

DEPARTMENT OF FINANCE BILL ANALYSIS

AMENDMENT DATE: Original
POSITION: Neutral

BILL NUMBER: SB 1166
AUTHOR: J. Simitian
RELATED BILLS: SB 20

BILL SUMMARY: Personal Information: Privacy

This bill amends current security breach notification law as specified in Sections 1798.29 and 1798.82 of the Civil Code. These sections apply to state agencies, persons, or businesses conducting business in California that own or license computerized data that includes personal information. The bill has the following three components:

- 1. Specifies security breach notices be written in plain language and include certain standard information.
2. Requires notification to the Attorney General (AG) if more than 500 California residents are affected by a single breach.
3. Requires notification to either the Office of Information Security (OIS) within the Office of the State Chief Information Officer (OCIO), or the Office of Privacy Protection (OPP) within the State and Consumer Services Agency, if the substitute notice provision in current law is used as notification.

This bill is identical to the enrolled version of SB 20 of 2008 which was vetoed last year by the Governor. The veto message maintained that the bill is unnecessary because there is no evidence that there is a problem with the information currently provided to consumers and no additional consumer benefit is gained by requiring the AG to receive breach notices as the AG is not required to do anything with them.

FISCAL SUMMARY

Specified Content for Security Breach Notifications

- Fiscal impact to state agencies is most likely extremely minor, if any. According to the author's staff, SB 1166 is mainly directed at the private sector.
Breach notifications provided by state agencies, in at least one case (the Department of Health Care Services), already include the content specified in SB 1166.

Notification to the Attorney General

The AG did not take a position on SB 20, however, staff commented that most likely an e-mail address would be established to receive the notifications, which would then be posted to the AG website. Staff indicated this could be accomplished with existing resources. Staff further commented that as statistical tracking of breaches is already performed by the OIS/OPP, the further benefit of notifying the AG, as well, is not clear.

Notification to the OIS and the OPP

The OIS and the OPP indicated that this bill would have minimal fiscal impact on their agencies. Existing policy in Section 5350.1 of the State Administrative Manual already requires state agencies to report

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Department Deputy Director Date

Governor's Office: By: Date: Position Approved
Position Disapproved

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security breaches to the OIS regardless of whether they resulted in a breach notification. The OCIO, which houses the OIS, did not take a position on SB 20, indicating the bill would have limited to no impact on their agency. The OCIO believes the impact will be primarily on the agencies who own the information subject to the breach notifications.

COMMENTS

Primarily due to the limited fiscal impact to the state, Finance is neutral regarding this bill. However, certain stakeholders and interested parties have expressed support, opposition, or concerns as noted below:

- Support: American Civil Liberties Union; Consumer Federation of California; Privacy Rights Clearinghouse.
- Opposed: The California Hospital Association (CHA) has an "oppose unless amended" position on SB 1166. The CHA opposes this bill unless it is amended to include a specified exemption, as its member hospitals are already subject to two "extensive sets of requirements" that require notification in the case of a security breach.
- A number of groups, including the State Privacy and Security Coalition that counts Google and Yahoo as members, were opposed to SB 20. They felt that current breach notification requirements were sufficient and providing the date of a breach gives a hacker an opportunity to determine whether his or her attack was successful. They were concerned that providing customers with credit agency contact information implies that all breaches result in fraud and identity theft and expressed these concerns in a letter to the Senate Judiciary Committee dated February 12, 2009. It is unknown whether they are opposed to SB 1166.

Senator Simitian's Office provided additional information regarding similar legislation in other states and clarified how SB 1166 aligns with federal regulations:

- Other states: Fourteen states including Hawaii, Virginia, North Carolina, Iowa, and Michigan have passed similar legislation for security breach notification using existing California law as a model, as well as including many of the requirements proposed in SB 1166.
- Federal law: The Health Information Technology for Economic and Clinical Health Act (HITECH Act) establishes a security breach notification law for personal health information and specifies the content of the notification. SB 1166 aligns with the HITECH Act and contains some additional requirements over and above the Act.

General Comments

Finance takes a neutral position on this bill as its fiscal and operational impact on state agencies would likely be minimal and agencies are already subject to breach notification requirements. This bill simply specifies content to be included in the breach notification.

| Code/Department Agency or Revenue Type | (Fiscal Impact by Fiscal Year) | | | | | | | | Fund Code | |
|--|--------------------------------|------------------------|------|----|-----------|----|-----------|------------------------|--------------|-----------|
| | SO | (Dollars in Thousands) | | | | | | | | |
| | LA | CO | PROP | FC | 2009-2010 | FC | 2010-2011 | FC | | 2011-2012 |
| 0820/Justice | SO | No | | | | | | No/Minor Fiscal Impact | | 0001 |
| 0510/Secty SCS | SO | No | | | | | | No/Minor Fiscal Impact | | 0001 |
| 0502/Chief Info | SO | No | | | | | | No/Minor Fiscal Impact | | 0001 |