

SUMMARY ANALYSIS OF AMENDED BILL

Franchise Tax Board

Author: Bowen Analyst: LuAnna Hass Bill Number: SB 1841

Related Bills: See Prior Analysis Telephone: 845-7478 Amended Date: August 4, 2004

Attorney: Patrick Kusiak Sponsor: _____

SUBJECT: Electronic Monitoring Of Employees

DEPARTMENT AMENDMENTS ACCEPTED. Amendments reflect suggestions of previous analysis of bill as introduced/amended _____.

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 amended June 23, 2004.

FURTHER AMENDMENTS NECESSARY.

DEPARTMENT POSITION CHANGED TO _____.

REMAINDER OF PREVIOUS ANALYSIS OF BILL AS AMENDED June 23, 2004, STILL APPLIES.

OTHER - See comments below.

SUMMARY

This bill would allow employers to engage in electronic monitoring of employees after providing notice to the employees.

SUMMARY OF AMENDMENTS

The August 4, 2004, amendments would:

- Expand the definition of "electronic monitoring" to include the collection of information through the use of computer software or other computer programs.
- Expand the definition of "employee," to include individuals employed by corporations, sole proprietorships, partnerships, or any other business or entity.
- Modify the notice required by this section to describe 1) the form of communication or other activity, and 2) the kinds of information that would be obtained through the monitoring.
- Clarify that placing signs in the workplace, by itself, would not constitute adequate notice to an employee as required under this bill.
- Modify the language that would allow an employer to electronically monitor an employee without prior notice.
 - The employer would be required to have reasonable grounds to believe that both: 1) the employee is engaged in unlawful conduct, and 2) the electronic monitoring would produce evidence of an employee's unlawful conduct and would be conducted in accordance with other applicable state and federal laws.

Board Position:

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Legislative Director

Date

Brian Putler

8/18/04

- An employer would be unable to conduct such monitoring in instances under current law where employers are already prohibited from maintaining two-way mirrors, audio recording, or video recording in certain spaces such as restrooms and changing rooms.
- Remove language that would have provided that the provisions of the bill should not be construed as enhancing or diminishing an employee's reasonable expectation of privacy under state or federal laws.
- Modify the provision regarding employee rights to provide that the notice required by this bill may be included in a contract if the notice meets the provisions of this bill.
- Expand the provision of this bill to include collective bargaining agreements as a mechanism that the provisions of this bill would not preempt, modify, or amend.
- Add language stating that the rights of employees under this section are in addition to, and should not diminish, any other rights of employees under any other federal, state, local, or other constitutional provision, statute, ordinance, rule, regulation, order, or other authority.

These amendments do not have a significant impact on the department. For convenience, the Implementation Considerations from the department's analysis of the bill as amended June 23, 2004, are included below. The remainder of the department's analysis of the bill still applies.

ANALYSIS

IMPLEMENTATION CONSIDERATIONS

FTB is charged with collecting, maintaining, and protecting the privacy of taxpayer information. As such, FTB engages in extensive electronic monitoring of employee activities. FTB has established a notification practice that includes: 1) an annual confidentiality statement, 2) a security pamphlet, 3) an electronic security banner that is presented prior to any individual gaining network or system access, and 4) annual computer-based security training. If FTB is required to specifically identify the kinds of information that will be obtained through its electronic monitoring, the systems and procedures to protect the privacy of taxpayer information and cashing of receipts could be compromised. For example, by providing the notice information required by this bill, employees could evade detection of unauthorized access to taxpayer information or theft of taxpayer checks. Additionally, an employee, or any other individual provided with such information, could use the monitoring information potentially to design and launch a successful and undetected system attack. The author may wish to consider providing an amendment that provides that it is not the intent of the bill to prevent a public agency from performing its statutorily mandated mission, such as protecting confidential taxpayer information.

The term "material change" in an electronic monitoring practice is subject to multiple interpretations, which may lead to disputes between employees and employers. Clarification of the author's intent about this provision may help in administering this provision of the bill.

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