

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

SB 58 (Wilk)  
Version: March 15, 2021  
Hearing Date: March 23, 2021  
Fiscal: Yes  
Urgency: Yes  
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**SUBJECT**

Personal information: social security numbers: Employment Development Department:  
fraud prevention.

**DIGEST**

This bill prohibits the Employment Development Department (EDD) from sending any outgoing United States mail with an individual's social security number unless it is replaced with a modified unique identifier or truncated to its last four digits, except as provided. The bill places certain requirements on EDD related to fraud prevention.

**EXECUTIVE SUMMARY**

During the COVID-19 pandemic, the economic disruption led to a dramatic rise in unemployment claims. Within nine weeks of the beginning of the pandemic, 38.6 million claims had been filed for unemployment in the United States, or roughly one out of four people working before the pandemic hit.<sup>1</sup> By mid-July, the number surpassed 51 million.<sup>2</sup> As reported by the FBI, with the rise came a "spike in fraudulent unemployment claims complaints related to the ongoing COVID-19 pandemic involving the use of stolen personally identifiable information."<sup>3</sup>

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<sup>1</sup> Scott Horsley, *38.6 Million Have Filed For Unemployment Since March* (May 21, 2020) NPR, <https://www.npr.org/sections/coronavirus-live-updates/2020/05/21/859836248/38-6-million-have-filed-for-unemployment-since-march> [as of Mar. 9, 2021]. All further internet citations are current as of March 9, 2021.

<sup>2</sup> Danielle Echeverria, *More than 51 million have filed for unemployment under shelter-in-place* (July 16, 2020) San Francisco Chronicle, <https://www.sfchronicle.com/business/article/More-than-50-million-have-filed-for-unemployment-15412510.php>.

<sup>3</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>.

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>4</sup> In response, two audits have been conducted; this bill carries out several of the audit's recommendations. It prohibits the inclusion of social security numbers in EDD mailings, except as specified, and requires EDD to take certain steps to address potential fraud.

The bill is author-sponsored. It is supported by the California Landscape Contractors Association. There is no known opposition. The bill includes an urgency clause. It passed out of Senate Labor, Public Employment, and Retirement Committee on a vote of 5-0.

### **PROPOSED CHANGES TO THE LAW**

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,

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<sup>4</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).

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 Sec. 27301.)

This bill:

- 1) Prohibits EDD, commencing on or before October 1, 2021, from sending any outgoing United States mail to an individual containing the individual's social security number, unless that social security number is replaced with a modified unique identifier or truncated to its last four digits. Exempted from this requirement are instances where EDD is returning an individual's own documents or under the circumstances laid out in Section 11019.7(b)(1) of the Government Code.
- 2) Requires EDD, on or before January 1, 2022, to identify the fraud prevention efforts it can adjust to improve effectiveness during periods of high demand for benefits.
- 3) Requires EDD, on or before January 1, 2022, to designate, using existing resources, a single unit responsible for coordinating fraud prevention and align the unit's duties with best practices for detecting and preventing fraud.

- 4) Declares that it is an urgency statute to take immediate effect in order to detect and prevent fraud and protect and better safeguard the identities of millions of unemployment insurance claimants served by EDD.

## 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>5</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, as of 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;
- 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).)

AB 499 further requires all agencies that mail social security numbers, other than as provided above, to report to the Legislature on or before September 1, 2021, when and why it does so. If a state agency 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).) Both of these were drawn from the audit report’s recommendations.

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<sup>5</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>.

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>6</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.

The California State Auditor subsequently conducted an "emergency audit of EDD's response to the COVID-19 pandemic, including its backlog of unemployment claims, its call center performance, and the adequacy of its information technology infrastructure." Released in January 2021, the audit report highlights "significant weaknesses in EDD's approach to fraud prevention." The report again laid out recommendations moving forward. It urged the Legislature to pass legislation requiring EDD to "assess the effectiveness of its fraud prevention and detection tools, eliminate those that are not effective, and reduce duplication in its efforts." The audit report recommended that "EDD should plan in advance which UI fraud prevention and detection mechanisms it can adjust during recessions to effectively balance timely payment with fraud prevention." It specifically urged EDD to do the following:

- By March 2021, establish a central unit responsible for coordinating all fraud prevention and detection efforts.
- By May 2021, develop a plan for how it will assess the effectiveness of its fraud prevention and detection tools.

