

Senate Bill No. 1272

Passed the Senate August 31, 2018

Secretary of the Senate

Passed the Assembly August 30, 2018

Chief Clerk of the Assembly

This bill was received by the Governor this _____ day
of _____, 2018, at _____ o'clock ____M.

Private Secretary of the Governor

CHAPTER _____

An act to add Part 12.3 (commencing with Section 15925) to Division 3 of Title 2 of, and to repeal Section 15929 of, the Government Code, relating to underground economy.

LEGISLATIVE COUNSEL'S DIGEST

SB 1272, Galgiani. Tax Recovery and Criminal Enforcement (TRaCE) Task Force.

Existing law, until January 1, 2019, establishes the Revenue Recovery and Collaborative Enforcement Team as a pilot program consisting of a team of agencies charged with specified duties that include developing a plan to document, review, and evaluate data and complaints, evaluating the benefits of a processing center to receive and analyze data, share complaints, and research leads, and providing agencies with investigative leads, as specified, to combat criminal tax evasion associated with the underground economy.

This bill would establish the Tax Recovery and Criminal Enforcement (TRaCE) Task Force in the Department of Justice to combat underground economic activities through a multiagency collaboration to, among other things, pool resources, collaborate and share data, including confidential tax and fee information, prosecute violations, and recover state revenue lost to the underground economy, as specified. This bill would require TRaCE Task Force investigative teams to be located in Sacramento, Los Angeles, San Diego, the San Francisco Bay area, and Fresno, under the direct oversight of the Department of Justice. The bill would establish a TRaCE Task Force executive board and TRaCE Task Force investigative team committees to ensure multiagency collaboration. The bill would require that information exchanged pursuant to these provisions retain its confidential status, as specified. The bill would require the TRaCE Task Force to develop a data analytics system that enhances the efficiency and effectiveness of the multiagency collaboration to the extent the Legislature appropriates funds for these purposes. The bill would require the Department of Justice, in consultation with the

executive board of the TRaCE Task Force, to submit an annual report to the Legislature that includes specified information.

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

SECTION 1. (a) The Legislature finds and declares all of the following:

(1) The underground economy has significant negative effects on Californians. Many workers go without basic rights and protections, law-abiding businesses are put at a competitive disadvantage, consumer protections are threatened, and tax revenues are lost that could otherwise fund programs such as education, law enforcement, infrastructure projects, or reduce taxes for the majority of Californians who play by the rules.

(2) According to a 2013 report by the University of California, Los Angeles (UCLA) Labor Center prepared for the State Board of Equalization (now the California Department of Tax and Fee Administration), the underground economy has more than doubled between 1970 and 2000. The state's underground economy is estimated at \$60 to \$140 billion annually. An estimated \$8.5 billion in corporate, personal, and sales and use taxes go uncollected each year.

(3) In 2014, the Legislature passed Assembly Bill 576 (V.M. Perez), which established the Revenue Recovery and Collaborative Enforcement Team (RRACE), a pilot project intended to combat the underground economy by institutionalizing collaboration among state agencies and reduce barriers for information sharing related to investigations involving felony criminal tax evasion and other underground economic criminal activity. Recognizing, however, that there was no enforcement element included in Assembly Bill 576, the Department of Justice, in partnership with the State Board of Equalization, created a pilot program called the Tax Recovery and Criminal Enforcement (TRaCE) Task Force to investigate and prosecute the most egregious felony-level underground multijurisdictional economic crimes. Several other state and federal agencies, such as the Franchise Tax Board, the Employment Development Department, the Federal Bureau of Investigation, and the Internal Revenue Service Criminal Investigation division participate in the TRaCE Task Force.

(4) The TRaCE pilot program consists of two TRaCE teams focused on underground economic activities in Sacramento and Los Angeles. Both teams are under the command and leadership of the Department of Justice and rely on multiagency collaboration to investigate the totality of the crime and to prosecute violations as a single case to help reduce time, workload, and prosecutorial costs associated with the underground economy. Since its inception, TRaCE teams identified \$210 million in unreported gross receipts and \$46 million in associated tax loss to the state. Through its enforcement efforts, TRaCE has been collecting millions of dollars for tax loss, court ordered restitution, and cost of investigations.

(5) In 2015, the Little Hoover Commission published a report on the underground economy, which, among other things, recognized that during its short tenure, TRaCE has shown promising results. The report, however, concluded that the two TRaCE teams in Sacramento and Los Angeles do not provide adequate resources to address the underground economy in a state as large as California. According to the report, “At a minimum, California should have a multiagency financial crimes-focused task force based in every major metropolitan region.”

