

(Without Reference to File)

CONCURRENCE IN SENATE AMENDMENTS

AB 56 (Salas and Patterson)

As Amended September 3, 2021

Majority vote

SUMMARY

This bill comprehensively regulates the Employment Development Department (EDD) by, among other things, codifying various recommendations from State Auditor related to EDD.

Senate Amendments

- 1) Remove a requirement that EDD include the amount of benefit payments for which it must assess potential overpayments and specify that the reports shall encompass benefit payments made by the department from March 1, 2020, to January 12, 2021.
- 2) Remove a requirement that by October 1, 2021, and every six months thereafter, EDD analyze this data and make specified changes within its call centers.
- 3) Remove a requirement that EDD convene two working groups by March 1, 2022.
- 4) Remove a requirement that EDD develop a plan for how it will assess the effectiveness of its fraud prevention and detection tools by May 2022.
- 5) Remove the requirement that EDD assess its fraud prevention and detection tools biannually.
- 6) Allow details on methods and tools used within the reports furnished to the Assembly and Senate committees to be generalized, excluded, or redacted to protect deterrence practices.
- 7) Add findings and declarations related to the public's right of access to the meetings of public bodies, as specified.

COMMENTS

Widespread use of SSNs makes the identifier an attractive target for identity thieves: For decades, California residents have benefited from laws protecting SSNs from disclosure by the private sector and government agencies. By way of example, SB 458 (Peace), Chapter 685, Statutes of 1998, prohibited state agencies from sending any correspondence to an individual that contains personal information about that individual (e.g., social security number, driver's license number, telephone number, or credit card account number) unless the correspondence is sealed. Additionally, since 2002, California has restricted the use and display of SSNs by private actors (see SB 168 (Bowen), Chapter 720, Statutes of 2001) by prohibiting companies and persons from engaging in certain activities, such as:

Yet despite states like California regulating the use and disclosure of SSNs, identity theft and fraud continue to rise. After widespread media coverage of EDD printing full SSNs on correspondence to millions of Californians in 2015, EDD claimed it would begin to redact SSNs on 75 % of all mailed documents. In a recent report (hereinafter "Report") regarding EDD's privacy protection practices when mailing documents to its customers, the State Auditor

concluded that "EDD likely sent more than 17 million pieces of mail containing full Social Security numbers (SSNs) to a total of more than a million people in fiscal year 2017–18 [and that] several of the security incidents [...] reviewed from 2015 through 2018 showed that EDD exposed nearly 300 claimants to the risk of identity theft when it inappropriately disclosed their personal information, including SSNs, to other mail recipients."

Mass unemployment fraud during the COVID-19 pandemic: More recently, a surge in the filing of unemployment claims began in March 2020 following the issuance of a statewide stay-at-home order at the start of the COVID-19 pandemic which resulted in a significant increase in EDD's workload. During the same time period, Congress expanded federal unemployment insurance (UI) benefits and relaxed the eligibility criteria for receiving those benefits through the Coronavirus Aid, Relief, and Economic Security Act.

Beginning in July 2020, EDD criminal investigators began identifying specific cases of UI fraud involving the information of incarcerated individuals and communicating that information to local law enforcement agencies. In late November 2020, nine county district attorneys announced the discovery of widespread UI fraud involving tens of thousands of incarcerated individuals that took place during the first six months of the pandemic. The fraudulent claims primarily involved federal Pandemic Unemployment Assistance (PUA) claims. It was reported that in most cases the payments were sent via prepaid debit cards to addresses used on claims applications (i.e., addresses outside of a correctional facility) with the funds later deposited to inmate accounts in jails and prisons.

The extent of the fraud was uncovered after the U.S. Department of Labor crosschecked federal UI claims data against a list of state prison inmates that it had subpoenaed from the state and identified approximately 35,000 claims involving individuals incarcerated in the state's prisons. EDD estimated that it paid roughly \$810 million in benefits between January 2020 and November 2020 to 45,000 claimants with information that matched incarcerated individuals.

The State Auditor conducted an audit of EDD's management of federal funds related to the COVID-19 pandemic and published its findings in January 2021. The report concluded that billions of dollars of benefit payments were improperly paid due to significant weaknesses in EDD's approach to fraud prevention. The report stated that EDD was particularly vulnerable to fraud associated with incarcerated individuals because "it lacked a system to cross-match all incoming claims against incarceration data." The report noted that as of 2016, at least 35 other states had a system to cross-match unemployment claims against state prison data and 28 states were cross-matching claims against county jail data. The report also indicated that EDD was aware of the fact that it did not have a way to cross-match against incarceration data and had considered adopting a cross-match system in recent years.

