

ANALYSIS OF AMENDED BILL

Author: Lara Analyst: Janet Jennings Bill Number: SB 244
Related Bills: See Legislative History Telephone: 845-3495 Amended Date: July 13, 2017
Attorney: Bruce Langston Sponsor: _____

SUBJECT: State Agency Disclosure of Personal Information in Application for Public Services or Programs

SUMMARY

This bill would restrict the use of personal information that is collected or obtained by state and local agencies.

RECOMMENDATION – NO POSITION

Summary of Amendments

The July 13, 2017, amendments clarified use of patient information.

This is the department's first analysis of the bill. This analysis only addresses the provisions of the bill that impact the department's programs and operations.

Summary of Suggested Amendments

Amendments are provided to clarify the continued allowance of data sharing between state agencies and departments.

REASON FOR THE BILL

The reason for the bill is to protect the disclosure of personal information of individuals in administration of public programs.

EFFECTIVE/OPERATIVE DATE

This bill would become effective and operative January 1, 2018.

FEDERAL LAW

Under federal law, the United States Freedom of Information Act (Information Act) ensures public access to U.S. government records. The Information Act carries a presumption of disclosure; the burden is on the government to substantiate why information may not be released. Upon written request, federal agencies are required to disclose the requested records unless they can be lawfully withheld from disclosure under one of the specific exemptions in the Information Act. Federal agencies are given 20 days to determine whether the agency is able to comply with the information request and notify the requestor of the determination.

The Federal Privacy Act (FPA) provides individuals specific rights and protections in regard to their personal records. Among other provisions, the FPA requires agencies to comply with an individual's request for personal records and establishes procedures for an individual to request amendment of those records. The FPA also creates a cause of action if the agency fails to comply with the FPA.

STATE LAW

Under state law, the Information Practices Act of 1977 (IPA), provides an individual the same rights to request and amend records, and provides for a cause of action if a state agency fails to comply with the IPA, similar to the provisions of the FPA.

Under state law, the Public Records Act (PRA),¹ similar to the federal Information Act, is designed to give the public access to information in possession of public agencies. The state agency bears the burden of justifying nondisclosure of requested information. The agency must justify withholding of any record by demonstrating that the record is exempt or that the public interest in confidentiality outweighs the public interest in disclosure. The state agency is given 10 days to determine whether the department possesses records responsive to the request that may be disclosed and to notify the requestor accordingly along with the estimated date and time when the records will be made available.

Under the Revenue and Taxation Code (R&TC), the Franchise Tax Board (FTB) has specific statutory authority to receive information from certain state agencies, including the State Department of Social Services, Department of Health Care Services,² State Board of Equalization for information regarding sales tax permits and other licenses or permits issued by the State Board of Equalization; the Employment Development Department for income tax withholding information, and several other state agencies that certify qualification for state income tax credits.

THIS BILL

Under the Civil Code, this bill would require state agencies under the IPA to collect and use personal information only for the purpose of assessing eligibility for and administering the public services or programs requested or used by the applicant.

Under the IPA, for purposes of the restricted use, this bill would define "personal information" as any information provided in support of the application including:

- Residential address.
- Date and place of birth.
- Religion.
- Marital status.
- Citizenship or immigration status.

¹ Government Code section 6250 et seq.

² R&TC section 19555.

- Social security number or individual taxpayer identification number.
- Records of criminal or juvenile arrests, convictions, or adjudication.
- Status as a victim of crime.
- Known or suspected political or organization affiliations.
- Status as a recipient of public services or programs.
- Health information.
- Income, assets, and debts.
- Credit information.

An “applicant for public services or programs” would be defined as any natural person who applies for, receives, or uses any government service or benefit on his or her own behalf or on behalf of a dependent.

“Public services or programs” would be defined as any services, programs, or benefits operated, administered, or conducted by the state, or by any state or local agency, contractor, or grantee using public funds, intended to contribute to an improvement in the condition of the applicant, including veterans’ services, job training and assistance, education, financial aid, health care, disability, rehabilitation, employment or labor, workers’ compensation, retirement, unemployment benefits, income assistance, nutrition assistance, family services, housing, counseling, law enforcement assistance, library access, identification cards, driver’s licenses, professional or business licenses, business assistance, other licenses and permits, and victim’s services.

