

AMENDED IN ASSEMBLY MARCH 6, 2003
AMENDED IN ASSEMBLY JANUARY 22, 2003
CALIFORNIA LEGISLATURE—2003–04 REGULAR SESSION

ASSEMBLY BILL

No. 46

Introduced by Assembly Member Simitian

December 2, 2002

An act to add Section ~~1798.86~~ 1798.85.1 to the Civil Code, ~~and to amend Section 530.5 of~~, to amend Section 226 of the Labor Code, and to add Section 667.13 to, the Penal Code, relating to identity theft.

LEGISLATIVE COUNSEL'S DIGEST

AB 46, as amended, Simitian. Identity theft.

Existing law prohibits any person or entity, not including a state or local agency, from using an individual's social security number in specified ways, including posting it publicly or requiring it for access to products or services. Existing law provides specified exceptions from the above provisions.

~~This bill would, in addition, prohibit any university or college located in California from using a social security number as a student identifier and would prohibit any employer from requiring an employee to use his or her social security number for any purpose other than taxes.~~

This bill would, in addition, prohibit any private or public university or college in California from using a student's social security number for identification in a manner that is available to the public or an unauthorized third party. The bill would permit the use of a student's social security number for identification for communication with a 3rd party who is authorized by the student to receive it. Each university or

college would be authorized to develop a system of personal identifiers for students to be used for grading and other administrative purposes, however the personal identifiers could not be social security numbers. The bill would also prohibit an employer from requiring an employee to use his or her social security number in a manner that is available to the public or an unauthorized 3rd party.

Existing law requires that every employer, semimonthly or at the time of each payment of wages, furnish each of his or her employees, either as a detachable part of the check, draft, or voucher paying the employee's wages, or separately when wages are paid by personal check or cash, an itemized statement in writing showing, among other things, the name of the employee and his or her social security number.

This bill would remove the requirement that the statement show the employee's social security number and would instead require the employer to show the employee's personal identification number if the employer has established an employee identification number system that uses a personal identifier other than the employee's social security number.

Existing law makes every person who willfully obtains personal identifying information of another person, and uses that information for any unlawful purpose, guilty of a misdemeanor or a felony.

~~This bill would make it a misdemeanor for an adult relative, parent, or guardian of a minor to sell, give, or distribute personal identifying information of a minor, with the knowledge that the information will be used in violation of the above provision relating to unlawful use of personal identifying information.~~

Existing law makes it a crime to falsely personate a person so as to do any an act that would render the person impersonated liable for a suit or prosecution.

The bill would create a one-year enhancement for any person who commits false personation in those circumstances, or who unlawfully uses personal identifying information, against a person who is under 18 years of age at the time the crime was committed and the victim's age is known or reasonably should have been known to the person committing the crime. ~~Additionally, if the person who commits the crime is an adult relative, parent, or guardian of the victim, or someone who was provided identifying information from a relative, parent or guardian of the victim, the person committing the crime would receive an additional one-year enhancement for each violation.~~ Because this



bill would ~~create a new crime and~~ create a new enhancement, it would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section ~~1798.86~~ 1798.85.1 is added to the Civil
2 Code, to read:

3 ~~1798.86.~~

4 1798.85.1. In addition to Section 1798.85, the following
5 restrictions on the use of social security numbers shall apply:

6 ~~(a) No university or college located in California may use a~~
7 ~~social security number as a student identifier.~~

8 ~~(b) No employer may require an employee to use his or her~~
9 ~~social security number for any purpose other than taxes.~~

10 (a) (1) A public or private university or college in California
11 may not use a student's social security number for identification in
12 a manner that is available to the public or an unauthorized third
13 party.

14 (2) A public or private university or college in California may
15 use a student's social security number for identification for
16 communication with a third party who is authorized by the student
17 to receive it.

18 (3) Each university or college may develop a system of personal
19 identifiers for students to be used for grading and other
20 administrative purposes. The personal identifiers shall not be
21 social security numbers.

