

AMENDED IN ASSEMBLY APRIL 21, 1997

CALIFORNIA LEGISLATURE—1997–98 REGULAR SESSION

ASSEMBLY BILL

No. 433

Introduced by Assembly Member Hertzberg

February 20, 1997

An act to amend Section 7480 of the Government Code, to amend Section 830.11 of the Penal Code, and to amend Section 1808.4 of the Vehicle Code, relating to financial investigations.

LEGISLATIVE COUNSEL'S DIGEST

AB 433, as amended, Hertzberg. County investigators: auditor-controller or director of finance.

(1) Existing law *on financial privacy* generally provides that no officer, employee, or agent of a state or local agency or department thereof, in connection with a civil or criminal investigation of a customer, may request or receive copies of the financial records of any customer from a financial institution, unless specified requirements are met. Existing law exempts from this prohibition requests to a financial institution for customer account information made by a specified list of state or local agencies for specified purposes. *Existing law makes the intentional violation of the provisions on financial privacy a misdemeanor.*

This bill would also exempt from this prohibition requests for customer account information made by a county auditor-controller or director of finance when investigating fraud. *This bill would further provide that a county*

auditor-controller or director of finance who unlawfully discloses the information he or she is authorized to request is guilty of the unlawful disclosure of confidential data, a misdemeanor. By creating a new crime, this bill would impose a state-mandated local program.

(2) Existing law specifies a list of persons who, while not peace officers and unable to carry firearms, may, under specified circumstances, exercise the powers of arrest of a peace officer and the power to serve warrants, and are eligible to receive state summary criminal history information.

This bill would add to this list, persons employed as investigators of an auditor-controller or director of finance of any county, who are regularly employed and paid in that capacity, provided that the primary duty of these persons is to engage in investigations related to the theft of funds or the misappropriation of funds or resources, or investigations related to the duties of the auditor-controller or finance director.

(3) Existing law provides that the home address of a specified list of persons that appears in any record of the Department of Motor Vehicles is confidential, if the person requests the confidentiality of that information. The willful, unauthorized disclosure of information from any department record to any person is a misdemeanor.

This bill would add to that list, investigators employed by a county auditor-controller or director of finance if their primary duties place them in personal contact with persons under investigation for, charged with, or convicted of, committing criminal acts. By expanding the scope of an existing crime, this bill would impose a state-mandated local program.

(4) 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 7480 of the Government Code,
2 as amended by Section 1.5 of Chapter 1087 of the Statutes
3 of 1996, is amended to read:

4 7480. Nothing in this chapter prohibits any of the
5 following:

6 (a) The dissemination of any financial information
7 which is not identified with, or identifiable as being
8 derived from, the financial records of a particular
9 customer.

10 (b) When any police or sheriff's department or district
11 attorney in this state certifies to a bank, credit union, or
12 savings association in writing that a crime report has been
13 filed which involves the alleged fraudulent use of drafts,
14 checks, or other orders drawn upon any bank, credit
15 union, or savings association in this state, the police or
16 sheriff's department or district attorney may request a
17 bank, credit union, or savings association to furnish, and
18 a bank, credit union, or savings association shall supply, a
19 statement setting forth the following information with
20 respect to a customer account specified by the police or
21 sheriff's department or district attorney for a period 30
22 days prior to and up to 30 days following the date of
23 occurrence of the alleged illegal act involving the
24 account:

25 (1) The number of items dishonored.

26 (2) The number of items paid which created
27 overdrafts.

28 (3) The dollar volume of the dishonored items and
29 items paid which created overdrafts and a statement
30 explaining any credit arrangement between the bank,
31 credit union, or savings association and customer to pay
32 overdrafts.

33 (4) The dates and amounts of deposits and debits and
34 the account balance on these dates.

35 (5) A copy of the signature and any addresses
36 appearing on a customer's signature card.

37 (6) The date the account opened and, if applicable, the
38 date the account closed.



1 (c) The Attorney General, a supervisory agency, the
2 Franchise Tax Board, the State Board of Equalization, the
3 Employment Development Department, the Controller
4 or an inheritance tax referee when administering the
5 Prohibition of Gift and Death Taxes (Part 8
6 (commencing with Section 13301) of Division 2 of the
7 Revenue and Taxation Code), a police or sheriff's
8 department or district attorney, a county welfare
9 department when investigating welfare fraud, a county
10 auditor-controller or director of finance when
11 investigating fraud against the county, or the
12 Department of Corporations when conducting
13 investigations in connection with the enforcement of
14 laws administered by the Commissioner of Corporations,
15 from requesting of an office or branch of a financial
16 institution, and the office or branch from responding to
17 a request, as to whether a person has an account or
18 accounts at that office or branch and, if so, any identifying
19 numbers of the account or accounts.

