

SUMMARY ANALYSIS OF AMENDED BILL

Franchise Tax Board

Author: Bowen Analyst: Darrine Distefano Bill Number: SB 1279

Related Bills: See Prior Analysis Telephone: 845-6458 Amended Date: April 16, 2004

Attorney: Patrick Kusiak Sponsor: _____

SUBJECT: State Agencies Disclose Any Breach of Security of 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 introduced/amended _____.

FURTHER AMENDMENTS NECESSARY.

DEPARTMENT POSITION CHANGED TO _____.

REMAINDER OF PREVIOUS ANALYSIS OF BILL AS AMENDED March 22, 2004 STILL APPLIES.

OTHER - See comments below.

SUMMARY

This bill would require a state agency to notify an individual within 30 days of an unauthorized disclosure that was made regarding their personal information.

SUMMARY OF AMENDMENTS

The April 16, 2004, and April 1, 2004, amendments made numerous changes to the bill. As a result, a new "FEDERAL/STATE LAW" discussion and "THIS BILL" discussion are provided below. The April 16th amendments also resolve the department's implementation consideration as discussed in the March 22nd analysis. However, new implementation considerations have been identified and are provided below. Finally, since the amendments remove the credit monitoring service provision, the fiscal impact provided in the department's March 22nd analysis no longer applies. The remainder of the department's analysis of the bill as amended March 22, 2004, still applies.

POSITION

Pending.

FEDERAL/STATE LAW

In 1997, the federal Taxpayer Browsing Protection Act (Act) was enacted. The Act creates a misdemeanor under the Internal Revenue Code (IRC) for the willful, unauthorized inspection of tax returns or return information. This Act applies to all federal employees, as well as state employees and contractors who receive federal tax information. The penalty is a fine of up to \$1,000 or imprisonment up to one year or both. Upon conviction, a federal employee is dismissed from employment.

Board Position:

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Legislative Director

Date

Brian Putler

5/11/04

The Revenue & Taxation Code (R&TC) prohibits the unauthorized inspection or unwarranted disclosure of any taxpayer information (paper or computer data), except as specifically authorized by statute. Unauthorized inspection and unwarranted disclosure of state tax information is a misdemeanor. In addition, employees are subject to disciplinary action or loss of employment or both under the Civil Service Act.

Under the R&TC, Franchise Tax Board (FTB) notifies taxpayers of any willful unauthorized inspection, unwarranted disclosure, or use of his or her confidential taxpayer records, whether electronic or paper, by FTB employees, deputies, agents, clerks, officers, or FTB member, only if criminal charges have been filed. Under the Civil Code, a state agency is required to notify a resident of California in the event their personal information has been acquired by an unauthorized person due to a breach of security of that agency's computer system.

Under current FTB procedures, notification of unauthorized inspection or unwarranted disclosure by an employee is typically sent out within 10-30 days of the investigation being completed. However, notification could be extended beyond this timeframe depending on the nature of the investigation. If an unauthorized disclosure by an employee is made to a third party either due to negligence or unintentional action, that employee's supervisor sends a written report to the department's Disclosure Office within 24 hours. An analysis of the data is performed. FTB notifies the taxpayer(s) of inappropriate access or use or disclosure of their tax information if the taxpayer may suffer from identity theft, financial, or physical harm.

THIS BILL

This bill would require an agency that possesses noncomputerized personal information to notify an individual if there has been an unauthorized disclosure of their information.

This bill would define the following terms:

- "Noncomputerized" means personal information included in written format on paper.
- "Personal information" means an individual's first name or initial and last name in combination with one of the following: social security number, driver's license number or California identification number, or account number, credit or debit number.
- "Unauthorized disclosure" means a machine error, human error, or theft that the agency knows or reasonably should have known to cause the disclosure of a consumer's personal information to a third party.

This bill would require notification of an unauthorized disclosure of noncomputerized personal information within 30 days of the date the agency knew or reasonably should have known of the unauthorized disclosure.

AB 700 (Stat. 2002, Ch. 915) and SB 1386 (Stat. 2002, Ch.1054) were identical bills. SB 1386 chaptered out AB 700. However, both bills were added to the Civil Code. This bill, AB 1279, would repeal the duplicate provisions of current law in the Civil Code.

IMPLEMENTATION CONSIDERATIONS

This bill uses the term "consumer" that is undefined. However this bill also uses the term "individual" to describe personal information that cannot be disclosed. The absence of definitions to clarify "consumer" could lead to disputes with taxpayers and could complicate the administration of this provision by state agencies. The author may wish to either define the term "consumer" or replace the term "consumer" with "individual" to maintain consistency.

As stated, under "FEDERAL/STATE LAW," FTB monitors access and use of paper documents under a manual process and notifies the affected person(s) should their information be accessed or disclosed to an unauthorized person. However, the requirement to notify any consumer within 30 days of an unauthorized disclosure to a third party regardless of whether the analysis of the data indicated an abuse would expand the department's current procedures for notification. Therefore, it is possible that the department could require additional resources to handle these notifications.

FISCAL IMPACT

If the department were to have a large-scale theft of paper documents, department costs have been determined to be approximately \$18,000 for .2 personnel years to investigate and notify taxpayers. However this cost may vary due to expertise needed to investigate and time required resolving the incident.

LEGISLATIVE STAFF CONTACT

Darrine Distefano
Franchise Tax Board
845-6458

darrine.distefano2@ftb.ca.gov

Brian Putler
Franchise Tax Board
845-6333

brian.putler@ftb.ca.gov