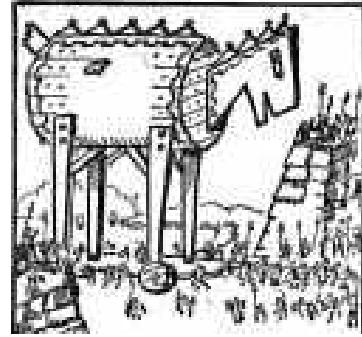


# WHY THE AMY BOYER LAW IS A TROJAN HORSE

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The Amy Boyer Law, proposed by Senator Gregg and named for the first known victim of an Internet stalker, purports to limit public display of Social Security Numbers. It actually enshrines numerous loopholes that would likely allow future stalkers to obtain confidential consumer information including social security numbers from information brokers. **We urge Congress to delete Section 626 from HR 4690 RS, the Commerce-Justice-State Appropriations bill.**

## THE CREDIT HEADER TROJAN HORSE PROVISION:

**The Amy Boyer Law contains a Trojan Horse provision designed to roll back an important new FTC rule that limits sale of Social Security Numbers under the Gramm Leach Bliley Act:**

The final Federal Trade Commission privacy rule under Gramm-Leach-Bliley states that if consumers take advantage of their new rights to prevent (by opt-out) their bank from sharing sensitive personal information with unaffiliated third parties, then their bank cannot share their Social Security Numbers for credit header purposes. This is a powerful new privacy advance. The companies in the Individual References Services Group (IRSG) lobby that helped write the Gregg law (as detailed in the Washington Post on 25 October 2000) want to roll it back. They are suing the FTC to overturn the rule. **If they win the lawsuit and win the Amy Boyer Law, then they will succeed in their effort to roll back current privacy law.**

**What is the difference between a credit report and a credit header?** Each month, banks and other creditors provide detailed files to credit bureaus about whether their customers pay their bills on time. The credit-related information provided becomes part of a consumer's **credit report**, subject to the strict Fair Credit Reporting Act (FCRA). In 1993, the Federal Trade Commission told credit bureaus that the sale of the demographic information (called **credit headers**) provided by banks -- names, addresses, and social security numbers, and until recently dates of birth -- was **not** protected by the Fair Credit Reporting Act. [Privacy experts contend that the sale of credit headers containing confidential information like Social Security Numbers is a violation of Fair Information Practices, since the consumer hasn't consented to the secondary use of his or her confidential information.]

Credit headers are sold by the credit bureaus both to other member companies of the IRSG and directly to so-called "professional and commercial users" such as private

detectives, debt collectors, Internet information brokers, and others. Amy Boyer's killer tracked her through an Internet information broker. [Non-credit bureau IRSG members also re-sell the data, generally to the same crowd.]

In 1999, Congress passed the Gramm-Leach-Bliley Financial Services Modernization Act. Its privacy provisions give consumers the right to prevent their bank from sharing confidential information with unaffiliated third parties. The FTC's final GLB rule holds that Social Security Numbers held by financial institutions are sensitive information subject to the GLB unaffiliated third party opt-out. The FTC recognized that GLB includes a "does not amend the Fair Credit Reporting Act" provision, but held that credit headers are not sold under the FCRA. If a consumer opts-out with his or her financial institution, then a credit bureau can ONLY receive sensitive information for FCRA purposes, such as credit reports, but not for credit headers.

**Rolling back this unheralded privacy victory is at the core of the industry's attempt to pass the Gregg bill.** The FTC is being sued to overturn this powerful new privacy protection. If the FTC loses the lawsuit and the Amy Boyer Law passes, then credit bureau use of confidential Social Security Numbers will not be subject to Gramm-Leach-Bliley's opt-out rule and it won't be subject to the Amy Boyer Law either, since the Amy Boyer Law includes both a GLB and an FCRA loophole.