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<sup>6</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>.

### 3. Responding to the recommendations

This bill takes steps toward better protecting an individual's sensitive information by implementing suggestions found in the series of relevant audit reports over the last two years. As discussed, the Auditor has recommended replacing use of full social security numbers with unique identifiers, which allows EDD to effectively track claimants without exposing their social security numbers. EDD has stated it finds this solution to be one of the "least disruptive to its existing systems." In fact, this approach was an element of EDD's modernization project, albeit on a much longer timeline; it was not projected to be completed until well into 2024.

This bill requires EDD, on or before October 1, 2021, to cease sending outgoing mail containing an individual's social security number, unless that social security number is replaced with a modified unique identifier or truncated to its last four digits. It provides exceptions where EDD is returning an individual's own documents or under the circumstances laid out in Section 11019.7(b)(1) of the Government Code. This provision mandates a recommended practice that will significantly reduce the risks to an individual's privacy and security. As indicated above, the law already provides that all state agencies must cease sending mail containing an individual's social security number unless the number is truncated to its last four digits. However, agencies are not required to comply with that provision until January 1, 2023. This bill therefore pushes the timeline forward more than one year for EDD, as provided.

The bill also carries out several recommendations from the Auditor with regard to internal fraud prevention. It requires EDD, on or before January 1, 2022, to identify the fraud prevention efforts it can adjust to improve effectiveness during periods of high demand for benefits, and requires them to designate a single unit responsible for coordinating fraud prevention and align the unit's duties with best practices for detecting and preventing fraud. The bill specifically requires that the latter duty be done "using existing resources."

### 4. Stakeholder positions

According to the author:

In this day and age it is inconceivable that any government agency would include an individual's most important personal information on unsecure correspondence. The State's Auditor recommended this be done away with back in 2019, but we learned in the recent Auditor report issues in November of last year, it has not. Bureaucratic malaise is no excuse for putting people's identity at risk. Unemployment fraud scams are rampant and SB 58 will require EDD to take the appropriate steps to end this practice.

The California Landscape Contractors Association writes in support that “it is long overdue that the EDD stop using employee and employer social security and tax identification numbers in its communications to Californians regarding benefit programs. Identity theft is a serious problem and EDD’s current practices make millions vulnerable unnecessarily.”

### **SUPPORT**

California Landscape Contractors Association

### **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 Senate Public Safety 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 Senate Labor, Public Employment, and Retirement 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 Senate Labor, Public Employment, and Retirement Committee.

AB 12 (Seyarto, 2021) prohibits EDD from sending any outgoing United States mail to an individual that contains the individual’s social security number unless the number is



truncated to its last four digits, except in specified circumstances. This bill is currently in the Assembly Privacy and Consumer Protection Committee.

AB 56 (Salas, 2021) prohibits, commencing on or before December 1, 2022, EDD from sending any outgoing United States mail, as defined, to an individual containing the individual's social security number unless truncated to its last four digits, except as provided. The bill requires EDD to submit an annual corrective action plan containing specified information to the Legislature every December 15 if EDD fails to comply. If EDD fails to comply by January 1, 2023, the bill requires, upon appropriation by the Legislature, the department to provide access to and pay for identity theft monitoring for any individual who receives outgoing United States mail from the department that contains full social security numbers in violation of the bill's provisions. This bill is currently in the Assembly Privacy and Consumer Protection Committee.

AB 110 (Petrie-Norris, 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 Privacy and Consumer Protection 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.

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

**PRIOR VOTES:**

Senate Labor, Public Employment, and Retirement Committee (Ayes 5, Noes 0)

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