
SENATE COMMITTEE ON PUBLIC SAFETY

Senator Aisha Wahab, Chair
2023 - 2024 Regular

Bill No: SB 516 **Hearing Date:** April 25, 2023
Author: Skinner
Version: April 10, 2023
Urgency: No **Fiscal:** Yes
Consultant: SC

Subject: *Franchise Tax Board Debtor Bill of Rights*

HISTORY

Source: Author

Prior Legislation: Unknown

Support: California Public Defenders Association; Coalition of California Welfare Rights Organizations; Western Center on Law & Poverty;

Opposition: California Association of County Treasurers and Tax Collectors

PURPOSE

The purpose of this bill is to enact the Franchise Tax Board (FTB) Debtor Bill of Rights, which modifies several provisions related to FTB's collection of debts and levies of property.

Existing law authorizes the Controller to offset any amount due to a state agency from a person or entity against any amount owing to that person or entity by a state agency, including any tax refund, except as specified. (Gov. Code, § 12419.5.)

This bill requires the Controller to maintain the contact information of the state agency that requested the offset.

Existing law authorizes the Controller to offset any amount due a city, county, or special district from a person or entity as provided against any amount owing the person or entity at the request of the city, county or special district. (Gov. Code, § 12419.8.)

This bill requires the Controller to maintain the contact information of the city, county, or special district that requested an offset.

This bill prohibits a city, county, or special district from sending a bill for any amount due that the city, county, or special district has submitted an offset request and shall relinquish all right to collection until it has withdrawn the request for offset.

This bill requires the Controller, when an offset request by a city, county, or special district is satisfied, to give the person or entity from whom the offset was collected a receipt with all of the following:

- The offset amount;
- The name of the city, county, or special district that requested the offset; and,
- The remaining amount due to the city, county, or special district.

This bill authorizes a person or entity to file a claim with the Controller for any amount erroneously offset under Government Code sections 12419.5 and 12419.8.

The bill requires the Controller to provide the person or entity with the contact information of the state agency, city, county or special district that requested the offset when the claim is filed and cease the offset until the claim is resolved.

The bill requires the Controller to refund any amount erroneously offset as expeditiously as possible, but within one year of the filing of a claim.

Existing law authorizes the FTB, in cases of financial hardship, as determined by FTB, allow a taxpayer to enter into installment payment agreements with the FTB to make full or partial payment of taxes due, plus applicable interest and penalties over the life of the installment period. Failure by a taxpayer to comply fully with the terms of the installment payment agreement shall render the agreement null and void, unless the FTB determines that the failure was due to a reasonable cause, and the total amount of tax, interest, and all penalties shall be immediately due and payable. (Rev. & Tax Code, § 19008, subd. (a).)

This bill requires the FTB to allow a taxpayer to submit an offer for an installment agreement online or by mail or telephone.

This bill provides that the terms of the installment agreement shall not be less favorable because of the method chosen by the taxpayer to submit an offer for an installment agreement.

Existing law states that except in a case where the FTB finds collection of the tax to which an installment payment agreement relates to be in jeopardy, or there is a mutual consent to terminate, alter or modify the agreement, the agreement shall not be null and void, or otherwise terminated, unless both of the following occur:

- A notice of termination is provided to the taxpayer not later than 30 days before the date of termination; and,
- The notice includes an explanation of why the Franchise Tax Board intends to terminate the agreement.

This bill additionally requires if the taxpayer has failed to comply fully with the terms of the installment payment agreement, the taxpayer has been given at least 60 calendar days to cure the failure.

Existing law states that, in addition to any other penalty provided or imposed under the law, the court shall order the defendant to pay both a restitution fine and restitution to the victim or victims, if any. (Pen. Code § 1202.4, subd. (a)(3).)

Existing law specifies that a restitution order is enforceable by the victim as a civil judgment, and enforceable in the same manner as is provided for the enforcement of any other money judgment. Upon the victim's request, the court shall provide the victim in whose favor the order of

restitution is entered with a certified copy of that order and a copy of the defendant's financial disclosure. (Pen. Code, §§ 1202.4, subd. (i), & 1214, subd. (b).)

Existing law states that any portion of a restitution fine or restitution fee that remains unsatisfied after a defendant is no longer on probation, parole, postrelease community supervision or mandatory supervision, after a term in custody, or after completing diversion is enforceable by the California Victim Compensation Board. (Pen. Code, § 1214, subd. (a).)