### **OTHER LOOPHOLES IN THE AMY BOYER LAW:**

**Public Records Loophole:** The Amy Boyer Law doesn't prevent display of Social Security Numbers if obtained from a public record. So, anytime a public record -- whether a deed, a bankruptcy filing, a motor vehicle document -- is the source of an SSN, then the Gregg law does not apply.

**The Kitchen Sink Loophole: Bank Holding Company Act Section 4(K) Uses:** Last week's draft of the bill also exempts any business engaged in any activity "incidental" or "complementary" to banking, under BHCA 4(k). We believe the rule applies not only to affiliates, but any business doing what affiliates can do. 4(k) is sweeping. The agencies have already ruled that banks can affiliate with travel agencies under the new BHC Act 4(k) exception. (They also have ruled previously under other authority) that banks can host Internet web sites.) Does this mean travel agencies and web sites wouldn't need to obtain consumer consent to use or display Social Security Numbers?

**Commercial and Professional User Loophole:** The bill's commercial and professional user loophole actually expands on the uses now allowed in the limited IRSG principles: To stave off legislation four years ago, IRSG proposed to FTC a set of principles its members supposedly operate under (although its audits have not been made public as IRSG promised FTC).

Under one principle, so-called "professional and commercial users" can use Social Security numbers, but only if displayed in truncated form. Here is the provision:

*B. Commercial and Professional Distribution of Non-Public Information: Individual reference services, when they limit the non-public information content of their products or services as set forth below, **may distribute such products or services only to established professional and commercial users** who use the information in the normal course and scope of their business or profession and the use is appropriate for such activities.*

*1. non-public information products or services distributed pursuant to this subsection shall not include:*

*a. Information that reflects credit history, financial history, medical records, mother's maiden name identified as such, or similar information;*

*b. **Certain information like social security number and birth information unless truncated in an appropriate and industry consistent manner.***

[http://www.irsg.org/html/industry\\_principles\\_principles.htm](http://www.irsg.org/html/industry_principles_principles.htm)

**Yet, the Gregg bill includes specific language exempting "professional and commercial users," exactly the phrase from IRSG. These firms would appear to gain a new right to use full untruncated Social Security Numbers under law, even though their current use is supposedly limited to truncated uses, to protect consumer privacy.**

### **Who opposes the bill? Is it only the liberal privacy lobby? Hardly.**

The bill has been opposed by a bi-partisan group of members including Chairman Archer and Rep. Shaw of House Ways and Means, Chairman Roth and Ranking Member Moynihan of Senate Finance, Senator Grassley, Senator Feinstein and others. It is also strongly opposed by the administration. A previous version also preempted stronger state laws, so it was also opposed by the state legislatures.

**It is opposed by over a dozen consumer, civil liberties and privacy organizations,** ranging from the ACLU to Phyllis Schlafly's Eagle Forum and including Consumer Action, Consumer Federation of America, Consumers Union, Electronic Privacy Information Center, Identity Theft Resource Center, Privacy Journal, Privacy Rights Clearinghouse, Privacy Times, U.S. Public Interest Research Group.

### **WHAT SHOULD CONGRESS DO INSTEAD?**

We believe that the Congress needs to move very carefully in its approach to protecting Social Security Number privacy, so that any new rules actually increase protections. This year, we recommend legislation that would do two things: (1) Return to Fair Information Practices and limit identity theft by closing the so-called "credit header" loophole, as proposals by Reps. Shaw and the full Ways and Means Committee (HR 4857), Kleckza (HR 1450), Hooley (HR 4311) and Senator Feinstein (S. 2328) would provide and (2) Extend to the private sector the Privacy Act's provision that makes it unlawful for a governmental agency to deny a right, benefit, or privilege merely because the individual refuses to disclose his Social Security Number (HR 4857).

### **For more information:**

Letter to Congress from 10 groups <<http://www.pirg.org/consumer/greggssn.htm>>

Letter to Congress from 12 groups <http://www.pirg.org/consumer/greggssn3.htm>

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