

AMENDED IN ASSEMBLY MARCH 26, 2015

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

**ASSEMBLY BILL**

**No. 322**

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**Introduced by Assembly Member Waldron**

February 13, 2015

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An act to amend Section ~~130300~~ of the ~~Health and Safety Code~~, relating to health insurance ~~1798.85~~ of the ~~Civil Code~~, relating to privacy.

LEGISLATIVE COUNSEL'S DIGEST

AB 322, as amended, Waldron. ~~Health insurance.~~ *Privacy: social security numbers.*

*Existing law prohibits a person or entity, with specified exceptions, from publicly posting or displaying an individual's social security number, print a social security number on any card, require the transmitting of a social security number over the internet, require the use of a social security number, or the sale of a social security number, as specified.*

*This bill would prohibit a person, entity, state agency, or local agency from electronically collecting, retaining, maintaining, licensing, or using a social security number unless the social security number is encrypted. This bill would also prohibit a person, entity, state agency, or local agency from electronically sharing, transmitting, or disclosing a social security number unless it is encrypted.*

~~Existing law, the Health Insurance Portability and Accountability Implementation Act of 2001, establishes the Office of HIPAA Implementation within the California Health and Human Services Agency, which is responsible for implementing the provisions of the federal Health Insurance Portability and Accountability Act (HIPAA).~~

~~Under the act, the office is required, until January 1, 2016, to, among other things, determine the provisions of state law that are preempted by HIPAA. The provisions of the act will repeal on that date.~~

~~This bill would make technical, nonsubstantive changes to those provisions:~~

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

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

1     SECTION 1. Section 1798.85 of the Civil Code is amended to  
2     read:

3     1798.85. (a) Except as provided in this section, a person or  
4     entity may not do any of the following:

5     (1) Publicly post or publicly display in any manner an  
6     individual’s social security number. “Publicly post” or “publicly  
7     display” means to intentionally communicate or otherwise make  
8     available to the general public.

9     (2) Print an individual’s social security number on any card  
10    required for the individual to access products or services provided  
11    by the person or entity.

12    (3) Require an individual to transmit his or her social security  
13    number over the Internet, unless the connection is secure or the  
14    social security number is encrypted.

15    (4) Require an individual to use his or her social security number  
16    to access an Internet Web site, unless a password or unique  
17    personal identification number or other authentication device is  
18    also required to access the Internet Web site.

19    (5) Print an individual’s social security number on any materials  
20    that are mailed to the individual, unless state or federal law requires  
21    the social security number to be on the document to be mailed.  
22    Notwithstanding this paragraph, social security numbers may be  
23    included in applications and forms sent by mail, including  
24    documents sent as part of an application or enrollment process, or  
25    to establish, amend or terminate an account, contract or policy, or  
26    to confirm the accuracy of the social security number. A social  
27    security number that is permitted to be mailed under this section  
28    may not be printed, in whole or in part, on a postcard or other  
29    mailer not requiring an envelope, or visible on the envelope or  
30    without the envelope having been opened.

1 (6) Sell, advertise for sale, or offer to sell an individual’s social  
2 security number. For purposes of this paragraph, the following  
3 apply:

4 (A) “Sell” shall not include the release of an individual’s social  
5 security number if the release of the social security number is  
6 incidental to a larger transaction and is necessary to identify the  
7 individual in order to accomplish a legitimate business purpose.  
8 Release of an individual’s social security number for marketing  
9 purposes is not permitted.

10 (B) “Sell” shall not include the release of an individual’s social  
11 security number for a purpose specifically authorized or specifically  
12 allowed by federal or state law.

13 (b) This section does not prevent the collection, use, or release  
14 of a social security number as required by state or federal law or  
15 the use of a social security number for internal verification or  
16 administrative purposes.

17 (c) This section does not prevent an adult state correctional  
18 facility, an adult city jail, or an adult county jail from releasing an  
19 inmate’s social security number, with the inmate’s consent and  
20 upon request by the county veterans service officer or the United  
21 States Department of Veterans Affairs, for the purposes of  
22 determining the inmate’s status as a military veteran and his or her  
23 eligibility for federal, state, or local veterans’ benefits or services.

24 (d) This section does not apply to documents that are recorded  
25 or required to be open to the public pursuant to Chapter 3.5  
26 (commencing with Section 6250), Chapter 14 (commencing with  
27 Section 7150) or Chapter 14.5 (commencing with Section 7220)  
28 of Division 7 of Title 1 of, Article 9 (commencing with Section  
29 11120) of Chapter 1 of Part 1 of Division 3 of Title 2 of, or Chapter  
30 9 (commencing with Section 54950) of Part 1 of Division 2 of  
31 Title 5 of, the Government Code. This section does not apply to  
32 records that are required by statute, case law, or California Rule  
33 of Court, to be made available to the public by entities provided  
34 for in Article VI of the California Constitution.

