

Date of Hearing: April 8, 2021

**ASSEMBLY COMMITTEE ON PRIVACY AND CONSUMER PROTECTION**

Ed Chau, Chair

AB 110 (Petrie-Norris) – As Introduced December 17, 2020

**SUBJECT:** Fraudulent claims: inmates

**SUMMARY:** This bill would require the Department of Corrections and Rehabilitation (CDCR) and counties to provide the names and social security numbers (SSN) of current inmates to the Employment Development Department (EDD) for the purpose of preventing payments on fraudulent claims for unemployment compensation benefits, as specified, and would require EDD to cross match that information before any payment of unemployment compensation benefits is provided. Specifically, **this bill would:**

- 1) Require, that for purpose of preventing payments on fraudulent claims for unemployment compensation benefits, EDD to verify with the information provided by the CDCR and the counties before making any payment of unemployment compensation benefits, that the claimant is not an inmate currently incarcerated in the state prisons or an inmate serving a sentence in a county jail.
- 2) Require, notwithstanding any law, CDCR to provide, on the first of every month and upon request, the names and SSNs, consistent with federal law, of current inmates to EDD for the purpose set forth in 1), above.
- 3) Require, notwithstanding any law, the counties to provide, on the first of every month and upon request, the names and SSNs, consistent with federal law, of current inmates to EDD for the purpose set forth in 1), above.

**EXISTING LAW:**

- 1) Prohibits any state agency from sending any outgoing United States mail to an individual that contains personal information (PI) about that individual, including, but not limited to, the individual's SSN, 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 Sec. 11019.7(a).)
- 2) Provides that, 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 SSN unless the number is truncated to its last four digits. (Gov. Code. Sec. 11019.7(b).)
- 3) Establishes the Employment Development Department (EDD) which is responsible for administering the State's unemployment insurance (UI) program, including the payment of unemployment compensation benefits to eligible persons. (Unemp. Ins. Code, Sec. 201 et seq.)
- 4) Authorizes the California Department of Corrections and Rehabilitation (CDCR) to provide the social SSN of current or former inmates to EDD, the California Workforce Development Board (CWDB), or the CWDB's designee, as specified. (Pen. Code Sec. 11105.9(a).)

- 5) Prohibits EDD, CWDB, and any board designee from disseminating SSNs obtained to an individual or public entity not explicitly authorized in statute. (Pen. Code Sec.11105.9(b).)

**FISCAL EFFECT:** Unknown

**COMMENTS:**

- 1) **Purpose of this bill:** This bill seeks to curb unemployment fraud by ensuring that EDD can cross match claimant information against current inmate information. This bill is author-sponsored.

- 2) **Author's statement:** According to the author:

EDD left itself especially vulnerable to UI fraud associated with incarcerated individuals—which it estimates has reached about \$810 million—because it has not had a system to regularly cross-match UI claims with information from state and local correctional facilities.

Cross-checking lists of unemployment benefit claimants against incarceration data is a common fraud prevention practiced in other states. However, California law restricts the inmate information that can be shared with other state agencies. This bill is needed to enable EDD to easily cross-check claimants' information, including social security numbers, against the relevant information in the database of inmate information maintained by the California Department of Corrections and Rehabilitation (CDCR) and by the counties.

- 3) **Widespread use of SSNs makes the identifier an attractive target for identity thieves:** According to the Social Security Administration, the use of the SSN has expanded significantly since its inception in 1936. Created merely to keep track of the earnings history of U.S. workers for Social Security entitlement and benefit computation purposes, it is now used as a nearly universal identifier. Assigned at birth, the SSN enables government agencies to identify individuals in their records and allows businesses to track an individual's financial information. Unfortunately, this universality has led to abuse as the SSN is a key piece of information used to commit identity theft. The Federal Trade Commission estimates that as many as 9 million Americans have their identities stolen each year.<sup>1</sup>

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, Ch. 685, Stats. 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, Ch. 720, Stats. 2001)) by prohibiting companies and persons from engaging in certain activities, such as:

- posting or publicly displaying SSNs;

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<sup>1</sup> Puckett, *The Story of the Social Security Number* Social Security Bulletin, Vol. 69, No. 2, 2009.)

- printing SSNs on cards required to access the company’s products or services;
- requiring people to transmit an SSN over the internet unless the connection is secure or the number is encrypted;
- requiring people to log onto a website using an SSN without a password; or,
- printing SSNs on anything mailed to a customer unless required by law or the document is a form or application.