22 (b) An employer may not require an employee to use his or her
23 social security number in a manner that is available to the public
24 or an unauthorized third party.

25 ~~SEC. 2. Section 530.5 of the Penal Code is amended to read:~~

26 ~~530.5. (a) Every person who willfully obtains personal~~
27 ~~identifying information, as defined in subdivision (b), of another~~



1 person, and uses that information for any unlawful purpose,
2 including to obtain, or attempt to obtain, credit, goods, services,
3 or medical information in the name of the other person without the
4 consent of that person, is guilty of a public offense, and upon
5 conviction therefor, shall be punished either by imprisonment in
6 a county jail not to exceed one year, a fine not to exceed one
7 thousand dollars (\$1,000), or both that imprisonment and fine, or
8 by imprisonment in the state prison, a fine not to exceed ten
9 thousand dollars (\$10,000), or both that imprisonment and fine.

10 (b) “Personal identifying information,” as used in this section,
11 means the name, address, telephone number, health insurance
12 identification number, taxpayer identification number, school
13 identification number, state or federal driver’s license number, or
14 identification number, social security number, place of
15 employment, employee identification number, mother’s maiden
16 name, demand deposit account number, savings account number,
17 checking account number, PIN (personal identification number)
18 or password, alien registration number, government passport
19 number, date of birth, unique biometric data including fingerprint,
20 facial scan identifiers, voice print, retina or iris image, or other
21 unique physical representation, unique electronic data including
22 identification number, address, or routing code,
23 telecommunication identifying information or access device,
24 information contained in a birth or death certificate, or credit card
25 number of an individual person.

26 (c) In any case in which a person willfully obtains personal
27 identifying information of another person, uses that information
28 to commit a crime in addition to a violation of subdivision (a), and
29 is convicted of that crime, the court records shall reflect that the
30 person whose identity was falsely used to commit the crime did not
31 commit the crime.

32 (d) Every person who, with the intent to defraud, acquires,
33 transfers, or retains possession of the personal identifying
34 information, as defined in subdivision (b), of another person is
35 guilty of a public offense, and upon conviction therefor, shall be
36 punished by imprisonment in a county jail not to exceed one year,
37 or a fine not to exceed one thousand dollars (\$1,000), or by both
38 that imprisonment and fine.

39 (e) An adult relative, parent, or guardian of a minor who sells,
40 gives, or distributes personal identifying information of a minor,



1 ~~with the knowledge that the information will be used in violation~~
2 ~~of subdivision (a), shall be punished by imprisonment in a county~~
3 ~~jail not to exceed one year, a fine not to exceed one thousand~~
4 ~~dollars (\$1,000), or both that imprisonment and fine.~~

5 *SEC. 2. Section 226 of the Labor Code is amended to read:*

6 226. (a) Every employer shall, semimonthly or at the time of
7 each payment of wages, furnish each of his or her employees,
8 either as a detachable part of the check, draft, or voucher paying
9 the employee's wages, or separately when wages are paid by
10 personal check or cash, an itemized statement in writing showing
11 (1) gross wages earned, (2) total hours worked by the employee,
12 except for any employee whose compensation is solely based on
13 a salary and who is exempt from payment of overtime under
14 subdivision (a) of Section 515 or any applicable order of the
15 Industrial Welfare Commission, (3) the number of piece-rate units
16 earned and any applicable piece rate if the employee is paid on a
17 piece-rate basis, (4) all deductions, provided, that all deductions
18 made on written orders of the employee may be aggregated and
19 shown as one item, (5) net wages earned, (6) the inclusive dates of
20 the period for which the employee is paid, (7) the name of the
21 employee and his or her ~~social security number~~ *personal*
22 *identification number if the employer has established an employee*
23 *identification number system that uses a personal identifier other*
24 *than the employee's social security number, (8) the name and*
25 *address of the legal entity that is the employer, and (9) all*
26 *applicable hourly rates in effect during the pay period and the*
27 *corresponding number of hours worked at each hourly rate by the*
28 *employee. The deductions made from payments of wages shall be*
29 *recorded in ink or other indelible form, properly dated, showing*
30 *the month, day, and year, and a copy of the statement or a record*
31 *of the deductions shall be kept on file by the employer for at least*
32 *three years at the place of employment or at a central location*
33 *within the State of California.*

