

Assembly Bill No. 367

CHAPTER 132

An act to amend Section 1463.010 of, to add Section 1463.02 to, and to repeal and amend Section 1463.007 of, the Penal Code, and to amend Section 19280 of the Revenue and Taxation Code, relating to courts.

[Approved by Governor July 27, 2007. Filed with
Secretary of State July 27, 2007.]

LEGISLATIVE COUNSEL'S DIGEST

AB 367, De Leon. Court-ordered debts.

(1) Existing law authorizes any county or court that implements a comprehensive program to identify and collect various delinquent fees and penalties to deduct and deposit in the county treasury or the trial court operations fund the cost of operating that program from any revenues collected prior to distributing the revenues to other governmental entities, as specified.

This bill would specify that those fees include public defender fees. The bill also would delete other obsolete provisions relating to local comprehensive collection programs that were superseded by the above provisions.

(2) Existing law requires the Judicial Council to adopt guidelines for a comprehensive program concerning the collection of moneys owed for fees and other penalties imposed by court order, after considering the recommendations of a collaborative court-county working group. Existing law requires that working group to survey courts and counties regarding current collection efforts and make recommendations to the Judicial Council regarding collection methods.

This bill would require the Judicial Council to develop performance measures and benchmarks to review the effectiveness of court and county collection programs and to report on these collection programs to the Legislature on or before September 1, 2009, and annually thereafter, as specified. This bill would delete the above provisions relating to the working group. The bill would require the Judicial Council, on or after July 1, 2009, to establish a task force to evaluate criminal and traffic-related court-ordered debts imposed against adult and juvenile offenders. Among other things, the task force would be required to make recommendations to the Judicial Council no later than June 30, 2010, regarding the priority in which court-ordered debts should be satisfied.

(3) Under existing law, unpaid fines and other penalties for criminal offenses imposed by a court upon a person or entity in an amount less than \$250, except for certain traffic offenses, may be referred to the Franchise Tax Board for collection after being delinquent for 90 days.

This bill would decrease the above amount required to refer those unpaid debts to the Franchise Tax Board from \$250 to \$100. The bill would also delete the exemption for traffic offenses.

The people of the State of California do enact as follows:

SECTION 1. Section 1463.007 of the Penal Code, as amended by Section 52 of Chapter 850 of the Statutes of 1997, is repealed.

SEC. 2. Section 1463.007 of the Penal Code, as amended by Section 2 of Chapter 380 of the Statutes of 2004, is amended to read:

1463.007. Notwithstanding any other provision of law, any county or court that implements or has implemented a comprehensive program to identify and collect delinquent fees, fines, forfeitures, penalties, and assessments, including, but not limited to, public defender fees, with or without a warrant having been issued against the alleged violator, if the base fees, fines, forfeitures, penalties, and assessments are delinquent, may deduct and deposit in the county treasury or in the trial court operations fund the cost of operating that program, excluding capital expenditures, from any revenues collected thereby prior to making any distribution of revenues to other governmental entities required by any other provision of law. Any county or court may establish a minimum base fee, fine, forfeiture, penalty, or assessment amount for inclusion in the program. This section applies to costs incurred by a court or a county on or after June 30, 1997, and prior to the implementation of a time payments agreement, and shall supersede any prior law to the contrary. This section does not apply to a defendant who is paying fees, fines, forfeitures, penalties, or assessments through time payments, unless he or she is delinquent in making payments according to the agreed-upon payment schedule. For purposes of this section, a comprehensive collection program is a separate and distinct revenue collection activity and shall include at least 10 of the following components:

- (a) Monthly bill or account statements to all debtors.
- (b) Telephone contact with delinquent debtors to apprise them of their failure to meet payment obligations.
- (c) Issuance of warning letters to advise delinquent debtors of an outstanding obligation.
- (d) Requests for credit reports to assist in locating delinquent debtors.
- (e) Access to Employment Development Department employment and wage information.
- (f) The generation of monthly delinquent reports.
- (g) Participation in the Franchise Tax Board's Interagency Intercept Collections Program.
- (h) The use of Department of Motor Vehicle information to locate delinquent debtors.
- (i) The use of wage and bank account garnishments.
- (j) The imposition of liens on real property and proceeds from the sale of real property held by a title company.

