

Date of Hearing: June 17, 2021

ASSEMBLY COMMITTEE ON PRIVACY AND CONSUMER PROTECTION

Jesse Gabriel, Chair

SB 39 (Grove) – As Amended April 15, 2021

SENATE VOTE: 38-0

SUBJECT: Fraudulent claims: inmates

SUMMARY: This bill would, among other things, require the Department of Corrections and Rehabilitation (CDCR) to provide the names and social security numbers (SSNs) of current inmates to the Employment Development Department (EDD) for the purpose of preventing payments on fraudulent claims for unemployment compensation benefits. Specifically, **this bill would:**

- 1) Require the CDCR to provide the names and SSNs of current inmates to the Employment EDD, at least every 90 days and upon the request of EDD, for the purpose of preventing payments on fraudulent claims for unemployment compensation benefits.
- 2) Require any unemployment compensation benefits paid on and after July 1, 2021 to first have been verified by the Director of EDD with the information provided pursuant to 1) above, that the claimant is not an inmate currently incarcerated in the state prisons.
- 3) Prohibit EDD from using the information provided by the CDCR unless the information of current inmates is equal to or less than 90 calendar days old.
- 4) Require, if EDD determines a claimant is an inmate currently incarcerated in the state prisons, EDD to notify the CDCR and the Department of Justice (DOJ) of the attempt to make a fraudulent claim for unemployment compensation benefits.
- 5) Authorize EDD to disseminate inmate names and SSNs to CDCR and the DOJ pursuant to 4), above
- 6) Declare that it is to take effect immediately as an urgency statute.

EXISTING LAW:

- 1) Prohibits any state agency from sending any outgoing United States mail to an individual that contains personal information (PI) 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 PI 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 SSN unless the number is truncated to its last four digits. (Gov. Code. Sec. 11019.7(b).)

- 3) Establishes the Employment Development Department (EDD) which is responsible for administering the State's unemployment insurance (UI) program, including the payment of unemployment compensation benefits to eligible persons. (Unemp. Ins. Code, Sec. 201 et seq.)
- 4) Authorizes the California Department of Corrections and Rehabilitation (CDCR) to provide the SSN of current or former inmates to EDD, the California Workforce Development Board (CWDB), or the CWDB's designee, as specified. (Pen. Code Sec. 11105.9(a).)
- 5) Prohibits EDD, CWDB, and any board designee from disseminating SSNs obtained to an individual or public entity not explicitly authorized in statute. (Pen. Code Sec. 11105.9(b).)

FISCAL EFFECT: According to the Senate Appropriations Committee:

- **EDD:** The department reports one-time costs of between \$1 million and \$5 million to establish new automated systems to receive and store information from CDCR regarding incarcerated individuals, cross-check that data with claimant information, and stop payments for claimants with a positive match. It also anticipates ongoing costs associated with management of the system and processing appeals for any disqualifications. (General Fund)
- **CDCR:** The department reports one-time costs of approximately \$200,000 for technology procurement and ongoing workload costs of \$151,199 annually for 1.0 Information Technology Specialist I to support real-time data sharing with EDD. (General Fund)

COMMENTS:

- 1) **Purpose of this bill:** This urgency measure seeks to curb unemployment fraud by ensuring that EDD can cross-match claimant information against current inmate information. This bill is author-sponsored.
- 2) **Author's statement:** According to the author:

In a January conference call with the media, Julie Su, the secretary for the California Labor and Workforce Development Agency was quoted as saying, "Of the 114 billion dollars in unemployment paid by California since March, approximately 10% has been confirmed as fraudulent. An additional 17% of the paid claims have been identified as potentially fraudulent.

While exact totals are unknown, inmates in state prison alone have been estimated to comprise at least \$400 million. This is particularly troubling because EDD was supposed to implement a crosschecking policy at its own direction in 2018 after this was suggested by the State Auditor in a prior audit. At the time the fraud was first discovered, 35 other states had already implemented some type of crossmatch mechanism to prevent fraudulent claims.

