

AMENDED IN ASSEMBLY JUNE 3, 2003  
AMENDED IN ASSEMBLY MARCH 19, 2003  
AMENDED IN ASSEMBLY MARCH 6, 2003  
AMENDED IN ASSEMBLY JANUARY 22, 2003

CALIFORNIA LEGISLATURE—2003–04 REGULAR SESSION

**ASSEMBLY BILL**

**No. 46**

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**Introduced by Assembly Member Simitian**

December 2, 2002

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An act to add Section 1798.85.1 to the Civil Code, ~~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 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~~ 3rd party. The bill would permit the use of a student's social security number for *certain purposes, including, but not limited to, internal verification or nonpublic administration or* 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 *other than social security numbers* 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.

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 is convicted of a felony for committing false personation in those circumstances or unlawfully using 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. Because this bill would 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~~-no.  
State-mandated local program: ~~yes~~-no.

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

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

3 1798.85.1. In addition to Section 1798.85, the following  
4 restrictions on the use of social security numbers shall apply:

5 (a) ~~(1)~~-A public or private university or college in California  
6 may not use a student’s social security number for identification  
7 in a manner that is available to the public or an unauthorized third  
8 party:

9 ~~(2)~~-A, *except that a public or private university or college in*  
10 *California may use a student’s social security number for*  
11 *identification for —communication with a third party who is*  
12 *authorized by the student to receive it. the following purposes:*

13 (1) *Internal verification or nonpublic administrative purposes.*

14 (2) *Communications with a third party who is authorized by the*  
15 *student to receive it.*

16 (3) *As permitted under the federal Family Educational Rights*  
17 *and Privacy Act (20 U.S.C. Sec. 1232g).*

18 (4) *As required by state or federal law.*

19 ~~(3)~~

20 (b) Each university or college may develop a system of  
21 personal identifiers *other than social security numbers* for students  
22 ~~to be used for grading and other administrative purposes. The~~  
23 ~~personal identifiers shall not be social security numbers.~~

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

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

28 226. (a) Every employer shall, semimonthly or at the time of  
29 each payment of wages, furnish each of his or her employees,  
30 either as a detachable part of the check, draft, or voucher paying  
31 the employee’s wages, or separately when wages are paid by  
32 personal check or cash, an itemized statement in writing showing  
33 (1) gross wages earned, (2) total hours worked by the employee,  
34 except for any employee whose compensation is solely based on  
35 a salary and who is exempt from payment of overtime under



1 ~~subdivision (a) of Section 515 or any applicable order of the~~  
2 ~~Industrial Welfare Commission, (3) the number of piece-rate units~~  
3 ~~earned and any applicable piece rate if the employee is paid on a~~  
4 ~~piece-rate basis, (4) all deductions, provided, that all deductions~~  
5 ~~made on written orders of the employee may be aggregated and~~  
6 ~~shown as one item, (5) net wages earned, (6) the inclusive dates of~~  
7 ~~the period for which the employee is paid, (7) the name of the~~  
8 ~~employee and his or her personal identification number if the~~  
9 ~~employer has established an employee identification number~~  
10 ~~system that uses a personal identifier other than the employee's~~  
11 ~~social security number, (8) the name and address of the legal entity~~  
12 ~~that is the employer, and (9) all applicable hourly rates in effect~~  
13 ~~during the pay period and the corresponding number of hours~~  
14 ~~worked at each hourly rate by the employee. The deductions made~~  
15 ~~from payments of wages shall be recorded in ink or other indelible~~  
16 ~~form, properly dated, showing the month, day, and year, and a~~  
17 ~~copy of the statement or a record of the deductions shall be kept~~  
18 ~~on file by the employer for at least three years at the place of~~  
19 ~~employment or at a central location within the State of California.~~

20 ~~(b) An employer that is required by this code or any regulation~~  
21 ~~adopted pursuant to this code to keep the information required by~~  
22 ~~subdivision (a) shall afford current and former employees the right~~  
23 ~~to inspect or copy the records pertaining to that current or former~~  
24 ~~employee, upon reasonable request to the employer. The employer~~  
25 ~~may take reasonable steps to assure the identity of a current or~~  
26 ~~former employee. If the employer provides copies of the records,~~  
27 ~~the actual cost of reproduction may be charged to the current or~~  
28 ~~former employee.~~

29 ~~(c) An employer who receives a written or oral request to~~  
30 ~~inspect or copy records pursuant to subdivision (b) pertaining to~~  
31 ~~a current or former employee shall comply with the request as soon~~  
32 ~~as practicable, but no later than 21 calendar days from the date of~~  
33 ~~the request. A violation of this subdivision is an infraction.~~  
34 ~~Impossibility of performance, not caused by or a result of a~~  
35 ~~violation of law, shall be an affirmative defense for an employer~~  
36 ~~in any action alleging a violation of this subdivision. An employer~~  
37 ~~may designate the person to whom a request under this subdivision~~  
38 ~~will be made.~~

39 ~~(d) This section does not apply to any employer of any person~~  
40 ~~employed by the owner or occupant of a residential dwelling~~



1 ~~whose duties are incidental to the ownership, maintenance, or use~~  
2 ~~of the dwelling, including the care and supervision of children, or~~  
3 ~~whose duties are personal and not in the course of the trade,~~  
4 ~~business, profession, or occupation of the owner or occupant.~~

5 ~~(e) An employee suffering injury as a result of a knowing and~~  
6 ~~intentional failure by an employer to comply with subdivision (a)~~  
7 ~~is entitled to recover the greater of all actual damages or fifty~~  
8 ~~dollars (\$50) for the initial pay period in which a violation occurs~~  
9 ~~and one hundred dollars (\$100) per employee for each violation in~~  
10 ~~a subsequent pay period, not exceeding an aggregate penalty of~~  
11 ~~four thousand dollars (\$4,000), and is entitled to an award of costs~~  
12 ~~and reasonable attorney’s fees.~~

13 ~~(f) A failure by an employer to permit a current or former~~  
14 ~~employee to inspect or copy records within the time set forth in~~  
15 ~~subdivision (e) entitles the current or former employee or the~~  
16 ~~Labor Commissioner to recover a seven hundred fifty dollar~~  
17 ~~(\$750) penalty from the employer.~~

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

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

23 ~~SEC. 3.—Section 667.13 is added to the Penal Code, to read:~~

24 ~~667.13.—Any person who is convicted of a felony for the~~  
25 ~~commission of false personation as defined in paragraph (3) of~~  
26 ~~Section 529 or identity theft as defined in Section 530.5 against a~~  
27 ~~person who is under 18 years of age and the victim’s age is known~~  
28 ~~or reasonably should have been known to the person committing~~  
29 ~~the crime, shall receive a one-year enhancement.~~

30 ~~SEC. 4.—No reimbursement is required by this act pursuant to~~  
31 ~~Section 6 of Article XIII B of the California Constitution because~~  
32 ~~the only costs that may be incurred by a local agency or school~~  
33 ~~district will be incurred because this act creates a new crime or~~  
34 ~~infraction, eliminates a crime or infraction, or changes the penalty~~  
35 ~~for a crime or infraction, within the meaning of Section 17556 of~~  
36 ~~the Government Code, or changes the definition of a crime within~~  
37 ~~the meaning of Section 6 of Article XIII B of the California~~  
38 ~~Constitution.~~

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