



### Pennsylvania Protections for Social Security Numbers

On December 26, 2006, Pennsylvania joins a growing list of states (including New Jersey) that seek to combat identity theft through restrictions on the use and disclosure of Social Security Numbers. Employers, businesses and other entities in Pennsylvania will be required to comply with these new restrictions or face fines of \$50 - \$500 for a first offense and \$500 - \$5,000 for subsequent offenses.

The new law prohibits a range of activities with some significant exceptions. Perhaps most significantly, the law does not apply to certain financial institutions, health plans, most health care providers, credit reporting agencies and related entities.

**Prohibited Conduct.** Under the new law, no person or entity (including state or local governmental entities) in Pennsylvania may:

- Intentionally communicate or otherwise make an individual's Social Security Number available to the general public.
- Print an individual's Social Security Number on a card required to access products or services provided by that person or entity.
- Require an individual to transmit his or her Social Security Number over the Internet unless the connection is secure or the number is encrypted.
- Require an individual to use his or her Social Security Number to access an Internet website unless a password or unique personal identification number or other authentication device is also required to access the website.
- Print an individual's Social Security Number on mailed materials unless required by law. Social Security Numbers may be included in applications and forms sent by mail, including documents that are part of an enrollment process, but may, in no event, be visible without opening an envelope.
- Disclose the Social Security Number of an individual who applies for a fish or game license.

**Exceptions.** The statute that imposes the new restrictions also provides explicitly for several exceptions. In particular:

- Non-governmental persons and entities may continue an existing use of an individual's Social Security Number, provided that the use is not interrupted and the individual has (and is notified annually of) the right to discontinue the use. The individual may not be denied services (or incur a charge) because he or she has submitted a request.
- The new rules do not prevent the collection, use, or release of a Social Security Number as required by law.
- The new rules do not prevent the use of a Social Security Number for internal verification or administrative purposes or for law enforcement investigations.
- The use of Social Security Numbers in certain court and other government documents is permitted.

**Applicability.** The new law does not apply to health plans and other covered entities under HIPAA, to financial institutions subject to the Gramm-Leach-Bliley Act, or to entities subject to the Fair Credit Reporting Act.

**Comments.** *Many companies have already discontinued the use of Social Security Numbers in pay stubs and various other documents. Even in situations where the use of an individual's Social Security Number is permitted, it will often be sensible to adhere to limitations included in the new law. For example, although the new law prohibits an entity from requiring an individual to transmit his or her Social Security Number over the Internet in an unsecured or unencrypted manner, it does not impose the same security or encryption requirement on a company's own transmissions. Nevertheless, entities may choose to follow that practice.*

*Some of the activities that most commonly require use of a Social Security Number, such as credit checks and health plan enrollment are performed by entities that are exempt from the new requirements. An entity that is subject to the new rules should consider if there is a practical means of proceeding without the number. If not, it should consider if an exception to*



the rules applies. For example, if a disability plan requires an individual's Social Security Number, it may consider the exception for applications and forms in mailings as well as the exception for verification and administration. It may also consider arguing that ERISA preempts the new state law.

There are various ambiguities in the new law. For example, it is unclear how broadly the exception for applications and forms will be interpreted. However, under any interpretation, Pennsylvania businesses and employers who have not recently evaluated their use of Social Security Numbers should now examine that use.

**Ballard Spahr Andrews & Ingersoll, LLP**

**Baltimore**

18th Floor  
300 East Lombard Street  
Baltimore, MD 21202-3268  
410.528.5600  
Fax: 410.528.5650

**Philadelphia**

51st Floor  
1735 Market Street  
Philadelphia, PA 19103-7599  
215.665.8500  
Fax: 215.864.8999

**Bethesda**

4800 Montgomery Lane  
Suite 350  
Bethesda, MD 20814-6354  
301.664.6200  
Fax 301.664.6299

**Phoenix**

3300 Tower, Suite 1800  
3300 North Central Avenue  
Phoenix, AZ 85012-2518  
602.798.5400  
Fax: 602.798.5595

**Denver**

Suite 2300  
1225 17th Street  
Denver, CO 80202-5596  
303.292.2400  
Fax: 303.296.3956

**Salt Lake City**

Suite 600  
One Utah Center  
201 South Main Street  
Salt Lake City, UT 84111-2221  
801.531.3000  
Fax: 801.531.3001

**Las Vegas**

Suite 1201  
300 South Fourth Street  
Las Vegas, NV 89101-6018  
702.471.7000  
Fax 702.471.7070

**Washington, DC**

Suite 1000 South  
601 13th Street, N.W  
Washington, DC 20005-3807  
202.661.2200  
Fax: 202.661.2299

**New Jersey**

Plaza 1000 – Suite 500  
Main Street  
Voorhees, NJ 08043-4636  
856.761.3400  
Fax: 856.761.1020

**Wilmington, DE**

12th Floor  
919 North Market Street  
Wilmington, DE 19801-3034  
302.252.4465  
Fax: 302.252.4466

**The Ballard Spahr Andrews & Ingersoll, LLP  
Employee Benefits Group**

**Lawyers:**

John M. Bernard	215.864.8408
Kurt R. Anderson	215.864.8432
Michele Berman Golkow	215.864.8403
Jacquelyn M. Gray	215.864.8420
Jean C. Hemphill	215.864.8539
Barry L. Klein	215.864.8415
Edward I. Leeds	215.864.8419
Virginia E. Neiswender	215.864.8239
Brian M. Pinheiro	215.864.8511
Marla G. Roshkoff	215.864.8417

**@ ballardspahr.com**

bernard
andersonk
golkow
grayj
hemphill
kleinb
leeds
neiswenderv
pinheiro
roshkoff

**Benefit Plan Analysts**

Neil B. Sizer	215.864.8460
Jennifer DeMarco	215.864.8423
Pamela G. Anthony	215.864.8367
Kristin K. McCarthy	215.864.8338

sizer
demarco
anthonyg
mccarthykk

This bulletin is a publication of Ballard Spahr Andrews & Ingersoll, LLP, and is intended to alert the recipients to new developments in the law. It does not constitute legal advice or a legal opinion on any specific facts or circumstances. The contents are intended as general information only. You are urged to consult your own lawyer concerning your situation and specific legal questions you may have.

This publication is available online at [www.ballardspahr.com](http://www.ballardspahr.com)

©2006 Ballard Spahr Andrews & Ingersoll, LLP  
All Rights Reserved