

AMENDED IN ASSEMBLY JULY 24, 1995

AMENDED IN SENATE APRIL 27, 1995

AMENDED IN SENATE APRIL 17, 1995

SENATE BILL

No. 633

Introduced by Senator Kopp

February 22, 1995

An act to add Sections 18626, 19720, and 19721 to the Revenue and Taxation Code, relating to taxation.

LEGISLATIVE COUNSEL'S DIGEST

SB 633, as amended, Kopp. Income and bank and corporation tax laws: violations.

~~(1) Existing~~

Existing law provides for the administration of income and bank and corporation tax laws, and imposes various fines and penalties for violations of those laws.

This bill would impose specified penalties and create new crimes for filing fraudulent tax returns, or committing other specified violations of the income and bank and corporation tax laws. By creating new crimes, this bill would create a state-mandated local program.

~~(2) Proposition 8, an initiative statute approved by the voters at the June 8, 1982, primary election, prescribes a 5-year prison sentence enhancement for any person convicted of a serious felony, as defined, who has been previously convicted of a serious felony. This initiative statute provides that any amendment of its provisions by the Legislature shall require a $\frac{2}{3}$ vote of the membership of each house. Chapter 12 of the~~

~~Statutes of 1994 amended the initiative statute and prescribes enhanced prison sentences for any person convicted of a felony who has one or more prior felony convictions, as defined.~~

~~This bill would provide that a felony conviction under the provisions in (1) above shall not constitute a current felony conviction for purposes of the above sentence enhancement provisions. Because this provision would constitute an amendment of an initiative statute, the bill would require a $\frac{2}{3}$ vote.~~

~~(3) Proposition 184, an initiative statute approved by the voters at the November 8, 1994, general election, added Section 1170.12 to the Penal Code. This initiative statute also provides that any amendment of its provisions by the Legislature shall require a $\frac{2}{3}$ vote of the membership of each house. Section 1170.12 of the Penal Code also prescribes enhanced sentences for any person convicted of a felony who has one or more prior felony convictions.~~

~~This bill would provide that a felony conviction under the provisions in (1) above shall not constitute a current felony conviction for purposes of the above sentence enhancement provisions. Because this provision would also constitute an amendment of an initiative statute, the bill would require a $\frac{2}{3}$ vote.~~

~~(4) The~~

~~The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.~~

~~This bill would provide that no reimbursement is required by this act for a specified reason.~~

~~Vote: $\frac{2}{3}$ majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.~~

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

1 SECTION 1. Section 18626 is added to the Revenue
2 and Taxation Code, to read:
3 18626. For purposes of Chapter 9 (commencing with
4 Section 19701), which relates to criminal penalties in the



1 case of fraudulent returns, the term “return” includes any
2 return filed under this part using electronic technology
3 pursuant to Section 18621.5.

4 SEC. 2. Section 19720 is added to the Revenue and
5 Taxation Code, to read:

6 19720. (a) Any person who does any of the following
7 is liable for a penalty of not more than five thousand
8 dollars (\$5,000):

9 (1) Utters, passes, negotiates, or procures a
10 state-issued income tax refund warrant generated
11 through the filing of a return knowing that the recipient
12 is not entitled to the refund.

13 (2) Aids, abets, advises, encourages, or counsels any
14 individual to utter, pass, negotiate, or procure a
15 state-issued income tax refund warrant generated
16 through the filing of a return knowing that the recipient
17 is not entitled to the refund.

18 (b) The fact that an individual’s name is endorsed to
19 a state-issued refund warrant shall be prima facie
20 evidence for all purposes that the refund warrant was
21 actually signed by him or her.

22 (c) The penalty shall be recovered in the name of the
23 people in any court of competent jurisdiction. Counsel for
24 the Franchise Tax Board may, upon request of the district
25 attorney or other prosecuting attorney, assist the
26 prosecuting attorney in presenting the law or facts to
27 recover the penalty at the trial of a criminal proceeding
28 for violation of this section.

29 (d) The person is also guilty of a misdemeanor and
30 upon conviction shall be punishable by a fine not to
31 exceed ten thousand dollars (\$10,000) or by
32 imprisonment not to exceed one year, or both, at the
33 discretion of the court, together with costs of
34 investigation and prosecution.

35 (e) Any individual guilty under this part shall be
36 subject to Section 502.01 of the Penal Code.

37 SEC. 3. Section 19721 is added to the Revenue and
38 Taxation Code, to read:



1 19721. (a) Any person who, with intent to defraud,
2 does any of the following is liable for a penalty of not more
3 than ten thousand dollars (\$10,000):

4 (1) Willfully utters, passes, negotiates, or procures a
5 state-issued income tax refund warrant generated
6 through the filing of a return knowing that the recipient
7 is not entitled to the refund.

8 (2) Willfully aids, abets, advises, encourages, or
9 counsels any individual to utter, pass, negotiate, or
10 procure a state-issued income tax refund warrant
11 generated through the filing of a return knowing the
12 recipient is not entitled to the refund.

13 (b) The person is also punishable by imprisonment in
14 a county jail not to exceed one year, or in the state prison,
15 or by a fine of not more than twenty thousand dollars
16 (\$20,000), or by both that fine and imprisonment, at the
17 discretion of the court, together with costs of
18 investigation and prosecution.

19 (c) The fact that an individual's name is endorsed to a
20 state-issued refund warrant shall be prima facie evidence
21 for all purposes that the refund warrant was actually
22 signed by him or her.

23 (d) The penalty shall be recovered in the name of the
24 people in any court of competent jurisdiction. Counsel for
25 the Franchise Tax Board may, upon request of the district
26 attorney or other prosecuting attorney, assist the
27 prosecuting attorney in presenting the law or facts to
28 recover the penalty at the trial or a criminal proceeding
29 for violation of this section.

30 ~~(e) A felony conviction under this section shall not~~
31 ~~constitute a current felony conviction for purposes of~~
32 ~~subdivisions (b) to (i), inclusive, of Section 667 of, or~~
33 ~~Section 1170.12 of, the Penal Code.~~

34 ~~(f)~~

35 (e) Any individual guilty under this part shall be
36 subject to Section 502.01 of the Penal Code.

37 SEC. 4. No reimbursement is required by this act
38 pursuant to Section 6 of Article XIII B of the California
39 Constitution because the only costs that may be incurred
40 by a local agency or school district will be incurred



1 because this act creates a new crime or infraction,
2 eliminates a crime or infraction, or changes the penalty
3 for a crime or infraction, within the meaning of Section
4 17556 of the Government Code, or changes the definition
5 of a crime within the meaning of Section 6 of Article
6 XIII B of the California Constitution.

7 Notwithstanding Section 17580 of the Government
8 Code, unless otherwise specified, the provisions of this act
9 shall become operative on the same date that the act
10 takes effect pursuant to the California Constitution.

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