
VETO

Bill No: SB 1262
Author: Bradford (D)
Introduced: 2/17/22
Vote: 27

SENATE PUBLIC SAFETY COMMITTEE: 5-0, 4/26/22
AYES: Bradford, Ochoa Bogh, Kamlager, Skinner, Wiener

SENATE APPROPRIATIONS COMMITTEE: Senate Rule 28.8

SENATE FLOOR: 37-0, 5/24/22
AYES: Allen, Atkins, Bates, Becker, Borgeas, Bradford, Cortese, Dahle, Dodd, Durazo, Eggman, Glazer, Gonzalez, Grove, Hueso, Hurtado, Jones, Kamlager, Laird, Leyva, Limón, McGuire, Melendez, Min, Newman, Nielsen, Ochoa Bogh, Pan, Portantino, Roth, Rubio, Skinner, Stern, Umberg, Wieckowski, Wiener, Wilk

NO VOTE RECORDED: Archuleta, Caballero, Hertzberg

ASSEMBLY FLOOR: 53-9, 8/31/22 - See last page for vote

SUBJECT: Courts: indexes

SOURCE: Author

DIGEST: This bill requires the clerk of the superior court to keep publicly accessible electronic indexes of defendants in criminal cases that may be searched and filtered based on a defendant's driver's license number or date of birth, or both.

ANALYSIS:

Existing law:

- 1) Requires the Department of Justice to maintain state summary criminal history information and requires the Attorney General to furnish state summary

criminal history information only to statutorily authorized entities or individuals for employment, licensing, volunteering etc. (Pen. Code, § 11105.)

- 2) Requires local summary criminal history records to be maintained by local criminal justice agencies and prohibits furnishing this information except to those specifically authorized in statute. (Pen. Code, § 13300.)
- 3) Requires the clerk of the superior court to keep such indexes as will insure ready reference to any action or proceeding filed in the court. There shall be separate indexes of plaintiffs and defendants in civil actions and of defendants in criminal actions. The name of each plaintiff and defendant shall be indexed and there shall appear opposite each name indexed the number of the action or proceeding and the name or names of the adverse litigant or litigants. (Gov. Code, § 69842.)

This bill requires publicly accessible electronic indexes of defendants in criminal cases to permit searched and filtering of results based on a defendant's driver's license number or date of birth, or both.

FISCAL EFFECT: Appropriation: No Fiscal Com.: Yes Local: No

SUPPORT: (Verified 10/3/22)

American Financial Services Association
American Staffing Association
Apartment Association of Greater Los Angeles
Asian American Hotel Owners Association
Brea Chamber of Commerce
California Apartment Association
California Bankers Association
California Building Industry Association
California Cable & Telecommunications Association
California Chamber of Commerce
California Credit Union League
California Financial Services Association
California Hospital Association
California Hotel & Lodging Association
California Restaurant Association
California Retailers Association
California Staffing and Recruiting Association
Carlsbad Chamber of Commerce
Checkr, Inc.

Coalition for Sensible Public Records Access
Consumer Data Industry Association
Corona Chamber of Commerce
Danville Area Chamber of Commerce
Family Business Association of California
Fountain Valley Chamber of Commerce
Freemont Chamber of Commerce
Fresno Chamber of Commerce
Gilroy Chamber of Commerce
Greater Conejo Valley Chamber of Commerce
Greater High Desert Chamber of Commerce
Imperial Valley Regional Chamber of Commerce
LA Canada Flintridge Chamber of Commerce
Laguna Niguel Chamber of Commerce
Long Beach Area Chamber of Commerce
Los Angeles Area Chamber of Commerce
Mission Viejo Chamber of Commerce
National Credit Reporting Association
National Federation of Independent Business
National Notary Association
Newport Beach Chamber of Commerce
Nonprofits Insurance Alliance of California
Official Police Garages of Los Angeles
Professional Background Screening Association
Rancho Cordova Chamber of Commerce
San Jose Chamber of Commerce
Santa Maria Valley Chamber of Commerce
Simi Valley Chamber of Commerce
Southern California Rental Housing Association
Tulare Chamber of Commerce
Valley Industry & Commerce Association
West Ventura County Business Alliance

OPPOSITION: (Verified 10/3/22)

A New Way of Life
All of Us or None
All of Us or None – Bakersfield Chapter
Center for Employment Opportunities
Homies Unidos – Los Angeles, California
Legal Aid at Work

Legal Services for Prisoners with Children
Root & Rebound
Starting Over, Inc.

