

SUMMARY ANALYSIS OF AMENDED BILL

Author: Wright Analyst: Gloria McConnell Bill Number: AB 2004

Related Bills: _____ Telephone: 845-4336 Amended Date: 04/28/98

Attorney: Doug Bramhall

Sponsor: _____

SUBJECT: FTB Collection of Student Aid Commission Outstanding Accounts
Receivable/Additional Notice to Debtor/Limits FTB Collection Remedies

DEPARTMENT AMENDMENTS ACCEPTED. Amendments reflect suggestions of previous analysis of bill as introduced/amended _____.

AMENDMENTS IMPACT REVENUE. A new revenue estimate is provided.

AMENDMENTS DID NOT RESOLVE THE DEPARTMENT'S CONCERNS stated in the previous analysis of bill as introduced 02/18/98.

FURTHER AMENDMENTS NECESSARY.

DEPARTMENT POSITION CHANGED TO _____.

REMAINDER OF PREVIOUS ANALYSIS OF BILL AS INTRODUCED 02/18/98 STILL APPLIES.

OTHER - See comments below.

BILL SUMMARY

Under this bill, before a delinquent student loan could be referred to Franchise Tax Board (FTB) for collection, the Student Aid Commission (commission) would:

- refer the delinquent account to a private debt collector, only if allowed under the Accounts Receivable Management Act;
- have to allow the collector only three months from the time of referral to collect the delinquency, instead of the current nine months;
- be required to provide certain notices and hearings, include notice that would delay referral of outstanding student loans to FTB by a minimum of 60 days;
- be required to provide "actual" notice at the debtor's current address; and
- be liable to the debtor for certain damages, attorney's fees and costs if the commission refers an outstanding debt to FTB without satisfying all notice and hearing requirements.

Additionally, under this bill, FTB would be:

- precluded from levying on wages in the case of a debtor who is involuntarily separated from employment, until the debtor has been continuously reemployed in the 12 months preceding the levy;
- required to provide notices to the debtor written in English and Spanish; required to provide, at a minimum, 45 days after it issues notice to the debtor of the amount due and requests payment before proceeding with collection action;

DEPARTMENTS THAT MAY BE AFFECTED:

___ STATE MANDATE

___ GOVERNOR'S APPOINTMENT

Board Position:

___ S ___ O
___ SA ___ OUA
 X N ___ NP
___ NA ___ NAR
_____ PENDING

Agency Secretary Position:

___ S ___ O
___ SA ___ OUA
___ N ___ NP
___ NA ___ NAR
DEFER TO _____

GOVERNOR'S OFFICE USE

Position Approved ___
Position Disapproved ___
Position Noted ___

Department/Legislative Director Date

Agency Secretary Date

By: Date:

G. Alan Hunter

- limited to levying on those accounts in financial institutions where the money has been held in a bank account for at least 30 days;
- required to ensure the debtor has received "actual" notice of the proposed levy or withholding prior to conducting any levy on wages or any withholding of any bank account; and
- required to adopt regulations to implement the provisions of this bill.

SUMMARY OF AMENDMENT

Under the April 14, 1998, amendments,

- The commission's compliance with specified federal notice requirements would satisfy certain of the commission's requirements under this bill to provide notice to the debtor.
- FTB would continue current law requirements of sending notices to the debtor's most recent address of record or last address known to FTB and would not be required to send "actual" notice to the debtor's "current" address. However, FTB would have to ensure that the debtor has received "actual" notice of a proposed levy or withholding.
- A withholding order would "apply to amounts in any account held by a financial institution until those amounts have been held by the institution for 30 days."
- FTB's initial notice to the debtor would have to be written in English and Spanish.

Under the proposed amendments -

- The commission would refer the delinquent account to a private debt collector, only if allowed under the Accounts Receivable Management Act;
- The commission would allow the collector only three months from the time of referral, instead of the current nine months, to collect the delinquency;
- The commissioner could refer to FTB for collection a delinquency where the debtor is involuntarily separated from employment and has not been continuously employed for 12 months; however, FTB would be precluded from levying on wages of the debtor until the 12 months have expired; and
- FTB could continue to use enforcement remedies and capabilities that may be available to the commission to collect these debt.

SPECIFIC FINDINGS

Under current law (Accounts Receivable Management Act), state agencies generally are allowed to contract with private collection agencies provided collections are likely to generate more net revenue or net value than equivalent state efforts. Irrespective of this law, before the commission can refer a delinquent student loan to FTB for collection, the commission must refer the delinquency to a private collection agency and that agency must be allowed at least nine months from the date of referral the opportunity to collect the delinquency.

Under this bill, before referral of a delinquent student loan to FTB for collection, the commission may refer a delinquent student loan to a private collection agency only if allowed under the Accounts Receivable Management Act and the private collection agency may be allowed only three months from the date of referral to collect the delinquency.

Currently, federal law governs certain actions that must be taken to recover a defaulted student loan, including due process and other requirements for notice. The commission must abide by all applicable federal requirements.

