

**SENATE JUDICIARY COMMITTEE**  
**Senator Thomas Umberg, Chair**  
**2021-2022 Regular Session**

AB 12 (Seyarto)  
Version: March 24, 2021  
Hearing Date: June 29, 2021  
Fiscal: Yes  
Urgency: Yes  
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**SUBJECT**

Personal information: social security numbers: the Employment Development  
Department

**DIGEST**

This bill requires state agencies, as soon as is feasible, but no later than January 1, 2023, to stop sending any outgoing United States mail to an individual that contains the individual's social security number, unless truncated, except as provided.

**EXECUTIVE SUMMARY**

As a result of the COVID-19 pandemic, there was a dramatic rise in unemployment claims and an attendant "spike in fraudulent unemployment claims complaints related to the ongoing COVID-19 pandemic involving the use of stolen personally identifiable information."<sup>1</sup> In California alone, EDD reported processing a total of approximately 11.9 million unemployment claims in the first six months and have acknowledged the rise in fraud.<sup>2</sup> In response, this bill expedites the requirement in existing law that agencies phase out the practice of sending United States mail with individuals' full social security numbers.

The bill is author-sponsored. It is supported by the California Landscape Contractors Association and the Southwest California Legislative Council. There is no known opposition. The bill includes an urgency clause. It passed out of Senate Governmental Organization Committee on a vote of 15 to 0.

**PROPOSED CHANGES TO THE LAW**

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<sup>1</sup> Press Release, FBI Sees Spike in Fraudulent Unemployment Insurance Claims Filed Using Stolen Identities (July 6, 2020) FBI, <https://www.fbi.gov/news/pressrel/press-releases/fbi-sees-spike-in-fraudulent-unemployment-insurance-claims-filed-using-stolen-identities>. All internet citations are current as of June 14, 2021.

<sup>2</sup> News Release, *Nearly \$77 billion in unemployment benefits paid to workers impacted by pandemic* (September 3, 2020) EDD, [https://www.edd.ca.gov/About\\_EDD/pdf/news-20-44.pdf](https://www.edd.ca.gov/About_EDD/pdf/news-20-44.pdf).

Existing law:

- 1) Prohibits state agencies from sending any outgoing United States mail to individuals that contains personal information about an individual, including, but not limited to, an individual's social security number, telephone number, driver's license number, or credit card account number, unless that personal information is contained within sealed correspondence and cannot be viewed from the outside of that sealed correspondence. (Gov. Code § 11019.7(a).)
- 2) Prohibits, as of January 1, 2023, state agencies from sending any outgoing United States mail to individuals that contains an individual's social security number unless the number is truncated to its last four digits, except in the following circumstances:
  - a) federal law requires inclusion of the social security number;
  - b) the documents are mailed to a current or prospective state employee;
  - c) an individual erroneously mailed a document containing a social security number to a state agency, and the state agency is returning the original document by certified or registered United States mail;
  - d) the Controller is returning documents to an individual previously submitted by the individual pursuant to Code of Civil Procedure section 1500 et seq.; or
  - e) the document is sent in response to a valid request for access to personal information, pursuant to Civil Code Section 1798.34. (Gov. Code § 11019.7(b)(1).)
- 3) Requires, on or before September 1, 2021, each state agency that mails an individual's full or truncated part of a social security number to that individual, other than as permitted by the previous paragraph, to report to the Legislature regarding when and why it does so. If a state agency determines that it is unable to comply with the above requirements, it must submit an annual corrective action plan to the Legislature until it is in compliance. (Gov. Code § 11019.7(b)(2).)
- 4) Establishes the data breach notification law, which requires any agency that owns or licenses computerized data that includes personal information to disclose a breach of the security of the system to any California resident whose unencrypted personal information was, or is reasonably believed to have been, acquired by an unauthorized person. The disclosure must be made in the most expedient time possible and without unreasonable delay, consistent with the legitimate needs of law enforcement, as specified. (Civ. Code § 1798.29(a), (c).)
- 5) Requires, pursuant to the data breach notification law, that any agency that maintains computerized data that includes personal information that the agency does not own to notify the owner or licensee of the information of any security breach immediately following discovery if the personal information was, or is

reasonably believed to have been, acquired by an unauthorized person. (Civ. Code § 1798.29(b).)

- 6) Requires the county recorder of each county to establish a social security number truncation program in order to create a public record version of each official record, in an electronic format, and requires the social security number contained in the record to be truncated, as specified. (Gov. Code § 27301.)

