

# ANALYSIS OF AMENDED BILL

Franchise Tax Board

Author: Assm. Budget Comm. Analyst: LuAnna Hass Bill Number: AB 1752

Related Bills: See Legislative History Telephone: 845-7478 Amended Date: June 23, 2003

Attorney: Patrick Kusiak Sponsor: \_\_\_\_\_

**SUBJECT:** Child Support Enforcement/Order To Withhold/Claims Of Exemption

## SUMMARY

With respect to child support collections administered by the Franchise Tax Board (FTB), this bill would make various changes to the laws regarding the information obtained through the Financial Institution Match System.

This analysis will not address the bill's provisions relating to human services, social programs, and the budget, as they do not impact the department or state income tax revenue.

## SUMMARY OF AMENDMENTS

The June 23, 2003, amendments removed the bill's general provision regarding the budget, and replaced it with various provisions relating to human services, social programs, and the provisions discussed in this analysis.

This is the department's first analysis of this bill.

## PURPOSE OF THE BILL

It appears the purpose of this bill is to enhance the collection of child support liabilities.

## EFFECTIVE/OPERATIVE DATE

As an urgency statute, this bill would be effective immediately upon enactment and operative for orders to withhold (OTWs) issued after that date.

## POSITION

Pending.

## ANALYSIS

### FEDERAL/STATE LAW

Federal law requires each state to have a single entity that is responsible for child support enforcement in that state, which is commonly referred to as the Title IV-D agency. Current law provides that the Department of Child Support Services (DCSS) is California's Title IV-D agency and each county is required to create a local child support agency to oversee child support enforcement. Additionally, each local agency is required to transfer to FTB the responsibility for accounts receivable management of child support delinquencies. The accounts receivable management activities are in support of DCSS and local agencies and subject to all federal and state laws, regulations, and directives relating to child support programs prescribed by federal law.

Board Position:

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<input type="checkbox"/> N	<input type="checkbox"/> OUA	<input checked="" type="checkbox"/> PENDING

Department Director

Date

Gerald H. Goldberg

7/28/03

Upon transfer of the child support delinquency, FTB is authorized to enforce collection of the child support delinquency as though it were a delinquent personal income tax liability. The department uses an automated tax collection system to send notices of delinquency to taxpayers and to garnish wages and levy bank accounts. This automated system searches through more than 220 million income records (including wage, dividend, and interest information) to locate an individual's assets. Once assets are located, the system can issue levies on bank accounts, wages, commissions, rents, and other miscellaneous sources of income. At the time collection of the child support delinquency is enforced, FTB is required to also enforce payment of any current child support obligation owed by that obligor.

State tax law authorizes FTB to issue OTWs to various institutions, including financial institutions, that have in their possession or control personal property or other things of value that belong to a taxpayer or debtor that owe a liability under the tax and non-tax programs administered by FTB. The financial institution is required to transmit the amount to FTB not less than 10 business days after receiving the OTW. However, if the assets consist of a brokerage account or financial account whose underlying value is based on security holdings, then the financial institution notifies FTB of the account status and the account is "frozen" pending further action. Under current law, these types of assets may be liquidated to their cash value through a warrant seizure and auction process.

FTB, in conjunction with DCSS and financial institutions in the state, is required by law to operate a Financial Institution Match System (or Financial Institution Data Match (FIDM)) using automated data exchanges. This process consists of a quarterly cross-reference of the name and social security number of any obligor of past-due child support with financial institution records. In the event assets are located, FTB issues an OTW for any amount of past-due child support.

The counties are required to notify FTB of the following instances regarding an obligor of past-due child support:

- A court has ordered an obligor to make scheduled payments and the obligor is in compliance with that order.
- An earnings assignment order that includes an amount for past-due support has been served to the obligor's employer and earnings are being withheld.
- At least 50% of the obligor's earnings are being withheld for support.
- The obligor is less than 90 days delinquent in the payment of any amount of support.
- A jurisdiction outside of the state is enforcing an obligor's child support order.

