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112TH CONGRESS
2D SESSION

S. 3432

To prevent identity theft and tax fraud.

IN THE SENATE OF THE UNITED STATES

JULY 25, 2012

Mr. NELSON of Florida (for himself and Mr. COBURN) introduced the following bill; which was read twice and referred to the Committee on Finance

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A BILL

To prevent identity theft and tax fraud.

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 ''Identity Theft and Tax Fraud Prevention Act''.

SEC. 2. CRIMINAL PENALTY FOR USING A FALSE IDENTITY IN CONNECTION WITH TAX FRAUD.

(a) IN GENERAL.—Section 7206 of the Internal Revenue Code of 1986 is amended—

(1) by striking ''Any person'' and inserting the following:

''(a) IN GENERAL.—Any person'', and

(2) by adding at the end the following new subsection:

"(b) USE OF FALSE IDENTITY.—Any person who willfully misappropriates another person's taxpayer identity (as defined in section 6103(b)(6)) for the purpose of making any list, return, account, statement, or other document submitted to the Secretary under the provisions of this title shall be guilty of a felony and, upon conviction thereof, shall be fined not more than $250,000 ($500,000 in the case of a corporation) or imprisoned not more than 5 years, or both, together with the costs of prosecution.".

(b) AGGRAVATED IDENTITY THEFT.—Section 1028A(c) of title 18, United States Code, is amended by striking "or" at the end of paragraph (10), by striking the period at the end of paragraph (11) and inserting "; or", and by adding at the end the following new paragraph:

"(12) section 7206(b) of the Internal Revenue Code of 1986 (relating to use of false identity in connection with tax fraud).".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to offenses committed after the date of the enactment of this Act.

SEC. 3. INCREASED PENALTY FOR IMPROPER DISCLOSURE OR USE OF INFORMATION BY PREPARERS OF RETURNS.

(a) IN GENERAL.—Section 6713(a) of the Internal Revenue Code of 1986 is amended—

(1) by striking ''$250'' and inserting ''$1,000'', and

(2) by striking ''$10,000'' and inserting ''$50,000''.

(b) CRIMINAL PENALTY.—Section 7216(a) of the Internal Revenue Code of 1986 is amended by striking ''$1,000'' and inserting ''$100,000''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to disclosures or uses after the date of the enactment of this Act.

SEC. 4. PIN SYSTEM FOR PREVENTION OF IDENTITY THEFT TAX FRAUD.

(a) IN GENERAL.—Not later than 1 year after the date of the enactment of this Act, the Secretary of the Treasury (or the Secretary's delegate) shall implement an identity theft tax fraud prevention program under which—

(1) a person who has filed an identity theft affidavit with the Secretary may elect—

(A) to be provided with a unique personal identification number to be included on any Federal tax return filed by such person, or

(B) to prevent the processing of any Federal tax return submitted in an electronic format by a person purporting to be such person, and

(2) the Secretary will provide additional identity verification safeguards for the processing of any Federal tax return filed by a person described in paragraph (1) in cases where a unique personal identification number is not included on the return.

SEC. 5. AUTHORITY TO TRANSFER INTERNAL REVENUE SERVICE APPROPRIATIONS TO USE FOR TAX FRAUD ENFORCEMENT.

For any fiscal year, the Commissioner of Internal Revenue may transfer not more than $10,000,000 to the ''Enforcement'' account of the Internal Revenue Service from amounts appropriated to other Internal Revenue Service accounts. Any amounts so transferred shall be used solely for the purposes of preventing and resolving potential cases of tax fraud.

SEC. 6. LOCAL LAW ENFORCEMENT LIAISON.

(a) ESTABLISHMENT.—The Commissioner of Internal Revenue shall establish within the Criminal Investigation Division of the Internal Revenue Service the position of Local Law Enforcement Liaison.

(b) DUTIES.—The Local Law Enforcement Liaison shall serve as the primary source of contact for State and local law enforcement authorities with respect to tax-related identity theft and other tax fraud matters, having duties that may include—

(1) receiving information from State and local law enforcement authorities;

(2) responding to inquiries from State and local law enforcement authorities;

(3) administering authorized information-sharing initiatives with State or local law enforcement authorities; and

(4) any other duties as delegated by the Commissioner of Internal Revenue.

SEC. 7. REPORT ON TAX FRAUD.

Subsection (a) of section 7803 of the Internal Revenue Code of 1986 is amended by adding at the end the following new paragraph:

"(4) ANNUAL REPORT ON TAX FRAUD.—The Commissioner shall submit to the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives an annual report detailing—

"(A) the number of reports of tax fraud and suspected tax fraud received from State

and local law enforcement agencies in the preceding year, and

"(B) the actions taken in response to such reports.".