ARGUMENTS IN SUPPORT: According to Checkr, Inc.:

In May 2021, some California courts began removing the ability to search an electronic index by DOB as a result of *All of Us or None of Us - Riverside Chapter v. Hamrick*, (2021) 64 Cal.App.5th 751 based on California Court Rule 2.507, which prohibits disclosure of certain personally identifying information in court indexes. Checkr agrees with the importance of protecting privacy, but believes that privacy interests are adequately protected when an individual provides their identifiers and consents to a background check.

The removal of DOB as a search field has resulted in substantial delays in the background check process for individuals with common names and criminal records. Due to the inability to filter out results by a unique identifier like DOB, the number of searches requiring a clerk-assisted search has nearly doubled to 14% of all searches. This means that the number of searches requiring clerk assistance has gone from tens of thousands to more than six figures. This has created a substantial backlog for these searches, resulting in these checks taking weeks to months as opposed to a few days prior to May 2021. Not only do these delays impact people with criminal records, but it also affects those with common names. Based on the data in Checkr's system, these delays disproportionately impact individuals with Spanish surnames. Looking at searches conducted in Los Angeles County (one of the first courts to remove the ability to search by DOB), Checkr has been averaging more than 20,000 background checks that have been pending for more than 30 days. The most impacted individuals all have Spanish surnames.

Given the barriers to employment that already exist for people with criminal records and those with Spanish surnames, we believe that it is essential to eliminate the additional barrier of a delayed background check.

ARGUMENTS IN OPPOSITION: According to Root & Rebound:

A recent court case, *All Of Us Or None – Riverside vs Hamrick*, protects the privacy of people with criminal records by making it harder and more costly for unauthorized individuals to access those records by personal information such as driver's license number and date of birth and misuse them. Background check companies argue that one's criminal history information, compiled for law enforcement purposes, should be freely available for all purposes. SB 1262

flouts individual privacy and creates unnecessary barriers to stable housing and employment, which hurts all Californians.

The instant access to a person's criminal history information is often used by unauthorized employers or landlords to exclude people with old arrests or expunged convictions or convictions that have no relation to the purpose of the background check.

....

When the vast majority of jobs require a criminal background check, unemployment and suppression of wages follow as a natural consequence. A recent study finds that 64% of all unemployed men by the age of 35 have an arrest record, while 46% have a conviction record. For those who are employed, a conviction record reduces the average annual income of black men by 32 percent (and white men by 25 percent).

The Hamrick ruling does not affect employers who already have access to an official report from the California Department of Justice.

....

[Fn. omitted.]

GOVERNOR'S VETO MESSAGE:

This bill would change superior court rules to allow publicly accessible electronic court criminal indexes to be searched with a subject's driver's license number or date of birth.

This bill would override a 2021 appellate court decision and current court rules that strike a fair balance between public access to court records, public safety, and an individual's constitutional right to privacy. While this bill may provide for a more convenient process for companies conducting commercial background checks, it would also allow any member of the public to easily access individuals' sensitive personal information online.

ASSEMBLY FLOOR: 53-9, 8/31/22

AYES: Aguiar-Curry, Alvarez, Arambula, Bigelow, Bloom, Calderon, Carrillo, Cervantes, Chen, Choi, Cooley, Cooper, Cunningham, Megan Dahle, Daly, Davies, Flora, Mike Fong, Fong, Gallagher, Gipson, Gray, Grayson, Irwin, Jones-Sawyer, Kiley, Lackey, Low, Maienschein, Mathis, Mayes, McKinnor,

Medina, Nguyen, O'Donnell, Patterson, Petrie-Norris, Quirk-Silva, Ramos, Reyes, Robert Rivas, Rodriguez, Blanca Rubio, Salas, Santiago, Seyarto, Smith, Valladares, Villapudua, Voepel, Waldron, Akilah Weber, Wilson

NOES: Bauer-Kahan, Kalra, Lee, McCarty, Mullin, Quirk, Stone, Ting, Wicks

NO VOTE RECORDED: Bennett, Berman, Boerner Horvath, Mia Bonta, Bryan, Friedman, Gabriel, Cristina Garcia, Eduardo Garcia, Haney, Holden, Levine, Muratsuchi, Nazarian, Luz Rivas, Ward, Wood, Rendon

Prepared by: Stella Choe / PUB. S. /

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