(6) Formally establishing TRaCE in state law and expanding the program to other major metropolitan areas will significantly strengthen the program and reinforce the state’s commitment to combating the underground economy.

(b) In light of the successes of the TRaCE pilot program, it is the intent of the Legislature in enacting this act to do all of the following:

(1) Permanently establish the TRaCE Task Force within the Department of Justice to investigate and prosecute egregious felony-level underground economic crimes.

(2) Expand TRaCE into other major metropolitan regions in the state by codifying the existing TRaCE teams in Sacramento and Los Angeles and establishing additional TRaCE teams in San Diego, the San Francisco Bay area, and Fresno.

(3) Continue to facilitate data and intelligence sharing among participating governmental agencies to assist in the investigation and prosecution functions of the TRaCE program.

SEC. 2. Part 12.3 (commencing with Section 15925) is added to Division 3 of Title 2 of the Government Code, to read:

PART 12.3. TAX RECOVERY AND CRIMINAL
ENFORCEMENT TASK FORCE ACT

15925. This part shall be known, and may be cited, as the Tax Recovery and Criminal Enforcement Task Force Act.

15926. (a) The Tax Recovery and Criminal Enforcement (TRaCE) Task Force is hereby established in the Department of Justice to combat underground economic activities through a multiagency collaboration to do, to the extent practicable, the following:

- (1) Pool resources and leverage enforcement efforts.
- (2) Collaborate and share data with state and federal partners.
- (3) Efficiently prosecute violations covering jurisdictions of multiple agencies to address the severity of the crimes and impose appropriate penalties on convicted violators.

- (4) Recover state revenue lost to the underground economy.

(b) The TRaCE Task Force shall include an executive board to ensure efficient and effective multiagency collaboration in furtherance of this act. The executive board shall consist of the following voting members:

- (1) A representative from the Division of Law Enforcement at the Department of Justice.

- (2) A representative from the Criminal Law Division at the Department of Justice.

- (3) A representative from the Investigations and Special Operations Bureau at the California Department of Tax and Fee Administration.

- (4) A representative from the Criminal Investigation Bureau at the Franchise Tax Board.

- (5) A representative from the Investigation Division at the Employment Development Department.

(c) The TRaCE Task Force may, as the executive board deems appropriate, invite the following state agencies to join the executive board in an advisory capacity:

- (1) The California Health and Human Services Agency.

- (2) The Department of Consumer Affairs.

- (3) The Department of Industrial Relations.

- (4) The Department of Insurance.

- (5) The Department of Motor Vehicles.

- (6) The Department of the California Highway Patrol.

- (7) The Department of Alcoholic Beverage Control.
- (8) The Bureau of Cannabis Control.
- (9) The Contractors' State License Board.

(d) The TRaCE Task Force may, as the executive board deems appropriate, invite other state and federal agencies to join the executive board in an advisory capacity subject to paragraph (2) of subdivision (b) of Section 15928.

(e) The addition of an advisory agency to the TRaCE Task Force executive board shall be by written agreement between the voting members of the TRaCE Task Force executive board and the agency joining the TRaCE Task Force executive board. The written agreement shall govern the participation of the agency joining the TRaCE Task Force executive board. The written agreement shall include provisions ensuring that confidential information is shared only when necessary to assess leads, conduct an investigation, or prosecute a case.

15927. (a) The TRaCE Task Force shall include TRaCE Task Force investigative teams located in Sacramento, Los Angeles, San Diego, the San Francisco Bay area, and Fresno under the direct oversight of the Department of Justice. The TRaCE Task Force investigative teams shall include, but are not limited to, duly authorized representatives of the agencies listed in subdivision (b) of Section 15926. The addition of an agency to a TRaCE Task Force investigative team shall be by written agreement between the TRaCE Task Force executive board and the agency joining the TRaCE Task Force investigative team. The written agreement shall govern the participation of the agency joining the TRaCE Task Force investigative team in the TRaCE Task Force investigative team.

(b) Each TRaCE Task Force investigative team shall have a committee established by the TRaCE Task Force executive board to ensure efficient and effective multiagency collaboration in each region in furtherance of this act.

(c) The TRaCE Task Force executive board and each TRaCE Task Force investigative team's committee shall meet as needed, but at least quarterly, to conduct its business.

