

ANALYSIS OF ORIGINAL BILL

Franchise Tax Board

Author: Campbell, John Analyst: Darrine Distefano Bill Number: AB 2278

Related Bills: See Legislative History Telephone: 845-6458 Introduced Date: 02-20-2002

Attorney: Patrick Kusiak Sponsor: _____

SUBJECT: Public Records/Personal Identifying Information

SUMMARY

This bill would prohibit a state agency from releasing specific personal information in any public document.

PURPOSE OF THE BILL

According to the author's staff, the intent of this bill is to prevent the disclosure of personal information to third parties.

EFFECTIVE/OPERATIVE DATE

This bill would become effective and operative on January 1, 2003.

POSITION

Pending.

ANALYSIS

FEDERAL/STATE LAW

Current federal and state tax laws require that an individual's Social Security number (SSN) be used as the identifying number for that individual with regard to income taxes. Current state tax law provides that information collected on income tax returns is considered confidential and, unless specifically available for other uses, must be used only to administer the income tax laws. The Franchise Tax Board (FTB) may disclose taxpayer information only in limited circumstances and only to specific recipients as authorized by law. Authorized recipients include individuals other than the individual from whom the information pertains, i.e., an authorized representative, and entities other than public agencies. Unwarranted or unauthorized disclosure of state income tax return information is a misdemeanor offense.

Board Position:

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_____ N	_____ OUA	_____ X PENDING

Department Director

Date

Gerald H. Goldberg

5/7/02

Under the Information Practices Act of 1977, current state law requires state and local agencies to maintain in their records only that personal information relevant and necessary to its governmental purposes, including disclosing personal information under only specific circumstances. "Personal information" is defined as any information that is maintained by an agency that identifies or describes an individual, including, but not limited to, his or her name, SSN, physical description, home address, home telephone number, education, financial matters, and medical or employment history. The definition also includes statements made by, or attributed to, the individual. The Information Practices Act establishes civil remedies for the enforcement of its provisions.

Current state law prohibits any state agency from sending any outgoing United States mail to an individual containing 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 the correspondence is sealed and no personal information can be viewed from the outside of that correspondence.

THIS BILL

This bill would prohibit a state agency from releasing specific information in documents that are available to the public or to other organizations. The information can only be released to the individual to whom the information pertains and to other public agencies. The following information about an individual would be prohibited from being released:

- residential address
- residential telephone number
- mother's maiden name
- social security number
- place of birth

IMPLEMENTATION CONSIDERATIONS

This bill would limit the type of information given by state agencies to third party individuals. Many taxpayers have a tax preparer or execute a power of attorney for someone to act on their behalf. Under this bill the department would be required to sanitize any documents that contain the restricted items provided to these types of individuals. This requirement could increase the department's workload. It should be noted that the taxpayer might have already provided the restricted items under this bill to the tax preparer or person with a power of attorney through other documents; therefore the timeliness of information could be delayed if additional documents, with the restricted items, are requested from the department.

Both federal and California laws require the SSN to be used as the identifying number for individual taxpayers. FTB uses SSNs on documents such as tax liens, wage assignments, and bank levies for delinquent taxpayers sent to banks and employers. SSNs are used to assure proper identification by the county recorders as well as other entities. If FTB is required to remove the SSN from tax liens, wage assignment, and bank levies, an alternate means of identifying taxpayers must be created. This would require extensive system and form changes that would have a significant impact to the department. This alternate identification system would have to be used by banks, employers, and county recorders also so that documents are correctly matched to the individual.

Department staff is available to work with the author's office to resolve these and other concerns that may be identified.

LEGISLATIVE HISTORY

SB 558 (Peace, Stats. 1997, Ch. 685) prohibits any state agency from sending any mail to an individual containing personal information about that individual unless the correspondence is sealed.

SB 129 (Peace, Stats. 2000, Ch. 984) requires each state agency to enact and maintain a permanent privacy policy in adherence with the Information Practices Act of 1977.

SB 1365 (Murray, 1999/2000) would have created the "Identify Theft Victim's Protection Act," which would have made it a felony or misdemeanor to intentionally disclose personal information about a California resident to a third party for direct marketing purposes. This bill failed passage from the Senate Committee on Public Safety.

SB 1767 (Bowen, 1999/2000) would have given a consumer the right to place a security alert or prohibit a consumer credit reporting agency from releasing any information in the consumer's credit report without express authorization of that consumer. This bill failed passage from the Assembly Banking and Finance Committee.

SB 168 (Bowen, Stats. 2001, Ch. 720) limits the use of SSN's as personal identifying numbers and grants consumers the right both to verify and to authorize the issuance of their consumer credit report information.

OTHER STATES' INFORMATION

Most states have privacy laws that are similar to California's privacy laws and the federal Privacy Act, prohibiting various state and local agencies from disclosing personal identifying information, such as an SSN, in an unauthorized manner. Some states have additional laws relating to identity theft; however, they do not further restrict disclosure and use of personal identifying information by revenue collecting agencies.

Illinois, Massachusetts, and Minnesota also have varying identity theft laws that make it illegal to use any personal identifying information of another person to fraudulently obtain credit, money, goods, services, or property in the name of the other person.

FISCAL IMPACT

The department's costs to administer this bill cannot be determined until the implementation concerns have been resolved, but the costs could be significant if the department is required to eliminate SSNs from all documents.

ECONOMIC IMPACT

This bill would not impact the state's income tax revenues.

LEGISLATIVE STAFF CONTACT

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