

SUMMARY OF THE SOCIAL SECURITY NUMBER PRIVACY ACT

Recently, Michigan enacted the Social Security Number Privacy Act (“the Act”), which prohibits certain uses of all or more than four sequential digits of social security numbers. The Act covers all Michigan employers and many of its provisions took effect March 1, 2005. This summary explains the Act’s basic framework.

Pursuant to the Act, an employer may not “publicly display” all or more than four sequential digits of a social security number. The term “public display” means making the number visible to the public, including through open view on a computer, network, or website. Correspondingly, an individual may not be required to transmit his/her social security number over the Internet or computer network unless through a secure or encrypted connection or, in the case of gaining access to a website or network, a password or authorization system exists. Additionally, social security numbers may not be used as an account number or printed on any identification badge or card, membership card, permit, or license. Further, when mailing any document containing a social security number, the number must not be visible on or from outside the envelope or packaging. Finally, beginning January 1, 2006, social security number information may not be included on any document mailed unless permitted by law, regulation, or court order; sent as part of an application or enrollment process initiated by the individual; sent to establish, confirm, or amend an account or contract policy; or sent by a public body under appropriate circumstances.

Use of a social security number is permissible if authorized or required by state or federal statute, rule, or regulation; by court order or rule; or pursuant to legal discovery. An employer may use a social security number as a primary account number or include it in a mailed document in the ordinary course of business to:

- verify an identity, identify an individual, or perform another similar administrative purpose related to an account, transaction, or employment;
- investigate an individual's claim, credit, criminal, or driving history;
- detect, prevent, and deter identity theft;
- enforce a person's legal rights, including debt collection;
- investigate, collect, or enforce a child or spousal support obligation or tax liability; or
- administer a health insurance, retirement benefit, or investment program.

The use of a social security number as a primary account number is permitted if the use began before the Act's effective date and the use is ongoing, continuous, and in the ordinary course of business.

Significantly, beginning January 1, 2006, all employers who obtain social security numbers must have a privacy policy published in an employee handbook or similar document that: (1) ensures confidentiality of the social security numbers; (2) prohibits unlawful disclosure; (3) limits access to information or documents containing the numbers; (4) describes how to dispose of documents containing social security numbers; and (5) establishes penalties for violating the privacy policy.

Violations of the Act are subject to criminal and civil penalties. A knowing violation is a misdemeanor punishable by up to 93 days imprisonment or a fine of not more than \$1,000, or both. If the violation is committed knowingly, the individual can recover the greater of actual damages or \$1,000, plus attorneys' fees. Sixty days before bringing a civil action, however, an individual must make a written demand for damages, unless good cause is shown.

If an employer is using a social security number on an identification badge, membership card, permit, or license, or as a primary account number on the effective date of the Act, the prohibition regarding primary accounts will not take effect until January 1, 2006. If an employer

adopts a plan with a specific compliance date for such usage, the prohibition will not take effect until the earlier of the specified completion date or January 1, 2006.

The Act will likely require updating your personnel and record policies, as well as training your staff. If you have any questions, please contact any member of Honigman's labor and employment department.

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