Once FTB is notified of an obligor who meets any of the above conditions, FTB is prohibited from using the information received through FIDM to collect any past-due child support. However, FTB may use the FIDM information if a county requests an action to be taken.

### THIS BILL

This bill would provide that FTB may be specifically authorized to take an enforcement action to collect a child support delinquency by another provision of law (see below), even if a court has ordered an obligor to make scheduled payments and the obligor is in compliance with that order.

With respect to the current law regarding FIDM and the requirement that counties notify FTB of specific instances where FTB would be prohibited from issuing the FIDM information to issue levies, as described above under "Federal/State Law," this bill would:

- Remove the requirement that counties must notify FTB when the obligor is less than 90 days delinquent in the payment of any amount of support.
- Remove the language prohibiting FTB from using FIDM information in the instances where FTB is notified of an obligor who meets a specific condition.
- Provide that if any of the conditions exist, then the assets of the obligor that are held by a financial institution are subject to levy by FTB. The following conditions exist with respect to such a levy:
  - The first \$3,500 would be exempt from levy without the obligor having to file a claim for exemption.
  - An obligor may file a claim for exemption for an amount that is less than or equal to the total amount levied. The sole basis for a claim for exemption would be financial hardship for the obligor and the obligor's dependents.
  - Existing law regarding levies and claims of exemption would not apply to a claim for exemption under this bill.
  - The local child support agency would be the levying officer for purposes of compliance with current laws regarding the claiming of exemptions (except for their release of property).
  - The local child support agency would notify FTB within two business days of receipt of a claim for exemption by an obligor. FTB would direct the financial institution subject to the OTW to hold any funds until FTB notifies the financial institution to remit or release the funds.
  - The superior court of the county in which the local child support agency is located shall have jurisdiction to determine the amount of exemption allowed.
  - Once the local child support agency receives an endorsed copy of the court order regarding the exemption, the local child support agency shall provide a copy of the order to FTB within two days. FTB would then instruct the financial institution to remit or release the obligor's funds as instructed by the court order.

In addition, this bill includes provisions that indirectly impact FTB. Specifically, these provisions would:

- Require a financial institution, person, or securities intermediary to liquidate the financial assets of an individual obligor who owes child support when a local child support agency or FTB issues a levy.
- Require DCSS to create an Offer In Compromise (OIC) program for child support debts. DCSS would be required to consult with FTB in the development of the program.

#### IMPLEMENTATION CONSIDERATIONS

Generally, this bill could be implemented by FTB without significant difficulties. However, this bill would allow, under certain circumstances, the first \$3,500 of an obligor's assets to be exempt from levy without the obligor having to file a claim for exemption. To prevent confusion, the author should amend the bill to clarify whether the \$3,500 exemption applies to each financial institution that receives a levy or to an obligor's total assets.

## TECHNICAL CONSIDERATIONS

This bill would move the current law provision that requires the counties to notify FTB if an obligor of past-due child support has at least 50% of their earnings being withheld for support. Subdivision (g) of Section 19271.6 contains a cross-reference that should either be updated or removed depending on the author's intent.

A provision of this bill would require a financial institution, person, or securities intermediary to liquidate the financial assets of an individual obligor when FTB issues a levy under current tax law. However, the reference to the current tax law regarding levies contains an unnecessary reference to Section 18670.5, which is a provision of law that allows FTB to issue levies to financial institutions using electronic means. Department staff suggests the author remove this unnecessary reference.

## **LEGISLATIVE HISTORY**

AB 2081 (Wright, 1999/2000) would have allowed a court to relieve any or all unpaid child support delinquencies with respect to an order for support of a child who is receiving public assistance, if 1) the obligor is 55 years of age or older, and 2) the child receiving support is 23 years of age or older. This bill failed in the Assembly Judiciary Committee.

AB 1995 (Aaroner, 1999/2000) would have required DCSS and the local child support agencies to offer a one-time child support amnesty program for amounts owed to the state. This bill was vetoed by the Governor due to the costs associated with the bill.