20 No additional information beyond that specified in this
21 section shall be released to a county welfare department
22 without either the accountholder's written consent or a
23 judicial writ, search warrant, subpoena, or other judicial
24 order.

25 *A county auditor-controller or director of finance who*
26 *unlawfully discloses information he or she is authorized to*
27 *request under this subdivision is guilty of the unlawful*
28 *disclosure of confidential data, a misdemeanor, which*
29 *shall be punishable as set forth in Section 7485.*

30 (d) The examination by, or disclosure to, any
31 supervisory agency of financial records which relate
32 solely to the exercise of its supervisory function. The
33 scope of an agency's supervisory function shall be
34 determined by reference to statutes which grant
35 authority to examine, audit, or require reports of financial
36 records or financial institutions as follows:

37 (1) With respect to the Commissioner of Financial
38 Institutions by reference to Division 1 (commencing with
39 Section 99), Division 1.5 (commencing with Section
40 4800), Division 2 (commencing with Section 5000),



1 Division 5 (commencing with Section 14000), Division 7
2 (commencing with Section 18000), Division 15
3 (commencing with Section 31000), and Division 16
4 (commencing with Section 33000) of the Financial Code.

5 (2) With respect to the Controller by reference to
6 Title 10 (commencing with Section 1300) of Part 3 of the
7 Code of Civil Procedure.

8 (3) With respect to the Administrator of Local Agency
9 Security by reference to Article 2 (commencing with
10 Section 53630) of Chapter 4 of Part 1 of Division 2 of Title
11 5 of the Government Code.

12 (e) The disclosure to the Franchise Tax Board of (1)
13 the amount of any security interest a financial institution
14 has in a specified asset of a customer or (2) financial
15 records in connection with the filing or audit of a tax
16 return or tax information return required to be filed by
17 the financial institution pursuant to Part 10 (commencing
18 with Section 17001), Part 11 (commencing with Section
19 23001), or Part 18 (commencing with Section 38001) of
20 the Revenue and Taxation Code.

21 (f) The disclosure to the State Board of Equalization of
22 any of the following:

23 (1) The information required by Sections 6702, 6703,
24 8954, 8957, 30313, 30315, 32383, 32387, 38502, 38503, 40153,
25 40155, 41122, 41123.5, 43443, 43444.2, 44144, 45603, 45605,
26 46404, 46406, 50134, 50136, 55203, 55205, 60404, and 60407
27 of the Revenue and Taxation Code.

28 (2) The financial records in connection with the filing
29 or audit of a tax return required to be filed by the financial
30 institution pursuant to Part 1 (commencing with Section
31 6001), Part 2 (commencing with Section 7301), Part 3
32 (commencing with Section 8601), Part 13 (commencing
33 with Section 30001), Part 14 (commencing with Section
34 32001), and Part 17 (commencing with Section 37001) of
35 Division 2 of the Revenue and Taxation Code.

36 (3) The amount of any security interest a financial
37 institution has in a specified asset of a customer, if the
38 inquiry is directed to the branch or office where the
39 interest is held.



1 (g) The disclosure to the Controller of the information
2 required by Section 7853 of the Revenue and Taxation
3 Code.

4 (h) The disclosure to the Employment Development
5 Department of the amount of any security interest a
6 financial institution has in a specified asset of a customer,
7 if the inquiry is directed to the branch or office where the
8 interest is held.

9 (i) The disclosure by a construction lender, as defined
10 in Section 3087 of the Civil Code, to the Registrar of
11 Contractors, of information concerning the making of
12 progress payments to a prime contractor requested by
13 the registrar in connection with an investigation under
14 Section 7108.5 of the Business and Professions Code.

15 (j) Upon receipt of a written request from a district
16 attorney referring to a support order pursuant to Section
17 11475.1 of the Welfare and Institutions Code, a financial
18 institution shall disclose the following information
19 concerning the account or the person named in the
20 request, whom the district attorney shall identify,
21 whenever possible, by social security number:

22 (1) If the request states the identifying number of an
23 account at a financial institution, the name of each owner
24 of the account.

25 (2) Each account maintained by the person at the
26 branch to which the request is delivered, and, if the
27 branch is able to make a computerized search, each
28 account maintained by the person at any other branch of
29 the financial institution located in this state.

30 (3) For each account disclosed pursuant to paragraphs
31 (1) and (2), the account number, current balance, street
32 address of the branch where the account is maintained,
33 and, to the extent available through the branch's
34 computerized search, the name and address of any other
35 person listed as an owner.

