

Date of Hearing: April 8, 2021

ASSEMBLY COMMITTEE ON PRIVACY AND CONSUMER PROTECTION

Ed Chau, Chair

AB 12 (Seyarto) – As Amended March 24, 2020

SUBJECT: Personal information: social security numbers: the Employment Development Department

SUMMARY: This bill would require state agencies to cease sending any outgoing mail that contains a full social security number (SSN), as specified, as soon as feasible, but in any event before January 1, 2023. The bill would also make findings and declarations related to the Employment Development Department's treatment of SSNs.

EXISTING LAW:

- 1) Prohibits any state agency from sending any outgoing United States mail to an individual that contains personal information about that individual, including, but not limited to, the individual's SSN, telephone number, driver's license number, or credit card account number, unless that personal information is contained within sealed correspondence and cannot be viewed from the outside of that sealed correspondence. (Gov. Code Sec. 11019.7(a).)
- 2) Provides that, notwithstanding any other law, commencing on or before January 1, 2023, a state agency shall not send any outgoing United States mail to an individual that contains the individual's social security number unless the number is truncated to its last four digits. (Gov. Code. Sec. 11019.7(b).)
- 3) Provides a limited exception to the prohibition described in 2), above, thereby allowing outgoing mail with full SSNs in the following circumstances:
 - Federal law requires the inclusion of the SSN.
 - The documents are mailed to a current or prospective state employee.
 - An individual erroneously mailed a document containing a SSN to a state agency, and the state agency is returning the document.
 - The document is in response to a valid request for access to PI, pursuant to the Information Practices Act.
- 4) Requires, on or before September 1, 2021, each agency that mails an individual's full or truncated SSN to that individual, other than as permitted as described in 3), above, to report to the Legislature regarding when and why it does so. (Gov. Code Sec. 11019.37(b)(2)(A).)
- 5) Requires any state agency that cannot, in its own estimation, comply with 2), above, to submit an annual corrective action plan to the Legislature until that agency is in compliance. (Gov. Code Sec. 11019.37(b)(2)(B).)
- 6) Prohibits a person or entity from printing an individual's SSN on any materials that are mailed to the individual, unless state or federal law requires the SSN to be on the document

to be mailed. However, SSNs may be included in applications and forms sent by mail, including documents sent as part of an application or enrollment process, or to establish, amend or terminate an account, contract or policy, or to confirm the accuracy of the SSN. (Civ. Code Sec. 1798.85(a)(5).)

FISCAL EFFECT: Unknown

COMMENTS:

- 1) **Purpose of this bill:** This urgency measure seeks to enhance individuals' privacy by requiring that state agencies stop sending outgoing mail containing individuals' full SSNs, except as provided, as soon as feasible. This bill is author sponsored.
- 2) **Author's statement:** According to the author:

Under current law, the Employment Development Department is required to mask the digits of an individual's social security number in outgoing mail starting January 1st, 2023. The problem is that while this issue needlessly and carelessly exposes the personal information and information for identity protection, it puts off the implementation of the correction until 2023 while the current environment is exponentially worse than ever before for fraud and identity theft.

Based on the 2019 audit of EDD and its use of SSN and its ramifications, combined with the LAO's own reporting of increased caseload during the pandemic, there stands an exponential risk of identity theft by EDD letters stands as a clear and very real danger to the public. This risk to the public needs correction now and not years later after the problem has run its course.

- 3) **Widespread use of SSNs makes the identifier an attractive target for identity thieves:** According to the Social Security Administration, the use of the SSN has expanded significantly since its inception in 1936. Created merely to keep track of the earnings history of U.S. workers for Social Security entitlement and benefit computation purposes, it is now used as a nearly universal identifier. Assigned at birth, the SSN enables government agencies to identify individuals in their records and allows businesses to track an individual's financial information. Unfortunately, this universality has led to abuse as the SSN is a key piece of information used to commit identity theft. The Federal Trade Commission estimates that as many as 9 million Americans have their identities stolen each year.¹

For decades, California residents have benefited from laws protecting SSNs from disclosure by the private sector and government agencies. By way of example, SB 458 (Peace, Ch. 685, Stats. 1998) prohibited state agencies from sending any correspondence to an individual that contains personal information about that individual (*e.g.*, social security number, driver's license number, telephone number, or credit card account number) unless the correspondence is sealed. Additionally, since 2002, California has restricted the use and display of SSNs by private actors (*see* SB 168 (Bowen, Ch. 720, Stats. 2001)) by prohibiting companies and persons from engaging in certain activities, such as:

¹ Puckett, *The Story of the Social Security Number* Social Security Bulletin, Vol. 69, No. 2, 2009.)