AB 3589 (Speier; Stats. 1992, Ch. 1223) created FTB's delinquent child support collection program. Under this program, counties (local child support agencies) refer child support delinquencies to FTB for collection as though they were delinquent income tax debts.

## **OTHER STATES' INFORMATION**

FTB staff contacted DCSS and per DCSS staff conversations with federal representatives, it appears that most states use FIDM information to issue levies in those cases where a current wage assignment exists and concern exists that California does not follow the same FIDM guidelines.

## **FISCAL IMPACT**

A provision of this bill would allow FTB to issue levies on an obligor's assets in instances where:

- A court has ordered an obligor to make scheduled payments and the obligor is in compliance with that order.
- An earnings assignment order that includes an amount for past-due support has been served to the obligor's employer and earnings are being withheld.
- At least 50% of the obligor's earnings are being withheld for support.

As a result, departmental costs associated with this provision would be approximately \$266,000. These costs include the system programming and testing costs needed to modify the system to issue OTWs on accounts that meet the above criteria.

This bill does not include a provision to cover FTB's costs. To ensure the department has the funding necessary to implement this bill, the department suggests the author add appropriation language to this bill that would cover the costs of implementation. Department staff suggests appropriation language that would provide FTB \$266,000 for the 2003/2004 fiscal year. The department is currently working on deficiency requests for the 2003/2004 fiscal year and Budget Change Proposals (BCPs) for the 2004/2005 fiscal year. However, absent an appropriation or Department of Finance approval of a deficiency request for the 2003/2004 fiscal year or a BCP for the 2004/2005 fiscal year, the department would be required to redirect staff from other revenue generating activities of the department, such as collections administration or audit, to administer this bill.

## **ECONOMIC IMPACT**

### Collection Estimate

Based on the discussion that follows, below, it is not possible at this time to provide an estimate of the impact this bill will have on child support collections.

### Collection Discussion

#### Levy/OTW

This bill would allow FTB to levy an obligor's assets that would otherwise have been protected from collection under current law. In specific circumstances, the first \$3,500 of an obligor's assets would be exempted from levy by this bill. The data and information necessary to determine the number of additional obligors that FTB would levy and of those obligors the number that would receive the \$3,500 exemption is not available at this time. However, to the extent that any obligor has assets in excess of \$3,500, collections could increase accordingly.

#### Liquidation Of Assets/OTW

It is anticipated that this provision could accelerate the collection of assets. However, the impact on collections is unknown at this time because data is not available regarding the number of accounts 1) where an obligor may have assets that would need to be liquidated, and 2) that may be subject to the \$3,500 automatic exemption from levy.

#### Offer In Compromise (OIC) Program

It is not possible to project in advance the response of obligors who would file for and have all or a portion of their child support arrearages forgiven and the total amount forgiven. Any "net" additional impact this provision may have on child support collections would depend on the extent to which such amounts would have otherwise been collected through FTB's existing child support program.

## **ARGUMENTS/POLICY CONCERNS**

Current law provides that debtors may receive some form of an exemption with respect to judgment creditors. A provision of this bill would allow an individual obligor that owes past due child support to receive or apply to receive a claim for exemption from an FTB levy in certain circumstances. However, FTB is not considered a judgment creditor and has authority under state income tax law to collect specific debts using remedies such as withholding orders and OTWs, which are not currently subject to any exemptions.

A provision of this bill would require a financial institution, person, or securities intermediary to liquidate the financial assets of an individual obligor within 20 days of receiving a levy from a local child support agency or FTB. However, an obligor with assets in excess of the levy amount would be allowed 10 days from the service of the levy to designate to the financial institution the asset or assets that are to be liquidated. However, the obligor may not have sufficient time to notify the financial institution of the decision to liquidate depending on the mailing of the notice from the financial institution to the obligor. The financial institution may liquidate and send FTB the funds prior to the obligor's decision about liquidating or prior to the obligor applying for an exemption from the FTB levy. Absent clarification, FTB staff would assume that an agreement could be reached regarding the liquidation of the assets with the appropriate financial institution on a case-by-case basis.

### **LEGISLATIVE STAFF CONTACT**

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