

ANALYSIS OF AMENDED BILL

Franchise Tax Board

Author: Cohn Analyst: Gloria McConnell Bill Number: AB 1528

Related Bills: See Legislative History Telephone: 845-4336 Amended Date: 05/14/03

Attorney: Patrick Kusiak Sponsor: _____

SUBJECT: Healthy California Act of 2003; FTB to Send Information

SUMMARY

This bill, which creates the Healthy California Act of 2003, would:

- generally require California residents to have at a minimum essential health care benefits, and
- require the Franchise Tax Board (FTB) to distribute a form that provides information about essential health benefits requirements.

The other provisions of the Act are not addressed in this analysis.

This is the department's first analysis of this bill.

SUMMARY OF AMENDMENTS

These May 14, 2003, amendments would provide that the provisions that apply to employer assessments and collections are merely illustrative of the Legislature's intent. For any taxes, fees, or assessments to be imposed or effective under the Act would require later enacted legislation. FTB's distribution requirement under the Act is not affected by these amendments and still applies.

The April 22, 2003, amendments would change the bill from merely expressing legislative intent to enabling legislation that creates the Act and sets forth certain requirements, including FTB's requirement to distribute the essential benefits information form.

PURPOSE OF THE BILL

According to the author's staff, this bill is a step toward establishing universal health care coverage in California.

EFFECTIVE/OPERATIVE DATE

This bill would be effective and operative January 1, 2004.

POSITION

Pending.

Board Position:

<input type="checkbox"/> S	<input type="checkbox"/> NA	<input type="checkbox"/> NP
<input type="checkbox"/> SA	<input type="checkbox"/> O	<input type="checkbox"/> NAR
<input type="checkbox"/> N	<input type="checkbox"/> OUA	<input checked="" type="checkbox"/> PENDING

Department Director
Gerald H. Goldberg

Date
06/03/03

Summary of Suggested Amendments

Department staff is available to assist with amendments to resolve the implementation and policy concerns discussed in this analysis.

ANALYSIS

FEDERAL/STATE LAW

Under current federal and state income tax laws, employees are allowed to exclude from taxable income their employers' contributions to employer-provided health care coverage. Employers are allowed to deduct their contributions to employee health care coverage as a trade or business expense when calculating taxable income.

Under the Personal Income Tax Law (PITL), "person" is defined to include individuals, fiduciaries, partnerships, limited liability companies, and corporations. In general, individuals are required to file personal income tax (PIT) returns only if they have adjusted gross income in excess of \$9,664 or gross income of \$12,080. For married couples, the income amounts are doubled. Also, nonresidents who derive income from sources within California are subject to the income tax laws administered by FTB.

THIS BILL

Under this bill, the Managed Risk Medical Insurance Board (Insurance Board) would administer the Act, which generally requires all individuals residing in California to have at least essential health care coverage for themselves and their dependents (Section 100021). It is the Legislature's intent that the Insurance Board would be required to contract with Employment Development Department to collect the (health coverage) assessments from employers with up to 200 employees. It is the Legislature's intent that such assessments would be paid by employers. However, no tax, fee, or assessment would be effective or imposed until a later enacted statute specifically so authorizes it.

The Insurance Board would be required to develop a form regarding essential benefits requirements. FTB would be required to distribute the form to every person to whom it distributes information regarding PIT liability, including every person who filed a PIT return in the most recent calendar year.

IMPLEMENTATION CONSIDERATIONS

Staff has identified the following implementation considerations regarding FTB's requirements under this bill.

- 1) For FTB to use addresses from tax returns to distribute the essential benefits information form, FTB would need specific authority in Article 2 of Chapter 7 of Part 10.2 of the Revenue and Tax Code (commencing with Section 19542).
- 2) Given FTB's current practice of distributing tax information, as described below under "Program Background," the meaning of "distribution," which under this bill triggers the distribution of the essential benefits information form, is unclear. It is unclear whether "distribution" means any method of dissemination or would only include the more traditional method of postal mail.

3) Under this bill, FTB would have to identify "every person" to whom it distributed tax information in order to establish the list of individuals to whom it would distribute the essential benefits information form. Given FTB's current practice of distributing tax information, it is unclear whether this provision means that:

- Once a person is distributed tax information, FTB would identify that person as a person to whom it would distribute the essential benefits information form, or
- Each time a person is distributed tax information, regardless of the number of times, FTB would distribute to that person the essential benefits information form.

4) It is unclear whether FTB's distribution of the essential benefits form would only occur one time, upon the enactment of the Act, or would be an annual distribution.

5) It is unclear whether FTB would be required to distribute the essential benefits information form to the address of record even though FTB's records show that tax information distributed to that address was previously returned by the postal service.

Once these considerations are resolved, staff would be able to develop an implementation plan for distributing the essential benefits information form. Given the revenue shortfall and its impact on departmental budgets, FTB will need an appropriation in this bill to ensure implementation of the plan and administration of the distribution process. The suggested language is attached.

