



Summary Analysis of Amended Bill

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Sponsor:

Bill Number: AB 1296

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Amended: April 24, 2019, June 21,
2019, and August 13, 2019

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Related Bills: See Prior Analysis

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) and include a provision in the Unemployment Insurance Code (UIC) to permit the use of information to enable participation in the TRUE Criminal Enforcement Program.

This analysis only addresses the provisions of the bill that impact the department's programs and operations.

Recommendation – No position.

Summary of Amendments

The April 24, 2019, amendments made technical changes, modified the date for the report to be submitted by the DOJ, and added a new reporting requirement for the Legislative Analyst's Office (LAO).

The June 21, 2019, amendments made minor technical changes, including the following:

- Modified the date the bill is repealed and the date the report is to be submitted by the LAO;
- Removed the requirements that the TRUE Criminal Enforcement Program's investigative teams would be under direct DOJ oversight, and would be required to establish committees;
- Added provisions to require an additional voting member to the TRUE Criminal Enforcement Program's executive board, to allow local agencies to be invited by the TRUE Criminal Enforcement Program's executive board, to ensure the sharing of confidential information is allowed, and to require the TRUE Criminal

Enforcement Program's executive board to oversee the investigative teams, and develop and adopt a standard nondisclosure agreement; and

- Made technical amendments to and added a provision in the UIC to permit the use of information to enable the TRUE Criminal Enforcement Program to carry out its duties.

The August 13, 2019, amendments modified provisions of the UIC.

As a result of the June 21, 2019, amendments, one implementation consideration was resolved and two new technical considerations were identified. Except for the "This Bill," "Implementation Considerations," "Technical Considerations," and "Fiscal Impact" sections, the remainder of the department's analysis of the bill as introduced on February 22, 2019, still applies. The "Effective/Operative Date," and "Economic Impact" sections have been restated below for convenience.

Effective/Operative Date

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

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.
- 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, and to oversee the investigative teams. The board would consist of the following voting members:

- Representative from DOJ who is designated by the Attorney General (AG),
- Representative from DOJ's Division of Law Enforcement,
- Representative from DOJ's Criminal Law Division,

- Representative from California Department of Tax and Fee Administration's (CDTFA's) Investigations and Special Operations Bureau,
- Representative from Franchise Tax Board's (FTB's) Criminal Investigation Bureau, and
- Representative from Employment Development Department's (EDD's) Investigation Division.

The representative from DOJ who is designated by the AG would be required to facilitate and oversee the multiagency collaboration as described in this bill.

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

- California Health and Human Services Agency (CHHS)
- Department of Consumer Affairs (DCA)
- Department of Industrial Relations (DIR)
- Department of Insurance (CDI)
- Department of Motor Vehicles (DMV)
- California Highway Patrol (CHP)
- Alcohol and Beverage Control (ABC)
- DCA's Bureau of Cannabis Control
- Contractors' State License Board (CSLB)

The TRUE Criminal Enforcement Program may, as the board deems appropriate, invite other state, federal, and local 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. 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.

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 board¹ or employed by an agency that is an advisory member of the board² 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.

Persons employed by an agency that is a voting member of the board³ or employed by an agency that is an advisory member of the board⁴ would be precluded from disclosing confidential tax or fee information pursuant to the confidentiality provisions of specified agencies and governments. ⁵ An exception would be provided allowing such persons to share confidential tax or fee information with other members of an investigatory team for cases that involve a known or suspected felony violation involving tax- or fee-related crimes, including, but not limited to, tax evasion or tax fraud, if all of the following are met:

- The confidential tax or fee information is obtained by a person employed by an agency that is a voting member of the board⁶ or a person employed by an agency that is an advisory member of the board⁷ 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.

¹ GC section 15926(b).

² GC section 15926(c).

³ GC section 15926(b).

⁴ GC section 15926(c).

⁵ GC section 15926(d).

⁶ GC section 15926(b).

⁷ GC section 15926(c).

- 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.
- 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 standard nondisclosure agreement, that would be developed and adopted by the board, and to which the Administrative Procedure Act⁸ would not apply, that prohibits the person receiving the information from doing any of the following:
 - Disclosing the information to any person that is not part of the TRUE Criminal Enforcement Program.
 - Disclosing the information to any other unauthorized person.
 - Using the information for purposes not related to the TRUE Criminal Enforcement Program.

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.

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.
- UIC sections 1094, 1095, and 2111, 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.

⁸ GC sections 11340 to section 11361.

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- Any other information confidentiality provisions in federal and 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 Internal Revenue Service.

The board would oversee the TRUE Criminal Enforcement Program to ensure that appropriate policies, procedures, and training are in place to protect confidential tax and fee information.

Reporting Requirements

On or before July 1, 2021, 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 from criminal prosecutions 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.

On or before July 1, 2026, the LAO would be required to submit a report in compliance with GC section 9795 to the Legislature that includes an analysis of the effectiveness of the TRUE Criminal Enforcement Program in accomplishing the purposes specified in the bill and recommendations for improvement.

This bill's reporting provision would be repealed by its own terms on January 1, 2027.

Implementation Considerations

The department has identified the following implementation concern. 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 TRUE Criminal Enforcement Program's executive board, to submit a report that includes, among other items, the number of instances of unauthorized accesses and disclosures dating back to TRUE's predecessor programs. If the reporting requirement is intended to be prospective, the bill should be amended.

Technical Considerations

Subdivision (e) of Section 15928 should be amended where the term "federal tax data" appears, as it should be "federal tax information," for clarity and consistency.

Page 6, lines 32 to 34, should be amended where the term "felony level tax or fee evasion crime" appears, as it should be consistent with the term "felony violation involving tax- or fee-related crimes" as it appears on Page 6, lines 19 to 20.

Fiscal Impact

Staff estimates a cost of approximately \$462,000 for fiscal year 2019/2020, \$556,000 for fiscal years 2020/2021, and 2021/2022, \$870,000 for fiscal year 2022/2023, and \$965,000 for fiscal year 2023/2024 and thereafter, for additional investigative staff and related travel and equipment costs.

Economic Impact

Revenue Estimate

To date, the FTB's participation in the Revenue Recovery and Collaborative Enforcement (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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