- 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 PI about that individual (*e.g.*, SSN, 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:

- 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 EDD printing full SSNs on correspondence to millions of Californians in 2015, EDD claimed it would begin to redact SSNs on 75% 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

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

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

- 4) **Mass unemployment fraud during the COVID-19 pandemic:** More recently, a surge in the filing of unemployment claims began in March 2020 following the issuance of a statewide stay-at-home order at the start of the COVID-19 pandemic which resulted in a significant increase in EDD’s workload. During the same time period, Congress expanded federal UI benefits and relaxed the eligibility criteria for receiving those benefits through the Coronavirus Aid, Relief, and Economic Security Act.

Beginning in July 2020, EDD criminal investigators began identifying specific cases of UI fraud involving incarcerated individuals and communicating that information to local law enforcement agencies. In late November 2020, nine county district attorneys announced the discovery of widespread UI fraud involving tens of thousands of incarcerated individuals that took place during the first six months of the pandemic. The fraudulent claims primarily involved pandemic unemployment assistance (PUA) claims, and it was reported that in most cases the payments were sent via prepaid debit cards to addresses used on claims applications (*i.e.*, addresses outside of a correctional facility) with the funds later deposited to inmate accounts.³

The extent of the fraud was uncovered after the U.S. Department of Labor crosschecked federal UI claims data against a list of state prison inmates that it had subpoenaed from the State and identified approximately 35,000 claims involving individuals incarcerated in the State’s prisons. EDD estimated that it paid roughly \$810 million in benefits between January 2020 and November 2020 to 45,000 claimants with information that matched incarcerated individuals.⁴ Those figures include individuals incarcerated in county jails who were identified after EDD contracted with a private vendor that provided cross-reference inmate data “from prisons and jails in multiple states,” including access to “real-time incarceration and arrest records.”⁵

The State Auditor conducted an audit of EDD’s management of federal funds related to the COVID-19 pandemic and published its findings in January 2021. The report concluded that billions of dollars of benefit payments were improperly paid due to significant weaknesses in EDD’s approach to fraud prevention. The report stated that EDD was particularly vulnerable to fraud associated with incarcerated individuals because “it lacked a system to cross-match all incoming claims against incarceration data.” The report noted that as of 2016, at least 35 other states had a system to cross-match unemployment claims against state prison data and 28 states were cross-matching claims against county jail data.⁶ The report also indicated that

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].)

³ New York Times, *Unemployment Scam Using Inmates’ Names Costs California Hundreds of Millions* <https://www.nytimes.com/2020/11/24/us/california-unemployment-fraud-inmates.html> [as of April 1, 2021].

⁴ State Auditor, *Employment Development Department: Significant Weaknesses in EDD’s Approach to Fraud Prevention Have Led to Billions of Dollars in Improper Benefit Payments*, Report 2020-628.2, p. 27 <http://www.auditor.ca.gov/reports/2020-628.2/index.html> [as of April 1, 2021].

⁵ *Id.* at pp. 29-30.

⁶ *Id.* at p. 29.

EDD was aware of the fact that it did not have a way to cross-match against incarceration data and had considered adopting a cross-match system in recent years.⁷

According to the report, EDD contacted CDCR in August 2020 about sharing state prison data to aid the department in identifying fraud. A data sharing agreement was not reached until the Attorney General authorized CDCR to provide inmate information to EDD in December 2020. The temporary and precarious nature of the existing data sharing agreement between EDD and CDCR, as well as the potential for ongoing fraud if data sharing does not take place between the departments, led the State Auditor to make the a number of recommendations including the following:

- Require EDD to regularly cross-match UI benefit claims against information about individuals incarcerated in state prisons and county jails to ensure that it does not issue payments to people who are ineligible for benefits. The Legislature should specify that EDD perform the cross-matches as quickly as possible after individuals file claims and with as little disruption of legal and eligible claims as possible.
- Require CDCR and any other necessary state or local government entities to securely share information about incarcerated individuals with EDD to enable EDD to prevent fraud.⁸

Based on these recommendations, this bill would require CDCR to provide the names and SSNs of current inmates to EDD for the purposes of preventing payments on fraudulent claims for unemployment compensation benefits, as specified, and would require EDD to cross-check that information before any payment of UI benefits is provided.

The County of San Bernardino writes in support of this bill:

SB 39 strengthens protections against fraudulent claims filed with the Employment Development Department, for benefits to ineligible recipients specifically prison inmates.