SEC. 8. STUDY ON THE USE OF PREPAID DEBIT CARDS AND COMMERCIAL TAX PREPARATION SOFTWARE IN TAX FRAUD.

(a) IN GENERAL.—The Comptroller General of the United States shall conduct a study to examine the role of prepaid debit cards and commercial tax preparation software in facilitating fraudulent tax returns through identity theft.

(b) REPORT.—Not later than 1 year after the date of the enactment of this Act, the Comptroller General of the United States shall submit to the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives a report with the results of the study conducted under subsection (a), together with any recommendations.

SEC. 9. RESTRICTION ON ACCESS TO THE DEATH MASTER FILE.

(a) IN GENERAL.—The Secretary of Commerce shall not disclose information contained on the Death Master File to any person with respect to any individual who has died at any time during the calendar year in which the

request for disclosure is made or the succeeding 2 calendar years unless such person is certified under the program established under subsection (b).

(b) CERTIFICATION PROGRAM.—

(1) IN GENERAL.—The Secretary of Commerce shall establish a program—

(A) to certify persons who are eligible to access the information described in subsection (a) contained on the Death Master File, and

(B) to perform periodic and unscheduled audits of certified persons to determine the compliance by such certified persons with the requirements of the program.

(2) CERTIFICATION.—A person shall not be certified nor remain certified under the program established under paragraph (1) unless—

(A) the Secretary of Commerce determines that access to the information described in subsection (a) is appropriate because such person has—

(i) a legitimate fraud prevention interest, or

(ii) a legitimate business purpose pursuant to a law, governmental rule, regulation, or fiduciary duty, and

(B) the Secretary of Commerce verifies that such person has facilities and procedures in place to safeguard such information, and experience in maintaining the confidentiality, security, and appropriate use of such information.

(3) FEES.—The Secretary of Commerce shall establish under section 9701 of title 31, United States Code, for the charge of fees sufficient to cover all costs associated with evaluating applications for certification and auditing, inspecting, and monitoring certified persons under the program.

(c) IMPOSITION OF PENALTY.—Any person who is certified under the program established under subsection (b), who receives information described in subsection (a), and who during the period of time described in subsection (a)—

(1) discloses such information to any other person, or

(2) uses any such information for any purpose not listed under subsection (b)(2)(A),

shall pay a penalty of $1,000 for each such disclosure or use, but the total amount imposed under this subsection on such a person for any calendar year shall not exceed $50,000.

(d) EXEMPTION FROM FREEDOM OF INFORMATION ACT REQUIREMENT WITH RESPECT TO CERTAIN RECORDS OF DECEASED INDIVIDUALS.—

(1) IN GENERAL.—The Social Security Administration shall not be compelled to disclose to any person who is not certified under the program established under subsection (b) the information described in subsection (a).

(2) TREATMENT OF INFORMATION.—For purposes of section 552 of title 5, United States Code, this section shall be considered a statute described in subsection (b)(3)(B) of such section 552.

SEC. 10. PROHIBITING THE DISPLAY OF SOCIAL SECURITY ACCOUNT NUMBERS ON NEWLY ISSUED MEDICARE IDENTIFICATION CARDS AND COMMUNICATIONS PROVIDED TO MEDICARE BENEFICIARIES.

(a) IN GENERAL.—Not later than 2 years after the date of enactment of this Act, the Secretary of Health and Human Services, in consultation with the Commissioner of Social Security, shall establish and begin to implement procedures to eliminate the unnecessary collection, use, and display of Social Security account numbers of Medicare beneficiaries.

(b) NEWLY ISSUED MEDICARE CARDS AND COMMUNICATIONS PROVIDED TO BENEFICIARIES.—

(1) NEWLY ISSUED CARDS.—

(A) IN GENERAL.—Not later than 4 years after the date of enactment of this Act, the Secretary of Health and Human Services, in consultation with the Commissioner of Social Security, shall ensure that each newly issued Medicare identification card meets the requirements described in subparagraph (B).

(B) REQUIREMENTS.—

(i) IN GENERAL.—Subject to clauses (ii) and (iii), the requirements described in this subparagraph are, with respect to a Medicare identification card, that the card does not display or electronically store (in an unencrypted format) a Medicare beneficiary's Social Security account number.

(ii) EXCEPTION.—The Secretary may waive the requirements under clause (i) in the case where the health insurance claim number of a beneficiary is the Social Security number of the beneficiary, the beneficiary's spouse, or another individual.

(iii) USE OF PARTIAL ACCOUNT NUMBER.—The Secretary of Health and Human Services, in consultation with the Commissioner of Social Security, may provide for the use of a partial Social Security account number on a Medicare identification card if the Secretary determines that such use does not allow an unacceptable risk of fraudulent use.