Existing law states that restitution is a permanent order that does not expire and is not dischargeable through bankruptcy. (Pen. Code, § 1214, subd. (a).)

Existing law states that fines, monetary sanctions, state or local penalties, bail, forfeitures, restitution fines, restitution orders, or any other amounts imposed by a juvenile or superior court of the State of California or the Supreme Court of the State of California upon a person or any other entity, or any payment from the State Bar of California's Client Security Fund that is part of a final determination from the Client Security Fund, that are due and payable in an amount totaling no less than \$100, may, no sooner than 90 days after payment of that amount becomes delinquent, be referred by the juvenile or superior court, the county, the state, or the State Bar to FTB for collection under guidelines prescribed by the board. (Rev. & Tax Code, § 19280, subd. (a).)

Existing law prohibits the Department of Corrections and Rehabilitation (CDCR) or the county from referring a restitution order to the Franchise Tax Board if a county agency has been designated by the county board of supervisors to collect restitution from individuals who are:

- Serving a sentence in a county jail for a realigned-felony;
- On mandatory supervision; or,
- On postrelease community supervision. (Gov. Code, § 19280, subd. (a)(1)(B).)

This bill states that a juvenile or superior court, county, state, or the State Bar shall not refer an amount pursuant to the above provision unless written notice is provided to the debtor specifying all of the following:

- The amount will be referred to the FTB for collection that may include bank levy, wage garnishment, tax refund offsets, and unclaimed property or lottery offsets;
- The full accounting of the amount referred, including, but not limited to, the case number, and date the amount was imposed; and,
- Information about resolving the amount before referral, including, but not limited to, a payment plan or the procedure to pay the amount.

This bill states that a juvenile or superior court, county, state, or the State Bar shall not refer an amount to the FTB that has not been imposed within the previous 15 years.

Existing law states that except as otherwise provided by statute, upon the expiration of 10 years after the date of entry of a money judgment or a judgment for possession or sale of property, the judgment may not be enforced. (Code of Civ. Pro., § 683.020.)

This bill states that a juvenile or superior court, county, state, or the State Bar shall not refer an amount to the FTB that is unenforceable pursuant to Section 683.020 of the Code of Civil Procedure, unless renewed.

This bill makes other conforming changes.

This bill states that its provisions shall be known and cited as the Franchise Tax Board Debtor Bill of Rights.

COMMENTS

1. Need for This Bill

According to the author of this bill:

Currently, when someone owes an unpaid debt to a public agency that public agency may request that the Controller and the FTB to collect the debt on their behalf. The Controller and FTB then collect these debts through offsets and wage garnishments. While public debtors are afforded some rights under existing law, such as the right to request a payment plan and the right to be notified in advance of a collection from bank levy or wage garnishment, there are very basic rights provided to people who owe and pay private debts that are not given to people who owe and pay public debts collected by FTB. These include getting a receipt when a debt is paid through collection and an accounting of the source of the debt. Not having a guarantee to these documents means that people may be unable to validate the debt was paid or that it remains unpaid if there is a dispute. It also prevents people from making plans for paying down the debt more quickly if that is what they'd like to and are able to do.

SB 516 will establish parity between the public and private debt collection processes. It does so by:

- Requiring a municipal government to prevent double billing and errant double collections by ceasing collections when a debt is requested for offset by the FTB or Controller.
- Requiring that, when an offset is satisfied, the person from whom the debt was collected is given a receipt specifying the offset amount collected, to which entity it was paid, and any details about the original debt that could help distinguish between payments made when multiple debts are owed.
- Allowing a claim to be made by the debtor for reimbursement when the same debt was paid to different government agencies
- Codifying current practice that the FTB allow a debtor to submit an offer for an installment agreement online, by mail, or by telephone.

- Codifying current practice that the FTB only terminate an installment payment agreement when it was not complied with after a reasonable opportunity to cure was provided.
- Conform to current law that no youth criminal justice fees can be referred to the Controller or FTB for collection.
- Require that all notifications to debtors include information about their right to secure an installment payment agreement and legal requirements and procedures to release a levy on money or property that is exempt from any levy.

No one wants to be in debt to the government, but it is sometimes unavoidable. For Californians trying to pay off public debt, we should make sure the collection practices employed by the state are transparent, fair, and accurate. SB 516 will ensure the state meets these goals by requiring some basic rights in the public debt collection process like being given a receipt when a payment is collected and having the right to a payment plan. Having these protocols in place will not only help ensure that the debt is accurately collected, it will also help debtors stay on track to pay off their debts more quickly.

