

AMENDED IN ASSEMBLY AUGUST 29, 2012

AMENDED IN ASSEMBLY AUGUST 22, 2012

SENATE BILL

No. 901

Introduced by Senator Steinberg
(Principal coauthor: Senator Padilla)
(Principal coauthor: Assembly Member Fuentes)

February 18, 2011

An act to add and repeal Article 1.5 (commencing with Section 19535) of Chapter 7 of Part 10.2 of Division 2 of the Revenue and Taxation Code, relating to taxation.

LEGISLATIVE COUNSEL'S DIGEST

SB 901, as amended, Steinberg. Taxation: undocumented immigrants.

Existing law creates within state government the Department of Justice. Existing law provides that the department is under the direction and control of the Attorney General. Existing law requires the Franchise Tax Board to, among other things, administer personal and corporation income tax laws and certain other nontax programs, including the collection of specified delinquent debt.

This bill would, *until January 1, 2020*, establish a program ~~until January 1, 2020~~, that would require the Department of Justice, until January 1, 2018, to report to the Franchise Tax Board information on a qualified person, defined as, among others, a person who is not eligible to receive a social security number, but who has filed a state income tax return with a valid individual taxpayer identification number. The bill would require the Franchise Tax Board to submit an annual report to the Legislature, until January 1, 2019, that details the tax receipts collected from qualified persons who participate in the program. The bill would provide that information collected under the program is

confidential and not subject to public disclosure under the California Public Records Act, except for purposes authorized under the act. The bill would require the destruction of all records collected under the act, as specified.

The California Constitution provides that the powers of state government are legislative, executive, and judicial. Existing law requires that the Governor see that the law is faithfully executed. Existing law provides that the Governor is the sole official organ of communication between the state and the government of any other state or of the United States. Existing federal law regulates immigration.

This bill would require the Governor to request that the President of the United States direct the Department of Homeland Security, the United States Immigration and Customs Enforcement (ICE), and other relevant federal agencies to not expend resources during the term of the program to apprehend, detain, or remove any qualified person participating in the program, or to prosecute any individual employing a qualified person.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. This act shall be known and may be cited as the
2 California Opportunity and Prosperity Act.
3 SEC. 2. Article 1.5 (commencing with Section 19535) is added
4 to Chapter 7 of Part 10.2 of Division 2 of the Revenue and Taxation
5 Code, to read:
6
7 Article 1.5. Undocumented Immigrants: State Income Taxes
8
9 19535. As used in this article:
10 (a) “Qualified person” means a natural person who meets all of
11 the following criteria:
12 (1) Is not eligible to receive a social security number.
13 (2) Filed a state income tax return with a valid individual
14 taxpayer identification number for the most recent taxable year
15 that a return was required to be made with respect to taxes imposed
16 under Part 10 (commencing with Section 17001).
17 (3) Is not employed by a public entity, including, but not limited
18 to, the federal government, the State of California, any

1 administrative subunit of the state, or any political subdivision of
2 the state, including any city, city and county, county, district, or
3 other local governmental agency or public agency authorized by
4 law.

5 (4) Declares that he or she is able to speak and understand the
6 English language or is enrolled in, or has applied to enroll in, an
7 English-as-a-second-language class.

8 (5) Has not been convicted of a felony under the laws of ~~the~~
9 ~~United States, the State of California, or any other state.~~

10 ~~(6) Is not a member or suspected member of a terrorist~~
11 ~~organization and has not engaged and is not expected to engage~~
12 ~~in terrorist activities as those terms are defined in Section~~
13 ~~1182(a)(3)(B) of Title 8 of the United States Code.~~

14 ~~(7)~~

15 (6) Is not a public charge within the meaning of Section
16 1182(a)(4) of Title 8 of the United States Code.

17 ~~(8)~~

18 (7) Declares that he or she has been a resident of California
19 continuously since at least January 1, 2008.

20 ~~(9)~~

21 (8) Consents to a *fingerprint* background check and the
22 disclosure of any information necessary to confirm eligibility for
23 the program.