36 Whenever the request prohibits the disclosure, a
37 financial institution shall not disclose either the request or
38 its response, to an owner of the account or to any other
39 person, except the officers and employees of the financial
40 institution who are involved in responding to the request



1 and to attorneys, auditors, and regulatory authorities who
2 have a need to know in order to perform their duties, and
3 except as disclosure may be required by legal process.

4 No financial institution, or any officer, employee, or
5 agent thereof, shall be liable to any person for (A)
6 disclosing information in response to a request pursuant
7 to this subdivision, (B) failing to notify the owner of an
8 account, or complying with a request under this
9 paragraph not to disclose to the owner, the request or
10 disclosure under this subdivision, or (C) failing to
11 discover any account owned by the person named in the
12 request pursuant to a computerized search of the records
13 of the financial institution.

14 The district attorney may request information
15 pursuant to this subdivision only when the district
16 attorney has received at least one of the following types
17 of physical evidence:

18 (A) Any of the following, dated within the last three
19 years:

- 20 (i) Form 599.
- 21 (ii) Form 1099.
- 22 (iii) A bank statement.
- 23 (iv) A check.
- 24 (v) A bank passbook.
- 25 (vi) A deposit slip.
- 26 (vii) A copy of a federal or state income tax return.
- 27 (viii) A debit or credit advice.
- 28 (ix) Correspondence that identifies the child support
29 obligor by name, the bank, and the account number.
- 30 (x) Correspondence that identifies the child support
31 obligor by name, the bank, and the banking services
32 related to the account of the obligor.
- 33 (xi) An asset identification report from a federal
34 agency.

35 (B) A sworn declaration of the custodial parent during
36 the 12 months immediately preceding the request that
37 the person named in the request has had or may have had
38 an account at an office or branch of the financial
39 institution to which the request is made.



1 Information obtained by a district attorney pursuant to
2 this subdivision shall be used only for purposes that are
3 directly connected within the administration of the
4 duties of the district attorney pursuant to Section 11475.1
5 of the Welfare and Institutions Code.

6 SEC. 2. Section 830.11 of the Penal Code, as amended
7 by Section 1.3 of Chapter 1066 of the Statutes of 1996, is
8 amended to read:

9 830.11. (a) The following persons are not peace
10 officers but may exercise the powers of arrest of a peace
11 officer as specified in Section 836 and the power to serve
12 warrants as specified in Sections 1523 and 1530 during the
13 course and within the scope of their employment, if they
14 receive a course in the exercise of those powers pursuant
15 to Section 832. The authority and powers of the persons
16 designated under this section shall extend to any place in
17 the state:

18 (1) Persons employed by the Department of Financial
19 Institutions designated by the Commissioner of Financial
20 Institutions, provided that the primary duty of these
21 persons shall be the enforcement of, and investigations
22 relating to, the provisions of law administered by the
23 Commissioner of Financial Institutions.

24 (2) Persons employed by the Department of Real
25 Estate designated by the Real Estate Commissioner,
26 provided that the primary duty of these persons shall be
27 the enforcement of the laws set forth in Part 1
28 (commencing with Section 10000) and Part 2
29 (commencing with Section 11000) of Division 4 of the
30 Business and Professions Code. The Real Estate
31 Commissioner may designate persons under this section,
32 who at the time of their designation, are assigned to the
33 Special Investigations Unit, internally known as the Crisis
34 Response Team.

35 (3) Persons employed by the State Lands Commission
36 designated by the executive officer, provided that the
37 primary duty of these persons shall be the enforcement
38 of the law relating to the duties of the State Lands
39 Commission.



1 (4) Persons employed as investigators of the
2 Investigations Bureau of the Department of Insurance,
3 who are designated by the Chief of the Investigations
4 Bureau, provided that the primary duty of these persons
5 shall be the enforcement of the Insurance Code and other
6 laws relating to persons and businesses, licensed and
7 unlicensed by the Department of Insurance, who are
8 engaged in the business of insurance.

9 (5) Persons employed as investigators of an
10 auditor-controller or director of finance of any county,
11 who are regularly employed and paid in that capacity,
12 provided that the primary duty of these persons shall be
13 to engage in investigations related to the theft of funds or
14 the misappropriation of funds or resources, or
15 investigations related to the duties of the
16 auditor-controller or finance director as set forth in
17 Chapter 3.5 (commencing with Section 26880), Chapter
18 4 (commencing with Section 26900), Chapter 4.5
19 (commencing with Section 26970), and Chapter 4.6
20 (commencing with Section 26980) of Part 3 of Division 2
21 of Title 3 of the Government Code.