Patient medical information could continue to be used by public hospitals and licensed health care professionals for the administration and operation of hospital services and programs.

The bill specifies that the changes made to the IPA would not affect whether a public record is subject to disclosure under the PRA.

Additionally, under the PRA, this bill would require sensitive personal information to be exempt from disclosure, with the following exceptions:

- If disclosure is required to assess eligibility for and to administer the public services or programs requested or used by the applicant, including for purposes of coordinating services or programs for an individual across state and local agencies, ensuring that public services or programs adequately serve individual and diverse communities, and providing access to public services, programs, or benefits.
- If disclosure is otherwise required by California law.
- If the disclosure is made in a manner that cannot be used to identify the person to whom that sensitive information pertains, alone, or in combination with other data.
- If the disclosure is pursuant to a state or federal court order.
- If the disclosure is made in response to a law enforcement request to address an urgent health or safety need and the law enforcement agency certifies in writing the specific circumstances that do not permit authorities time to obtain a court order.

- If the disclosure is made as follows:
 - In response to a request or authorization signed by the applicant, in which case the applicant's information may be shared with the applicant.
 - In response to a civil discovery request following notice to the individual whose sensitive personal information is disclosed if the disclosure is made pursuant to a protective order that limits disclosure and use of the information to the litigation in which the discovery is sought and requires the destruction of the information at the close of the litigation.

This bill would specifically allow:

- State and local agencies to exchange information if the exchange is otherwise permitted by law, and the exchange is necessary to address an individual's need for health or social services, or a particular health concern.
- State and local agencies for academic institutions to exchange information if the exchange is otherwise permitted by law, in order to evaluate a public service or program or to improve public service or program outcomes.
- The disclosure of information within a multidisciplinary team, child and family team, or other cross-disciplinary service delivery methodology otherwise authorized by statute, for purposes of developing and implementing service delivery plans for a child, adult, or family receiving public services. Any disclosure of this type would be subject to the applicable statutory confidentiality provisions for the teams involved.
- Sharing a decision issued pursuant to an administrative hearing conducted by a state or local agency if the decision is disclosed in a manner that would prevent it from being used to determine the identity of the person upon whom the decision is based, alone, or in combination with other data.
- A hospital or licensed health care professional to disclose patient medical information to an authorized person in compliance with the Confidentiality of Medical Information Act (Part 2.6 (commencing with Section 56) of Division 1 of the Civil Code) or the Lanterman-Petris-Short Act (Division 5 (commencing with Section 5000) of the Welfare and Institutions Code).

For purposes of the PRA, this bill would define the following words and phrases:

"Sensitive personal information" would mean:

- Place of birth.
- Religion.
- Marital status.
- Citizenship or immigration status.
- Social security number or taxpayer identification number.
- Records of juvenile arrests or juvenile convictions or adjudications, except that records of juvenile adjudications may be disclosed to a person or entity that is specifically authorized by law.
- Status as a victim of a crime.

- Health information.
- Health insurance information.
- Income, assets, and debt.
- Credit information.

“Applicant for public services or programs” would mean any natural person who applies for, receives, or uses any government service or benefit on his or her own behalf or on behalf of a dependent.

“Public services or programs” would mean any services, programs, or benefits operated, administered, or conducted by the state, or by any state or local agency, contractor, or grantee using public funds, intended to contribute to an improvement in the condition of an applicant, including veterans’ services, job training and assistance, education, financial aid, health care, disability, rehabilitation, employment or labor, workers’ compensation, retirement, unemployment benefits, income assistance, nutrition assistance, family services, housing, counseling, law enforcement assistance, library access, identification cards, driver’s licenses, professional or business licenses, business assistance, other licenses and permits, and victim’s services.

IMPLEMENTATION CONSIDERATIONS

Department staff has identified the following implementation consideration for purposes of a high-level discussion; additional concerns may be identified as the bill moves through the legislative process. Department staff is available to work with the author’s office to resolve these and other concerns that may be identified.

