

Date of Hearing: April 2, 2019

ASSEMBLY COMMITTEE ON PRIVACY AND CONSUMER PROTECTION

Ed Chau, Chair

AB 1472 (Mark Stone) – As Introduced February 22, 2019

SUBJECT: County recorder: social security number truncation program

SUMMARY: This bill would repeal a requirement that the County Recorders Association of California annually submit a report on each county's compliance with the existing social security number (SSN) truncation program (Truncation Program) to the chairpersons of the Assembly and Senate Committees on Judiciary and to the Office of Privacy Protection, or any successor agency, as specified.

EXISTING LAW:

- 1) Imposes, various restrictions on the use of SSN and specifically prohibited a person or entity from doing any of the following:
 - Publicly posting or displaying an individual's SSN.
 - Printing an individual's SSN on any card that he or she must use to access products or services.
 - Requiring an individual to transmit his or her SSN over the internet, unless the connection is secure or the SSN is encrypted.
 - Requiring an individual to use his or her SSN to access an internet website, unless specified security measures are also required to access the website.
 - Printing an individual's SSN on any materials mailed to him or her unless required by state or federal law.
 - Selling, advertising for sale, or offering to sell an individual's SSN, as specified. (Civ. Code Sec. 1798.85(a).)
- 2) Provides that, unless required to do so by state or federal law, no person, entity, or government agency shall present for recording or filing with a county recorder a document that is required law to be open to the public if that record displays more than the last four digits of a SSN. (Civ. Code Sec. 1798.89(a).)
- 3) Establishes the Truncation Program in state government, which requires the county recorder of each county to establish a SSN truncation program in order to create a public record version of each official record, as specified, and generally requires that the public record version of an official record be used for responses to public records act requests, among other things. (Gov. Code Sec. 27300 et seq.)
- 4) Requires, as part of this Truncation Program, that the County Recorders Association of California, no later than January 1, 2009, and annually thereafter, shall submit to the chairpersons of the Assembly Committee on Judiciary and of the Senate Committee on

Judiciary, and to the Office of Privacy Protection (OPP), or any successor agency, a report on the progress each county recorder has made in complying with this article, to assist the Legislature in monitoring the progress of each county recorder's SSN truncation program. Provides, that this report shall no longer be required upon the OPP making a determination that all counties have completed the component of the program with respect to each official record recorded between January 1, 1980, and December 31, 2008. (Gov. Code Sec. 27305.)

FISCAL EFFECT: Unknown

COMMENTS:

- 1) **Purpose of the bill:** This bill seeks to streamline reporting requirements by repealing an annual compliance report that has been required for over 10 years. This is an author-sponsored bill.
- 2) **Author's statement:** According to the author, "AB 1472 eliminates an outdated reporting requirement that was created to require the County Recorders Association of California to annually submit to the chairpersons of the Assembly and Senate Committees on Judiciary and to the Office of Privacy Protection, or any successor agency, a report on the progress each county recorder has made in complying with the requirements of the SSN truncation program."
- 3) **Background:** The underlying statute that this bill seeks to amend, was part of a larger legislative effort in 2007, AB 1168 (Jones, Ch. 627, Stats. 2007), to abate identity theft by restricting access to one of the most critical tools of identity theft: SSNs.

As noted in the Assembly Judiciary Committee analysis at the time, although identity thieves obtain other persons' SSNs in a variety of ways, studies suggest that quite often these numbers are harvested from official records and legal documents accessible to the public. Accordingly, AB 1168 sought to require the truncation (meaning the redaction of the first five digits) of any SSNs accessible to public viewing. The bill created additional truncation requirements in three particularly vulnerable areas, one of which is now the subject of this bill: local agencies that are required to make many records publicly accessible under the California Public Records Act. Two other vulnerable areas identified by AB 1168 were colleges and universities that, for operational reasons, must retain substantial amounts of personal information on students and staff (*see* AB 253 (Stone, 2019)), and the state Franchise Tax Board, which creates lien abstracts and other legal documents that become public records.