24 ~~(10)~~

25 (9) Consents to the disclosure of his or her name and federal
26 individual taxpayer identification number to the Franchise Tax
27 Board in accordance with Section 19539.

28 (b) The language requirement in paragraph (4) of subdivision
29 (a) shall not apply to any person who meets any of the following
30 criteria:

31 (1) Is unable because of physical or developmental disability
32 or mental impairment to speak and understand English.

33 (2) Is over 50 years of age and has been living in the United
34 States for at least 20 years.

35 (3) Is over 55 years of age and has been living in the United
36 States for at least 15 years.

37 (c) “Program” means the program created by this article.

38 19536. There is hereby established a voluntary program to be
39 administered by the Department of Justice until January 1, 2018.

1 A qualified person may participate in the program under the
2 requirements set forth in this article.

3 19537. (a) ~~On or after January 1, 2014, a written application~~
4 for admission to the program by a qualified person shall be made
5 in the form prescribed by the Department of Justice. ~~The~~
6 ~~application shall require that an applicant provide a photograph or~~
7 ~~other electronically transmissible image of the applicant.~~

8 (b) (1) *The applicant shall electronically submit to the*
9 *Department of Justice fingerprint images and related information*
10 *in the form prescribed by the Department of Justice, for the purpose*
11 *of obtaining information relating to the existence and content of*
12 *both of the following:*

13 (A) *A record of state arrests and state convictions.*

14 (B) *State arrests for which the Department of Justice establishes*
15 *that the person is free on bail or on his or her own recognizance*
16 *pending trial or an appeal.*

17 (2) *The Department of Justice shall do all of the following for*
18 *each person who submits fingerprint images and related*
19 *information pursuant to paragraph (1):*

20 (A) *Obtain the information described in paragraph (1) of*
21 *subdivision (l) of Section 11105 of the Penal Code.*

22 (B) *Obtain subsequent arrest notification, as provided pursuant*
23 *to Section 11105.2 of the Penal Code.*

24 (C) *Charge a fee sufficient to cover the reasonable costs of*
25 *processing the fingerprint images and related information.*

26 ~~(b)~~

27 (c) (1) Upon receipt of an application for admission to the
28 program and the fee provided for in Section 19538, the Department
29 of Justice shall cause an investigation to be made to determine
30 whether the applicant meets the definition of a qualified person.

31 (2) If the Department of Justice determines that an applicant
32 meets the definition of a qualified person, the Department of Justice
33 shall admit the applicant into the program and shall provide the
34 applicant with a confirmation of admission, which shall be valid
35 for one year from the date of issue.

36 (3) The Department of Justice shall renew a person's admission
37 into the program on an annual basis upon payment of the renewal
38 application fee provided for in Section 19538 and a demonstration
39 that the person continues to meet the definition of a qualified
40 person.

1 19538. The Department of Justice shall charge each applicant
2 for the program a fee or annual renewal fee in an amount that
3 allows the agency to recover all reasonable costs incurred by it in
4 administering the program, including startup costs and costs
5 associated with confirming eligibility for the program.

6 19539. On or before December 31, ~~2013~~ 2014, and on or before
7 December 31 of each successive year, until January 1, 2018, the
8 Department of Justice shall provide the Franchise Tax Board with
9 the name and federal individual taxpayer identification number of
10 each qualified person who was admitted into the program during
11 that calendar year. The Franchise Tax Board shall use the
12 information solely to prepare the report required by Section
13 19539.5 and shall not disclose the information for any purpose,
14 unless expressly provided for in this article.

15 19539.5. On or before December 31, ~~2014~~ 2015, and on or
16 before December 31 of each successive year, until January 1, 2019,
17 the Franchise Tax Board shall submit a report to the Legislature
18 that details the tax receipts collected ~~during~~ *with respect to* the
19 immediately preceding taxable year from qualified persons who
20 participated in the program. The report submitted by the Franchise
21 Tax Board pursuant to this section shall not contain any information
22 that identifies any specific qualified person who participated in
23 the program.