22 (6) Persons employed by the Safety and Enforcement
23 Division of the Public Utilities Commission who are
24 designated by the Director of the Safety and
25 Enforcement Division, and approved by the commission,
26 provided that the primary duty of these persons shall be
27 the enforcement of the law as that duty is set forth in
28 Section 308.5 of the Public Utilities Code.

29 (b) Notwithstanding any other provision of law,
30 persons designated pursuant to this section shall not carry
31 firearms.

32 (c) Persons designated pursuant to this section shall be
33 included as “peace officers of the state” under paragraph
34 (2) of subdivision (c) of Section 11105 for the purpose of
35 receiving state summary criminal history information
36 and shall be furnished that information on the same basis
37 as peace officers of the state designated in paragraph (2)
38 of subdivision (c) of Section 11105.

39 SEC. 3. Section 1808.4 of the Vehicle Code is amended
40 to read:



- 1 1808.4. (a) The home address of any of the following
2 persons, that appears in any record of the department, is
3 confidential, if the person requests the confidentiality of
4 that information:
- 5 (1) Attorney General.
 - 6 (2) State public defender.
 - 7 (3) Members of the Legislature.
 - 8 (4) Judges or court commissioners.
 - 9 (5) District attorneys.
 - 10 (6) Public defenders.
 - 11 (7) Attorneys employed by the Department of Justice,
12 the office of the State Public Defender, or a county office
13 of the district attorney or public defender.
 - 14 (8) City attorneys and attorneys who submit
15 verification from their public employer that they
16 represent the city in matters that routinely place them in
17 personal contact with persons under investigation for,
18 charged with, or convicted of, committing criminal acts,
19 if those attorneys are employed by city attorneys.
 - 20 (9) Nonsworn police dispatchers.
 - 21 (10) Child abuse investigators or social workers,
22 working in child protective services within a social
23 services department.
 - 24 (11) Active or retired peace officers, as defined in
25 Chapter 4.5 (commencing with Section 830) of Title 3 of
26 Part 2 of the Penal Code.
 - 27 (12) Employees of the Department of Corrections, the
28 Department of the Youth Authority, or the Prison
29 Industry Authority specified in Sections 20017.77 and
30 20017.79 of the Government Code.
 - 31 (13) Nonsworn employees of a city police department,
32 a county sheriff’s office, the Department of the California
33 Highway Patrol, federal, state, and local detention
34 facilities, and local juvenile halls, camps, ranches, and
35 homes, who submit agency verification that, in the
36 normal course of their employment, they control or
37 supervise inmates or are required to have a prisoner in
38 their care or custody.
 - 39 (14) County counsels assigned to child abuse cases.



1 (15) Investigators employed by the Department of
2 Justice, a county district attorney, or a county public
3 defender.

4 (16) Investigators employed by a county
5 auditor-controller or director of finance if their primary
6 duties place them in personal contact with persons under
7 investigation for, charged with, or convicted of,
8 committing criminal acts.

9 (17) Members of a city council.

10 (18) Members of a board of supervisors.

11 (19) Federal prosecutors and criminal investigators
12 and National Park Service Rangers working in this state.

13 (20) Any active or retired city enforcement officer
14 engaged in the enforcement of the Vehicle Code or
15 municipal parking ordinances.

16 (21) The spouse or children of persons listed in this
17 section, regardless of the spouse's or child's place of
18 residence.

19 (b) The confidential home address of any of the
20 persons listed in subdivision (a) shall not be disclosed to
21 any person, except a court, a law enforcement agency, the
22 State Board of Equalization, or any governmental agency
23 to which, under any provision of law, information is
24 required to be furnished from records maintained by the
25 department.

26 (c) Any record of the department containing a
27 confidential home address shall be open to public
28 inspection, as provided in Section 1808, if the address is
29 completely obliterated or otherwise removed from the
30 record. The home address shall be withheld from public
31 inspection for three years following termination of office
32 or employment except with respect to retired peace
33 officers, whose home addresses shall be withheld from
34 public inspection permanently upon request of
35 confidentiality at the time the information would
36 otherwise be opened. The department shall inform any
37 person who requests a confidential home address what
38 agency the individual whose address was requested is
39 employed by or the court at which the judge or court
40 commissioner presides.



1 (d) A violation of subdivision (a) by the disclosure of
2 the confidential home address of a peace officer, as
3 specified in paragraph (11) of subdivision (a), a
4 nonsworn employee of the city police department or
5 county sheriff’s office, or the spouse or children of these
6 persons that results in bodily injury to the peace officer,
7 employee of the city police department or county
8 sheriff’s office, or the spouse or children of these persons
9 is a felony.

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

20 Notwithstanding Section 17580 of the Government
21 Code, unless otherwise specified, the provisions of this act
22 shall become operative on the same date that the act
23 takes effect pursuant to the California Constitution.