This bill expressly provides that before a student loan delinquency may be referred to FTB for collection, the commission and any collection agency acting on its behalf must comply with certain federal law.

Currently, FTB may use any collection action it uses to collect taxes to collect delinquent student loans, i.e., garnishing wages, attaching bank accounts, or seizing and selling assets (recreational vehicles, vacation homes, stocks, works of art and other collectibles). When an OTW is issued to a financial institution, the institution holds the amounts that the OTW attaches for at least ten business days before remitting to FTB. Under federal law pertaining to the collection of delinquent student loans, FTB may not garnish the wages of the debtor "whom it knows" has been involuntarily separated from employment until the debtor is reemployed for at least 12 months. When a withholding order on wages is issued and FTB is made aware of this situation, the withholding order is released.

Under this bill, the collection actions FTB may take to collect delinquent student loans would be limited to withholding orders on wages and accounts in financial institutions. In the case of financial institutions, collection is further limited to amounts that have been held in a financial institution for at least 30 days. For withholding on wages, FTB would be precluded from levying on wages of any debtor who has been involuntarily separated from employment until the debtor has been continuously reemployed in the 12 months preceding the levy, without regard to whether FTB knows such a situation exists.

Under current law, FTB is allowed to enter into installment payments to collect delinquent taxes in the event of a financial hardship (RTC Section 19008); therefore, FTB may do the same in the collection of delinquent student loans. **Under current practice**, to collect a delinquent student loan FTB follows the general practice for collecting delinquent taxes and other debts. The demand for payment is mailed first class to the debtor and explains that failure to pay the amount due within 10 business days will result in collection action that may include one or more of the following actions: garnishing wages, attaching bank accounts, seizing and selling real or personal property, filing a lien. For delinquent student loans, the debtor is instructed to contact the FTB, if full payment would result in a hardship, or the commission, if the amount of the debt is disputed. The following titled information on the back of the demand for payment is printed in both in English and Spanish: "General Information," "Your Defaulted Student Loan," and "If You Disagree with the Balance." These sections explain the availability of an Advocate if problems cannot be resolved with FTB and directs the debtor to contact the commission for disputes about the amount of debt. When an earnings withholding order (EWO) or order to withhold (OTW) is issued, the third party is instructed to notify the debtor of the levy by providing the debtor with an FTB-prepared notice, which instructs the debtor to contact the FTB, if full payment would result in a hardship, or the commission, if the amount of the debt is disputed.

Under this bill, FTB's demand for payment expressly must be written "in English and Spanish," the debtor must be told of the process for claiming a hardship under the Wage Garnishment Law, and the debtor must be given 45 days from the date of the notice to pay the amount due before further collection

actions may begin. Additionally, prior to conducting any levy on wages or withholding on any accounts, FTB would be required to ensure that the debtor has received "actual" notice of the proposed levy or withholding. If any debtor requests other than a hardship hearing under the Wage Garnishment Law, the FTB would be prohibited from proceeding with the levy and would be required to refer the account to the commission if the account had not previously been referred.

Under current practice, if an OTW issued to a financial institution attaches money that the debtor can show is from social security, the OTW is withdrawn. Additionally, if a hardship can be demonstrated or a payment arrangement can be agreed upon, withholding orders may be withdrawn or reduced. To the extent a formal hearing is not required under the Wage Garnishment Law, these processes are informal. The Advocate is available to resolve problems that may arise with these informal processes.

Under this bill, for social security payments to be released from an OTW, the debtor would be required to follow the provisions in the Code of Civil Procedure relating to the seizure and selling of property and file a formal claim for exemption of the social security payments. Additionally, certain notices and hearings, which currently apply to wage garnishments, including EWOs issued by the FTB, also would apply to OTWs issued by FTB.

Implementation Considerations

This bill would be effective January 1, 1999, and apply to all accounts on which "collection proceedings are commenced" as of January 1, 1999. It is unclear what constitutes the "commencement" of collection proceedings. If each collection action taken by the FTB constitutes the commencement of collection proceedings, all accounts in FTB's inventory would have to be returned to the commission to satisfy the additional requirements that must be taken before accounts can be referred to FTB. According to the author's office, the bill is intended to apply to accounts that have not been referred by the commission to FTB for collection as of December 31, 1998. The bill should be amended to make this clear.

Additionally, before debts may be referred to FTB, this bill implements due process protections that go beyond those already provided under both federal and California laws and continues to substantially restrict FTB's collection activities following referral. If the due process provisions are implemented, it is unclear why additional restrictions should then be placed on FTB's collection of otherwise valid debts.

The bill, as amended April 14, 1998, resolved certain of the Implementation Considerations previously noted but it raises additional considerations, as follows. The bill continues to reduce the ability of FTB to maintain an effective and efficient collection program for delinquent student loans, would in certain instances, adds complexities for the debtor, for the following reasons:

- The bill requires the commission and "any collection agency acting on its behalf" to comply with certain federal requirements with respect to "reinstatement of the debtor's eligibility for assistance" and "with respect to rehabilitation of the debtor's loan." It is unclear whether FTB is a "collection agency acting on the commission's behalf." If this

provision is not intended to apply to FTB, the word "private" should be added to the term "collection agency." If it is intended to apply to FTB, FTB staff does not understand what specific federal requirements are at issue.

