

ANALYSIS OF AMENDED BILL

Franchise Tax Board

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Bill Number: AB 2448

Related Bills:

Telephone: 845-3380

Amended Date: 05-13-98

Attorney: Doug Bramhall

Sponsor: San Joaquin
County

SUBJECT: State Agencies Provide Social Security Numbers of Defendants To Courts

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 introduced/amended _____.

FURTHER AMENDMENTS NECESSARY.

DEPARTMENT POSITION CHANGED TO _____.

REMAINDER OF PREVIOUS ANALYSIS OF BILL AS INTRODUCED/AMENDED _____ STILL APPLIES.

OTHER - See comments below.

SUMMARY OF BILL

This bill would add a section to the Penal Code that would require any state or local agency to disclose to the court the social security number (SSN) of a defendant for whom a bench warrant has been issued for failure to appear in court and who still owes a fine or forfeiture.

SUMMARY OF AMENDMENT

The May 13, 1998, amendment replaced the original version of this bill with the provisions discussed in this analysis.

EFFECTIVE DATE

This bill would be effective and operative on January 1, 1999.

SPECIFIC FINDINGS

The **federal Privacy Act of 1974** (Pub. L. 93-579, in section 7) requires that any federal, state, or local government agency that requests a person's SSN has to tell that person four things:

1. whether disclosure of the SSN is required or optional,
2. what statute or other authority authorizes the request,
3. how the SSN will be used, and
4. the consequences of failure to provide an SSN.

The **Federal Tax Reform Act of 1976** permits states to use SSNs in the administration of tax, but with no detailed specifics as to how the number can be used.

Board Position:

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

Department Director

Date

Gerald H. Goldberg

6/26/98

Existing federal law requires any person required to make a return to include in it an identifying number for securing proper identification of that person. Furthermore, **under federal law**, the SSN shall be used as the identifying number for an individual for purposes of the Internal Revenue Code.

Existing federal law and this department's agreement with the Internal Revenue Service (IRS) regarding security and disclosure of federal returns and federal return information provide for their use or disclosure only for purposes relating to state tax administration. Similarly, state returns and state return information may be provided to the Internal Revenue Service (IRS) solely for the purpose of the administration of federal tax law.

Existing federal law requires generally that returns or return information are open to inspection or disclosure in a proceeding not related to tax administration only pursuant to and upon grant of an ex parte order by a federal district court judge or magistrate, in preparation for specified judicial or administrative proceedings by a federal agency or federal grand jury proceeding, including proceedings pertaining to the enforcement of federal criminal statutes.

Existing federal law includes SSN in the definition of "return information".

Existing state law allows a state or county agency to refer to the Franchise Tax Board (FTB) for collection amounts of \$250 or more imposed by a superior, municipal, or justice court. The FTB has a court-ordered debt (COD) collection program that collects delinquent fines, fees, and penalties for the courts in 14 California counties. Additional county courts are due to join the program in the near future. Only about 50% of the cases received have a SSN provided by the court, which means the COD program often must search for SSNs prior to issuing levies on wages and bank accounts. When the COD program searches against FTB records, some SSNs found are from IRS records. **Federal law** prohibits disclosing to the court the SSN.

Existing state law does not provide any specific rules regarding the use of SSNs by state agencies other than prohibiting the disclosure of SSNs in sealed or unsealed United States mail.

Existing state law allows disclosure of a return or return information in a judicial or administrative proceeding only if pertaining to tax administration, except as allowed by the disclosure of information provisions of the Revenue and Taxation Code (R&TC). It is a misdemeanor to disclose taxpayer data for other than tax administration purposes where not authorized.

Existing state law defines "court" as the court where the judgment sought to be enforced was entered.

This bill would require any state or local agency (including the FTB) having access to the SSN of a defendant to provide to the court the SSN of a defendant for whom a bench warrant of arrest has been issued for failure to appear in court and who has failed to pay any fine or forfeiture for purposes of assisting the court in collecting the delinquent fine or forfeiture.

Policy Considerations

This bill would conflict with R&TC provisions regarding unauthorized disclosure or use of taxpayer information. The R&TC would have to be amended to specifically allow disclosure to the courts.

Implementation Considerations

As stated above, this bill would conflict with R&TC concerning unauthorized disclosure of confidential taxpayer information and additional amendments would be needed before it could be implemented. Also, this bill needs to be amended to clarify that SSNs found only on IRS records would not be required to be disclosed, as this would violate federal law.

This bill would not set any minimum amount of fine or forfeiture owed by the defendant to cause the request by the court for his or her SSN. It may not be efficient to implement this bill for small amounts owed.

FISCAL IMPACT

Departmental Costs

Once amended to resolve the implementation concerns, this bill would not significantly impact departmental costs.

Tax Revenue Estimate

To the extent that the state's self-assessed tax system relies on the taxpayer's trust in the confidentiality of information, this bill may have a negative, but indeterminable, impact on the collection of income tax revenue.

BOARD POSITION

Pending.