(2) COMMUNICATIONS PROVIDED TO BENEFICIARIES.—Not later than 4 years after the date of enactment of this Act, the Secretary of Health and Human Services shall prohibit the display of a Medicare beneficiary's Social Security account number on written or electronic communication provided to the beneficiary unless the Secretary, in consultation with the Commissioner of Social Security, determines that inclusion of Social Security account numbers on such communications is essential for the operation of the Medicare program.

(c) MEDICARE BENEFICIARY DEFINED.—In this section, the term ''Medicare beneficiary'' means an individual who is entitled to, or enrolled for, benefits under part A of title XVIII of the Social Security Act or enrolled under part B of such title.

(d) CONFORMING AMENDMENTS.—

(1) REFERENCE IN THE SOCIAL SECURITY ACT.—Section 205(c)(2)(C) of the Social Security Act (42 U.S.C. 405(c)(2)(C)) is amended—

(A) by moving clause (x), as added by section 1414(a)(2) of the Patient Protection and Affordable Care Act (Public Law 111–148), 6 ems to the left;

(B) by redesignating clause (x), as added by section 2(a)(1) of the Social Security Number Protection Act of 2010 (42 U.S.C. 1305 note), as clause (xii); and

(C) by adding after clause (xii), as redesignated by subparagraph (B), the following new clause:

''(xiii) Subject to section 203 of the Medicare and Medicaid Fighting Fraud and Abuse to Save Taxpayers' Dollars Act, social security account numbers shall not be displayed on Medicare identification cards or on communications provided to Medicare beneficiaries.''.

(2) ACCESS TO INFORMATION.—Section 205(r) of the Social Security Act (42 U.S.C. 405(r)) is amended by adding at the end the following new paragraph:

"(10) To prevent and identify fraudulent activity, the Commissioner shall upon the request of the Attorney General or upon the request of the Secretary of Health and Human Services enter into a reimbursable agreement with the Attorney General or the Secretary to provide information collected under paragraph (1) if—

"(A) the requirements of subparagraphs (A) and (B) of paragraph (3) are met; and

"(B) such agreement includes appropriate provisions to protect the confidentiality of information provided by the Commissioner under such agreement.".

(e) PILOT PROGRAM.—

(1) ESTABLISHMENT.—The Secretary shall establish a pilot program utilizing smart card technology to evaluate—

(A) the applicability of smart card technology to the Medicare program under title XVIII of the Social Security Act (42 U.S.C. 1395 et seq.), including the applicability of such technology to Medicare beneficiaries or Medicare providers; and

(B) whether such cards would be effective in preventing fraud under the Medicare program.

(2) IMPLEMENTATION.—

(A) INITIAL IMPLEMENTATION.—The Secretary shall implement the pilot program under this subsection not later than 1 year after the date of enactment of this Act.

(B) SCOPE AND DURATION.—The Secretary shall conduct the pilot program—

(i) in not less than 2 States; and

(ii) for a period of not less than 180 days or more than 2 years.

(3) REPORT.—Not later than 12 months after the completion of the pilot program under this subsection, the Secretary shall submit to the appropriate committees of Congress and make available to the public a report that includes the following:

(A) A summary of the pilot program and findings, including—

(i) the costs or savings to the Medicare program as a result of the implementation of the pilot program;

(ii) whether the use of smart card technology resulted in improvements in the quality of care provided to Medicare beneficiaries under the pilot program; and

(iii) whether such technology was useful in preventing or detecting fraud, waste, and abuse in the Medicare program.

(B) Recommendations regarding whether the use of smart card technology should be expanded under the Medicare program.

(4) DEFINITIONS.—In this subsection:

(A) MEDICARE BENEFICIARY.—The term ''Medicare beneficiary'' means an individual entitled to, or enrolled for, benefits under part A of title XVIII of the Social Security Act (42 U.S.C. 1395c et seq.) or enrolled for benefits under part B of such title (42 U.S.C. 1395j et seq.).

(B) MEDICARE PROVIDER.—The term ''Medicare provider'' includes a provider of services (as defined in section 1861(u) of the Social Security Act (42 U.S.C. 1395x(u))) and a supplier (as defined in section 1861(d) of such Act (42 U.S.C. 1395x(d))).

(C) SECRETARY.—The term ''Secretary'' means the Secretary of Health and Human Services.

(D) SMART CARD.—The term ''smart card'' means identification used by a Medicare

1 beneficiary or a Medicare provider that includes
2 anti-fraud attributes. Such a card—
3 (i) may rely on existing commercial
4 data transfer networks or on a network of
5 proprietary card readers or databases; and
6 (ii) may include—
7 (I) cards using technology adapt-
8 ed from the financial services indus-
9 try;
10 (II) cards containing individual
11 biometric identification, provided that
12 such identification is encrypted and
13 not contained in any central database;
14 (III) cards adapting technology
15 and processes utilized in the
16 TRICARE program under chapter 55
17 of title 10, United States Code, or by
18 the Veterans' Administration; or
19 (IV) such other technology as the
20 Secretary determines appropriate.