35 (e) (1) In the case of a health care service plan, a provider of  
36 health care, an insurer or a pharmacy benefits manager, a contractor  
37 as defined in Section 56.05, or the provision by any person or  
38 entity of administrative or other services relative to health care or  
39 insurance products or services, including third-party administration

1 or administrative services only, this section shall become operative  
2 in the following manner:

3 (A) On or before January 1, 2003, the entities listed in paragraph  
4 (1) shall comply with paragraphs (1), (3), (4), and (5) of subdivision  
5 (a) as these requirements pertain to individual policyholders or  
6 individual contractholders.

7 (B) On or before January 1, 2004, the entities listed in paragraph  
8 (1) shall comply with paragraphs (1) to (5), inclusive, of  
9 subdivision (a) as these requirements pertain to new individual  
10 policyholders or new individual contractholders and new groups,  
11 including new groups administered or issued on or after January  
12 1, 2004.

13 (C) On or before July 1, 2004, the entities listed in paragraph  
14 (1) shall comply with paragraphs (1) to (5), inclusive, of  
15 subdivision (a) for all individual policyholders and individual  
16 contractholders, for all groups, and for all enrollees of the Healthy  
17 Families and Medi-Cal programs, except that for individual  
18 policyholders, individual contractholders and groups in existence  
19 prior to January 1, 2004, the entities listed in paragraph (1) shall  
20 comply upon the renewal date of the policy, contract, or group on  
21 or after July 1, 2004, but no later than July 1, 2005.

22 (2) A health care service plan, a provider of health care, an  
23 insurer or a pharmacy benefits manager, a contractor, or another  
24 person or entity as described in paragraph (1) shall make reasonable  
25 efforts to cooperate, through systems testing and other means, to  
26 ensure that the requirements of this article are implemented on or  
27 before the dates specified in this section.

28 (3) Notwithstanding paragraph (2), the Director of the  
29 Department of Managed Health Care, pursuant to the authority  
30 granted under Section 1346 of the Health and Safety Code, or the  
31 Insurance Commissioner, pursuant to the authority granted under  
32 Section 12921 of the Insurance Code, and upon a determination  
33 of good cause, may grant extensions not to exceed six months for  
34 compliance by health care service plans and insurers with the  
35 requirements of this section when requested by the health care  
36 service plan or insurer. Any extension granted shall apply to the  
37 health care service plan or insurer's affected providers, pharmacy  
38 benefits manager, and contractors.

39 (f) If a federal law takes effect requiring the United States  
40 Department of Health and Human Services to establish a national

1 unique patient health identifier program, a provider of health care,  
2 a health care service plan, a licensed health care professional, or  
3 a contractor, as those terms are defined in Section 56.05, that  
4 complies with the federal law shall be deemed in compliance with  
5 this section.

6 (g) A person or entity may not encode or embed a social security  
7 number in or on a card or document, including, but not limited to,  
8 using a barcode, chip, magnetic strip, or other technology, in place  
9 of removing the social security number, as required by this section.

10 (h) (1) *A person, entity, state agency, or local agency may not*  
11 *electronically collect, retain, maintain, license, or use a social*  
12 *security number unless the social security number is encrypted.*

13 (2) *A person, entity, state agency, or local agency may not*  
14 *electronically share, transmit, or disclose a social security number*  
15 *unless the connection is secure or the social security number is*  
16 *encrypted.*

17 (3) *Paragraphs (1) and (2) shall not apply if any of the following*  
18 *circumstances are met:*

19 (A) *The person, entity, state agency, or local agency that*  
20 *electronically collects, retains, maintains, licenses, uses, shares,*  
21 *transmits, or discloses an individual's social security number*  
22 *alters the social security number or uses other security measures*  
23 *such that the social security number could not be linked to a*  
24 *specific individual.*

25 (B) *The person, entity, state agency, or local agency causes to*  
26 *be covered by a contractual or other legally enforceable*  
27 *prohibition on each third party to which the person, entity, state*  
28 *agency, or local agency electronically collects, retains, maintains,*  
29 *licenses, uses, shares, transmits, or discloses an individual's social*  
30 *security number from attempting to link the data to a specific*  
31 *individual.*

32 (C) *The social security number is used for any public licenses*  
33 *or public records associated with employment, when that*  
34 *information is collected or used by an employer or a third party*  
35 *in connection with employment status.*

