



Analysis of Original Bill

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Bill Number: AB 1296

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Related Bills: See Legislative
History

Subject: Tax Recovery in the Underground Economy (TRUE) Criminal Enforcement Program

Summary

This bill would, under the Government Code (GC), establish the Tax Recovery in the Underground Economy (TRUE) Criminal Enforcement Program in the Department of Justice (DOJ).

Recommendation – No position.

Reason for the Bill

The reason for the bill is to combat underground economic activities by statutorily creating a program that would protect workers, businesses, and consumers, recover lost revenues by prosecuting crimes in the underground economy, and support multiagency investigative teams in every region of the state.

Effective/Operative Date

This bill would be effective and operative January 1, 2020.

State Law

On October 26, 1993, Governor Wilson signed Executive Order W-66-93, which created the Joint Enforcement Strike Force (JESF) to combat the underground economy. The JESF is led by the Employment Development Department (EDD) and comprised of the Department of Consumer Affairs (DCA), the Department of Industrial Relations (DIR), the Department of Insurance (CDI), and the Office of Criminal Justice Planning. Other agencies encouraged to participate include, the Franchise Tax Board (FTB), the former Board of Equalization (BOE) (now California Department of Tax and Fee Administration

(CDTFA)),¹ and the DOJ. The JESF is responsible for enhancing the development and sharing of information necessary to combat the underground economy, improving the coordination of enforcement activities, developing methods to pool, focus, and target enforcement resources, and reporting each year on its activities.

In January 2005, Governor Schwarzenegger's budget established the Economic and Employment Enforcement Coalition (EEEC), a targeted joint effort by state and federal agencies to combat the underground economy to ensure safe working conditions and proper payment of wages. This coalition consists of investigators and auditors from DIR, EDD, DCA, the Contractors' State License Board (CSLB), the Bureau of Automotive Repair (BAR), the former BOE (now CDTFA), CDI, DOJ, and the Department of Alcohol and Beverage Control (ABC). The Internal Revenue Service (IRS) provides audit leads to EDD. The EEEEC was renamed the Labor Enforcement Task Force (LETF) in 2012.

State law,² prior to January 1, 2019, established in the Government Code the Revenue Recovery and Collaborative Enforcement (RRaCE) team, as a pilot program, to complement the state's underground economy enforcement efforts. The team included FTB, DOJ, the former BOE (now CDTFA), and EDD, and allowed participation by other state agencies, including California Health and Human Services Agency (CHHS), DCA, DIR, CDI, and Department of Motor Vehicles (DMV). The team members were authorized to exchange intelligence, data, documents, information, complaints, or lead referrals for the purpose of investigating criminal tax evasion associated with underground economic activities. The legislation did not require any one agency to head the team or be responsible for the team's work. Upon signing the bill in 2013, Governor Brown directed the DIR to lead the RRaCE team. The team was required to report specific information to the Legislature on or before December 1, 2017.

This Bill

This bill would establish the TRUE Criminal Enforcement Program in the DOJ to combat underground economic activities through a multiagency collaboration to do the following, to the extent practicable:

- Pool resources and leverage enforcement efforts.
- Collaborate and share data with state and federal partners.

¹ The CDTFA was established in 2017 when many of the tax and fee administration duties, powers, and responsibilities of the State BOE were transferred to the department as a result of the Taxpayer Transparency and Fairness Act of 2017.

² AB 576, Chapter 614, statutes of 2013.

- Efficiently prosecute violations covering multiple jurisdictions of multiple agencies to address the severity of the crimes and impose appropriate penalties on convicted violators.
- Recover state revenue lost to the underground economy.

The TRUE Criminal Enforcement Program would be required to develop, to the extent the Legislature appropriates funds, a data analytics system that enhances the efficiency and effectiveness of the multiagency collaboration required by this bill.

Executive Board

The TRUE Criminal Enforcement Program would include an executive board (board), to ensure efficient and effective multiagency collaboration, consisting of the following voting members:

- Representative from DOJ's Division of Law Enforcement,
- Representative from DOJ's Criminal Law Division,
- Representative from CDTF's Investigations and Special Operations Bureau,
- Representative from FTB's Criminal Investigation Bureau, and
- Representative from EDD's Investigation Division.

The TRUE Criminal Enforcement Program may, as the board deems appropriate, invite the following state agencies to join the board in an advisory capacity.

- CHHS
- DCA
- DIR
- CDI
- DMV
- California Highway Patrol (CHP)
- ABC
- DCA's Bureau of Cannabis Control
- CSLB

The TRUE Criminal Enforcement Program may, as the board deems appropriate, invite other state and federal agencies to join the board in an advisory capacity, subject to the limitations on the sharing of confidential tax or fee information as discussed below.