Bill seeks to increase data security for personal information: This bill is one of many bills over the past decade that would seek to create improved data security standards and protocols for EDD's treatment of claimant PI. Most recently, AB 499 (Mayes), Chapter 155, Statutes of 2020, prohibits, beginning in January of 2023, any state agency from sending outgoing US mail to an individual that contains the individual's full social security number (SSN), unless federal law requires the inclusion of a full SSN. AB 499 also required, January 1, 2024, any state agency that, in its estimation, is unable to comply with the prohibition on mailing full SSNs to submit an annual corrective action plan to the Legislature until that agency is able to comply with the

prohibition. AB 56 would now flesh out the requirements of the annual corrective action plans established by AB 499.

This bill also requires that EDD follow the most recent federal National Institute of Standards and Technology (NIST) Special Publication 800-63 standards whenever requesting personal identification information from a claimant. NIST creates security standards and guidelines, including minimum requirements for federal systems, and promotes the US economy and public welfare by providing technical leadership for the nation's measurement and standards infrastructure.

Requiring EDD to follow the NIST standards, which are routinely updated as technology evolves, when it requests PI from claimants for identity verification should create an important baseline protection for claimants as EDD works through its use of programmatic tools, old and new.

According to the Author

The Employment Development Department has been plagued by administrative and technical issues since March 2020, when the surge of unemployment insurance claims overwhelmed EDD's systems and resulted in millions of Californians being forced to wait months to receive the benefits they needed and resulted in the state giving billions of dollars to inmates and fraudsters in one of the biggest fraud scandals in California's history. AB 56 institutes common sense reforms that have been recommended by the State Auditor and from the stories of those Californians who have had to suffer through EDD's failings.

Arguments in Support

The Coalition of California Welfare Rights Organizations write in support that collecting the data required by AB 56 would help non-profit organizations better advocate for the rights of currently and formerly incarcerated individuals. Supporters also note that budget supplemental report language could help advocates coordinate more effectively with EDD.

Arguments in Opposition

None on file.

FISCAL COMMENTS

According to the Senate Appropriations Committee:

- 1) This bill would impose a myriad of new requirements on EDD, including risk assessment, paying for theft monitoring for specified individuals, modeling workload projections, revising public dashboards, implementing various policies and convening specified working groups. However, this bill provides that implementation of all these activities would be subject to an appropriation by the Legislature. Thus, until funding is provided, the provisions requiring an appropriation would have no immediate fiscal impact to EDD. However, the resulting cost pressures would minimally be in the tens millions of dollars per year (General Fund and various special funds).
- 2) EDD notes that this bill's requirement to assess the effectiveness of its fraud prevention strategy is similar to a proposal contained in the 2021-22 Budget (AB 138, Committee on Budget). Consequently, the requirement in this bill would be minor and absorbable.

VOTES:

ASM PRIVACY AND CONSUMER PROTECTION: 11-0-0

YES: Chau, Kiley, Bauer-Kahan, Bennett, Carrillo, Cunningham, Gabriel, Gallagher, Irwin, Lee, Wicks

ASM INSURANCE: 13-0-0

YES: Daly, Mayes, Berman, Bigelow, Chen, Cooley, Cooper, Frazier, Gipson, Grayson, Rodriguez, Voepel, Wood

ASM APPROPRIATIONS: 16-0-0

YES: Lorena Gonzalez, Bigelow, Calderon, Carrillo, Chau, Megan Dahle, Davies, Fong, Gabriel, Eduardo Garcia, Levine, Quirk, Robert Rivas, Akilah Weber, Holden, Luz Rivas

ASSEMBLY FLOOR: 77-0-1

YES: Aguiar-Curry, Arambula, Bauer-Kahan, Bennett, Berman, Bigelow, Bloom, Boerner Horvath, Burke, Calderon, Carrillo, Cervantes, Chau, Chen, Chiu, Choi, Cooley, Cooper, Cunningham, Megan Dahle, Daly, Davies, Flora, Fong, Frazier, Friedman, Gabriel, Gallagher, Cristina Garcia, Eduardo Garcia, Gipson, Lorena Gonzalez, Gray, Grayson, Holden, Irwin, Kalra, Kiley, Lackey, Lee, Levine, Low, Maienschein, Mathis, Mayes, McCarty, Medina, Mullin, Muratsuchi, Nazarian, Nguyen, O'Donnell, Patterson, Petrie-Norris, Quirk, Quirk-Silva, Ramos, Reyes, Luz Rivas, Robert Rivas, Rodriguez, Blanca Rubio, Salas, Santiago, Seyarto, Smith, Stone, Ting, Valladares, Villapudua, Voepel, Waldron, Ward, Akilah Weber, Wicks, Wood, Rendon

ABS, ABST OR NV: Jones-Sawyer

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