(k) The filing of a claim or the filing of objections to the inclusion of outstanding fines and forfeitures in bankruptcy proceedings.

(l) Coordination with the probation department to locate debtors who may be on formal or informal probation.

(m) The initiation of driver's license suspension actions where appropriate.

(n) The capability to accept credit card payments.

(o) Participation in the Franchise Tax Board's Court-Ordered Debt Collections Program.

(p) Contracting with one or more private debt collectors.

(q) The use of local, regional, state, or national skip tracing or locator resources or services to locate delinquent debtors.

SEC. 3. Section 1463.010 of the Penal Code is amended to read:

1463.010. The uniform imposition and enforcement of court-ordered debts are recognized as an important element of California's judicial system. Prompt, efficient, and effective imposition and collection of court-ordered fees, fines, forfeitures, penalties, restitution, and assessments ensure the appropriate respect for court orders. To provide for this prompt, efficient, and effective collection:

(a) The Judicial Council shall adopt guidelines for a comprehensive program concerning the collection of moneys owed for fees, fines, forfeitures, penalties, and assessments imposed by court order. As part of its guidelines, the Judicial Council may establish standard agreements for entities to provide collection services. As part of its guidelines, the Judicial Council shall include provisions that promote competition by and between entities in providing collection services to courts and counties. The Judicial Council may delegate to the Administrative Director of the Courts the implementation of the aspects of this program to be carried out at the state level.

(b) The courts and counties shall maintain the collection program that was in place on January 1, 1996, unless otherwise agreed to in writing by the court and county. The program may wholly or partially be staffed and operated within the court itself, may be wholly or partially staffed and operated by the county, or may be wholly or partially contracted with a third party. In carrying out this collection program, each superior court and county shall develop a cooperative plan to implement the Judicial Council guidelines. In the event that a court and a county are unwilling or unable to enter into a cooperative plan pursuant to this section, prior to the arbitration procedures required by subdivision (e) of Section 1214.1, the court or the county may request the continuation of negotiations with mediation assistance as mutually agreed upon and provided by the Administrative Director of the Courts and the California Association of Counties.

(c) The Judicial Council shall develop performance measures and benchmarks to review the effectiveness of the cooperative superior court and county collection programs operating pursuant to this section. Each superior court and county shall jointly report to the Judicial Council, as provided by the Judicial Council, information requested in a reporting

template on or before September 1, 2009, and annually thereafter. The Judicial Council shall report to the Legislature on December 31, 2009, and annually thereafter, on all of the following:

(1) The extent to which each court or county is following best practices for its collection program.

(2) The performance of each collection program.

(3) Any changes necessary to improve performance of collection programs statewide.

(d) The Judicial Council may, when the efficiency and effectiveness of the collection process may be improved, facilitate a joint collection program between superior courts, between counties, or between superior courts and counties.

(e) The Judicial Council may establish, by court rule, a program providing for the suspension and nonrenewal of a business and professional license if the holder of the license has unpaid fees, fines, forfeitures, penalties, and assessments imposed upon them under a court order. The Judicial Council may provide that some or all of the superior courts or counties participate in the program. Any program established by the Judicial Council shall ensure that the licensee receives adequate and appropriate notice of the proposed suspension or nonrenewal of his or her license and has an opportunity to contest the suspension or nonrenewal. The opportunity to contest may not require a court hearing.

(f) Notwithstanding any other provision of law, the Judicial Council, after consultation with the Franchise Tax Board with respect to collections under Section 19280 of the Revenue and Taxation Code, may provide for an amnesty program involving the collection of outstanding fees, fines, forfeitures, penalties, and assessments, applicable either statewide or within one or more counties. The amnesty program shall provide that some or all of the interest or collections costs imposed on outstanding fees, fines, forfeitures, penalties, and assessments may be waived if the remaining amounts due are paid within the amnesty period.