- posting or publicly displaying SSNs;
- printing SSNs on cards required to access the company’s products or services;
- requiring people to transmit an SSN over the internet unless the connection is secure or the number is encrypted;
- requiring people to log onto a website using an SSN without a password; or,
- printing SSNs on anything mailed to a customer unless required by law or the document is a form or application.

Yet despite states like California regulating the use and disclosure of SSNs, identity theft and fraud continue to rise. In September 2005, the United States Government Accountability Office issued a report entitled, *Social Security Numbers: Federal and State Laws Restrict Use of SSNs, yet Gaps Remain*. The report found that “SSN use is widespread. Agencies at all levels of government frequently collect and use SSNs to administer their programs, verify applicants’ eligibility for services and benefits, and perform research and evaluations of their programs. Although some government agencies are taking steps to limit the use and display of SSNs, these numbers are still available in a variety of public records held by states, local jurisdictions, and courts[.]”

After widespread media coverage of California’s Employment Development Department (EDD) printing full SSNs on correspondence to millions of Californians in 2015, EDD claimed it would begin to redact SSNs on 75 percent of all mailed documents. In a recent report (hereinafter “Report”) regarding EDD’s privacy protection practices when mailing documents to its customers, the State Auditor concluded that “[a]lthough EDD has undertaken efforts since 2015 to reduce the amount of mail it sends to claimants that include full SSNs, its efforts have been insufficient.” Specifically, the State Auditor found that “EDD likely sent more than 17 million pieces of mail containing full Social Security numbers (SSNs) to a total of more than a million people in fiscal year 2017–18 [and that] several of the security incidents [...] reviewed from 2015 through 2018 showed that EDD exposed nearly 300 claimants to the risk of identity theft when it inappropriately disclosed their personal information, including SSNs, to other mail recipients.”²

Ultimately, the State Auditor found that EDD should take near-term measures to protect its claimants better, and made a series of recommendations to that effect. This bill would codify one of those recommendations for state agencies.

- 4) **Ongoing attempts to curb practices at EDD that have lead to widespread fraud:** Last year, AB 499 (Mayes, Ch. 155, Stats. 2020) was signed into law. That bill, beginning January 1, 2023, prohibits a state agency from sending any outgoing US mail to an individual that contains the individual’s full SSN, unless federal law requires the inclusion of a full SSN. This prohibition was taken directly from the State Auditor’s Report which provides that “[b]ecause other state agencies may mail full SSNs to Californians, and because this

² State Auditor Report 2018-129, *Employment Development Department: Its Practice of Mailing Documents Containing Social Security Numbers Puts Californians at Risk of Identity Theft* <<http://www.auditor.ca.gov/pdfs/reports/2018-129.pdf>> [as of Mar. 26, 2021].)

practice—regardless of the agency involved—exposes individuals to the risk of identity theft, the Legislature should amend state law to require all state agencies to develop and implement plans to stop mailing documents that contain full SSNs to individuals by no later than December 2022, unless federal law requires the inclusion of full SSNs.” (See Report at p. 22.)

Unfortunately, since the passage of that bill, there has been a massive spike in fraudulent unemployment claims being processed by EDD. As reported earlier this year by the San Francisco Chronicle:

Opening the floodgates to criminals, California’s Employment Development Department exhibited “significant missteps and inaction” in handling fraudulent unemployment claims, causing it to pay at least \$10.4 billion to scammers, according to a report from the state auditor issued Thursday.

The total fraud could reach nearly \$30 billion as the state continues to investigate claims, the EDD said this week.

Besides the huge hit to federal and state funds, the fraud could come back to bite hundreds of thousands of Californians whose identities were stolen, the report said. Those victims will be asked to pay taxes on benefits they never received - or to repay the benefits. If they become unemployed, they may be unable to collect benefits.

Daniela Urban, executive director of the Center for Workers' Rights in Sacramento, said she has a client who couldn't receive benefits after being laid off because an imposter had already filed a claim under her name. “She is now living in her car,” after fruitlessly trying since July to file for unemployment relief, Urban said.

