

REVISED ANALYSIS

Franchise Tax Board

Author: Bowen Analyst: Kristina E. North Bill Number: SB 168
Related Bills: See Legislative History Telephone: 845-6978 Original Date: July 5, 2001
Attorney: Patrick Kusiak Sponsor: _____

SUBJECT: Personal Information Confidentiality/Identity Theft

- REVENUE ESTIMATE CHANGED.
 FURTHER CONCERNS IDENTIFIED.
REMAINDER OF PREVIOUS ANALYSIS OF BILL AS AMENDED JULY 5, 2001, STILL APPLIES.
 OTHER - See comments below.

SUMMARY OF BILL

This bill would:

- * Limit the use of social security numbers (SSNs) as personal identifying numbers.
- * 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 or unpaid court orders or to fulfill any of its other statutory obligations.

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 REVISION

The department's analysis of the July 5, 2001, amendments is being revised to add implementation considerations and reflect departmental costs. Amendments by the author that were anticipated by staff have not been made to address the implementation or technical concerns identified in the previous analyses of this bill. The department's costs are primarily attributable to programming and testing costs necessary to implement the bill's intent.

Except for the departmental costs, the new and revised implementation considerations, and the new policy consideration, the remainder of the department's analysis of the bill as amended on July 5, 2001, still applies. The Franchise Tax Board's position is restated for convenience.

Board Position:

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Legislative Director

Date

Brian Putler

8/31/01

POSITION

Support, if amended.

At its June 27, 2001, meeting, the Franchise Tax Board (FTB) voted 2-0 to take a support position if the bill is amended to exclude FTB from the SSN provisions of this bill, with Annette Porini, on behalf of Member B. Timothy Gage, abstaining.

Summary of Suggested Amendments

Amendment 1 would specify that the provisions of this bill would not apply to tax liens. Amendments 2 and 3 would remove FTB from the provisions of this bill. As an alternative, Amendment 4 would extend the implementation date from July 1, 2002, to January 1, 2005, to allow time for the department to obtain funding to modify its computer systems and develop a department wide plan to implement this bill.

CONFIDENTIALITY OF SOCIAL SECURITY NUMBERS

IMPLEMENTATION CONSIDERATIONS

- * The author's office initially 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 FTB to the extent needed to fulfill its statutory obligations. Amendments 2 and 3 are provided to address this issue.
- * 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. The basic design of FTB's personal income tax (PIT) mainframe computer system relies on using the SSN as the taxpayer's account number. The PIT system feeds information to other related systems, including collection and audit systems. All refunds, billings, taxpayer communications relating to audit and collection activities, and notices of state tax liens contain the taxpayer's SSN. These documents could no longer contain the taxpayer's SSN if this bill is enacted. Thus, modification to the PIT mainframe and related computer systems would be necessary to implement this bill. The department's implementation plan must contain a strategy to minimize taxpayer confusion and disruption to the PIT program. Staff is working to determine the best department wide implementation method; staff is certain that due to the enormity of the task this bill could not be fully implemented by July 1, 2002.

To meet the intent of the bill of eliminating public display of SSNs and SSNs on material mailed to the taxpayer without major PIT program disruption and minimize taxpayer concern, department staff recommends an extended implementation date of three years from the effective date, similar to current federal legislation. Amendment 4 is provided. This extension would reduce the implementation urgency and:

- 1) enable FTB to plan effectively for needed changes to minimize taxpayer concern and disruption to the PIT program;
- 2) enable FTB to obtain funding to implement the bill through the budgetary process for 2003/2004 and thereafter;

- 3) enable FTB to work with the author to identify any cleanup legislation for 2002 where provisions may be subject to misinterpretation;
- 4) eliminate departmental costs in the current fiscal year;
- 5) reduce departmental costs in subsequent years that otherwise would be attributable to overtime and contracting for additional resources.
- 6) attempt to incorporate federal efforts underway to limit use of SSNs into the department's plan so that system changes would have to be made only once.

- * The department is authorized to record tax liens in the property records maintained by the various county recorders. Those records are available to the general public and are routinely used by title and escrow companies for real estate transactions and by credit reporting agencies. The use of social security numbers helps to precisely identify taxpayers and protect innocent third parties. The removal of SSNs from tax liens could cause unintended impact on individual taxpayers. Example 1: A tax lien is filed against John Smith without the SSN as an identifier. A credit reporting agency would report the possibility of a tax lien on all credit reports with the name of John Smith. Example 2: John Smith is selling a piece of real property. The title company conducts a search of property records at the county recorder's office and finds a tax lien in the name of John Smith. Without the SSN on the tax lien, the title company could not determine that the John Smith with the tax lien is the same individual who is selling the property. The title company would need to request assistance from FTB to determine the correct identity of the lien holder. Title could be unnecessarily clouded until the identification issue is resolved. Additional department staff would be required to handle the increased contacts. To resolve this issue, department staff recommends exempting tax liens from the public display provisions. Amendment 1 is provided.
- * Current federal legislation carrying significant support would specifically prohibit an individual's SSN or derivative thereof to be used on documents that are publicly posted or displayed. If the department uses truncation of the SSN to meet the provisions of this bill, and current federal legislation is later passed, the department would incur large costs to reprogram systems to meet federal limitations.
- * Definitions are needed for "forms," "continuous," "secure," "internal verification," and "administrative purposes."

Department staff continues to be available to work with the author's office to resolve these and other concerns that may be identified.

FISCAL IMPACT

As discussed under "Implementation Considerations," staff is uncertain how this bill would be implemented. However, preliminary estimates range from \$2.2 million to \$5.5 million in the first year. This range depends upon the interpretation of various aspects of the bill. This bill could not be implemented by the department by July 1, 2002.

POLICY CONCERN

A large, unintended impact of this bill is the delay of the close of a sale or purchase of real property by individual taxpayers due to the removal of SSN from tax liens.

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FRANCHISE TAX BOARD'S
PROPOSED AMENDMENTS TO SB 168
As Amended July 5, 2001

AMENDMENT 1

On page 13, line 22, after "(f)" insert

This section shall not prevent the use of the social security number of a taxpayer on notices, certificates, or other documents related to a state tax lien as authorized by Chapter 14 (commencing with section 7150) and Chapter 14.5 (commencing with section 7220) of Division 7 of Title 1 of the Government Code.

AMENDMENT 2

On page 13, line 26, after "(g)" 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.

(h)

AMENDMENT 3

On page 13, line 26, strikeout "(h)" and insert:

(i)

AMENDMENT 4

On page 13, revise lines 33 and line 34 as follows:

SEC. 8. Except with respect to the Franchise Tax Board, section ~~Section~~ 1 of this act shall become operative on July 1, 2002. Section 1 shall become operative with respect to the Franchise Tax Board on January 1, 2005. Section 2 of this act shall become operative on September