Many public records held by county recorders often (or used to, as the case may be) contain SSNs, including deeds, deeds of trust, judgments, and liens. With respect to these records, the author of AB 1168 noted that because many public records are increasingly becoming available electronically and even online, companies that compile significant amounts of personal information about individual consumers (such as data brokers), have created large databases of personal information about consumers, often from public records. Much of this information is available for sale.

At the same time, information obtained from public records is often used for legitimate business and government uses, such as detecting crime and fraud, or performing title searches to determine whether a piece of property is subject to a tax lien. Accordingly, AB

1168 sought to balance legitimate needs for information with the need to provide additional security against identity theft by reducing the amount of sensitive personal information—namely SSNs—in county recorders' records.

Specifically, AB 1168 required the County Recorders Association of California to report to the Senate and Assembly Judiciary Committees and the Office of Privacy Protection (OPP) by January 1, 2009, and annually thereafter, on the implementation of the bill's requirements concerning SSN truncation. That bill additionally provided that the report would no longer be required once the OPP determined that all counties had complied with the requirements of the program.

- 4) **Reporting requirement may be obsolete:** Until 2012, there was in California state government the OPP established to “protect the privacy of individuals’ personal information in a manner consistent with the California Constitution by identifying consumer problems in the privacy area and facilitating the development of fair information practices in adherence with the Information Practices Act [...] and to promote and protect consumer privacy to ensure the trust of the residents of this state.” (Gov. Code Sec. 11549.5 et seq.) While the OPP disbanded due to budget cuts in 2012, it still exists as a matter of statutory law. Immediately upon its disbandment, the Office of the Attorney General created a new privacy enforcement unit where the director of that former office was relocated. That office is now the Privacy Enforcement and Protection Unit.

Relevant to this bill, AB 1168 established a reporting requirement in the Truncation Program that required the County Recorders Association of California, no later than January 1, 2009, and annually thereafter, to submit to the chairpersons of the Assembly and Senate Committees on Judiciary, and to the OPP, or any successor agency, a report on the progress that each county recorder has made in complying with this program, in order to assist the Legislature in monitoring the program's progress. While this report is technically required annually, it was not envisioned to exist in perpetuity. The statute specifically states that once the OPP makes a determination that all counties have completed the component of the program with respect to each official record recorded between January 1, 1980, and December 31, 2008, the report would no longer be required. (*See* Gov. Code Sec. 27305.)

While the Legislature has since approved legislation requiring a sunset date on all new reporting requirements by state agencies (*see* Gov. Code Sec. 10231.5 enacted by AB 1585 (Ch. 7, Stats. 2010)), the Truncation Report is arguably distinct from other reports in that it was designed to exist until compliance is achieved. This bill would repeal that reporting requirement, despite no apparent indication that OPP has made a determination that all counties are in compliance. In fact, staff notes, that at the time of this writing, the last Truncation Program progress report was produced in 2016, and indicated that over 20 counties were not in compliance with the requirements of the Truncation Program at that time. To ensure that there is continued monitoring of county compliance with the Truncation Program, the author offers the following amendment, which would require the annual report be sent to this Committee, rather than the Judiciary Committee. The Privacy and Consumer Protection Committee was established in 2014 after the passage of AB 1168 in 2007, and is arguably a more appropriate body in today's structure of the Assembly, to review the contents of this report given this Committee's specific jurisdiction.

Author's amendment:

Strike current language of bill and amend Government Code Section 27305 to require that the progress report be sent to the Assembly Committee on Privacy and Consumer Protection and the Senate Committee on Judiciary, and to the Office of Privacy Protection, or any successor agency.

- 5) **Related legislation:** AB 253 (Stone) would remove an obsolete provision in the Education Code which otherwise requires the College and University SSN Task Force within the OPP to produce a specified report by July 1, 2010.

AB 1818 (Comm. on Jud.) would restructure or eliminate several reports that are required to be sent to the Judiciary Committee that were enacted prior to the Office of Legislative Counsel adopting a policy to automatically add sunset dates for most legislative reports and which are not outdated.

- 6) **Prior legislation:** AB 1168 (Jones, Ch. 627, Stats. 2007) *See* Comment 3.

REGISTERED SUPPORT / OPPOSITION:**Support**

None on file

Opposition

None on file

Analysis Prepared by: Nichole Rapier / P. & C.P. / (916) 319-2200