2. Court-Ordered Fines and Fees

Court-ordered fines and fees collected by FTB include:

- Fines;
- Monetary sanctions;
- State or local penalties;
- Bail;
- Forfeitures;
- Restitution fines;
- Restitution orders;
- Any amount imposed by a juvenile or superior court or the Supreme Court of the State of California upon a person or other entity;
- Any payment from the State Bar of California's Client Security Fund (CSF) that is part of a final determination of the SCF, that are due and payable in an amount totaling no less than \$100;
- Criminal offenses;
- All offenses involving a violation of the Vehicle Code;
- Amounts due pursuant to Section 903.1 of the Welfare Institutions Code, relating to support of wards and dependent children ; and
- Amounts due pursuant to Section 6086.10, 6086.13 or 6140.5 of the Business and Professions Code, related to the disciplinary author of the board of Governors.

Current law allows the courts, the State Bar, or the governmental entity to refer fines, state or local penalties, bail, forfeitures, restitution fines, restitution orders, any payment from the State Bar of California's Client Security Fund or any other amount imposed by a superior or juvenile court, the Supreme Court of the State of California, State Bar, or a governmental entity in

California, totaling no less than \$100, and delinquent for 90 days or more, to the FTB for collection. (Rev. & Tax Code, § 19008.) Judgments generally become unenforceable 10 years after the date of entry of the judgment. (Code Civ. Proc., § 683.020.) However, the 10 year enforcement limitation does not apply to a judgment for court-ordered fines, forfeitures, penalties, fees, assessments, restitution fines, restitution orders or diversion restitution fees. (Pen. Code, § 1214, subd. (e).)

This bill requires, prior to referral to FTB for collection, a superior or juvenile court, county, state, or the State Bar to provide written notice to the debtor specifying the amount will be referred to the FTB for collection, the full accounting of the amount referred including the case number and date the amount was imposed, and information about resolving the amount before referral, including a payment plan or the procedure to pay the amount. This bill prohibits juvenile or superior court, county, state, or the State Bar from referring an amount to the FTB that is unenforceable pursuant to Section 683.020 of the Code of Civil Procedure, unless renewed. Additionally, a juvenile or superior court, county, state, or the State Bar would be prohibited from referring an amount to the FTB that has not been imposed within the previous 15 years.

3. Criminal Restitution Orders

Restitution Fine

A convicted defendant must pay a restitution fine. (Pen. Code, § 1202.4, subd. (b).) The fine can only be waived if the court finds compelling and extraordinary reasons not to impose it, and inability to pay does not qualify as a compelling and extraordinary reason to waive the fine. (Pen. Code, § 1202.4, subd. (c).)

The amount of the fine varies in the trial court's discretion, ranging from a minimum of \$300 up to \$10,000 for felony convictions, and \$150 to \$1,000 for misdemeanor convictions. (Pen. Code, § 1202.4, subd. (b)(1).) The court may determine the amount of the fine by multiplying the minimum fine by the number of years of imprisonment to which the defendant is sentenced, and then by the number of convictions. (Pen. Code, § 1202.4, subd. (b)(2).) In this calculation, the court is permitted to consider the defendant's ability to pay although this factor is only to be considered in determining whether to set the fine in excess of the statutory minimum. (Pen. Code, § 1202.4, subd. (c).)

A restitution fine is not paid directly to the victim. Instead, the fine is deposited in the Restitution Fund from which crime victims may obtain compensation. (Pen. Code, § 1202.4, subd. (e).) Similar to victim restitution, a defendant's obligation to pay a restitution fine does not expire once the sentence is completed or probation has ended. (Pen. Code, § 1202.4, subd. (f); Pen. Code, § 1214.) The California Victim Compensation Board is authorized with collecting any restitution fines that the defendant is ordered to pay. (Pen. Code, § 1214.)

This bill prohibits juvenile or superior court, county, state, or the State Bar from referring an amount to the FTB that is unenforceable pursuant to Section 683.020 of the Code of Civil Procedure, unless renewed. It appears that restitution fines are not subject to the limitations in Code of Civil Procedure section 683.020, thus they would remain enforceable through FTB and other existing means. (Pen. Code, § 1214, subd. (e).)