Yet despite states like California regulating the use and disclosure of SSNs, identity theft and fraud continue to rise. In September 2005, the United States Government Accountability Office issued a report entitled, *Social Security Numbers: Federal and State Laws Restrict Use of SSNs, yet Gaps Remain*. The report found that “SSN use is widespread. Agencies at all levels of government frequently collect and use SSNs to administer their programs, verify applicants’ eligibility for services and benefits, and perform research and evaluations of their programs. Although some government agencies are taking steps to limit the use and display of SSNs, these numbers are still available in a variety of public records held by states, local jurisdictions, and courts[.]”

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 percent 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 “[a]lthough EDD has undertaken efforts since 2015 to reduce the amount of mail it sends to claimants that include full SSNs, its efforts have been insufficient.” Specifically, the State Auditor found 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.”<sup>2</sup>

- 4) **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 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 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 pandemic unemployment assistance (PUA) claims, and it was reported that in most

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<sup>2</sup> State Auditor Report 2018-129, *Employment Development Department: Its Practice of Mailing Documents Containing Social Security Numbers Puts Californians at Risk of Identity Theft* <<http://www.auditor.ca.gov/pdfs/reports/2018-129.pdf>> [as of Mar. 26, 2021].)

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.<sup>3</sup>

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.<sup>4</sup> Those figures include individuals incarcerated in county jails who were identified after EDD contracted with a private vendor that provided cross-reference inmate data "from prisons and jails in multiple states," including access to "real-time incarceration and arrest records."<sup>5</sup>

As discussed above, 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.<sup>6</sup> 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.<sup>7</sup>

According to the report, EDD contacted CDCR in August 2020 about sharing state prison data to aid the department in identifying fraud. A data sharing agreement was not reached until the Attorney General authorized CDCR to provide inmate information to EDD in December 2020. The temporary and precarious nature of the existing data sharing agreement between EDD and CDCR, as well as the potential for ongoing fraud if data sharing does not take place between the departments, led the State Auditor to make the a number of recommendations including the following:

- Require EDD to regularly cross-match UI benefit claims against information about individuals incarcerated in state prisons and county jails to ensure that it does not issue payments to people who are ineligible for benefits. The Legislature should specify that EDD perform the cross-matches as quickly as possible after individuals file claims and with as little disruption of legal and eligible claims as possible.

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<sup>3</sup> New York Times, *Unemployment Scam Using Inmates' Names Costs California Hundreds of Millions* <https://www.nytimes.com/2020/11/24/us/california-unemployment-fraud-inmates.html> [as of April 1, 2021].

<sup>4</sup> State Auditor, *Employment Development Department: Significant Weaknesses in EDD's Approach to Fraud Prevention Have Led to Billions of Dollars in Improper Benefit Payments*, Report 2020-628.2, p. 27 <http://www.auditor.ca.gov/reports/2020-628.2/index.html> [as of April 1, 2021].

<sup>5</sup> *Id.* at pp. 29-30.

<sup>6</sup> *Id.* at p. 29.

<sup>7</sup> *Id.* at pp. 28-29.

- Require CDCR and any other necessary state or local government entities to securely share information about incarcerated individuals with EDD to enable EDD to prevent fraud.<sup>8</sup>

Based on these recommendations, this bill would require CDCR and the counties to provide the names and SSNs of current inmates to EDD for the purposes of preventing payments on fraudulent claims for unemployment compensation benefits, as specified, and would require EDD to cross check that information before any payment of UI benefits is provided.

The California State Sheriff's Association writes in support of this bill:

In recent months, it has been alleged that fraudulent unemployment insurance claims are contributing to major backlogs in disbursing payments to lawful claimants as well as resulting in the payment of billions of dollars of benefits to persons otherwise unentitled to them. Current statutes should be updated to address the current state unemployment fraud scheme and avoid recurrences.

Cross-referencing claims with rosters of inmates is a sensible objective, so those who seek to defraud the unemployment system can be stopped and ultimately held accountable.

- 5) **Practical considerations:** This bill was introduced in response to tens of thousands of fraudulent UI claims that were recently filed using PI associated with state prison and county jail inmates. This bill seeks to prevent this type of fraud by requiring CDCR and counties to share the names and SSNs of current inmates with EDD. This bill also requires CDCR and the county jails to share this information with EDD upon EDD's request. This bill additionally requires EDD to cross check the information received from CDCR and the county jails against UI claims prior to making any payment of benefits.

