

# ANALYSIS OF AMENDED BILL

## Franchise Tax Board

Author: Spitzer Analyst: Deborah Barrett Bill Number: AB 2928

Related Bills: See Legislative History Telephone: 845-4301 Amended Date: March 25, 2008 & April 3, 2008

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

**SUBJECT:** California Department Of Corrections To Contract With FTB For Collection Of Restitution Orders Owed By Prisoners

### SUMMARY

This bill would authorize the California Department of Corrections and Rehabilitation (CDCR) to refer restitution orders to the Franchise Tax Board (FTB) for collection for anyone who has been under CDCR jurisdiction.

### SUMMARY OF AMENDMENTS

The March 25, 2008, amendments removed provisions relating to depreciation adjustments and added provisions allowing CDCR to refer restitution orders to FTB for collection. The April 3, 2008, amendments added language that would allow a victim to choose not to have CDCR refer restitution orders to FTB for collection. This is the department's first analysis of this bill.

### PURPOSE OF THE BILL

According to the author's office, the purpose of this bill is to provide CDCR with the authority to continue collection of restitution orders through FTB against persons who are no longer under CDCR custody.

### EFFECTIVE/OPERATIVE DATE

This bill would be effective on January 1, 2009, and would be operative for restitution orders referred to FTB on or after that date.

### POSITION

Pending.

#### Board Position:

\_\_\_\_\_ S      \_\_\_\_\_ NA      \_\_\_\_\_ NP  
\_\_\_\_\_ SA      \_\_\_\_\_ O      \_\_\_\_\_ NAR  
\_\_\_\_\_ N      \_\_\_\_\_ OUA        X   PENDING

Department Director

Date

Selvi Stanislaus

4/21/08

## **ANALYSIS**

### **STATE LAW**

Under current state law, fees, penalties, forfeitures, restitution orders, fines, or certain amounts imposed by a superior or municipal court or governmental entity in California and delinquent for 90 days or more can be referred by the court or government entity to FTB for collection.

Restitution orders may be referred by a government entity under the following conditions:

- The government entity has the authority to collect on behalf of the state or victim.
- The government entity is responsible for the distribution of the amounts collected from the restitutions orders.
- The government entity ensures that in making the referral and distribution that it coordinates with any other related collection activities that may occur by superior courts, counties, or other state agencies.
- The government entity ensures compliance with the laws relating to reimbursement of the State Restitution Fund.

After issuing a preliminary notice to the debtor, FTB is authorized to collect the referred restitution orders in the same manner as authorized for collection of a delinquent personal income tax liability. FTB's costs attributable to this collection program are reimbursed through the amount FTB collects for the program. The department has followed legislative intent language under the court-ordered debt (COD) collection program that limits FTB reimbursement to 15% of the amounts collected. In general, the county or state fund originally owed the debt receives the net collection proceeds after reduction by the amount of FTB's departmental collection costs.

Current state law authorizes FTB to use administrative collection tools to collect delinquent tax and non-tax debt liabilities. Collection actions include, but are not limited to, attaching bank accounts and garnishing wages.

CDCR has authority to refer restitution orders owed by parolees to FTB for collection because a parolee is still under the jurisdiction of CDCR. When a parolee is discharged from parole, CDCR no longer has authority to collect on behalf of the state or the victim, and FTB must return the uncollected portion of the account to CDCR.

### **PROGRAM BACKGROUND**

FTB currently collects restitution orders referred from courts of 43 counties and maintains an inventory of approximately 1.1 million cases. Non-tax debt collection is accomplished primarily through the use of wage garnishments and bank levies. In August 2004, legislation was enacted (SB 246, Stats. 2004, Ch. 380) making FTB's COD program permanent and requiring FTB to expand participation to all 58 counties and superior courts. To meet this requirement, FTB initiated the Court Ordered Debt Expansion (CODE) project to develop and implement a scalable collection and billing system. CODE is in development, and the department expects it to be functional by August 2009. CODE is expected to administer an inventory of approximately 8 million cases from potentially 190 different courts.

## THIS BILL

This bill would authorize CDCR to refer restitution orders owed by persons that have been under CDCR jurisdiction to FTB for collection. An exception is made if the victim provides notification to the contrary to FTB and CDCR.

## IMPLEMENTATION CONSIDERATIONS

As a collection agent for CDCR, FTB does not deal directly with the victims to whom restitution orders are owed, but with CDCR. Consequently, the provisions of this bill that would require a victim to notify FTB, in addition to CDCR, to prevent referral of a restitution order are unnecessary. It is recommended that any notification from the victim to prevent referral or discontinue collection be directed solely to CDCR.

## TECHNICAL CONSIDERATION

To reference the subparagraph and paragraph appropriately, the language should also include reference to the subdivision.

On page 2, line 21, after "paragraph (2)" insert:

of this subdivision

## LEGISLATIVE HISTORY

AB 2487 (Berg, 2007/2008) would authorize courts to refer civil judgments awarded to victims of domestic violence to Franchise Tax Board (FTB) for collection. This bill has been referred to the Assembly Revenue and Taxation Committee.

SB 1203 (Runner, 2007/2008) would authorize CDCR to contract with FTB for collection of direct restitution orders on behalf of victims of prison inmates. This bill has not yet been heard in committee.

AB 367 (de Leon, Stats. 2007, Ch. 132) established a task force to evaluate the imposition of criminal COD and distribution of revenue from the collection of those debts, and lowered the balance requirement for referral of COD for collection to the FTB.

SB 246 (Escutia, Stats. 2004, Ch. 380) extended indefinitely the provisions authorizing a county to refer delinquent debts to FTB for collection, thereby requiring FTB and the courts to expand the collection or court ordered debts to all 58 California Counties.

## FISCAL IMPACT

Implementing this bill would not impact department programs or operations because the cost to FTB to collect these restitution orders would be deducted from any amounts collected prior to being distributed.

## **ECONOMIC IMPACT**

This bill would not impact state income tax revenues.

## **LEGISLATIVE STAFF CONTACT**

Legislative Analyst  
Deborah Barrett  
(916) 845-4301  
[deborah.barrett@ftb.ca.gov](mailto:deborah.barrett@ftb.ca.gov)

Revenue Manager  
Rebecca Schlussler  
(916) 845-5986  
[rebecca.schlussler@ftb.ca.gov](mailto:rebecca.schlussler@ftb.ca.gov)

Legislative Director  
Brian Putler  
(916) 845-6333  
[brian.putler@ftb.ca.gov](mailto:brian.putler@ftb.ca.gov)