If an agency is added as an advisory member, a written agreement would be created between the voting members of the board and the agency joining the board that would govern participation of the agency joining the board, and would include provisions ensuring confidential information is shared only when necessary to assess leads, conduct investigations, or prosecute cases.

The board would be required to meet as needed, but at least quarterly, to conduct its business.

Investigative Teams

The bill would require the TRUE Criminal Enforcement Program to include investigative teams located in Sacramento, Los Angeles, San Diego, the San Francisco Bay area, and Fresno under the direct oversight of the DOJ. The investigative teams would be required to include, but would not be limited to, duly authorized representatives of the agencies: DOJ, CDTFA, FTB, and EDD.

The addition of an agency to an investigative team would be by written agreement between the board and the agency joining the investigative team, and such agreement would govern the participation of the joining agency.

Each investigative team would have a committee established by the board to ensure efficient and effective multiagency collaboration in each region. Each investigative team's committee would be required to meet as needed, but at least quarterly, to conduct its business.

Sharing of Confidential Information

For cases that involve tax or fee administration associated with underground economic activities, duly authorized members of the TRUE Criminal Enforcement Program employed by an agency that is a voting member of the board³ or employed by an agency that is an advisory member of the board (as listed in the bill)⁴ would be required to exchange intelligence, data, including confidential tax or fee information, documents, information, complaints, or lead referrals for the following purposes:

- To assess leads or referrals in order to determine if an investigation is warranted.
- To conduct investigations.
- To prosecute violations.
- To conduct data analytics.
- To enforce judgments.

³ GC section 15926(b).

⁴ GC section 15926(c).

Persons employed by an agency that is a voting member of the board⁵ or employed by an agency that is an advisory member of the board (as listed in the bill)⁶ would be precluded from disclosing confidential tax or fee information to a person employed by an agency that is invited to join the board.⁷ An exception would be provided allowing voting members and advisory members to share confidential tax or fee information with other members of an investigatory team for cases that involve a known or suspected felony level tax or fee evasion crime, if all of the following are met:

- The confidential tax or fee information is obtained by a voting member or advisory member pursuant to existing law, agreements authorized by existing law, or order by the Governor.
- The person who receives the confidential tax or fee information is a peace officer.
- The confidential tax or fee information is for one of the following purposes as related to a felony level tax or fee evasion crime:
 - To assess leads or referrals in order to determine if an investigation is warranted,
 - To conduct investigations,
 - To prosecute violations,
 - To conduct data analytics, or
 - To enforce judgments.
- The person receiving the confidential tax or fee information has a legitimate need to know to assess leads, conduct an investigation, or prosecute a case.
- There is a nondisclosure agreement that prohibits the person receiving the information from disclosing the information to any person that is not part of the TRUE Criminal Enforcement Program, or disclosing the information to any other unauthorized person.

Any person that was or has been involved in the TRUE Criminal Enforcement Program as a board member, advisor, team member, or committee member, or any person who has at any time obtained knowledge from anyone involved in the TRUE Criminal Enforcement Program, would be precluded from divulging or making known in any manner not provided by law, any of the confidential information received by or reported to the TRUE Criminal Enforcement Program.

⁵ GC section 15926(b).

⁶ GC section 15926(c).

⁷ GC section 15926(d)

Confidential information authorized to be exchanged pursuant to this bill would retain its confidential status and otherwise remain subject to the confidentiality provisions contained in, but not limited to, all of the following provisions:

- GC section 11183, as that section pertains to the DOJ.
- Unemployment Insurance Code sections 1094 and 1095, as those sections pertain to the EDD.
- Revenue and Taxation Code (R&TC) sections 19542, 19542.1, and 19542.3, as those sections pertain to the FTB.
- GC Section 15619, Public Resources Code section 42464.8, and R&TC sections 7056, 7056.5, 8255, 9255, 9255.1, 30455, 32455, 32457, 38705, 38706, 43651, 45981, 45982, 45983, 45984, 46751, 50159, 50160, 50161, 55381, 60608, and 60609, as those sections pertain to the CDTFA.
- Any other information confidentiality provisions in state law.
- Any information confidentiality provisions that are applicable to any agency that is added to the TRUE Criminal Enforcement Program.

Members of the TRUE Criminal Enforcement Program would be prohibited from exchanging federal tax data absent authorization from the IRS.

The board would oversee the TRUE Criminal Enforcement Program to ensure the protection of confidential tax and fee information.