This bill will also protect taxpayer funds while helping to ensure that Unemployment Insurance benefits only go to eligible unemployed individuals. By mandating that California Employment Development Department conduct regular cross matching of their record with prison rolls as a standard practice, fraudulent claims will decrease.

- 5) **Efforts to prevent fraud should be considered alongside the likelihood of increasing wrongful denials of benefits:** This bill was introduced in response to tens of thousands of fraudulent UI claims that were recently filed using PI associated with prison inmates. This bill seeks to prevent this type of fraud by requiring CDCR to share the names and SSNs of current inmates with EDD, at least every 90 days, or upon EDD's request. This bill additionally requires EDD to cross check the information received from CDCR against UI claims prior to making any payment of benefits, and prohibits EDD from using information provided by CDCR for these purposes if it is more than 90 days old.

⁷ *Id.* at pp. 28-29.

⁸ *Id.* at pp. 30-31.

In support, the Office of the District Attorney of Alameda County writes:

On January 25, [EDD] reported a staggering level of fraud, confirming that 9.7% of the \$114 billion in benefits paid between March 2020 and mid-January 2021 were paid on fraudulent claims. Further, this \$11 billion, while shocking, is likely just a fraction of the actual fraud present. EDD is currently investigating 17% of its additional payments for potential fraud.

SB 39 will assist EDD in identifying prison inmates who have illegally and fraudulently sought unemployment benefits. By reducing fraud, this bill will help ensure that financial assistance is provided to those legally entitled to these crucial benefits.

That being said, this bill raises a number of practical questions and concerns. First, it should be noted that the vast majority of the claims contributing to the recent uptick in fraud that have been reported largely involve the federal Pandemic Unemployment Assistance program (PUA) and not the regular California UI. That is not to say that cross-matching claimants against inmate populations would not identify instances of fraud, and the State Auditor has recommended this practice. However, to the extent that the information provided to EDD is not current or is inaccurate, this bill could result in some individuals being denied benefits to which they are entitled.

In opposition, Legal Aid at Work and Legal Services for Prisoners with Children write that their “overriding concern is that the bill as written will prevent legitimate claims for unemployment and lead to the wrongful denial of a critical safety net resource to formerly incarcerated individuals who already face particular difficulties getting back into the labor market because of the stigma attached to their convictions and never incarcerated individuals alike. Even now, individuals, both formerly incarcerated and those who were never incarcerated, are being wrongfully denied benefits.”

Staff notes that AB 110 (Petrie-Norris), which was approved by this Committee earlier this year, which would require inmate information to be sent to EDD once a month (instead of every 90 days, as required by this bill), may better prevent against EDD reliance on outdated information when verifying the identity and incarceration status of claimants. More frequent reporting, however, will not address the issue of wrongful denials because of recordkeeping errors in California’s criminal records systems. The ACLU, in opposition to this bill, points out that according “to the Bureau of Justice Statistics’ Survey of State Criminal History Information Systems, in 2018, an average of 68% of arrests in state databases had a matching court disposition, meaning that nearly one third of arrests were missing dispositions. Stanford’s Criminal Justice Center, in its 2019 report entitled ‘The California Criminal Justice Data Gap’ found that the California Department of Justice estimates that up to 60% of arrest records are missing disposition information. Practically, this means that someone could be wrongfully arrested, incarcerated for a few hours or days, released upon the realization that the police arrested the wrong person, and then denied unemployment benefits.”

6) Bill authorizes EDD to share inmates’ names and SSNs with DOJ and CDCR:

This bill *requires* EDD to notify CDCR and the DOJ when it determines that a claimant is an inmate currently incarcerated in state prison of any attempt to make a claim for benefits. The bill additionally *permits* EDD, pursuant to this requirement, to disseminate names and SSNs of those inmates.

Presumably, these provisions are for the purpose of investigating fraudulent claims, but as discussed in Comment 3, above, the collection, storage, and disclosure of sensitive information like SSNs generally increases the risk of identity theft. Accordingly, this information should only be disseminated when necessary and should always be dealt with in a secure manner. Because the DOJ has the capacity and authority to access information necessary to complete investigations, the author has agreed to strike the provision permitting EDD to send inmate SSNs to the DOJ. Staff notes that this amendment would not impair EDD's ability to notify DOJ (or CDCR, for that matter) with the *name* of an inmate with whom a claim is associated, thereby allowing those entities to investigate the matter further.