This bill raises a number of practical questions and concerns. First, it should be noted that the vast majority of the claims contributing to the recent uptick in fraud that has been reported largely involves the federal Pandemic Unemployment Assistance program (PUA) and not the regular California UI. That is not to say that cross matching claimants against inmate populations would not catch instances of fraud, and the State Auditor has recommended this practice. That being said, because inmate populations at county facilities often serve short sentences, a county jail's population is generally less stable and more varied than the population in a state prison. If the information from counties is not updated very frequently (or perhaps even in real-time), it is foreseeable that some individuals will be denied UI benefits when they are in fact eligible for those benefits.

To this point, the Coalition of California Welfare Rights Organizations (CCWRO) opposes this bill unless amended to have a well-defined verification process that the person on the report is indeed incarcerated. CCWRO writes in opposition:

It is totally Unamerican to have a system that will deny benefits to persons eligible just to catch those who are ineligible. We are still a Country where Americans are innocent until

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<sup>8</sup> *Id.* at. pp. 30-31.

proven guilty. AB 110 fails to prove 100% that the person being denied benefits is actually in jail.

[...]

Second, despite the troubling nature of this recent activity, the fraud was largely limited to the Pandemic Unemployment Assistance (PUA) program. EDD has estimated that roughly 95 percent of the known fraudulent payments in California were made to PUA. The remaining 5 percent is associated with California's existing unemployment insurance program. By comparison, in 2019, fraud accounted for about 6 percent of California's unemployment payments.<sup>9</sup> The U.S. Department of Labor itself found that the PUA program was particularly susceptible to fraud as it did not require income or employment verification upfront and allowed claimants to backdate their claims, unlike the unemployment program. Fraudulent claims for the PUA program are undoubtedly a significant issue. Nevertheless, providing EDD access to incarcerated people's information for purposes of all unemployment benefits verification is not the way to solve it.

Also in opposition, Legal Aid at Work and Legal Services for Prisoners with Children write that "overriding concern is that the bill as written will prevent legitimate claims for unemployment and lead to the wrongful denial of a critical safety net resource to formerly incarcerated individuals who already face particular difficulties getting back into the labor market because of the stigma attached to their convictions and never incarcerated individuals alike. Even now, individuals, both formerly incarcerated and those who were never incarcerated, are being wrongfully denied benefits."

These groups also point out that "the inclusion of county jail information in AB 110 is particularly troubling, as it will almost certainly lead to the incorrect denial of benefits to individuals who have special custody arrangements (such as intermittent sentences that allow individuals to serve their time during specific periods, such as weekends) or short stays at county facilities. Short stays are incredibly common in county jails."

While crosschecking claimant information against the population incarcerated in county jails is an important fraud prevention tool, the unique inmate population of county jails arguably requires a method for cross matching information that is distinct from the method used with regard to CDCR inmates. Given these concerns, the author offers the following amendment which would remove the data sharing requirements imposed on counties from this bill.

Author's amendment:

On page 3, strike lines 26 – 34

On page 4, line 9, strike "and the counties"

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<sup>9</sup> EDD News Release No: 21-05, Jan. 25, 2021, [https://edd.ca.gov/About\\_EDD/pdf/news-21-05.pdf](https://edd.ca.gov/About_EDD/pdf/news-21-05.pdf); California Unemployment: Fraud by the Numbers, <https://www.edd.ca.gov/unemployment/pdf/fraud-info-sheet.pdf>

On page 4, lines 12-13, strike “or an inmate serving a sentence in a county jail”

In order to ensure that the information of inmates at county jails is not used to commit fraud, as this bill moves through the legislative process, the author should continue looking into how to best cross match claimant information against current county inmate information.

Second, EDD has argued that names and SSNs alone are not adequate information for EDD to perform appropriate cross matches. However, sharing additional data elements raises data privacy and security concerns. EDD’s position is reflected in the data sharing agreement (DSA) between EDD and CDCR, executed in February of this year, which indicates that in addition to full SSNs, EDD has asked for the following data elements for each inmate:

- Personal identification number for use within the prison or jail;
- Any unique identifiers assigned to a person for each incarceration period;
- Full name and any aliases for each inmate.
- Dates, including incarceration date, parole date, and discharge date.
- Latest inmate photo.