24 19540. (a) Any information disclosed by an applicant for, or
25 qualified person in, the program shall be used solely to administer
26 the program and shall not be used for any other purpose, unless
27 expressly provided for in this article.

28 (b) Any record containing any identifying information of an
29 applicant for, or qualified person in, the program shall not be
30 disclosed for any purpose, except as provided for in this article,
31 to the extent that the information is necessary to enforce a liability
32 that arises out of the Revenue and Taxation Code or the Family
33 Code, or as otherwise required by state or federal law. If identifying
34 information of an applicant for, or qualified person in, the program
35 is disclosed for a purpose authorized by this subdivision, the
36 recipient shall use the information solely for that purpose and shall
37 not disseminate the information any further.

38 (c) All identifying information of an applicant for, or qualified
39 person in, the program shall be confidential and exempt from
40 disclosure under the California Public Records Act (Chapter 3.5

1 (commencing with Section 6250) of Division 7 of Title 1 of the
2 Government Code).

3 19540.5. Unless expressly authorized or required by federal
4 law, this article shall not grant a qualified person any right or
5 privilege in any other state and shall not be used for any purpose
6 in any other state.

7 19540.6. The Department of Justice and the Franchise Tax
8 Board may adopt regulations in accordance with Chapter 3.5
9 (commencing with Section 11340) of Part 1 of Division 3 of Title
10 2 of the Government Code as necessary to implement this article.

11 19540.7. On January 1, 2019, or as soon as practicable
12 thereafter, all records relating to the program that contain any
13 identifying information of applicants for, or qualified persons who
14 participated in, the program shall be destroyed including, without
15 limitation, any applications for the program and records provided
16 to the Franchise Tax Board pursuant to Section 19540. This section
17 shall not obligate the Franchise Tax Board to destroy any tax
18 returns or other records that are necessary to conduct an audit or
19 appeal pursuant to the Revenue and Taxation Code or to process
20 any taxpayer claim for refund.

21 19540.8. This article shall remain in effect only until January
22 1, 2020, and as of that date is repealed.

23 SEC. 3. (a) On or after July 1, 2013, the Governor is authorized
24 and directed to submit, as a ministerial act on behalf of the state,
25 a request to the President of the United States asking that the
26 President direct the Department of Homeland Security, the United
27 States Immigration and Customs Enforcement (ICE), and other
28 relevant federal agencies not to expend resources during the term
29 of the program established by Article 1.5 (commencing with
30 Section 19535) of Chapter 7 of Part 10.2 of Division 2 of the
31 Revenue and Taxation Code ~~of~~ on either of the following:

32 (1) The apprehension, detention, or removal of a qualified person
33 in the program or the qualified person's spouse or eligible
34 dependent, unless the qualified person, spouse, or eligible
35 dependent meets one of the priority enforcement criteria set forth
36 in the then-existing ICE policy on civil immigration enforcement.

37 (2) The prosecution of a person for employing a qualified person
38 pursuant to Section 1324a of Title 8 of the United States Code.

39 (b) On or after July 1, 2013, the Governor is further authorized
40 and directed, as a ministerial act on behalf of the state, to request

1 that the President provide any available waivers, exemptions, or
2 authorizations necessary to provide a safe harbor for individuals
3 and businesses from federal civil and criminal liability arising out
4 of a qualified person's participation in the program or the
5 employment of a qualified person during the term of the program.

6 SEC. 4. Section 19540 of the Revenue and Taxation Code, as
7 added by this act, imposes a limitation on the public's right of
8 access to the meetings of public bodies or the writings of public
9 officials and agencies within the meaning of Section 3 of Article
10 I of the California Constitution. Pursuant to that constitutional
11 provision, the people of California make the following finding to
12 demonstrate the interest protected by this limitation and the need
13 to protect that interest:

14 In order to protect the confidentiality and safety of a person who
15 participates in the program created by this act, it is necessary for
16 any identifying information that relates to that person to be exempt
17 from disclosure.

18 SEC. 5. The provisions of this measure are severable. If any
19 provision of this measure or its application is held invalid, that
20 invalidity shall not affect other provisions or applications that can
21 be given effect without the invalid provision or application.