

Franchise Tax Board

ANALYSIS OF ORIGINAL BILL

Author: Dababneh & Reyes Analyst: Janet Jennings Bill Number: AB 241
Related Bills: See Legislative History Telephone: 845-3495 Introduced Date: January 30, 2017
Attorney: Bruce Langston Sponsor: _____

SUBJECT: State Agencies Notify CA Residents of Any Breach of Security Promptly, and If the Source of Compromise, Offer Theft and Mitigation Services at No Costs for 12 Months

SUMMARY

Under the Civil Code, this bill would require a state agency that owns or licenses computerized data that includes personal information, which was the source of a security breach of that data, to offer appropriate identity theft prevention and mitigation services for no cost to the affected persons for not less than 12 months.

RECOMMENDATION - NO POSITION

REASON FOR THE BILL

The reason for the bill is to require state agencies, as defined, that have experienced a data breach, to offer identity theft prevention and mitigation services to the individuals affected by that breach.

EFFECTIVE/OPERATIVE DATE

This bill would be effective January 1, 2018, and would apply to specified security breach notifications issued on or after that date.

FEDERAL/STATE LAW

Current federal and state law provides that income tax returns and tax information are confidential and may not be disclosed, unless specifically authorized by statute. Any Franchise Tax Board employee or member responsible for the improper disclosure of federal or state tax information is subject to criminal prosecution or fines, or both. Improper disclosure of federal tax information is punishable as a felony, and improper disclosure of state tax information is punishable as a misdemeanor.

The Information Practices Act of 1977 (Act) requires an agency, as defined, 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. A "breach of the security of the system" is the unauthorized acquisition of computerized data that compromises the security, confidentiality, or integrity of personal information; however, an employee or agent of an agency is authorized to acquire personal information to perform his or her work duties.

For purposes of the Act, "agency" means every state office, officer, department, division, bureau, board, commission, or other state agency, except for the California Legislature, any agency established under Article VI of the California Constitution, the State Compensation Insurance Fund, as specified, and a local agency, as defined in subdivision (a) of Section 6252 of the Government Code.

"Personal information" is defined as either:

- A. An individual's first name or first initial and last name, in combination with one or more of the following data elements, when either the name or the data elements are not encrypted:
 - Social security number;
 - Driver's license number or California Identification Card number;
 - Account number, credit card number, or debit card number along with the required security code, access code, or password that would permit access to an individual's financial account;
 - Medical information;
 - Health insurance information;
 - Information or data collected through the use or operation of an automated license plate recognition system, as defined in Civil Code section 1798.90.5.
- B. A user name or email address, in combination with a password or security question and answer that would permit access to an online account.

Personal information does not include publically available information that is legally made available to the general public from federal, state, or local government records.

The security breach notification is to be written in plain language in the format specified and must include the following information:

- The name and contact information of the reporting agency.
- A list of the types of personal information that were or are reasonably believed to have been the subject of a breach.
- The date, estimated date, or date range the breach occurred, if known.
- Whether the notification was delayed as a result of a law enforcement investigation, if known.
- A general description of the breach, if that information is possible to determine at the time of notice.
- The toll-free telephone numbers and addresses of the major credit reporting agencies, if the breach exposed a social security number, or a drivers' license or California identification number.

THIS BILL

This bill provides that if the agency providing the security breach notification was the source of the breach, then the agency must do the following:

- Offer to provide appropriate identity theft prevention and mitigation services, if any, at no cost to the affected person for not less than 12 months if the breach exposed or may have exposed either a social security number, driver's license number or California identification card number.
- Provide all information necessary to take advantage of the offer to any person whose information was or may have been breached if the breach exposed or may have exposed a social security number, driver's license number or California identification card number.

This bill adds that current state law's notification made after the law enforcement agency determines that the notification will not compromise the investigation, must be done so "promptly."

IMPLEMENTATION CONSIDERATIONS

This bill uses the undefined term, "promptly." The absence of a definition to clarify this term could lead to disputes with taxpayers and would complicate the administration of this remedy.

TECHNICAL CONSIDERATIONS

On page 2, line 21, there needs to be a space inserted between "An" and "agency".

LEGISLATIVE HISTORY

AB 259 (Dababneh, 2015/2016) similar to this bill, AB 259 would have required state agencies to provide appropriate identity theft prevention and mitigation services. AB 259 failed passage from the Senate Appropriations Committee.

SB 46 (Corbett, Chapter 396, Statutes of 2013) added the data elements "user name or email address, in combination with a password or security question and answer that would permit access to an online account" to the definition of "personal information."

SB 24 (Simitian, Chapter 197, Statutes of 2011) requires agencies to provide specific information when notifying California residents of a system security breach containing personal information, notification electronically to the Attorney General when a single breach involves more than 500 California residents, and requires state agencies to provide the Office of Information Security within the Office of the Chief Information Officer with a security breach notification when a substitute notice is used.

OTHER STATES' INFORMATION

The states surveyed include *Florida, Illinois, Massachusetts, Michigan, Minnesota, and New York*. These states were selected due to their similarities to California's economy, business entity types, and tax laws. Florida does not have an individual income tax. The remaining states have statutes similar to California law regarding breach of systems containing personal information. Research failed to identify any statutes specifically related to providing identity theft prevention and mitigation services.

FISCAL IMPACT

The cost would be dependent on the number of security breaches that occur in the future, if any, and the number of taxpayers affected by the breach who elect to request identity theft prevention and mitigation services.

If a security breach of a significant magnitude occurs, the department may need to pursue a budget augmentation ("legislative budget change proposal") through the normal budgetary processes.

ECONOMIC IMPACT

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

SUPPORT/OPPOSITION

Support: None on file.

Opposition: None on file.

ARGUMENTS

Proponents: Some would argue that government should be required to abide by the same laws that are imposed on private industry.

Opponents: Some would argue that taxpayer money should not be used to pay for identity theft prevention and mitigation services.

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