

Date of Hearing: May 8, 2024

ASSEMBLY COMMITTEE ON APPROPRIATIONS

Buffy Wicks, Chair

AB 2358 (Low) – As Amended March 21, 2024

Policy Committee: Insurance

Vote: 15 - 0

Urgency: No

State Mandated Local Program: Yes

Reimbursable: No

SUMMARY:

This bill requires the Employment Development Department (EDD) to release an employee's wage information to a qualified third-party vendor if the employee provides EDD written permission for such release.

Specifically, this bill:

- 1) Defines, generally, a "qualified third-party vendor" to mean a consumer reporting agency that has provided the same service offered to EDD in another state and has had its business model, data sharing agreements, and other collateral materials reviewed, formally or informally, by the U.S. Department of Labor (DOL) for conformance with relevant federal rules.
- 2) Defines a "permissible use" to mean verifying an employee's wages or employer, or using the employee's wage information for credit granting and related account maintenance, residential leasing, employment screening, or insurance or government transactions, consistent with the purposes set forth in the federal Fair Credit Reporting Act (Act).
- 3) Requires, upon written consent of the employee, EDD to release an employee's wage information to a qualified third party vendor, and requires EDD to allow, at the request of the employee, electronic transmission of such information, pursuant to an agreement with the vendor. The vendor may, upon written consent of the employee, share the employee's wage information with a "subscriber" that pays a fee to a qualified third-party vendor to obtain consumer reports or other information. The subscriber may only receive wage information for a permissible use and may not resell or disclose wage information.
- 4) Requires EDD to enter into an agreement with a qualified third-party vendor to allow for electronic transmission of an employee's wage information for permissible uses, but prohibits EDD from expending any additional state funds to execute agreement terms.
- 5) Specifies such wage information to be confidential and subject to applicable federal and state confidentiality laws, and provides that a person who, without authorization, knowingly accesses, uses, or discloses such information is guilty of a misdemeanor.

FISCAL EFFECT:

Total costs of an unknown, but significant, amount to EDD to enter into agreements with a qualified third-party vendor (General Fund (GF)). At a minimum, EDD will incur one-time costs

of approximately \$4.9 million to establish an information technology system to transmit confidential data to third-party vendors. EDD will also incur additional ongoing costs to meet the terms of the agreements, contingent on the number of agreements entered into with vendors, the length of such agreements, the number of claimant notices providing informed consent, the amount of data requested by vendors, and the level of oversight and auditing protections required by the DOL. EDD notes it would need approximately 20 months to implement this bill. Supporters of this bill note that federal rules around such wage sharing agreements require the vendor to reimburse the state for all incurred costs.

According to the Legislative Analyst's Office, the GF faces a structural deficit in the tens of billions of dollars over the next several fiscal years.

COMMENTS:

1) **Purpose.** According to the author:

The state of California is fully aware of the housing situation in our region, including the increasing number of unhoused people. As a legislative body, we are responsible for reducing the barriers that prevent Californians from accessing financial essentials. This proposed bill aims to improve the accessibility of existing accommodations to those who would benefit from it.

2) **Employment Screening Companies.** According to the Consumer Financial Protection Bureau, employment screening companies are a type of consumer reporting company that provide information, including credit history, employment, salary, education, and professional license verification, to employers and other entities, such as non-profit volunteer organizations or government agencies, to verify employment income or determine eligibility for government assistance. Some companies may also provide other information, such as residential address history, criminal arrests and convictions, and fingerprint information. Many employment screening companies will not have information about an employee unless the employee authorized an employer or other end-user to obtain a report. This bill requires EDD to release an employee's wage information to a qualified third-party vendor, such as an employment screening company, if the employee provides EDD written consent for such release. The vendor may, upon written consent of the employee, share the employee's wage information with a subscriber, such as a prospective employer that buys wage information from the vendor.

This bill includes provisions designed to safeguard an employee's data, such as specifying a permissible use must be consistent with the purposes set forth in the Act, requiring confidentiality by vendors and subscribers, and a prohibiting a subscriber from reselling or redisclosing wage information received from a vendor. However, this bill includes credit granting and related account maintenance as a permissible use, which may include debt collection in compliance with the Act. Additionally, while this bill states that federal and state confidentiality laws apply to these data sharing agreements and a vendor's practices must conform to DOL rules, explicitly cross-referencing applicable federal and state code sections would ensure more robust consumer protections by making rights and enforcement clear, in the event certain existing laws apply only partially or conflict.