- The bill provides that "no notice to withhold shall apply to amounts in any account held by a financial institution until those amounts have been held by the institution for 30 days." It is unclear whether it is the intent of the author that (1) before an amount in a financial institution is subject to levy by OTW, the amount must be in the account for 30 days or (2) before an amount levied by an OTW can be remitted to the FTB, the money must be held by the bank for 30 days. In the first instance, such a limitation could virtually remove the OTW as a viable collection tool and provides an additional complexity for financial institutions because they would have to determine the period of time the amount at issue was in the account. In the second instance, for all OTWs received for student loan delinquencies, the financial institution would hold (and earn the interest on) the debtor's money for 20 days beyond the current requirements, and the debtor's delinquent student loan would continue to accrue interest for the additional 20 days.
- Currently, FTB is concentrating on the automated implementation of the student loan collection program and, therefore, is using automated processes to issue OTWs on accounts in financial institutions and issue EWOs to employers. Additional collection actions of a manual nature, such as seizing and selling assets, may occur in the future as determined on a case-by-case basis. This bill could limit the issuance of an OTW on accounts in financial institutions, as discussed above, and would preclude the seizing and selling of any assets under any circumstances.
- The bill provides that social security payments in a deposit account would be exempt from levy, if the debtor files an exemption from levy under the Code of Civil Procedures, which is a formal process. Under FTB's current practice, the same result is achieved through an informal process.
- This bill would require that notices and hearings relative to wage garnishments also apply to OTWs issued to financial institutions. Administratively, when issuing an OTW, FTB provides hearings and gives or instructs the financial institution to provide notice similar in concept to that required under the Wage Garnishment Law, but only to the extent the provisions are applicable. Certain of the wage garnishment provisions (e.g., required notices by a levying officer, claims for exemptions, service and contents of documents) are applicable to judgment creditors, not to state taxing agencies, and under certain circumstances require a formal process for filing third-party claims or claims for exemption from levy (and may require that actions for relief be brought in court). Under FTB's current practice, these notices and hearings are provided by FTB administratively and informally. Additionally, it is difficult to make all EWO hearings and notices apply to OTWs because of the difference in the relationship between an employer/employee and financial institution/customer, the withholding periods for deposit accounts and wages, and the dollar amounts subject to withholding under an EWO and OTW.

- This bill would require that FTB's demand for payment explain to the debtor the process for claiming a hardship exemption under the Wage Garnishment Law. The demand for payment is the initial notice that FTB issues; it is issued before collection actions are taken. To explain on the demand for payment the hardship exemption process relevant to a wage garnishment would be premature. Once an EWO is issued in accordance with the Wage Garnishment Law, FTB does give the debtor instructions to contact FTB immediately in the case of a hardship. FTB must follow the Wage Garnishment Law for determining hardships and the amount of wages subject to withholding.
- The bill, as amended, would require the demand for payment be written in English and Spanish. It is unclear whether FTB's current practice of writing a portion of its demand in Spanish would meet the requirements of the bill.
- The bill provides that "prior" to conducting any levy on wages or withholding of any account, the FTB must ensure that the debtor receive "actual" notice of the proposed levy or withholding. It is unclear whether FTB's demand for payment or notice to the debtor by the third party receiving a withholding order would meet this notice requirement. Assuming that either would meet the "prior" notice requirement, it is unclear how FTB would ensure that "actual" notice was received by the debtor from the FTB or from the third-party. If to receive "actual" notice, the debtor must take possession of the notice. There would be an increase in the cost due to the mailing of the notices if they were mailed certified/receipt requested, and the debtor could avoid collection merely by refusing the certified mail.

The bill, as proposed to be amended, would not allow the FTB "to levy" on the wages of any debtor who has been involuntarily separated from employment until the debtor has been continuously reemployed in the 12 months preceding the levy. At the time FTB issues a withholding order it would not know whether such circumstances exists. It is unclear, therefore, whether this means FTB could not issue any wage levies because the circumstances at issue could exist. To conform to current practice and the federal law, which allows the levy to be issued and released once the circumstances are known, the phrase "who has been involuntarily separated" would be replaced by "the FTB knows has been involuntary separated."

Technical Consideration

The bill would require FTB to notify the debtor that payment arrangements with the commission would prevent further collection action. However, once a delinquency is referred to FTB, FTB itself makes the payment arrangements on that account. Therefore, it is suggested that the bill be amended to substitute FTB for the "commission."

BOARD POSITION

Neutral. At it March 26, 1998, hearing, the FTB took a neutral position on this bill on a vote of 2-0, with Robin J. Dezember, on behalf of Member Craig L. Brown, abstaining.