Reporting Requirements

On or before March 31, 2020, and annually thereafter, DOJ, in consultation with the board, would be required to submit a report in compliance with GC section 9795 to the Legislature that includes, but would not be limited to:

- The number of leads or complaints received by the TRUE Criminal Enforcement Program during the reporting period.
- The number of cases investigated or prosecuted through civil action or criminal prosecution as a result of the work of the TRUE Criminal Enforcement Program.
- The amount and final dispositions of moneys collected through the TRUE Criminal Enforcement Program's enforcement efforts.
- The status of the multiagency collaboration required by this bill.
- A list of agencies that received confidential tax or fee information, as specified.
- The number of instances, if any, of unauthorized or suspected unauthorized access, use, or disclosure of confidential tax or fee information. The report must include the number of instances, if any, of unauthorized or suspected unauthorized access, use, or disclosure of confidential tax or fee information dating back to the inception of the TRUE Criminal Enforcement Program and its predecessor programs.

- The status of any efforts to plan for, develop, and implement a data analytics system that enhances the efficiency and effectiveness of the multiagency collaboration required by this bill.
- Policy considerations, if any, to help advance the purpose of the TRUE Criminal Enforcement Program.

This bill's reporting provision would be repealed by its own terms on January 1, 2024.

Implementation Considerations

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

This bill would require the DOJ, in consultation with the executive board, to submit a report that includes, among other items, the number of instances of unauthorized accesses and disclosures dating back to the predecessor programs. This requirement may be overly broad, and include more information than the author intends. If this is contrary to the author's intent, it is recommended that the bill be amended to require reporting of the number of instances of unauthorized accesses and disclosures as a result of the TRUE Criminal Enforcement Program only.

This bill would require that the TRUE Criminal Enforcement Program include investigative teams in five specified areas and place the team members under the direct oversight of the Department of Justice. It is unclear whether the FTB would be required to deploy investigators to the areas that currently lack coverage, or whether the team members would be co-located, triggering additional staff movement. Also, the undefined phrase "under the direct oversight of the Department of Justice" could be interpreted as a delegation of supervisory and personnel authority of the team members to DOJ. For clarity and ease of administration, the bill should be amended.

Legislative History

SB 1272 (Galgiani, et al. 2017/2018) would have permanently established the Tax Recovery and Criminal Enforcement (TRaCE) Task Force in the DOJ to combat underground economic activities through a multiagency collaboration. The executive board would have included a representative from FTB. SB 1272 was vetoed by the governor whose veto message stated in part, "This bill... codifies a task force that is already operational via MOU... potentially unlimited scope of operations... reluctant to do this without additional and more detailed scrutiny through the budget process."

AB 576 (Perez, Ch. 614, Statutes of 2013) established under the GC the RRaCE team as a pilot program that was repealed by its own terms on January 1, 2019.

Program Background

Facilitated by AB 576, the 2013 legislation that allowed cooperation between agencies, the former BOE (now CDTFA) and the DOJ administratively created the TRaCE tax force, as a pilot program, housed within DOJ in 2014. The TRaCE task force is directed by an advisory council known as the TRaCE Task Force Executive Board, located in Sacramento. This board is comprised of public officials from DOJ, CDTFA, DMV, FTB, ABC, EDD, Federal Bureau of Investigation (FBI), Homeland Security Investigations, and IRS, and holds public meetings in Sacramento and Los Angeles regions. TRaCE has offices in Sacramento and City of Commerce and facilitates on-line reporting of criminal tax evasion, labor fraud, piracy, counterfeiting, human trafficking and other economic crimes, from the public, through the CDTFA website.

The creation of TRaCE resulted in four separate multiagency teams working to combat the underground economy. Currently, three teams remain (JESF, LEFT, and TRaCE) because the RRaCE expired on January 1, 2019.

Other States' Information

The states surveyed include *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.

A review of *Florida, Illinois and Michigan, Minnesota, and New York* laws found no current comparable joint enforcement efforts.

Massachusetts currently has a Council on the Underground Economy that consists of 17 agencies whose members share information to bring businesses and individuals into compliance with state labor, licensing, tax, and insurance laws.

Fiscal Impact

The department's costs to implement this bill have yet to be determined. As the bill moves through the legislative process, costs will be identified.

Economic Impact

Revenue Estimate

To date, FTB's participation in the RRaCE team joint task force pilot program has resulted in ordered restitution of \$3.3 million. Because it is difficult to predict the frequency and the value of future task force 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 or for the net final payment method of accrual.

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