



Analysis of Amended Bill

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Subject

State Agencies Report when Full Social Security Number (SSN) Mailed

Summary

This bill, under the Government Code (GC), would restrict a state agency from sending mail to an individual that contains an individual's full SSN, as specified, and would create a reporting requirement.

This analysis only addresses provisions of this bill that would impact the department's programs or operations.

Recommendation – No position.

Summary of Amendments

The April 11, 2019, amendments removed provisions of the bill related to the Insurance Code, and replaced them with the provisions discussed in this analysis.

The January 15, 2020, amendments extended by one year, until September 1, 2021, the due date for the report to the legislature that would be required by this bill.

Reason for the Bill

The reason for this bill is to protect SSNs from being disclosed and deter identity theft.

Effective/Operative Date

This bill would be effective and operative on January 1, 2021.¹ The restriction on sending mail containing an individual's full SSN would be specifically operative on or before January 1, 2023.

¹ The effective date is premised that the bill will be enacted in the 2020 legislative session.

Program Background

Under current department practice, the department collects personal information from various sources, including from the taxpayer and from agencies required to report financial information. For example, the department receives from the Employment Development Department employer-provided wage and withholding information, as well as financial information from financial institutions, as part of the Financial Information Records Match (FIRM). This information is used for return validation, compliance development, audit, and collection purposes. The Franchise Tax Board (FTB) does not use personal information or provide that information to third parties for any marketing purposes. As required by statute, all information received from the taxpayer is confidential and is shared with federal or state agencies only for statutorily specified purposes.

The FTB has stringent departmental policies and procedures regarding privacy and disclosure. All employees receive training annually about ensuring the confidentiality of taxpayer information and are given updated procedures on a regular basis. Any violation of these policies and procedures is subject to disciplinary action, punishable by law, or both.

The basic design of the FTB's personal income tax (PIT) mainframe computer system generally uses the SSN as an internal identifier. However, to protect the taxpayers' privacy, the FTB uses a unique ten digit identifier to take the place of an SSN on all notifications, bills, or correspondence. Certain communications regarding collection activities contain the taxpayer's full SSN, such as orders to withhold sent to a taxpayer's employer to ensure the correct taxpayer's wages are garnished.

Federal/State Law

Current federal and state tax laws generally require that an individual's 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 FTB may disclose taxpayer information only in limited circumstances and only to specific agencies as authorized by law. Improper disclosure of federal tax information is punishable as a felony, and improper disclosure of state tax information is punishable as a misdemeanor.

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 their governmental purposes, including disclosing personal information under only specific circumstances and keeping records thereof. "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.

Current state law requires the FTB to truncate the first five digits of SSNs on lien abstracts and any other records created by FTB that are made public.

This Bill

This bill, under the GC, would provide:

- Notwithstanding any other law, commencing on or before January 1, 2023, a state agency shall not send any outgoing United States mail to an individual that contains the individual's full SSN unless, under the particular circumstances, federal law requires inclusion of the full SSN.
- On or before September 1, 2021, each state agency would be required to report to the Legislature when and why it mails documents that contain individuals' full SSNs. A state agency that, in its own estimation, is unable to comply with the requirement of this bill by January 1, 2023, would be required to submit an annual corrective action plan to the Legislature until it is in compliance. The report would be required to be submitted in compliance with GC section 9795. The requirement for submitting a report would be inoperative on January 1, 2024, pursuant to GC section 10231.5.²

This bill would require a state agency that is not in compliance with this bill's requirement to not send outgoing United States mail with an individual's full SSN to offer appropriate identity theft prevention and mitigation services for at least 12 months, free of cost, to any individual to whom the state agency sent outgoing United States mail that contained the individual's full SSN, along with all information necessary to take advantage of the offer.

² GC section 10231.5 requires repeal of a reporting requirement within a specified period: four years following the date the bill was enacted or four years after the due date of any report required every four or more years.

Implementation Considerations

Department staff has identified the following implementation considerations 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.

This bill's restrictions would apply to "mail to an individual;" however, the reporting requirement would apply to "documents that contain individuals' full SSNs." The bill lacks a definition of "documents" thus it is unclear whether the author intends the reporting requirement apply to "documents" mailed to an individual, or more broadly. The department's concern would be alleviated if the bill was amended to clarify that the reporting requirement would apply to "documents mailed to an individual."

This bill uses terms and phrases that are undefined, i.e., "documents," "comply with the requirements of this bill," "corrective plan," "appropriate identity theft prevention," "mitigation services," and "all information necessary to take advantage of the offer." The absence of definitions to clarify these terms and phrases could lead to disputes with taxpayers and would complicate the administration of this bill. The author may want to amend the bill to clearly define the terms and phrases.

It is unclear whether the bill's requirement to provide identity theft prevention applies only for mail containing an individual's full SSN that is sent to that individual, or all "documents" mailed containing an individual's full SSN, for example, orders to withhold sent to an employer. Additionally, it is unclear when the start date for the 12-month period would begin. The department's concern would be alleviated if the bill was amended to clarify that the identity theft prevention requirement would apply to "mail to an individual."

The "Notwithstanding" language is vague and it is unclear how the provision could be harmonized with existing disclosure laws and federal law. For clarity and consistency with the author's intent, it is recommended that the bill be amended.

Legislative History

AB 322 (Waldron, 2015/2016), would have required a person, entity, state agency, or local agency to encrypt SSNs, as specified. AB 322 failed to pass by the constitutional deadline.

AB 1168 (Jones, Chapter 627, Statutes of 2007), among other changes, required the FTB to truncate SSNs on lien abstracts and any other records created by FTB that are disclosable under the Public Records Act.

Fiscal Impact

The department's costs to implement this bill have yet to be determined. As the bill moves through the legislative process, costs will be identified.

Economic Impact

Revenue Estimate

This bill as amended January 15, 2020, would not impact state income or franchise tax revenue.

This analysis does not account for changes in employment, personal income, or gross state product that could result from this bill or for the net final payment method of accrual.

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