Thus, as a matter of practice, EDD is asking CDCR for many more data elements than this bill would require, and it is not entirely clear that all of those data elements are necessary to perform an adequate cross match against claims for UI. In fact, it is likely that the more information EDD has at its disposal when doing crosschecks, the more reasons it will have to deny UI to those who are potentially eligible for the benefit. Further, the more information an entity has, the more vulnerable they are to data breach.

In opposition, the National Employment Law Project raises similar concerns. NELP writes:

AB 110 unfairly places the risk of identity theft on incarcerated Californians to bear the burden of resolving fraud. Incarcerated people are already recognized to be particularly vulnerable to identity theft. Incarcerated people lack access to regularly monitor their credit reports. Friends or family members often have access to personal data, including bank and credit card accounts and information while they are incarcerated. Prison and jail staff may have access to an incarcerated person’s personal financial information. Incarcerated Californians incarcerated for lengthier periods may not become aware of identity theft until years later, and further, may be subsequently treated with unfair suspicion due to their arrest or conviction history. Indeed, recent reports have emerged involving non-incarcerated individuals stealing the identities of incarcerated Californians for the purpose of submitting fraudulent EDD Claims.

While the DSA appears to have arguably adequate data security provisions, it is only a temporary agreement and will expire within two years. Given EDD’s past mishandling of PI (*see* Comment 3, above), and the concerns raised by NELP, it is concerning that they will be entrusted with even more PI without being subject to strict data security standards permanently.

Accordingly, as this bill moves through the legislative process, the author may wish to carefully consider the data elements CDCR can share with EDD and potentially codify some of the data security provisions found in the current DSA to ensure that the PI of inmates is properly handled well into the future.

- 6) **Numerous bills introduced this year to address issues with EDD:** In response to the crises at EDD, numerous bills have been introduced this year, of which AB 110 is one. Among those bills are: AB 12 (Seyarto), which would require state agencies to stop sending full SSNs on outgoing mail as soon as feasible, and AB 23 (Chen) and SB 39 (Grove) which would both require EDD to cross match claimant information with information provided by CDCR and counties prior to making any payment of unemployment benefits to ensure that the claimant is not an inmate at a state prison or county jail. AB 74 (Lorena Gonzalez) would require EDD to give claimants the option of receiving payments through direct deposit into a qualifying account of their choice, and AB 56 (Salas), would, among other things, set dates by which state agencies that cannot comply with the prohibition on including SSNs on outgoing mail must submit an annual corrective action plan to the Legislature. AB 56 would additionally codify a number of recommendations from the State Auditor's Report.

There is considerable overlap among these bills and others moving through the Legislature. This Committee has worked with authors to ensure that any duplicative provisions are eliminated in the handful of ABs addressing the EDD situation currently before the Committee, but there are many other bills that continue to have overlapping or conflicting provisions. The authors of these various bills should work collaboratively to ensure that the Legislature passes a series of bills that complement each other and will enhance EDD's performance, which should benefit all California residents.

- 7) **Related legislation:** AB 12 (Seyarto) *See* Comment 6.

AB 23 (Chen) *See* Comment 6.

AB 56 (Salas) *See* Comment 6.

AB 74 (Lorena Gonzalez) *See* Comment 6.

SB 39 (Grove) *See* Comment 6.

- 8) **Prior legislation:** AB 499 (Mayes, Ch. 155, Stats. 2020) Beginning January 1, 2023, prohibits a state agency from sending any outgoing US mail to an individual that contains the individual's full SSN, unless federal law requires the inclusion of a full SSN.

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. SB 447 was vetoed by Governor Brown, who argued that this prohibition "would hinder the ability of state agencies to promptly and accurately provide information to run essential programs."

SB 458 (Peace, Ch. Stats. 1998) *See* Comment 3.

- 9) **Double-referral:** This bill has been double-referred to the Assembly Committee on Insurance.



**REGISTERED SUPPORT / OPPOSITION:**

**Support**

California Chamber of Commerce  
California State Sheriffs' Association

**Opposition**

Coalition of California Welfare Rights Organizations (unless amended)  
Legal Aid at Work  
Legal Services for Prisoners with Children  
National Employment Law Project

**Analysis Prepared by:** Nichole Rocha / P. & C.P. / (916) 319-2200