



Bill Analysis

Author: Cooper

Sponsor:

Bill Number: AB 782

Related Bills: See Legislative
History

Amended: March 25, 2021

SUBJECT

Congo Child Labor Act of 2021

SUMMARY

Under the Business and Professions Code, this bill would create the Congo Child Labor Act of 2021.

RECOMMENDATION

No position.

SUMMARY OF AMENDMENTS

The March 25, 2021, amendments provide that the exclusive remedy for selling or making a product containing 300 or more grams of cobalt shall be an action brought by the Attorney General for injunctive relief.

REASON FOR THE BILL

The reason for this bill is to address California's role in the ongoing exploitation of children, and help shift global mining practices by requiring companies to certify that their supply chains are free of child labor.

ANALYSIS

This bill would, under the Business and Professions Code, create the Congo Child Labor Disclosure, which would require the Franchise Tax Board (FTB) to develop or contract to develop a list of products sold in California that contain 300 grams or more of cobalt and persons who sell or manufacture those products. The FTB would be required to publish the list on its internet website.

Amended: March 25, 2021

The bill would prohibit a retail seller or manufacturer doing business in this state with gross receipts of ten million dollars or more per year, from selling or making a product containing 300 or more grams of cobalt unless it has certified, under penalty of perjury, that the cobalt was not mined or refined using child labor by filing a Congo Child Labor Disclosure with the FTB that shall, at a minimum:

- Contain a statement that to the best of the retail seller's or manufacturer's knowledge, the product does not contain cobalt mined or processed using child labor.
- Disclose to what extent, if any, the retail seller or manufacturer does each of the following:
 - Engages in verification of product supply chains to evaluate and address risks of child labor and must include whether this verification was conducted by an independent third party.
 - Conducts audits of suppliers to evaluate supplier compliance with company standards for child labor in supply chains and must include whether the audits were independent and unannounced.
 - Requires direct suppliers to certify that materials incorporated into their products comply with the laws regarding child labor of the country or countries in which the suppliers are doing business.
 - Maintains internal accountability standards and procedures for employees or contractors failing to meet company standards regarding child labor.
 - Provides training on child labor to company employees and management who have direct responsibility for supply chain management. The disclosure shall specify whether or not the training includes mitigation of risks within the supply chains of products.
 - Contracts with an independent third party to audit or verify that their supply chains are free of child labor.

Under this bill, a person who certifies under penalty of perjury as true any material matter listed above that the person knows to be false would be guilty of a misdemeanor. The sole remedy for violating the prohibition above would be an action for injunctive relief brought by the Attorney General. In addition, this bill would not limit any other remedies available for a violation of any other state or federal law.

Under the Government Code, the bill would specify that state funds must not be used to purchase, lease, or otherwise acquire, or for grants to third parties that would be used to purchase, lease, or otherwise acquire, products containing cobalt in an amount of 300 grams or more and appearing on the list developed by the FTB, unless the retail seller or manufacturer has filed a valid Congo Child Labor Disclosure.

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Under the Public Contract Code, this bill states that a person, as specified, that has not filed a Congo Child Labor Disclosure would be ineligible to, and prohibited from, bidding on or submitting a proposal for a new or renewed contract with a public entity for goods or products that contain more than 300 grams of cobalt and are worth more than one million dollars (\$1,000,000). In addition, a public entity shall require that a person bidding for or renewing a contract for goods or products containing more than 300 grams of cobalt submit proof that they have timely filed a Congo Child Labor Disclosure.

Under the Revenue and Taxation Code (RTC), this bill would require the FTB to provide the list described above free of charge to any public entity and to the Legislature, upon request.

The bill's provisions would be severable if found to be invalid, illegal, unenforceable, or unconstitutional.

The bill also provides that no reimbursement would be required by this act to local agencies for the expansion of the crime of the penalty of perjury.

Effective/Operative Date

This bill would become effective and operative January 1, 2022.

Federal/State Law

Federal Law

No provision comparable in federal law.

State Law

The California Transparency in Supply Chains Act of 2010, requires retail sellers and manufacturers doing business in the state, who make more than \$100,000,000 in annual worldwide gross receipts, to disclose their efforts to eradicate slavery and human trafficking from their direct supply chains for tangible goods offered for sale, as specified. The FTB provides to the Attorney General a list of retail sellers and manufacturers required to disclose efforts to eradicate slavery and human trafficking pursuant to that provision, as specified.

Existing state law prohibits the disclosure of any taxpayer information, except as specifically authorized by statute. Any FTB employee or member responsible for the unauthorized disclosure of state or federal tax information is subject to criminal prosecution. Improper disclosure of state tax information is a misdemeanor and improper disclosure of federal tax information is a felony.

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Implementation Considerations

Department staff has identified the following implementation considerations for purposes of a high-level discussion; additional concerns may be identified as the bill moves through the legislative process. Department staff is available to work with the author's office to resolve these and other concerns that may be identified.

The FTB lacks expertise of the cobalt industry, therefore developing or contracting to develop a list of products sold in California that contain 300 grams or more of cobalt could potentially be challenging and costly.

Technical Considerations

None noted.

Policy Considerations

Section 19562 of the RTC provides that FTB has the right to obtain reimbursement of the "reasonable costs" of providing data to public agencies. However, this bill requires FTB to provide this list free of charge to any public entity and the Legislature. Because this requirement conflicts with Section 19562 of the RTC and could be costly to FTB, the author may want to amend the provisions of this bill to allow FTB to seek reimbursement for its costs or to provide an appropriation to FTB for its costs.

LEGISLATIVE HISTORY

SB 657 (Chapter 556, Statutes of 2010) created the California Transparency in Supply Chains Act, and required the FTB to annually make available to the AG a list of retail sellers and manufacturers with worldwide gross receipts that exceed \$100 million.

PROGRAM BACKGROUND

None noted.

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

This bill as amended March 25, 2021, would not impact state income or franchise tax revenue.

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LEGAL IMPACT

None impacted.

APPOINTMENTS

None noted.

SUPPORT/OPPOSITION

To be determined.

ARGUMENTS

To be determined.

LEGISLATIVE CONTACT

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