SEC. 11. IMPROVE AND MAKE PERMANENT THE PROVISION AUTHORIZING THE INTERNAL REVENUE SERVICE TO DISCLOSE CERTAIN RETURNS AND RETURN INFORMATION TO CERTAIN PRISON OFFICIALS.

(a) IN GENERAL.—Paragraph (10) of section 6103(k) of the Internal Revenue Code of 1986 is amended to read as follows:

"(10) DISCLOSURE OF CERTAIN RETURNS AND RETURN INFORMATION TO CERTAIN PRISON OFFICIALS.—

"(A) IN GENERAL.—Under such procedures as the Secretary may prescribe, the Secretary may disclose to officers and employees of the Federal Bureau of Prisons and of any State agency charged with the responsibility for administration of prisons any returns or return information with respect to individuals incarcerated in Federal or State prison systems whom the Secretary has determined may have filed or facilitated the filing of a false or fraudulent return to the extent that the Secretary determines that such disclosure is necessary to permit effective Federal tax administration.

"(B) DISCLOSURE TO CONTRACTOR-RUN PRISONS.—Under such procedures as the Sec-

retary may prescribe, the disclosures authorized by subparagraph (A) may be made to contractors responsible for the operation of a Federal or State prison on behalf of such Bureau or agency.

"(C) RESTRICTIONS ON USE OF DISCLOSED INFORMATION.—Any return or return information received under this paragraph shall be used only for the purposes of and to the extent necessary in taking administrative action to prevent the filing of false and fraudulent returns, including administrative actions to address possible violations of administrative rules and regulations of the prison facility and in administrative and judicial proceedings arising from such administrative actions.

"(D) RESTRICTIONS ON REDISCLOSURE AND DISCLOSURE TO LEGAL REPRESENTATIVES.—Notwithstanding subsection (h)—

"(i) RESTRICTIONS ON REDISCLOSURE.—Except as provided in clause (ii), any officer, employee, or contractor of the Federal Bureau of Prisons or of any State agency charged with the responsibility for administration of prisons shall not disclose

any information obtained under this paragraph to any person other than an officer or employee or contractor of such Bureau or agency personally and directly engaged in the administration of prison facilities on behalf of such Bureau or agency.

"(ii) DISCLOSURE TO LEGAL REPRESENTATIVES.—The returns and return information disclosed under this paragraph may be disclosed to the duly authorized legal representative of the Federal Bureau of Prisons, State agency, or contractor charged with the responsibility for administration of prisons, or of the incarcerated individual accused of filing the false or fraudulent return who is a party to an action or proceeding described in subparagraph (C), solely in preparation for, or for use in, such action or proceeding.".

(b) CONFORMING AMENDMENTS.—

(1) Paragraph (3) of section 6103(a) of the Internal Revenue Code of 1986 is amended by inserting "subsection (k)(10)," after "subsection (e)(1)(D)(iii),".

(2) Paragraph (4) of section 6103(p) of such Code is amended—

(A) by inserting ''subsection (k)(10),'' before ''subsection (l)(10),'' in the matter preceding subparagraph (A),

(B) by inserting ''subsection (k)(10) or'' before ''subsection (l)(10),'' in subparagraph (F)(i), and

(C) by inserting ''subsection (k)(10) or'' before ''subsection (l)(10),'' both places it appears in the matter following subparagraph (F)(iii).

(3) Paragraph (2) of section 7213(a) of such Code is amended by inserting ''(k)(10),'' before ''(l)(6),''.

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect on the date of the enactment of this Act.

SEC. 12. TREASURY REPORT ON INFORMATION SHARING BARRIERS WITH RESPECT TO IDENTITY THEFT.

(a) REVIEW.—

(1) IN GENERAL.—The Secretary of the Treasury (or the Secretary's delegate) shall review whether current Federal tax laws and regulations related

to the confidentiality and disclosure of return information prevent the effective enforcement of local, State, and Federal identity theft statutes. The review shall consider whether greater information sharing between the Internal Revenue Service and State and local law enforcement authorities would improve the enforcement of criminal laws at all levels of government.

(2) CONSULTATION.—In conducting the review under paragraph (1), the Secretary of the Treasury (or the Secretary's delegate) shall solicit the views of, and consult with, State and local law enforcement officials.

(b) REPORT.—Not later than 180 days after the date of enactment of this Act, the Secretary of the Treasury (or the Secretary's delegate) shall submit a report with the results of the review conducted under subsection (a), along with any legislative recommendations, to the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives.

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