Author's amendment:

- On page 4, line 8, strike "names and"
- On page 4 line 9, strike "and the Department of Justice"

CDCR, on the other hand, has indicated to staff that receiving inmate names and corresponding SSNs from EDD could be useful for the purposes of investigating fraud, along with other functions such as parole consideration, identifying victimization and enemy concerns, identifying rules violations, analyzing security threat group operations. While investigating fraud is indeed laudable, any exchange of sensitive PI creates new avenues for identity theft and must be balanced against the need to obtain that information. In opposition to this bill, the ACLU writes:

Despite some popular media reports, it is important to note that incarcerated people were generally the victims of the recent EDD fraud, and had their information used to apply for benefits without their knowledge or consent. Formerly incarcerated people have had their accounts frozen by EDD and some have received requests to return benefits they never received, all as a result of having someone else use their information. This bill proposes to disseminate incarcerated people's sensitive information, among [] different governmental departments and entities. We are concerned that this will only magnify the likelihood that others will gain access to that information to perpetrate further fraud. That EDD has been unable to protect the personal information it already has in its possession only intensifies this concern.

CDCR already has access to inmates' SSNs. Thus permitting EDD to send them *back* to CDCR arguably creates yet another avenue that could expose inmates to identity theft and fraud themselves. Accordingly, as this bill moves through the legislative process, the author should further investigate the extent to which CDCR needs this information to perform certain functions, and balance that need against the increased risk of identity theft and fraud.

- 7) **Numerous bills introduced this year to address issues with EDD:** In response to the crises at EDD, numerous bills have been introduced this year, of which SB 39 is one. Among those bills are: AB 12 (Seyarto), which would require state agencies to stop sending full SSNs on outgoing mail as soon as feasible, and AB 110 (Petrie-Norris) which would require EDD to cross-match claimant information with information provided by CDCR prior to making any payment of unemployment benefits to ensure that the claimant is not an inmate at a state prison. AB 74 (Lorena Gonzalez) would require EDD to give claimants the option of receiving payments through direct deposit into a qualifying account of their choice, and AB

56 (Salas), would, among other things, set dates by which state agencies that cannot comply with the prohibition on including SSNs on outgoing mail must submit an annual corrective action plan to the Legislature. AB 56 would additionally codify a number of recommendations from the State Auditor's Report. Similarly, SB 232 (Nielsen), which has been single-referred to the Assembly Insurance Committee, would codify many of the same recommendations from the Auditor's Report.

There is considerable overlap among these bills and others moving through the Legislature. This Committee has worked with authors to ensure that competing bills referred to this Committee addressing the EDD situation are appropriately amended. There are many remaining bills, however, that continue to have overlapping or conflicting provisions. This bill is included among those. The authors of these various bills should work collaboratively to ensure that the Legislature passes a series of bills that complement each other and will enhance EDD's performance, which should benefit all California residents.

8) **Related legislation:** AB 12 (Seyarto) *See* Comment 7.

AB 56 (Salas) *See* Comment 7.

AB 74 (Lorena Gonzalez) *See* Comment 7.

AB 110 (Petrie-Norris) *See* Comments 5 and 7.

SB 58 (Wilk) among other things, prohibits EDD from sending outgoing mail with full SSNs beginning October 1, 2021.

SB 232 (Nielsen) *See* Comment 7.

9) **Prior legislation:** AB 499 (Mayes, Ch. 155, Stats. 2020) 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.

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. Stats. 1998) *See* Comment 3.

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

REGISTERED SUPPORT / OPPOSITION:

Support

Alameda County District Attorney's Office
California Chamber of Commerce
California State Sheriffs' Association

County of Kern
County of San Bernardino
Sacramento County District Attorney's Office
San Bernardino County District Attorney's Office
San Bernardino County Sheriff's Department
Southwest California Legislative Council
Tulare County District Attorney's Office

Opposition

ACLU California Action
Initiate Justice
Legal Aid At Work
San Francisco Public Defender

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