15928. (a) For cases that involve tax or fee administration associated with underground economic activities, duly authorized members of the TRaCE Task Force employed by an agency listed in subdivision (b) of Section 15926 or employed by an agency that

joined the TRaCE Task Force pursuant to subdivision (c) of Section 15926 shall exchange intelligence, data, including confidential tax or fee information, documents, information, complaints, or lead referrals for the purposes listed in subdivision (c).

(b) (1) Notwithstanding subdivision (a), no person employed by an agency listed in subdivision (b) or (c) of Section 15926 shall disclose confidential tax or fee information to a person employed by an agency invited to join the executive board pursuant to subdivision (d) of Section 15926, except as set forth in paragraph (2).

(2) For cases that involve a known or suspected felony level tax or fee evasion crime, voting members and advisory members may share confidential tax or fee information with other members of an investigatory team of the TRaCE Task Force if all of the following criteria are met:

(A) The confidential tax or fee information is obtained by a voting member or advisory member of the TRaCE Task Force pursuant to existing law, agreements authorized by existing law, or order by the Governor.

(B) The person who receives the confidential tax or fee information is a peace officer.

(C) The confidential tax or fee information is for one of the purposes listed in subdivision (c) related to a felony level tax or fee evasion crime.

(D) 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.

(E) There is a nondisclosure agreement that prohibits the person receiving the confidential tax or fee information from disclosing the information to any person that is not part of the TRaCE Task Force or any other unauthorized person.

(c) The intelligence, data, including confidential tax or fee information, documents, information, complaints, and lead referrals exchanged pursuant to this section shall be used for the following purposes:

(1) To assess leads or referrals in order to determine if an investigation is warranted.

(2) To conduct investigations.

(3) To prosecute violations.

(4) To conduct data analytics.

(5) To enforce judgments.

(d) Any person who was or has been involved in the TRaCE Task Force pursuant to Section 15926 or 15927, or any person who has at any time obtained that knowledge from any of the foregoing persons shall not divulge, or make known in any manner not provided by law, any of the confidential information received by, or reported to, the TRaCE Task Force. Confidential information authorized to be exchanged pursuant to this section shall retain its confidential status and shall otherwise remain subject to the confidentiality provisions contained in, but not limited to, all of the following provisions:

(1) Section 11183 as that section pertains to the Department of Justice.

(2) Sections 1094 and 1095 of the Unemployment Insurance Code as those sections pertain to the Employment Development Department.

(3) Sections 19542, 19542.1, and 19542.3 of the Revenue and Taxation Code as those Sections pertain to the Franchise Tax Board.

(4) Section 15619 of this code, Section 42464.8 of the Public Resources Code, and 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 of the Revenue and Taxation Code, as those sections pertain to the California Department of Tax and Fee Administration.

(5) (A) Any other information confidentiality provisions in state law.

(B) Any information confidentiality provisions that are applicable to any agency that is added to the TRaCE Task Force pursuant to subdivision (c) or (d) of Section 15926.

(e) A member of the TRaCE Task Force shall not exchange federal tax data without authorization from the Internal Revenue Service.

(f) The TRaCE Task Force executive board shall oversee the TRaCE Task Force to ensure the protection of confidential tax and fee information pursuant to this part.

(g) The TRaCE Task Force shall, to the extent the Legislature appropriates funds for purposes of this section, develop a data analytics system that enhances the efficiency and effectiveness of the multiagency collaboration set forth by this act.

15929. (a) On or before March 31, 2020, and annually thereafter, the Department of Justice in consultation with the executive board of the TRaCE Task Force shall submit a report to the Legislature that includes, but is not limited to, the following information:

(1) The number of leads or complaints received by the TRaCE Task Force during the reporting period.

(2) The number of cases investigated or prosecuted through civil action or criminal prosecution as a result of the work of the TRaCE Task Force.

(3) The amount and final disposition of moneys collected through TRaCE Task Force enforcement efforts.

(4) The status of the multiagency collaboration required by this act.

(5) A list of the agencies that received confidential tax or fee information pursuant to subdivision (b) of Section 15928.

(6) The number of instances, if any, of unauthorized or suspected unauthorized access, use, or disclosure of confidential tax or fee information. The report shall 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 TRaCE Task Force.

(7) 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 set forth in this act.

(8) Policy considerations, if any, to help advance the purpose of the TRaCE Task Force.

(b) (1) A report to be submitted pursuant to subdivision (a) shall be submitted in compliance with Section 9795.

(2) Pursuant to Section 10231.5, this section is repealed on January 1, 2024.

Approved _____, 2018

Governor