36 (D) *The person, entity, state agency, or local agency*  
37 *electronically collects, retains, maintains, licenses, uses, shares,*  
38 *transmits, or discloses fewer than 10,000 social security numbers*  
39 *during a 12-month period or has five or fewer employees, and*  
40 *does not knowingly collect, retain, maintain, license, use, share,*

1 *transmit, or disclose any information that includes personal data*  
2 *linked with social security numbers.*

3 *(E) A person or entity has 25 or fewer employees and would*  
4 *otherwise be covered under this subdivision because the data that*  
5 *the person or entity processes related to job applicants and*  
6 *employees in the ordinary course of business.*

7 *(F) A person, entity, state agency, or local agency covered by*  
8 *this subdivision is also covered by one of the following provisions*  
9 *of federal privacy or security law:*

10 *(i) The Privacy Act of 1974 (5 U.S.C. Sec. 552a).*

11 *(ii) The Right to Financial Privacy Act of 1978 (12 U.S.C. Sec.*  
12 *3401 et seq.).*

13 *(iii) The Fair Credit Reporting Act (15 U.S.C. Sec. 1681 et seq.).*

14 *(iv) The Fair Debt Collection Practices Act (15 U.S.C. Sec.*  
15 *1692 et seq.).*

16 *(v) The Children's Online Privacy Protection Act of 1998 (15*  
17 *U.S.C. Sec. 6501 et seq.).*

18 *(vi) Title V of the Gramm-Leach-Bliley Financial Modernization*  
19 *Act (15 U.S.C. Sec. 6801 et seq.).*

20 *(vii) Chapters 119, 121, 123, and 206 of Title 18 of the United*  
21 *States Code.*

22 *(viii) The Family Educational Rights and Privacy Act of 1974*  
23 *(20 U.S.C. Sec. 1232g).*

24 *(ix) The Protection of Pupil Rights Amendment (20 U.S.C. Sec.*  
25 *1232h).*

26 *(x) Sections 5701 and 7332 of Title 38 of the United States Code.*

27 *(xi) The Health Insurance Portability and Accountability Act*  
28 *of 1996 (42 U.S.C. Sec. 1320d-2 et seq.).*

29 *(xii) The Privacy Protection Act of 1980 (42 U.S.C. Sec. 2000aa*  
30 *et seq.).*

31 *(xiii) Part C of Title XI of the Social Security Act.*

32 *(xiv) Subtitle D of Title IV of the Health Information Technology*  
33 *for Economic and Clinical Health Act, which was enacted under*  
34 *Title XIII of the American Recovery and Reinvestment Act of 2009*  
35 *(Public Law 111-5).*

36 *(xv) The E-Government Act of 2002 (44 U.S.C. Sec. 101 et seq.).*

37 *(xvi) The Paperwork Reduction Act of 1995 (44 U.S.C. Sec.*  
38 *3501 et seq.).*

39 *(xvii) Any other federal privacy law or regulation enacted after*  
40 *January 1, 2015.*

1 (4) *The amendments made to this section by the act adding this*  
2 *paragraph shall become operative on July 1, 2017.*

3 ~~(h)~~

4 (i) This section shall become operative, with respect to the  
5 University of California, in the following manner:

6 (1) On or before January 1, 2004, the University of California  
7 shall comply with paragraphs (1), (2), and (3) of subdivision (a).

8 (2) On or before January 1, 2005, the University of California  
9 shall comply with paragraphs (4) and (5) of subdivision (a).

10 ~~(i)~~

11 (j) This section shall become operative with respect to the  
12 Franchise Tax Board on January 1, 2007.

13 ~~(j)~~

14 (k) This section shall become operative with respect to the  
15 California community college districts on January 1, 2007.

16 ~~(k)~~

17 (l) This section shall become operative with respect to the  
18 California State University system on July 1, 2005.

19 ~~(l)~~

20 (m) This section shall become operative, with respect to the  
21 California Student Aid Commission and its auxiliary organization,  
22 in the following manner:

23 (1) On or before January 1, 2004, the commission and its  
24 auxiliary organization shall comply with paragraphs (1), (2), and  
25 (3) of subdivision (a).

26 (2) On or before January 1, 2005, the commission and its  
27 auxiliary organization shall comply with paragraphs (4) and (5)  
28 of subdivision (a).

29 ~~SECTION 1. Section 130300 of the Health and Safety Code~~  
30 ~~is amended to read:~~

31 ~~130300. This division shall be known, and may be cited as,~~  
32 ~~the Health Insurance Portability and Accountability Implementation~~  
33 ~~Act of 2001.~~