

Date of Hearing: June 17, 2021

ASSEMBLY COMMITTEE ON PRIVACY AND CONSUMER PROTECTION

Jesse Gabriel, Chair

SB 58 (Wilk) – As Amended April 27, 2021

SENATE VOTE: 37-0

SUBJECT: Personal information: social security numbers: Employment Development Department: fraud prevention

SUMMARY: Among other things, this bill would prohibit the Employment Development Department (EDD) from sending any outgoing mail containing full social security numbers (SSN), as specified. Specifically, **this bill would:**

- 1) On or before October 1, 2021, prohibit, subject to certain exceptions, EDD from sending any outgoing United States mail to an individual containing the individual's SSN, unless that number is replaced with a modified unique identifier or the number is truncated to its last four digits.
- 2) Require, on or before January 1, 2022, EDD to identify the fraud prevention efforts it can adjust to improve effectiveness during periods of high demand for benefits, and, using existing resources, require EDD to designate a single unit responsible for coordinating fraud prevention and align the unit's duties with best practices for detecting and preventing fraud.
- 3) 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) 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: According to the Senate Appropriations Committee, "Current law prohibits state agencies from sending any outgoing United States mail to individuals containing their SSNs, unless otherwise specified, by January 1, 2023. This bill, among other things, would accelerate this deadline for EDD to October 1, 2021. Complying with this accelerated timeline would require EDD to reallocate existing IT resources such that other competing workload could not be performed. EDD has yet to identify costs related to the other provisions of the bill."

COMMENTS:

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

In March 2019, the State Auditor issued audit report 2018-129, relating to EDD's practice of mailing documents that contain individuals' social security numbers (SSNs). One of the recommendations from the Auditor was for EDD to remove SSNs from its most commonly mailed documents, and replace them with unique identifiers.

On November 19, 2020, the Auditor issued the follow up audit report 2020-502, which concluded that EDD has continued to place Californians at risk of identity theft by not complying with the original audit's recommendation. This is more concerning now, as last year's surge in pandemic-related unemployment insurance claims has further revealed the dangers of EDD's practices. Since the pandemic began, millions more Californians have filed unemployment benefit claims and the number of pieces of mail that EDD sent with SSNs printed on them increased dramatically.

Furthermore, on January 28, 2021, the State Auditor released audit report 2020-628.2, which found that EDD paid about 10.4 billion in potentially fraudulent claims during the pandemic up until the end 2020. It also found that EDD has relied on disjointed and uninformed techniques to prevent fraud. While there is no direct link between the practice

of mailing documents containing individuals' social security numbers and the billions in fraudulent payments, there is a strong possibility that the practice could have placed certain individuals' identities at risk for the fraud that eventually occurred during the pandemic.

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[.]"

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

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% 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. By requiring that EDD stop sending outgoing mail containing full SSNs, as specified, this bill would codify one of those recommendations for state agencies.

- 4) **Attempts to curb practices at EDD that have lead to widespread fraud have been ongoing:** 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 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

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].)

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 SB 58 is one. Among those bills are: AB 110 (Petrie-Norris) and SB 39 (Grove) which would both require EDD to cross-check claimant information with information provided by the CDCR prior to making any payment of unemployment benefits to ensure that the claimant is not an inmate at the state prison; 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:

- 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.
- 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.

Similarly, to protect against identity theft, this bill would require EDD (and not other state agencies) to stop sending outgoing mail containing full SSNs by October of this year, rather than waiting until 2023. While it is clearly not the intent of the author to imply that EDD is not a state agency, singling EDD out in this manner in the Government Code raises statutory construction concerns that could imply that EDD is somehow different for the purposes of

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.

that code. Specifically, creating an exception for EDD to obligations imposed on *all* state agencies in one paragraph of the Government Code (even if that exception creates a more onerous standard for EDD) calls into question whether EDD is a state agency for the purposes of the entire code section, and potentially the entire chapter or part. Accordingly, the author has agreed to amend this bill to prohibit *all* state agencies from including full SSNs on outgoing mail as soon as feasible. This amendment will also ensure that this particular provision of this bill mirrors AB 12 (Seyarto), which this Committee approved earlier this year. Not only does this create consistency, but should also help avoid chaptering out issues, should both bills make their way to the Governor's desk.

Author's amendment:

- On page 3, line 1, strike “commencing on or before” and insert “as soon as feasible, but not later than”
- On page 3, line 2, strike “not send” and insert “stop sending”

This amendment 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 California Landscape Contractors Association writes:

The California EDD provides a variety of services to businesses, workers, and job seekers. The EDD administers several multi-billion-dollar benefit programs including the Unemployment Insurance (UI), Disability Insurance (DI), and Paid Family Leave (PFL) programs that provide financial stability to workers and their communities. CLCA believes that it is long overdue that the EDD stop using employee and employer social security and tax identification numbers in its communications to Californians regarding benefit programs. Identity theft is a serious problem and EDD's current practices make millions vulnerable unnecessarily.

- 5) **Numerous bills introduced this year to address issues with EDD:** As noted above, numerous bills have been introduced this year in response to the crises at EDD, of which SB 58 is one. There is considerable overlap among these bills moving through the Legislature. This Committee has worked with authors to ensure that any duplicative or conflicting provisions are eliminated in the handful of relevant bills that have been referred to this Committee, but there are a number of other bills that continue to have problematic provisions from this perspective. For example, this bill requires EDD to identify the fraud prevention efforts it can adjust to improve effectiveness during periods of “high demand” for benefits, and, “using existing resources, designate a single unit responsible for coordinating fraud prevention and align the unit's duties with best practices for detecting and preventing fraud.”

Similarly, AB 56 (Salas) requires EDD to “immediately begin modeling workload projections that account for possible scenarios that would cause a spike in unemployment insurance claims [and] plan its staffing around the likelihood of those scenarios, including having a contingency plan for less likely scenarios that would have a significant impact on its workload.”

To the extent that these and other provisions overlap, the authors should work to amend their bills to ensure that they complement, and do not duplicate, each other. Such changes to these bills should help to ensure that EDD is able to focus its limited resources in a way that best benefits Californians instead of duplicating efforts to comply with multiple mandates.

Staff notes that this bill has been double-referred to the Assembly Insurance Committee which traditionally has jurisdiction over the Unemployment Insurance Code, which both this bill and AB 56 would amend.

6) **Related legislation:** AB 12 (Seyarto) *See* Comment 4.

AB 56 (Salas) *See* Comment 4.

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

AB 74 (Gonzalez) *See* Comment 4.

SB 39 (Grove) *See* Comment 4.

7) **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.

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

REGISTERED SUPPORT / OPPOSITION:

Support

California Alliance for Retired Americans
California Landscape Contractors Association

Opposition

None on file

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