Based on the amendments to the IPA, it appears that, notwithstanding any other law, agencies would be prohibited from disclosing “personal information” to other state agencies, essentially prohibiting disclosure of such data that is specifically authorized currently under the R&TC. Drafting the language as notwithstanding any other law, appears to conflict with current Civil Code section 1798.24(e), (f), and (g). If this is contrary to the author’s intent, the bill should be amended.

The bill uses the term “public services and programs” that is undefined. It is unclear as to which agencies or subdivisions of the state are “public services and programs.” Arguably, it could be all state agencies or subdivisions of the state. For clarity and ease of administration, it is recommended that the bill be amended.

It is unclear what the scope is of “only for the purpose of assessing eligibility for and administering those public services and programs requested or used by the applicant” (used on page 11 starting on line 25). What is within the scope of assessing eligibility? Of administration of public services? Does this have the effect of prohibiting disclosure of all information retained by the state agency or only the application data? For clarity and ease of administration, it is recommended that the bill be amended.

LEGISLATIVE HISTORY

None identified.

OTHER STATES' INFORMATION

Since this bill pertains to disclosure under the IPA and the PRA a review of other states' income tax laws would not be relevant.

FISCAL IMPACT

If the bill is amended to resolve the implementation considerations addressed in this analysis, the department's costs are expected to be minor.

ECONOMIC IMPACT

The FTB administers various collections programs that rely on data sharing agreements between the FTB and other state agencies. The FTB collects hundreds of millions of dollars annually from the various programs that benefit from data sharing agreements. This bill may reduce the amount of information that other agencies share with the FTB, which could reduce the FTB's ability to identify and collect delinquent taxes. Currently, it is unclear which shared data sources may be affected, so it cannot be determined how much revenue would be lost. However, the revenue impact could be in the tens of millions of dollars annually.

This analysis does not account for changes in employment, personal income, or gross state product that could result from this bill.

SUPPORT/OPPOSITION

Support:

American Civil Liberties Union of Northern California (co-sponsor)
California Immigrant Policy Center (co-sponsor)
Alliance for Boys and Men of Color
Alliance San Diego
American Academy of Pediatrics
American Immigration Lawyers Association
Asian Americans Advancing Justice
Asian Health Services Asian
Law Alliance
California Board of Behavioral Sciences
California Food Policy Advocates
California Health Professional Student Alliance
California Labor Federation
California Latinas for Reproductive Justice
California One Care
California Pan-Ethnic Health Network
California Partnership

California Policy Advocacy Network California
Rural Legal Assistance Foundation California
Rural Legal Assistance Foundation California
Health+ Advocates
CLUE Ventura County
Coalition for Humane Immigrant Rights of Los Angel
Community Health Councils
Community Health Initiative of Orange County
Consumer Federation of CA
Courage Campaign
Education Trust West
El Quinto Sol de America Greenlining Institute Having Our Say
Health Access CA HOPE
Inland Empire Immigrant Youth Collective
Institute of Popular Education of Southern California
Jewish Family Services of Los Angeles
Jewish Public Affairs Committee of California Korean Community Center of the East Bay
Latino Coalition for a Healthy California Legal Aid at Work
Maintenance Cooperation Trust Fund
Mixteco Indigena Communtiy Organizing Project
National Association of Social Workers
National Council of Jewish Women- CA
National Health Law Program
National Immigration Law Center North
Bay Immigrant Youth Union Pangea
Legal Services
Pilipino Workers Center of Southern CA
Project Inform
San Francisco Senior & Disability Action
Senior Disability Action
Services, Immigrant Rights and Education Network
South Asian Network
The Haywood Burns Institute
United Farm Workers Village
Connect
Western Center on Law and Poverty

Opposition:

California Hospital Association
California State Sheriffs Association
Californians Aware
Coalition for Sensible Public Records Access

ARGUMENTS

Proponents: Some could argue that this bill would assure an individual's privacy is protected from disclosure.

Opponents: Some could argue that the prohibition on information sharing is overly broad and could impact the state's ability to deliver services efficiently while minimizing waste, fraud, and abuse.

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FRANCHISE TAX BOARD'S
PROPOSED AMENDMENTS TO SB 244
As Amended July 13, 2017

AMENDMENT 1.

On page 12, after line 34, insert:

(e) This section shall not prohibit any state agencies or departments from utilizing data received under data sharing agreements, as specifically provided for by law.