The state unemployment agency must strive to help identity theft victims but “given the high levels of potentially fraudulent claims and its processes for addressing them, EDD is underprepared to handle this work,” the report said.³

In response to this crisis at EDD, numerous bills have been introduced this year in the Legislature, of which AB 12 is one. Among those bills are: AB 110 (Petrie-Norris) and AB 23 (Chen) which would both require EDD to cross check claimant information with information provided by the Department of Corrections and Rehabilitations and counties prior to making any payment of unemployment benefits to ensure that the claimant is not an inmate at the state prison or a county jail; AB 74 (Lorena Gonzalez) which would require EDD to give claimants the option of receiving payments through direct deposit into a qualifying account of their choice; and AB 56, which would, among other things, set dates by which state agencies who cannot comply with the prohibition on including SSNs on outgoing mail must submit an annual corrective action plan to the Legislature and would codify suggestions from the State Auditor’s Report including:

³ Said, “Jobless pay price for scammers; Agency s failures could mean taxes, loss of benefits for ID theft victims; California EDD s fraud failures could saddle innocent with taxes, penalties,” SF Chronicle, Jan. 29, 2021.

- Requiring EDD to immediately begin modeling workload projections that could account for a spike in unemployment insurance claims and plan staffing around the likelihood of those scenarios.
- Requiring EDD to revise its public dashboards in order to clearly reflect the difference between those waiting for payment and those that have not, and clearly indicate the number of claims that have waited longer than 21 days for payment.
- Requiring EDD to determine how many of its temporary automation measures for claims processing it can retain, and make those permanent, as specified.
- Requiring EDD to develop specialized training modules to quickly train its call center staff on the most commonly requested items on which the callers want assistance.
- Requiring EDD to include information on its website and set up a separate email box for those individuals to contact the department and receive prompt resolution.

Similarly, to protect against identity theft, this bill would require state agencies that send out full SSNs on outgoing mail to cease that practice as soon as feasible, rather than waiting until 2023. As reflected in this bill's findings and declarations, certain practices employed by EDD are the intended target of this bill. However, singling EDD out in the manner this bill original did, raises statutory construction concerns. Specifically, creating an exception for EDD to obligations imposed on all state agencies in one paragraph (even if that exception creates a more onerous standard for EDD) of a statute calls into question whether EDD is a state agency for the purposes of the entire statute. Accordingly, the author amended this bill to prohibit all state agencies from including full SSNs on outgoing mail as soon as feasible.

This should ensure that *all* state agencies are required to stop sending full SSNs immediately, if possible, and will not allow them to wait until 2023 to implement programmatic changes that would eliminate (or truncate) SSNs on outgoing mail. While not as well defined as a strict date, "as soon as feasible" is a phrase commonly used in law and requires immediate action upon the occurrence of a circumstance that makes a desired outcome possible. The phrase is found 20 times in the California Codes alone, and shows up in federal and California state case law nearly 6000 times. It should be noted that this bill is also an urgency measure, which means that it becomes law upon receiving the Governor's signature. Thus, if this bill is signed into law, any state agencies that have the capacity to stop sending full SSNs would have to cease that practice by October 10th of this year, the last day for the Governor to sign or veto bills, at the latest. In support of this bill, the Southwest California Legislative Council writes:

Given the level of fraud currently surrounding payments made by this department, estimated to be approaching \$11 billion dollars, the idea of compounding the problem by mailing social security numbers to hundreds of state prisoners, potentially not their own, should give everybody pause and hasten the passage of this urgency measure. This truncation of numbers has been standard practice in private industry, real estate, county assessors and other venues for years. It's time the State of California adopted these same privacy protections for our most needy unemployed residents.

AB 56 (Salas) *See* Comment 4.

AB 110 (Petrie-Norris) *See* Comment 4.

AB 74 (Gonzalez) *See* Comment 4.

- 6) **Prior legislation:** AB 499 (Mayes, Ch. 155, Stats. 2020) *See* Comment 4.

SB 447 (DeSaulnier, 2012) would have prohibited a state agency from sending any communication to any individual that contains the full SSN of that individual unless required by federal law. SB 447 was vetoed by Governor Brown, who argued that this prohibition “would hinder the ability of state agencies to promptly and accurately provide information to run essential programs.”

SB 458 (Peace, Ch.685, Stats. 1998) *See* Comment 3.

- 7) **Double-referral:** This bill has been double-referred to the Assembly Committee on Insurance.

REGISTERED SUPPORT / OPPOSITION:

Support

California Landscape Contractor's Association
Southwest California Legislative Council

Opposition

None on file

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