

### **Options for action regarding Social Security numbers:**

- The SJR 38 Working Group recommends that the Economic Affairs Committee:
  - ▶ Send a letter to elected officials, to local governments and to the university system requesting that they comply with the Privacy Act of 1974, 5 U.S.C. §552a (see above) by stating, whenever there is a request for a social security number, the reason for the request, whether the provision of the number is voluntary or mandatory, and under what statutory or other authority the number is sought.
  - ▶ Include in the letter to elected officials, local governments, and the university system a request that they report on what types of requests their agencies make for social security numbers and under what authority.
  - ▶ Request the Department of Public Health and Human Services to apply to the U.S. Department of Health and Human Services for an exemption under the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 so that people applying for hunting, fishing, trapping, or wildlife conservation licenses would not have to show their social security number as currently required by 87-2-106 and 87-2-202. Previous attempts to obtain the exemption have resulted in "contingency" legislation that would take effect if

Montana were to receive an exemption. This means that no further legislation would be required to exempt Montana law from the Title IV-D provisions of the Social Security Act.

- The Economic Affairs Committee at its October 28 meeting suggested that it would look at the use of SSNs on state employee health insurance cards and make recommendations regarding this use.
- Other states have taken the following sample actions on social security numbers:
  - ▶ Prohibition against intentional communication or posting of an individual's SSN to the public. (parts of code in AZ, AR - which also prohibits schools for use of display of SSN or any part of an SSN on an ID card or report, CA, CT, FL, GA, IL -- as of July 1, 2006, IN, MI, NJ, OK (for employers), TX, UT, VA. Similar in MD, MN and MO except they exempt government).
  - ▶ Prohibition of printing an individual's SSN on any card required to receive products or services (AZ, AR, CT, IL, -- as of July 1, 2006, MD, MN, NM, OK, TX, UT, VA)
  - ▶ Prohibits a requirement for transmitting an SSN over the Internet unless the number is encrypted or the connection is secure (AZ, AR, CA, CT, IL -- as of July 1, 2006, MD, MI (references more than 4 sequential SSN digits), MN, MO, OK, TX, VA)
  - ▶ Prohibits required use of SSN to access Internet website unless a password or other security device is used (AZ, CA, CT, IL -- as of July 1, 2006, MD, MI (references more than 4 sequential SSN digits), MO, OK, TX, VA)
  - ▶ Authorizes redaction of SSNs from various court documents. (CA)
  - ▶ Authorizes redaction of SSNs on mortgage records and notarial acts. (LA)
  - ▶ Prohibits use of SSN on candidate nomination papers. (HI)
  - ▶ Prohibits printing of SSN on material mailed to individual unless required by law. (MD - includes faxing, MI (references more than 4 sequential SSN digits), OK. VA prohibits mailing a package with the SSN visible from the outside.
  - ▶ Prohibits requiring individual to use SSN as employee number (MO)
  - ▶ Prohibits inclusion of SSNs in certain documents recorded, filed or submitted to a government agency. Also requires notification if personal information is reasonably believed to have been acquired by unauthorized person (NV).
  - ▶ Authorizes county recording authority to expunge SSN on document without invalidating it. (NJ)
  - ▶ Requires companies acquiring or using SSNs of consumers to adopt internal policies that limit access to SSNs and hold employees responsible if SSNs released to unauthorized persons. (NM)
  - ▶ Prohibits a requirement to provide SSN to gain business discount card. (RI)
  - ▶ Prohibits use of SSN data in electronic barcodes. (SD)
  - ▶ Requires business records to be modified or made unreadable/undecipherable in disposal. (TX)

Except for references to Montana laws, much of the information for this briefing paper came from the Government Accountability Office report: "Social Security Numbers: Federal and State Laws Restrict Use of SSNs, yet Gaps Remain", GAO-05-1016T, September 15, 2005.

For further information or questions on this briefing paper, contact:  
Pat Murdo  
Legislative Services  
406-444-3594  
pmurdo@mt.gov