34 (b) An employer that is required by this code or any regulation
35 adopted pursuant to this code to keep the information required by
36 subdivision (a) shall afford current and former employees the right
37 to inspect or copy the records pertaining to that current or former
38 employee, upon reasonable request to the employer. The employer
39 may take reasonable steps to assure the identity of a current or
40 former employee. If the employer provides copies of the records,



1 the actual cost of reproduction may be charged to the current or
2 former employee.

3 (c) An employer who receives a written or oral request to
4 inspect or copy records pursuant to subdivision (b) pertaining to
5 a current or former employee shall comply with the request as soon
6 as practicable, but no later than 21 calendar days from the date of
7 the request. A violation of this subdivision is an infraction.
8 Impossibility of performance, not caused by or a result of a
9 violation of law, shall be an affirmative defense for an employer
10 in any action alleging a violation of this subdivision. An employer
11 may designate the person to whom a request under this subdivision
12 will be made.

13 (d) This section does not apply to any employer of any person
14 employed by the owner or occupant of a residential dwelling
15 whose duties are incidental to the ownership, maintenance, or use
16 of the dwelling, including the care and supervision of children, or
17 whose duties are personal and not in the course of the trade,
18 business, profession, or occupation of the owner or occupant.

19 (e) An employee suffering injury as a result of a knowing and
20 intentional failure by an employer to comply with subdivision (a)
21 is entitled to recover the greater of all actual damages or fifty
22 dollars (\$50) for the initial pay period in which a violation occurs
23 and one hundred dollars (\$100) per employee for each violation in
24 a subsequent pay period, not exceeding an aggregate penalty of
25 four thousand dollars (\$4,000), and is entitled to an award of costs
26 and reasonable attorney’s fees.

27 (f) A failure by an employer to permit a current or former
28 employee to inspect or copy records within the time set forth in
29 subdivision (c) entitles the current or former employee or the
30 Labor Commissioner to recover a seven hundred fifty dollar
31 (\$750) penalty from the employer.

32 (g) An employee may also bring an action for injunctive relief
33 to ensure compliance with this section, and is entitled to an award
34 of costs and reasonable attorney’s fees.

35 (h) This section does not apply to the state, or any city, county,
36 city and county, district, or any other governmental entity.

37 SEC. 3. Section 667.13 is added to the Penal Code, to read:

38 667.13. ~~(a)~~ Any person who commits false personation as
39 defined in paragraph (3) of Section 529 or identity theft as defined
40 in Section 530.5 against a person who is under 18 years of age and



1 the victim's age is known or reasonably should have been known
2 to the person committing the crime, shall receive a one-year
3 enhancement for each violation.

4 ~~(b) If the person who commits the crime under subdivision (a)~~
5 ~~is an adult relative, parent, or guardian of the victim, or someone~~
6 ~~who was provided identifying information from a relative, parent,~~
7 ~~or guardian of the victim, the person committing the crime shall~~
8 ~~receive an additional one-year enhancement for each violation in~~
9 ~~addition to the enhancement in subdivision (a).~~

10 SEC. 4. No reimbursement is required by this act pursuant to
11 Section 6 of Article XIII B of the California Constitution because
12 the only costs that may be incurred by a local agency or school
13 district will be incurred because this act creates a new crime or
14 infraction, eliminates a crime or infraction, or changes the penalty
15 for a crime or infraction, within the meaning of Section 17556 of
16 the Government Code, or changes the definition of a crime within
17 the meaning of Section 6 of Article XIII B of the California
18 Constitution.