This bill:

- 1) Provides that the existing requirement for a state agency to stop sending any outgoing United States mail to an individual that contains the individual's social security number unless the number is truncated must happen as soon as is feasible, but no later than January 1, 2023.
- 2) Provides that it is an urgency measure necessary to ensure that unemployment insurance claimants' full social security numbers are no longer easily accessible through the mail to individuals who seek to obtain benefits fraudulently, thereby reducing the state and federal costs resulting from unemployment insurance fraud, as soon as possible.
- 3) Makes a series of legislative findings.

### COMMENTS

#### 1. Protecting against identity theft

A Social Security number (SSN) is a nine-digit number issued to citizens, permanent residents, and certain temporary residents. The number is issued to an individual by the Social Security Administration. Although the primary purpose of the SSN is to track individuals for taxation and distribution of retirement benefits, it has effectively gained use as a national identification number. In fact, the number is used widely as a unique identifier by both the public and the private sector and has been called the "most frequently used recordkeeping number in the United States."

Social Security numbers are often used to verify identity, and, in the wrong hands, can be used by an identity thief to fraudulently open credit card or utility accounts, access financial accounts, or obtain loans, among other things. The overall growth in the use of SSNs is important to individual SSN holders because this number is one of the personal identifiers most sought after by identity thieves, making its easy availability, particularly in widespread mailings, of special concern.

The sensitivity of the information in these records coupled with their increasing availability online prompted legislation enacted in 2007 to protect against identity theft. In relevant part, the law requires the county recorder of each county to establish a social

security number truncation program in order to create a public record version of each official record, in an electronic format, and requires the social security number contained in the record to be truncated.

AB 458 (Peace, Ch. 685, Stats. 1997) also responded to growing concerns about identity theft. AB 458 established Government Code section 11019.7, which prohibited a state agency from sending any outgoing United States mail to an individual that contains personal information about that individual, including, but not limited to, the individual's social security number, telephone number, driver's license number, or credit card account number, unless that personal information is contained within sealed correspondence and cannot be viewed from the outside of that sealed correspondence.

## 2. EDD and the California State Auditor

In response to a request from the Joint Legislative Audit Committee, the California State Auditor's Office conducted an audit specifically focused on EDD's "privacy protection practices when mailing documents to its customers."<sup>3</sup> The audit report was released in March 2019 and was entitled *Employment Development Department, Its Practice of Mailing Documents Containing Social Security Numbers Puts Californians at Risk of Identity Theft*. The report found that in fiscal year 2017-2018 alone, EDD sent more than 17 million pieces of mail with full social security numbers. The report acknowledged that EDD had undertaken efforts to reduce individuals' social security number exposure, but concluded that those efforts were "insufficient to fully address privacy concerns." The report asserted that the evidence "showed that EDD exposed nearly 300 claimants to the risk of identity theft when it inappropriately disclosed their personal information – including SSNs – to others."

The Auditor proposed various solutions to EDD, including one involving the replacement of full social security numbers with a modified unique identifier. The report states: "EDD management indicated that this solution would be the least disruptive to its existing systems, policies, and procedures, and that EDD supports this solution compared to the others we identified."

The report also made a number of recommendations to the Legislature. In response, AB 499 (Mayes, Ch. 155, Stats. 2020) carried out those recommendations, building on AB 458. AB 499 prohibits, "commencing on or before January 1, 2023," state agencies from sending mail to individuals that contains an individual's social security number unless the number is truncated to its last four digits. However, it provides various exceptions under the following circumstances:

- federal law requires inclusion of the social security number;

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<sup>3</sup> *Employment Development Department, Its Practice of Mailing Documents Containing Social Security Numbers Puts Californians at Risk of Identity Theft* (March 2019) California State Auditor, <https://www.auditor.ca.gov/pdfs/reports/2018-129.pdf>.

- the documents are mailed to a current or prospective state employee;
- an individual erroneously mailed a document containing a social security number to a state agency, and the state agency is returning the original document by certified or registered United States mail;
- the Controller is returning documents to an individual previously submitted by the individual pursuant to Code of Civil Procedure section 1500 et seq.; or
- the document is sent in response to a valid request for access to personal information, pursuant to Civil Code Section 1798.34. (Gov. Code § 11019.7(b)(1).)

In November 2020, the California State Auditor issued a follow-up letter on the March 2019 audit, finding:

EDD has not yet removed [social security numbers] from some of the most commonly mailed documents as we recommended, meaning that EDD has continued to place Californians at risk of identity theft. The recent surge in unemployment insurance (unemployment) claims resulting from the COVID-19 pandemic has further revealed the dangers of EDD's practices. As millions more Californians filed unemployment benefit claims, the number of pieces of mail that EDD sent with [social security numbers] printed on them increased dramatically. EDD must take swift action to end its potentially harmful practice and better safeguard the identities of the residents it serves.<sup>4</sup>

The letter specifically highlighted EDD's agreement, at the time of the audit, to immediately implement one of the Auditor's suggested solutions: replacing full social security numbers with a modified unique identifier. The report indicates that EDD failed to carry out such actions adequately, finding "EDD has updated only two of the 10 forms" they reviewed, which did not include any of the three forms the audit report recommended it prioritize.

