

Franchise Tax Board

ANALYSIS OF AMENDED BILL

Author: Committee on Judiciary Analyst: Janet Jennings Bill Number: SB 647

Related Bills: See Legislative History Telephone: 845-3495 Amended Date: April 25, 2011

Attorney: Patrick Kusiak Sponsor: _____

SUBJECT: FTB To Collect Court Appointed Counsel Costs

SUMMARY

This bill would, among other things, allow the Franchise Tax Board (FTB) to collect specified legal costs relating to an order of the juvenile court.

RECOMMENDATION AND SUPPORTING ARGUMENTS

No position.

Summary of Amendments

The April 25, 2011, amendments, among other things, add to the type of court-ordered debts (COD) that can be referred to the FTB for collection.

This is the department's first analysis of this bill. This analysis only addresses the provisions of this bill that impact the department's programs and operations.

PURPOSE OF THE BILL

According to the Committee staff, the purpose of this provision of the bill is to assist in collecting the amounts owed to the court from the persons liable for the costs of counsel appointed to represent parents or minors in dependency proceedings.

EFFECTIVE/OPERATIVE DATE

This bill would become effective January 1, 2012, and would apply to debts referred to the FTB for collection on or after that date.

ANALYSIS

STATE LAW

Current state law authorizes the FTB to use administrative collection tools to collect delinquent COD. Collection actions include, but are not limited to, attaching bank accounts and garnishing wages.

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

COD may be referred to the FTB 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 referring debts pursuant to a restitution fine or restitution order are to ensure compliance with the laws relating to reimbursement of the State Restitution Fund.

After issuing a preliminary notice to the debtor, the FTB is authorized to collect the referred COD in the same manner as authorized for collection of a delinquent personal income tax liability. The FTB's costs for collecting the COD are reimbursed through the COD amounts collected by the FTB. Legislative intent language for COD collections states the intent of the Legislature to limit FTB's reimbursement to 15 percent of the amounts collected. The county or state fund originally owed the debt receives the net collection proceeds after reduction by the amount of the FTB's collection costs.

THIS BILL

This bill would allow the FTB to collect specified legal costs relating to an order of the juvenile court. Specified legal costs would include the costs for counsel appointed to represent parents or minors pursuant to dependency proceedings.

IMPLEMENTATION CONSIDERATIONS

Department staff has made the following assumptions absent specific language in the bill:

- A contractual agreement would be drawn up specifying the requirements consistent with existing collection protocols for court ordered debt.
- The FTB assumes the superior court of the State of California is equipped to handle the customer service aspects of collection on the reimbursement of debts for the costs of counsel; this bill would not require the FTB to provide customer service, only the referring entity.

LEGISLATIVE HISTORY

AB 2928 (Spitzer, Stats. 2008, Ch. 752) authorizes the California Department of Corrections and Rehabilitation (CDCR) to refer restitution orders owed by persons who are or have been under CDCR jurisdiction to the FTB for collection and allows the person who is owed the restitution to decline collection assistance.

AB 367 (De Leon, Stats. 2007, Ch. 132) establishes a task force to evaluate the imposition of criminal COD and distribution of revenue from the collection of those debts, and lowers the minimum balance requirement for referral of COD for collection to the FTB to \$100.

SB 246 (Escutia, Stats. 2004, Ch. 380) extends indefinitely the provisions authorizing superior or municipal courts of the State of California to refer COD to FTB for collection, thereby expanding the collection of CODs by the FTB to all 58 California Counties.

PROGRAM BACKGROUND

The FTB currently collects fines; state or local penalties, forfeitures, restitution fines, restitution orders, or other amounts imposed by a superior or municipal court of the State of California referred from courts of 43 participating counties and maintains an inventory of approximately 1.1 million cases. COD collection is accomplished primarily through the use of wage garnishments and bank levies.

FISCAL IMPACT

This bill would not impact the department's costs because the cost to the FTB to collect these reimbursements debts would be deducted from any amounts collected prior to being distributed. The FTB's COD system can accommodate the increase in the workload that this bill is expected to generate.

ECONOMIC IMPACT

This bill would not impact state income tax revenues.

SUPPORT/OPPOSITION

Support: None provided

Opposition: None provided

ARGUMENTS

Pro: Proponents may claim that using the capabilities of the FTB to collect the reimbursement of debts owed to the court will improve the collection of these debts.

Con: Opponents may claim that debts arising out of the Welfare and Institution Code should not be collected in the same manner as a tax debt.

LEGISLATIVE STAFF CONTACT

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