

## Franchise Tax Board

## ANALYSIS OF ORIGINAL BILL

Author: Gipson Analyst: Janet Jennings Bill Number: AB 963  
Related Bills: See Legislative History Telephone: 845-3495 Introduced Date: February 16, 2017  
Attorney: Bruce Langston Sponsor: \_\_\_\_\_

**SUBJECT:** Revenue Recovery and Collaborative Enforcement Team/Extend Pilot to January 1, 2020, and Establish Cannabis Criminal Enforcement Team

### SUMMARY

Under the Government Code, this bill would establish the Cannabis Criminal Enforcement Team within the Revenue Recovery and Collaborative Enforcement Team to combat criminal tax evasion associated with marijuana and marijuana-associated products and accessories and extend the repeal date of the Revenue Recovery and Collaborative Enforcement Team.

This bill would also modify provisions of the Health and Safety Code relating to identification cards for medical marijuana users and the Revenue and Taxation Code relating to sales and excise taxes. This analysis does not address the bill's changes to the provisions of these Codes as these provisions do not impact the department's programs and operations.

### RECOMMENDATION – NO POSITION

### REASON FOR THE BILL

The reason for this bill is to facilitate the exchange of intelligence, data, documents, information, complaints, or lead referrals to combat criminal tax evasion associated with the cannabis industry.

### EFFECTIVE/OPERATIVE DATE

Assuming enactment during the 2017 legislative session as an administrative measure, this bill would be effective and operative on January 1, 2018.

### STATE LAW

In 2013 Assembly Bill 576 was signed by the Governor allowing for a pilot program to create a multiagency Revenue Recovery and Collaborate Enforcement Team consisting of the Franchise Tax Board (FTB), Department of Justice, State Board of Equalization, and Employment Development Department to collaborate in combating criminal tax evasion associated with the underground economy. The pilot program will be repealed by its own terms as of January 1, 2019.

## **THIS BILL**

This bill would extend the repeal date of the Revenue Recovery and Collaborative Enforcement Team by one year from January 1, 2019, to January 1, 2020.

This bill would establish the Cannabis Criminal Enforcement Team within the Revenue Recovery and Collaborative Enforcement Team and include entities and state licensing authorities governed by the Business and Professions Code.<sup>1</sup>

This bill would authorize team members to exchange intelligence, data, documents, information, complaints, or lead referrals for the purpose of combatting criminal tax evasion associated with cannabis, cannabis products, and cannabis accessories.

The Cannabis Criminal Enforcement Team would be funded by:

1. Funds derived from fines and penalties imposed, as specified, and deposited into the Marijuana Tax Fines and Penalties Account, and, if such funds are insufficient,
2. Revenue derived from the imposition of sales and use taxes on marijuana and marijuana products and transferred to the General Fund, as specified.

## **IMPLEMENTATION CONSIDERATIONS**

The department has identified the following implementation concerns. Department staff is available to work with the author's office to resolve these and other concerns that may be identified.

The bill allows for team members to exchange intelligence, data, documents, information, complaints, or lead referrals for the purpose of combatting criminal tax evasion associated with cannabis, cannabis products, and cannabis accessories. The bill fails to provide any language to maintain the confidential information received by, or reported to the team, nor does it subject team members or ex-members to the confidentiality provisions contained in Sections 19542, 19542.1 and 19542.3 of the Revenue and Taxation Code. The lack of clear language to safeguard the confidential information would preclude the FTB from sharing confidential information. The author may want to amend the bill to include the safeguarding of confidential information.

This bill uses a term that is undefined, i.e., "criminal tax evasion". The absence of a definition to clarify this term could lead to disputes with taxpayers and would complicate the administration of this bill. The author may want to amend the bill to clearly define the term.

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<sup>1</sup> Business and Professions Code Chapter 3.5 (commencing with Section 19300) of Division 8, or Division 10 (commencing with Section 26000).

## **LEGISLATIVE HISTORY**

AB 576 (Perez, Ch. 614, Stats. 2013) created a pilot program to create a multiagency Revenue Recovery and Collaborative Enforcement Team consisting of the FTB, Department of Justice, State Board of Equalization, and Employment Development Department to collaborate in combating criminal tax evasion associated with the underground economy.

## **OTHER STATES' INFORMATION**

Twenty-six states and the District of Columbia currently have laws legalizing marijuana in some form. No information was found for any of these jurisdiction regarding the creation of an enforcement team specific to tax evasion in the cannabis industry.

## **FISCAL IMPACT**

This bill would not significantly impact the department's costs.

## **ECONOMIC IMPACT**

This bill would extend the Revenue Recovery and Collaborative Enforcement Team joint task force pilot program through January 1, 2020. To date, the FTB has not collected revenue as a result of joint enforcement team activities to combat criminal tax evasion associated with the underground economy. Because it is difficult to predict the frequency and the value of future enforcement team criminal investigation actions, the revenue impact is unknown.

This bill would also create the Cannabis Criminal Enforcement Team within the Revenue Recovery and Collaborative Enforcement Team. To estimate the revenue that would be collected, the FTB would need to know the amount of criminal activity associated with cannabis and the frequency of that activity. Because it is difficult to predict the frequency and the value of future joint enforcement team criminal investigation actions, the revenue impact is unknown.

This analysis does not account for changes in employment, personal income, or gross state product that could result from this bill.

## **SUPPORT/OPPOSITION**

Support: None on file.

Opposition: None on file.

## **ARGUMENTS**

Proponents: Some may argue that establishing the Cannabis Criminal Enforcement Team would provide additional oversight to ensure that entities engaged, or seeking to be engaged, in the cannabis industry transition smoothly and completely to the legal framework established in the state.

Opponents: Some may argue that creating a sub-team within an existing team would be counterproductive to current collaborative efforts underway to combat the underground economy.

## **LEGISLATIVE STAFF CONTACT**

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