This bill amends a provision added by AB 499 to expedite the phase out of state agencies sending documents containing full social security numbers. Instead of simply requiring state agencies to halt the practice on or before January 1, 2023, the bill requires them to stop sending non-truncated social security numbers "as soon as is feasible, but no later than January 1, 2023."

According to the author:

It goes without saying that an individual's Social Security Number is one of the most important pieces of information an individual should protect. This legislation follows a recommendation by the State Auditor after an

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<sup>4</sup> *Follow-Up – Employment Development Department Since the COVID-19 Pandemic It Continues to Mail Documents Containing Social Security Numbers and Put Californians at Risk of Identity Theft* (November 19, 2020) California State Auditor, <http://auditor.ca.gov/reports/2020-502/index.html>.

investigation into the Employment Development Department (EDD) practice of sending out mail with full Social security numbers. EDD exposed nearly 300 claimants to the risk of identity theft when it inappropriately disclosed their personal information, including SSNs, to other mail recipients. EDD is currently undergoing a system modernization project, which will incorporate a unique identifier to replace SSNs. However, this will not be completed before 2024 and EDD will send approximately 70 million documents with SSNs during this period. It is also unclear that EDD needs to send SSNs through the mail as the State Auditor could not find any laws expressly requiring them to do so. While EDD is a perfect example of the importance of protecting SSN, this bill seeks to protect Californians from all departments and agencies that may be following the same practices and endangering the identities of millions of Californians.

Writing in support, the Southwest California Legislative Council argues: “This truncation of numbers has been standard practice in private industry, real estate, county assessors and other venues for years. It’s time the State of California adopted these same privacy protections for our most needy unemployed residents.”

#### **SUPPORT**

California Landscape Contractors Association  
Southwest California Legislative Council

#### **OPPOSITION**

None known

#### **RELATED LEGISLATION**

##### **Pending Legislation:**

SB 39 (Grove, 2021) requires the Department of Corrections and Rehabilitation and counties to provide the names and social security numbers of current inmates to EDD for the purposes of preventing payments on fraudulent claims for unemployment compensation benefits, as specified. It requires EDD to use such information for verification purposes. This bill is currently in the Assembly Insurance Committee.

SB 390 (Laird, 2021) requires EDD to develop and implement a comprehensive plan to prepare for an increase in unemployment insurance compensation benefits claims due to an economic recession. The plan shall detail how to respond to economic downturns with a predetermined strategy that has considered the full effect on EDD’S operations. This bill is currently in the Assembly Insurance Committee.

SB 420 (Umberg, 2021) establishes the Unemployment Insurance Integrity Enforcement Program within the Department of Justice, administered by the Attorney General. The bill requires the Attorney General to establish a task force including the State Auditor charged with coordinating with local district attorneys and, when available and necessary, with the United States Attorney's Office to pursue available methods to recover improper benefit payments made by EDD. The bill would require the task force, prior to pursuing any civil or criminal action, to prepare a cost-benefit analysis, as specified. This bill is currently in the Assembly Insurance Committee.

AB 56 (Salas, 2021) extensively regulates EDD, requiring a series of assessments of its operations and specified corrective plans to be put into place should it be unable to abide by certain security requirements. AB 56 will be heard in this Committee on the same day as this bill.

AB 110 (Petrie-Norris, 2021) requires the Department of Corrections and Rehabilitation to provide the names and social security numbers of current inmates to EDD for the purposes of preventing payments on fraudulent claims for unemployment compensation benefits, as specified. It requires EDD to use such information for verification purposes. This bill is currently in the Senate Public Safety Committee.

Prior Legislation:

AB 499 (Mayes, Ch. 155, Stats. 2020) *See* Comment 2.

SB 447 (DeSaulnier, 2012) would have prohibited a state agency from sending any communication to any individual that contains the full SSN of that individual unless required by federal law. This bill was vetoed by Governor Brown, who asserted in his veto message that "federal and state laws provide numerous protections against identity theft and fraud." He argued the bill would "hinder the ability of state agencies to promptly and accurately provide information to run essential programs."

AB 458 (Peace, Ch. 685, Stats. 1997) *See* Comment 1.

**PRIOR VOTES:**

Senate Governmental Organization Committee (Ayes 15, Noes 0)

Assembly Floor (Ayes 76, Noes 0)

Assembly Appropriations Committee (Ayes 16, Noes 0)

Assembly Insurance Committee (Ayes 13, Noes 0)

Assembly Privacy and Consumer Protection Committee (Ayes 11, Noes 0)

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