

SUMMARY ANALYSIS OF AMENDED BILL

Franchise Tax Board

Author: Peace Analyst: Darrine Distefano Bill Number: SB 1386

Related Bills: See Prior Analysis Telephone: 845-6458 Amended Date: 08-23-2002

Attorney: Patrick Kusiak Sponsor: _____

SUBJECT: State Agencies Disclose Any Breach of Security of Computer Data Systems That Contain Personal Information

DEPARTMENT AMENDMENTS ACCEPTED. Amendments reflect suggestions of previous analysis of bill as introduced/amended _____.

AMENDMENTS IMPACT REVENUE. A new revenue estimate is provided.

AMENDMENTS DID NOT RESOLVE THE DEPARTMENT'S CONCERNS stated in the previous analysis of bill as amended August 5, 2002.

FURTHER AMENDMENTS NECESSARY.

DEPARTMENT POSITION CHANGED TO _____.

REMAINDER OF PREVIOUS ANALYSIS OF BILL AS AMENDED August 5, 2002. STILL APPLIES.

OTHER - See comments below.

SUMMARY

This bill would require a state agency to notify an individual whose personal information has been accessed due to a breach of security of that agency's computer system.

SUMMARY OF AMENDMENT

The August 23rd amendments made the following changes to the bill:

- Deletes intent language relating to costs of identity theft.
- Replaces the term "person" with "resident of California" for whom personal information has been or is considered to be acquired by an unauthorized person.
- Replaces the term "accessed" with "acquired."
- Adds language that good faith acquisition of personal information by an employee or agent of the agency is not a breach of security if that information is not used or subject to unauthorized disclosure.
- Adds an individual's first initial to the definition of personal information.
- Adds the term "data elements" when either the name or the data elements are not encrypted and used in combination with an individual's first name, or first initial, and last name under personal information.
- Changes the effective/operative date to July 1, 2003.
- Adds legislative intent language that states this subject matter is of statewide concern and that this act supersedes and preempts all rules, regulations, codes, statutes, or ordinances of all cities, counties, cities and counties, municipalities, and other local agencies regarding this subject matter.

Board Position:			
<input type="checkbox"/> S	<input type="checkbox"/> NA	<input type="checkbox"/> NP	
<input type="checkbox"/> SA	<input type="checkbox"/> O	<input type="checkbox"/> NAR	
<input type="checkbox"/> N	<input type="checkbox"/> OUA	<input checked="" type="checkbox"/> PENDING	

Legislative Director	Date
Brian Putler	9/9/02

The August 23rd amendments did not resolve the department's implementation, technical, and policy considerations. The amendments also create an additional concern under implementation and technical considerations. Those concerns, as well as the previous unresolved concerns, are provided below for convenience. The remainder of the department's analysis from August 5, 2002, still applies.

EFFECTIVE/OPERATIVE DATE

This bill is effective and operative July 1, 2003.

POSITION

Pending.

Summary of Suggested Amendments

Amendments have been suggested to provide consistency and clarity.

IMPLEMENTATION CONSIDERATIONS

It is unclear if the terms "unauthorized person" and "acquired" would include an employee who inappropriately acquires an individual's personal information while performing their duties. A definition of the terms "unauthorized person" and "acquired," including "unauthorized acquisition," would be helpful.

The Revenue & Taxation Code (R&TC) includes specific laws related to unauthorized disclosure and unwarranted inspection of confidential taxpayer information. It is unclear how the provisions of this bill would interact with these R&TC provisions.

The bill uses the term "licenses" to describe computerized data. The author may wish to define the term "license" for clarification.

The bill introduces the term "resident of California." The Information Practices Act (IPA) does not define or utilize this term, but instead uses and defines the term "individual." The author may wish to use the IPA term for consistency purposes and to eliminate constitutional concerns.

TECHNICAL CONSIDERATIONS

Amendments 1 & 2 have been provided to make terms and definitions consistent between the sections relating to agencies and businesses.

Amendment 3 has been provided for clarity purposes.

In referring to an agency being in compliance with this bill, the language of the bill refers to Part 4 of the Civil Code. Part 4 of the Civil Code is very broad and covers many areas that the department is unclear would be relevant to this bill. Perhaps the language of the bill should refer to Title 1.8 of Part 4 concerning personal data.

FISCAL IMPACT

If notification is required only when an *intentional* access (including unauthorized employee access) is made, it is estimated that the department will need 3 personnel years (PYs) at a total cost of \$241,000 to \$262,000 per year to notify and respond to taxpayers.

Due to budget constraints, the department would request appropriations be attached to the bill to support the positions necessary to properly implement the provisions of this bill.

LEGISLATIVE STAFF CONTACT

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FRANCHISE TAX BOARD'S
PROPOSED AMENDMENTS TO SB 1386
As Amended August 23, 2002

AMENDMENT 1

On page 3, line 35, ~~strikeout "acquisition of"~~ and insert:
acquired

AMENDMENT 2

On page 4, line 2, ~~strikeout "access to"~~ and insert:
acquisition of

AMENDMENT 3

On page 7, line 26, ~~strikeout "or"~~ and insert:
of