

Franchise Tax Board

ANALYSIS OF ORIGINAL BILL

Author: Margett Analyst: Rachel Coco Bill Number: SB 1422

Related Bills: See Legislative History Telephone: 845-4328 Introduced Date: February 22, 2006

Attorney: Patrick Kusiak Sponsor: _____

SUBJECT: Check Cashers/Change In Term Of Imprisonment

SUMMARY

This bill would specify the length of imprisonment for check cashers that willfully fail to report information to the Franchise Tax Board (FTB) regarding certain check cashing transactions.

This bill would also make numerous amendments related to crime, firearms, child welfare, and controlled substance addiction. These amendments do not impact the department and will not be discussed in this analysis.

PURPOSE OF THE BILL

According to the author's staff, the purpose of the bill is to eliminate ambiguity from the law.

EFFECTIVE/OPERATIVE DATE

This bill would be effective and operative beginning January 1, 2007.

POSITION

Pending.

ANALYSIS

FEDERAL/STATE LAW

Under federal law, the Federal Bank Secrecy Act (BSA) imposes certain record keeping and reporting requirements on financial institutions, including check cashers¹, in an attempt to monitor currency transactions.

The Currency Transaction Report (CTR) is one report under the BSA that is required to be filed by a financial institution. A CTR must be filed when any cash transaction exceeds \$10,000.

¹ Check casher means any person or entity that for compensation engages in the business of cashing checks, warrants, drafts, money orders, or other commercial paper serving the same purpose.

Board Position:	Department Director	Date
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Another report required under the BSA is the Suspicious Activity Report (SAR). A SAR must be filed by a check casher on transactions or attempted transactions involving at least \$2,000 in cash where the check casher knows, suspects, or has reason to suspect the money was derived from illegal activities.

Under the Internal Revenue Code, any person engaged in a trade or business who, in the course of that business, receives a cash payment of more than \$10,000 either in one designated reporting transaction or two or more related designated reporting transactions, must report the cash payments to the IRS on IRS Form 8300, Report of Cash Payments Over \$10,000 Received in a Trade or Business.

Failure to file the reports required under federal law would subject the financial institutions and others to information reporting penalties and criminal penalties for willful violations, which may include a fine of up to \$25,000 for individuals or \$100,000 for corporations, or imprisonment for up to one year, or both.

Current state law generally requires every owner of a check casher's business to obtain a permit from the Department of Justice in order to conduct transactions. The permit must be renewed annually. An owner of a check casher's business that engages in check cashing without a current and valid permit is subject to civil penalties, which may include a fine not exceeding \$5,000 or imprisonment not to exceed six months.

State law requires check cashers to file an information return with FTB identifying persons who have cashed checks cumulatively exceeding \$10,000 in the same calendar year.

The information return must be filed within 90 days after the end of the calendar year and must contain, at the minimum, the name, address, taxpayer identification number, amount and date of any transaction, and any other information deemed necessary by FTB. Failure to file the information return would subject the check casher to the same penalties imposed at the federal level.

THIS BILL

This bill would specify the term of imprisonment for willful failure to file information returns to be one year and one day in the state prison instead of up to one year.

IMPLEMENTATION CONSIDERATIONS

Implementing this bill would not significantly impact the department's programs or operations.

LEGISLATIVE HISTORY

AB 139 (Assembly Budget Committee, Stats. 2005, Ch. 74), among other things, requires check cashers to report to FTB the name, address, and taxpayer identification number of customers that cash checks totaling in excess of \$10,000 within a calendar year.

OTHER STATES' INFORMATION

Since this bill is fairly comprehensive and impacts several code sections, a meaningful comparison to other states cannot be made.

FISCAL IMPACT

This bill would not impact the department's costs.

ECONOMIC IMPACT

This bill would not impact the state's tax revenue.

LEGISLATIVE STAFF CONTACT

Rachel Coco
Franchise Tax Board
845-4328
rachel.coco@ftb.ca.gov

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