PROGRAM BACKGROUND

Staff estimates that mailing a notice costs FTB approximately \$.35. This cost does not include costs that may be associated with resulting telephone calls and correspondence.

In general, FTB distributes information regarding PIT liabilities to various persons, including taxpayers, tax professionals or attorneys representing taxpayers, other interested parties, and the public in general. Tax booklets, forms, and instructions are distributed by mail to taxpayers based on the tax returns filed in the prior year and specific requests from the taxpayers, their representatives and tax professionals. In addition, FTB distributes tax booklets, forms, and instructions en masse to post offices and other public sites. Once the tax return is filed, there may be a resulting balance due, error, or tax refund. In each instance, FTB will distribute tax liability information by mailing notice of the balance due, notice of the error, or a refund warrant to taxpayers or their representatives. If the balance due or error is not resolved upon the first notice, FTB may distribute any number of additional notices, depending upon the circumstances. In addition, if taxpayers do not file tax returns as required, FTB mails a series of tax liability information notices to taxpayers or their representatives. Further, a series of tax liability information notices are mailed to taxpayers or their representatives if FTB determines there is a deficiency assessment. FTB may also mail tax liability information with respect to claims for refunds, or audit or legal matters.

The following table provides an illustrative listing of some of the higher volume tax information distributions. These volumes include multiple distributions to the same taxpayer.

Illustrative Listing of Type of PIT Information Notices That Could Trigger the Distribution of the Essential Benefits Form	Volume Annually
Individuals filing tax returns for tax year 2002	14.0 million
Individuals to whom FTB mailed tax booklets for tax year 2002	3.0 million
Filing enforcement notices/assessments mailed to taxpayers in 2002	1.0 million
Notices of tax due, notices of proposed deficiency assessments, notices of action, return information notices, and refund warrants.	13.0 million

Again, for illustrative purposes, additional distributions of tax information are made as follows:

- Written correspondence and e-mails to taxpayers or their representatives.
- Chief counsel or other legal rulings or documents, or audit information.
- Telephone calls through the call centers, or tax preparer's call line, or other telephone lines.
- Personal contacts at public service district offices, tax preparation volunteer program, or public speaking appearances.
- Press releases, information newsletters, or other public service announcements.
- En masse, general-public distribution of tax booklets, forms, and instructions.
- FTB's Internet web site and links to FTB's web site through web sites of other agencies or other interested parties.

OTHER STATES' INFORMATION

The states researched were *Florida, Illinois, Massachusetts, Michigan, Minnesota, and New York*. These states were selected due to their similarities to California's economy, business entity types, and tax laws. Research found that these states do not have laws comparable to those that would be required by this bill. These states do not require all their residents to have health coverage for themselves and their dependents; hence they do not require their tax administration agencies to provide notice thereof.

FISCAL IMPACT

Departmental Costs

The department's costs to administer this bill cannot be determined until the implementation concerns have been resolved, at which time the amount of the appropriation that will be needed can also be determined.

ECONOMIC IMPACT

Revenue Estimate

The revenue loss impact of this bill from additional business deductions for income tax purposes would be minor, less than \$500,000 annually.

Revenue Discussion

This bill would only impact those businesses that don't provide health care insurance for their employees that meet the requirements of this bill. While the cost for health care insurance required by this bill would be a deductible item from business income, it is anticipated that the businesses that would be impacted by this bill will either have operating losses for the year or make reductions in other business expenses to largely offset these costs.

ARGUMENTS/POLICY CONCERNS

Historically, FTB has opposed legislation that authorizes FTB to use tax return information for non-tax purposes without the taxpayer's consent.

FTB's primary function is to administer the tax law. Because of FTB's expertise in debt collection, FTB also is responsible for collecting certain non-tax debts. However, distributing the essential benefits information form, as would be required by this bill, may be viewed as an activity beyond FTB's area of expertise.

By requiring FTB to distribute the essential benefits information form to all persons to whom it distributes tax information, only persons with a filing requirement will most likely receive the essential benefits information.

Because FTB would be required to distribute the essential benefits information form to all persons to whom it distributes PIT liability information, the essential benefits information form would be distributed to entities other than individuals, such as estates, trusts, fiduciaries, partnerships, limited liability companies, and corporations. In addition, nonresidents who are subject to the PITL would receive the essential benefits information form.

LEGISLATIVE STAFF CONTACT

Gloria McConnell
Franchise Tax Board
845-4336
gloria.mcconnell@ftb.ca.gov

Brian Putler
Franchise Tax Board
845-6333
brian.putler@ftb.ca.gov

Analyst Gloria McConnell
Telephone # 845-4336
Attorney Patrick Kusiak

FRANCHISE TAX BOARD'S
PROPOSED AMENDMENTS TO AB 1528
As Amended May 14, 2003

AMENDMENT 1

On page 14, after line 12, insert:

SEC 6. There is hereby appropriated from the General Fund for the 2003-04 fiscal year the sum of _____ dollars (\$ _____), to the Franchise Tax Board, in augmentation of Item 1730-001-0001 of the Budget Act of 2003.