

## Frequently Asked Questions in Support of California S.B. 1262

### Why do we need a bill?

Senate Bill 1262 is necessary to get people into jobs and apartments more quickly. The bill restores court record access to businesses, government agencies, and nonprofits to allow them to complete the background check process without unreasonable delay. This is especially true when a background check is required by law.

### What is the problem the bill is trying to fix?

In May 2021, [\*All of Us or None of Us v. Hamrick\*](#) was decided by the California Court of Appeals, 4<sup>th</sup> A.D. (Riverside County). The court misinterpreted a court rule, and in so doing, reversed nearly 20 years of court record access. The decision removed the ability to search by certain identifiers (date of birth and/or driver's license number) from criminal records based on an interpretation of California Rules of Court, [Rule 2.507](#) [(Electronic access to court calendars, indexes, and registers of actions)]. The Court wrote that:

After considering the text, history, and purpose of [Rule 2.507](#) [(Electronic access to court calendars, indexes, and registers of actions)], we agree that the rule prohibits the Riverside Superior Court from allowing searches of its electronic criminal index by use of an individual's date of birth or driver's license number.

Rule 2.507 first became effective in 2002 when it was numbered Rule of Court 2077. In 2003, it was renumbered 2.507. The *Hamrick* opinion is a new interpretation of that nearly-20-year-old rule.

### The harmful, personal impact of removing DOBs and DLNs from court record searches

Following *Hamrick*, many courts removed the ability to search and filter records based on date of birth and/or driver's license number. Without access to these identifiers, individuals who need to undergo a background check process to secure work or rental housing – and who have provided their identifiers for this process – are being stalled or stopped completely in the background check process. This delay disproportionately impacts individuals with common names and prevents these individuals from being able to secure work or housing on a timely basis.

### What's so important about access to DLNs or DOBs?

There are a lot of common names in California and in the United States. Not having access to identifiers, like a DOB or a DLN runs the risk that one person will be confused with another, creating false positives and false negatives. This is particularly true among certain racial and ethnic groups, like African-Americans, Asians, and Latinos.<sup>i</sup>

## **The bill does not make new law**

The bill returns court record access to where it was for nearly 20 years when the Judicial Council first enacted [Rule 2.507](#), concerning electronic access to court calendars, indexes, and registers of actions.

## **Why can't/won't the Supreme Court solve this problem?**

Neither party to the [Hamrick](#) decision appealed the case to the California Supreme Court. With the lack of a clear, traditional path to the Supreme Court, the Consumer Data Industry Association (CDIA) and the Professional Background Screening Association (PBSA) used an obscure procedure to petition the Court to accept the case.<sup>ii</sup> As expected, the Court rejected the unusual petition without comment in 2021.<sup>iii</sup>

## **Why can't/won't the Judicial Council solve this problem?**

In 2021, PBSA asked the Judicial Council to clarify [Rule 2.507](#). The Council rejected that request without comment. Council staff likely feels that any change is a policy matter for the legislature.

## **A federal agency opinion prevents name-only matching**

In November 2021, the Consumer Financial Protection Bureau (CFPB) issued an [Advisory Opinion](#) preventing "name-only matching."<sup>iv</sup> The logical impact of this opinion means that background check companies, working for their government, nonprofit, and business customers need additional information about an applicant, like a DOB or DLN, for a reliable check.

## **Does a DOB/DLN prevent false positives?**

Yes. People can be confused with one another based on their names or their faces. Since false matches may fall more heavily in communities of color (see above on common names), being able to access additional identifiers like DOB/DLN is essential to preventing those false positives in background checks.

## **Does an applicant for a job or an apartment provide their personal information?**

Yes. When a person applies for a job or apartment, they are providing information about themselves to on the application. The person with a job or an apartment to offer an applicant will often use a DOB and/or a DLN to measure against court record information for a background check.

## **Must an applicant for a job or an apartment consent to a background check?**

In general, yes. Federal and state law requires applicants for jobs to consent to a background check. While the law does not require consent for a background check for most apartment applications, this consent is generally required by landlords.

## **Without the bill background checks have slowed to a crawl or ground to a halt**

- More than half the state’s population—23 million Californians—currently live in a county whose superior court has removed the date-of-birth filter from its online search engine, thus severely restricting the availability of meaningful criminal background checks in that county.
- More than 44% of Californians currently live in a county that has eliminated the date-of-birth filter entirely—not only online, but even at the public access terminals at the courthouse.

## **Can background check companies just use the California DOJ database?**

No, for three reasons. First, only registered users may request reports on consumers through the database, and CRAs are not permitted to be registered users. Only an employer/agency that is authorized by *statute* can be a registered user and the information they may receive is limited.<sup>v</sup> For out of state applicants, there may be additional hurdles.

Second, the DOJ search is a fingerprint-based search, which means if the record has no fingerprint associated with it, or has a bad print, the record will not be returned. And, to begin this process, the applicant must go to a law enforcement agency or a Live Scan certified processor for their prints to be pulled. Forcing applicants to go to a police department to begin this process can be time consuming and expensive. There are often errors associated with the collection of fingerprints for processing, which may cause delays.

Third, there are significant delays with the DOJ search. DOJ FAQs state this may take as little as 48-72 hours if there is a ‘clear’ response. That’s a big if. If there are possible hits, then a live technician calls the local department and tries to determine the record’s status. The FAQs state “this is a manual process that can take an indeterminant amount of time.”