Victim Restitution

In 1982, Proposition 8 was approved by California voters to amend the California Constitution to establish the right of crime victims to receive restitution. The initiative provided that “It is the unequivocal intention of the People of the State of California that all persons who suffer losses as a result of criminal activity shall have the right to restitution from the persons convicted of the crimes for losses they suffer. Restitution shall be ordered from the convicted persons in every case, regardless of the sentence or disposition imposed, in which a crime victim suffers a loss, unless compelling and extraordinary reasons exist to the contrary.” (Cal. Const., art. I, sec. 28, subd. (b).)

A trial court is required to order defendant to pay full restitution to victims of a crime “unless it finds compelling and extraordinary reasons for not doing so and states them on the record.” (Pen. Code, § 1202.4, subd. (f).) If the amount of restitution cannot be ascertained at the time of sentencing, the court shall include a provision in the restitution order that the restitution amount shall be determined at a future time. (*Id.*) The trial court must incorporate the restitution order in the defendant's conditions of probation. (Pen. Code, § 1202.4, subd. (m).)

When the court grants probation, payment of restitution must be made a condition of probation. (Pen. Code, 1202.4, subd. (m).) If part of a restitution order has not been paid after a defendant is no longer on probation, it remains enforceable by the victim as though it were a civil judgment. (Pen. Code, 1202.4, subd. (m); Pen. Code, § 1214.) Additionally, if the defendant is unable to pay full restitution within the initial term of probation, the court can modify and extend the period of probation to allow the defendant to pay off all restitution within the probation term. (Pen. Code, § 1203.3, subd. (b)(4); *People v. Cookson* (1991) 54 Cal.3d 1091, 1097.) Generally, the probation term may be extended up to, but not beyond, the maximum probation period allowed for the offense. (*People v. Medeiros* (1994) 25 Cal.App.4th 1260, 1267–1268.)

The restitution order is also enforceable as a civil judgement. (Pen. Code, § 1214.) Restitution is a permanent order that does not expire and is not dischargeable through bankruptcy. (*Ibid.*)

This bill prohibits juvenile or superior court, county, state, or the State Bar from referring an amount to the FTB that is unenforceable pursuant to Section 683.020 of the Code of Civil Procedure, unless renewed. It appears that restitution orders are not subject to the limitations in Code of Civil Procedure section 683.020, thus they would remain enforceable through FTB and other existing means. (Pen. Code, § 1214, subd. (e).)

4. Double-Referral

This bill is double-referred with the Governance and Finance Committee where any issues impacting their jurisdiction will be analyzed.

5. Amendments from Governance and Finance Committee:

Due to time constraints of hearing this bill by two committees prior to the legislative deadline, the following amendments that was agreed upon in the Committee on Governance and Finance will be adopted in this Committee:

- 1) Clarify that the Controller shall work in collaboration with the FTB to meet the requirements in the bill related to satisfying an offset requested by a city, county or special district.
- 2) Require the entity requesting the offset, instead of the Controller, to send the notice to the debtor that the bill has been paid.

6. Argument in Support

According to the Western Center of Law and Poverty:

Navigating the Franchise Tax Board can be intimidating and confusing, particularly for low-income Californians who may not have an advocate or attorney to advise them. Basic due process principles require people to have sufficient information about their outstanding debts and their repayment options, so that they can make a realistic plan to address their debts and contest any collection errors. SB 516 makes important changes to the information people will receive about their repayment options and about what income is exempt from collection, so that repayment does not create harmful economic instability.

The bill also builds upon the innovative work California has done to ensure collection efforts by the Franchise Tax Board provide the same protections for low-income debtors that the state extends for consumer debts. A majority of the individuals who have debts referred to the Franchise Tax Board could not afford to pay the amount when it was imposed. Collection actions that leave Californians without sufficient income to meet their basic needs causes financial and social instability, which is both morally wrong and more costly for the state. Putting people into financial crisis also reduces the likelihood individuals will be able to pay outstanding amounts in the future.

7. Argument in Opposition

According to the California Association of County Treasurers and Tax Collectors:

Specifically, the new language proposed in Government Code 12419.8.(c) prohibits Tax Collectors and other fiscal officers from contacting those individuals who owe the County money if the County is working through the offset program. Since counties only have three years to recover these funds, they must use every tool available to them to serve the interests of the public in recovering funds owed to the County. In the rare event that the County recovers more than what is owed, the funds are immediately returned to the payor.

The public expects County Treasurers and Tax Collectors to perform their jobs fairly, accurately, and efficiently. Erecting legislative barriers that inhibit efficient functions in their offices works against public trust and accountability. SB 516 creates new barriers to the efficient operations of County Tax Collectors and as such, CACTTC is opposed to your bill.