

SUMMARY ANALYSIS OF AMENDED BILL

Franchise Tax Board

Author: Bowen Analyst: Kristina E. North Bill Number: SB 168

Related Bills: See Prior Analysis Telephone: 845-6978 Amended Date: April 16, 2001

Attorney: Patrick Kusiak Sponsor: _____

SUBJECT: Personal Information Confidentiality/Identity Theft

- A DEPARTMENT AMENDMENT ACCEPTED. One amendment reflects a suggestion of previous analysis of bill as introduced February 5, 2001.
- AMENDMENTS IMPACT REVENUE. A new revenue estimate is provided.
- AMENDMENTS DID NOT RESOLVE THE DEPARTMENT'S CONCERNS stated in the previous analysis of bill as introduced February 5, 2001.
- FURTHER AMENDMENTS NECESSARY.
- DEPARTMENT POSITION CHANGED TO _____.
- REMAINDER OF PREVIOUS ANALYSIS OF BILL AS INTRODUCED February 5, 2001, STILL APPLIES.
- OTHER - See comments below.

SUMMARY

This bill would:

- ◆ Grant consumers the right both to verify and to authorize the issuance of their consumer credit report information. The department would be exempt from these provisions for activities related to the investigation or collection of delinquent taxes.
- ◆ Reduce the use of social security numbers (SSNs) as personal identifying numbers.

These provisions are discussed separately.

This bill also would make changes to the Civil Code with regard to consumer credit reporting agencies. These changes do not affect the department and are not discussed in this analysis.

SUMMARY OF AMENDMENTS

The April 16, 2001, amendments specified that this bill:

- ◆ Would not prohibit the collection, use, or release of an SSN as required by state or federal law; and
- ◆ Would not apply to records open to the public pursuant to the Open Records Act or the Open Meetings Act.

Board Position:

____ S ____ NA ____ NP
____ SA ____ O ____ NAR
____ N ____ OUA ____ X PENDING

Legislative Director

Date

Jana Howard for BP

06/01/01

Except for these changes, and changes that did not impact the department, the remainder of the department's analysis of this bill as introduced February 5, 2001, still applies. The remaining implementation and policy concerns still apply and are restated below.

SECURITY ALERTS AND SECURITY FREEZES ON CONSUMER CREDIT REPORT INFORMATION

IMPLEMENTATION CONSIDERATIONS

FTB is statutorily required to collect and process payments and related correspondence for non-tax debt programs including the Child Support Collection Program, Court Ordered Debt Collections, Vehicle Registration Collections, and Industrial Health and Safety Collections. These non-tax debt programs are not specifically included in the bill's exclusion of FTB's use of the consumer credit report from these provisions. Author's staff had indicated that the intent was to exclude FTB's use of a consumer credit report to fulfill all of its statutory requirements, including non-tax debt programs. Amendment 1 is provided to resolve this concern. (Since the bill language currently limits Internal Revenue Service use of a consumer report, and that limit is not a California tax concern, the amendment is drafted without removing the current IRS provision. Please see "Policy Concern" below.)

CONFIDENTIALITY OF SOCIAL SECURITY NUMBERS

IMPLEMENTATION CONSIDERATIONS

The department has identified the following implementation concerns. Department staff is available to work with the author's office to resolve these and other concerns that may be identified.

- ◆ Definitions are needed for "publicly post or display," "continuous," "secure," "internal verification," and "administrative purposes."
- ◆ Internally inconsistent language exists within this bill. It is unclear how a person, entity, or state or local agency may *continue* using an SSN *only* if it meets all four conditions specified in the bill when two of the conditions would result in the cessation of use of the SSN (i.e., one of the conditions is to process a written request from an individual to cease using his or her SSN within 30 days, while another is the prohibition from denying services to an individual who has requested cessation of use of his or her SSN.). Additionally, it is unclear how a service entity or agency would be able to meet the annual disclosure condition since the annual disclosure does not commence until 2003, but the entity or agency must satisfy the condition to continue use after July 1, 2002.
- ◆ The author's office indicated that it was not its intent to require FTB to cease using SSNs as identifying numbers and has requested that the department provide language to specify that this section not apply to the FTB in fulfilling its statutory requirements. Amendment 2 is provided to address this issue. Without this amendment, FTB could be precluded from using SSNs on materials mailed to a taxpayer, including but not limited to refund checks, correspondence regarding the taxpayer's account, and related documents.

- ◆ Although state and federal laws require the SSN to be used as the identifying number for individual taxpayers, it does not specifically require the use of the SSN on every document that may be mailed to a taxpayer. FTB also uses SSNs when filing tax liens, wage assignments, and bank levies against delinquent taxpayers. SSNs are used to assure proper identification by the county recorders. These documents, including SSNs, become public documents. Similarly, wage assignments and bank levies include the taxpayer's SSN for identification and become known to private third parties, usually banks and employers.

POLICY CONCERN

By specifying that the Internal Revenue Service may use a consumer credit report to investigate or collect delinquent taxes, this bill attempts to limit federal use. This language could not be used to limit the federal government's use of this information since California would not have the constitutional authority to prohibit a federal agency from using a consumer report in any way authorized by federal law.

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FRANCHISE TAX BOARD'S
PROPOSED AMENDMENTS TO SB 168
As Amended April 16, 2001

AMENDMENT 1

Amend page 5, lines 14 through 19, to read as follows:

- (4) The Franchise Tax Board ~~or the Internal Revenue Service~~ or their its agents or assigns, acting to investigate or collect delinquent taxes or to fulfill any other of its statutory responsibilities.
- (5) The Internal Revenue Service, or its agents or assigns, acting to investigate or collect delinquent taxes.
- (6) The use of credit information for the purposes of prescreening as provided for by the federal Fair Credit Reporting Act.

AMENDMENT 2

On page 11, line 9, after "(f)" insert:

The provisions of this section shall not apply to the use of the Social Security number by the Franchise Tax Board or its agents or assigns.

(g)

AMENDMENT 3

On page 11, line 14, strikeout (g) and insert:

(h)