## **Who is supporting S.B. 1262?**

As of March 23, 2022, the following organizations have signed a letter of support for the bill:

American Financial Services Association, American Staffing Association, Apartment Association of Greater Los Angeles, Asian American Hotel Owners Association, Brea Chamber of Commerce, Carlsbad 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 Association, Coalition for Sensible Public Record Access, Consumer Data Industry Association, Corona Chamber of Commerce, Family Business Association of California, Fountain Valley Chamber of Commerce, Fremont Chamber of Commerce, Fresno Chamber of Commerce, Greater Conejo Valley Chamber of Commerce, Greater High Desert Chamber of Commerce, Imperial Valley Regional Chamber of Commerce, La Cañada Flintridge Chamber of Commerce and Community Association, Los Angeles Area Chamber of Commerce, Mission Viejo Chamber of Commerce, National Credit Reporting Association, Newport Beach Chamber of Commerce, NFIB, Official Police Garages of Los Angeles, Professional Background Screening Association, Rancho Cordova Chamber of Commerce, San Jose Chamber

of Commerce, Simi Valley Chamber of Commerce, Southern California Rental Housing Association, Sue Weaver CAUSE, Tulare Chamber of Commerce, West Ventura County Business Alliance

When CDIA and PBSA petitioned the state supreme court in July 2021 to overturn [Hamrick](#), that petition was supported by more than two dozen organizations.<sup>vi</sup>

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i The three most common last names in California are Garcia, Hernandez, and Lopez. Melia Robinson, [Map reveals the most popular last name in every state](#), *Business Insider*, June 7, 2017. According one website, the 25 most common surnames in California are ranked in order here: Garcia, Smith, Lopez, Hernandez, Hernandez, Martinez, Rodriguez, Johnson, Lee, Gonzalez, Nguyen, Williams, Perez, Ramirez, Sanchez, Jones, Miller, Flores, Kim, Anderson, Gomez, Torees, Wilson, Guitierrez, Martin, and Reyes. <https://forebears.io/united-states/california/surnames>.

According to a 2016 story from the New York Times, the ten most common names in the U.S. from the 2010 census are, in order, Smith, Johnson, Williams, Brown, Jones, Garcia, Miller, Davis, Rodriguez, and Martinez. Sam Roberts, [Hispanic Surnames on the Rise in U.S. as Immigration Surges](#), N.Y. Times, Dec. 15, 2016 (“Roberts”).

The 11<sup>th</sup> – 25<sup>th</sup> most common names in the U.S. from the 2010 census are, in order from 11, Davis, Rodriguez, Martinez, Hernandez, Lopez, Gonzalez, Wilson, Anderson, Thomas, Taylor, Moore, Jackson, Martin, Lee, and Perez. [Frequently Occurring Surnames from the 2010 Census](#), U.S. Census Bureau.

The top 15 names with the fastest-growing frequency in the U.S. from the 2010 census are Zhang, Lee, Ali, Liu, Khan, Vazquez, Wang, Huang, Lin, Singh, Chen, Baustista, Valzquez, Patel, and Wu. [What's in a Name?](#), U.S. Census Bureau, Dec. 16, 2016.

Most surnames in the U.S. are dominated by one Hispanic origin or race group. For example, more than 98 percent of people named Xiong are Asian, more than 87 percent of those named Washington are black, more than 96 percent named Barajas are Hispanic, and almost 98 percent named Yoder are white.” [What's in a Name?](#), U.S. Census Bureau, Dec. 16, 2016.

“Nearly one in four Smiths are black, as are about one in three Johnsons and Browns, nearly four in 10 Joneses and nearly half the people named Williams. (More than 87 percent of Americans with the last name Washington are black.)” Some of the most common last names in the U.S., Smith, Johnson, Williams, Brown or Jones,” exist because they have “been perpetuated because slaves either adopted or retained the surnames of their owners.” *Id.*, Roberts.

ii [Rule 8.512\(c\)\(2\)](#).

iii The California Supreme Court denies about 95% of all petitions. [2020 Court Statistics Report, Statewide Caseload Trends 2009–10 Through 2018–19](#), Calif. Judicial Council.

iv The CFPB advisory opinion was published “to highlight that a consumer reporting agency that uses inadequate matching procedures to match information to consumers, including name-only matching (*i.e.*, matching information to the particular consumer who is the subject of a consumer report based solely on whether the consumer’s first and last names are identical or similar to the names associated with the information), in preparing consumer reports is not using reasonable procedures to assure maximum possible accuracy under [section 607\(b\)](#) of the Fair Credit Reporting Act.” 86 Fed. Reg. 62466 (Nov. 10, 2021).

v *See website*, “Please note: The DOJ will only approve an organization if authorized in statute. The authorizing statute will specify the level of service you are authorized to receive (*i.e.*, California criminal history information ONLY or California and Federal criminal history information).” Cal. Dep’t. of Justice, [Fingerprints: Applicant Agencies](#).

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<sup>vi</sup> Apartment Association of Orange County, California Alarm Association, California Association of Boutique & Breakfast Inns, California Bankers Association, California Chamber of Commerce, California Credit Union League, California Hospital Association, California Hotel & Lodging Association, California Rental Housing Association, California Financial Services Association, California State Council of the Society for Human Resources Management, Checkr, Inc., Coalition for Sensible Public Records Access, Electronic Security Association,, Hospitality Santa Barbara, Hotel Association of Los Angeles, Long Beach Hospitality Alliance, Lyft, Inc., Monitoring Association (The), Moco Incorporated, National Consumer Reporting Association, National Public Records Research Association, Public Records Retrieval Network, Security Industry Association, Southern California Rental Housing Association, Sue Weaver CAUSE: Commit to Always Using Screened Employees, Tribal Gaming Protection Network, Uber Technologies, Inc., Vector Security, Inc., Western Burglar Alarm and Fire Alarm Association, and Western Burglar and Fire Alarm Association Unilateral Apprenticeship and Training Program.

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