SEC. 4. Section 1463.02 is added to the Penal Code, to read:

1463.02. (a) On or after July 1, 2009, the Judicial Council shall establish a task force to evaluate criminal and traffic-related court-ordered debts imposed against adult and juvenile offenders. The task force shall be comprised of the following members:

(1) Two members appointed by the California State Association of Counties.

(2) Two members appointed by the League of California Cities.

(3) Two court executives, two judges, and two Administrative Office of the Courts employees appointed by the Judicial Council.

(4) One member appointed by the Controller.

(5) One member appointed by the Franchise Tax Board.

(6) One member appointed by the California Victim Compensation and Government Claims Board.

(7) One member appointed by the Department of Corrections and Rehabilitation.

- (8) One member appointed by the Department of Finance.
- (9) One member appointed by each house of the Legislature.
- (b) The Judicial Council shall designate a chairperson for the task force.

The task force shall, among other duties, do all of the following:

- (1) Identify all criminal and traffic-related court-ordered fees, fines, forfeitures, penalties, and assessments imposed under law.
- (2) Identify the distribution of revenue derived from those debts.
- (3) Consult with state and local entities that would be affected by a simplification and consolidation of criminal and traffic-related court-ordered debts.

(4) Evaluate and make recommendations to the Judicial Council for consolidating and simplifying the imposition of criminal and traffic-related court-ordered debts and the distribution of the revenue derived from those debts with the goal of improving the process for those entities that benefit from the revenues, but with no intention of redistributing funds in a way that will have a detrimental effect on those entities.

(c) The task force also shall document recent annual revenues from the various penalty assessments and surcharges and, to the extent feasible, evaluate the extent to which the amount of each penalty assessment and surcharge impacts total annual revenues and the actual amounts assessed.

(d) The task force also shall evaluate and make recommendations to the Judicial Council on or before June 30, 2010, regarding the priority in which court-ordered debts should be satisfied and the use of comprehensive collection programs authorized pursuant to Section 1463.007, including associated cost-recovery practices.

SEC. 5. Section 19280 of the Revenue and Taxation Code is amended to read:

19280. (a) (1) Fines, state or local penalties, forfeitures, restitution fines, restitution orders, or any other amounts imposed by a superior court of the State of California upon a person or any other entity that are due and payable in an amount totaling no less than one hundred dollars (\$100), in the aggregate, for criminal offenses, including all offenses involving a violation of the Vehicle Code, may, no sooner than 90 days after payment of that amount becomes delinquent, be referred by the superior court, the county, or the state to the Franchise Tax Board for collection under guidelines prescribed by the Franchise Tax Board.

(2) For purposes of this subdivision:

(A) The amounts referred by the superior court, the county, or state under this section may include any amounts that a government entity may add to the court-imposed obligation as a result of the underlying offense, trial, or conviction. For purposes of this article, those amounts shall be deemed to be imposed by the court.

(B) Restitution orders may be referred to the Franchise Tax Board only by a government entity, as agreed upon by the Franchise Tax Board, provided that all of the following apply:

(i) The government entity has the authority to collect on behalf of the state or the victim.

(ii) The government entity shall be responsible for distributing the restitution order collections, as appropriate.

(iii) The government entity shall ensure, in making the referrals and distributions, that it coordinates with any other related collection activities that may occur by superior courts, counties, or other state agencies.

(iv) The government entity shall ensure compliance with laws relating to the reimbursement of the State Restitution Fund.

(C) The Franchise Tax Board shall establish criteria for referral, which shall include setting forth a minimum dollar amount subject to referral and collection.

(b) The Franchise Tax Board, in conjunction with the Judicial Council, shall seek whatever additional resources are needed to accept referrals from all 58 counties or superior courts.

(c) Upon written notice to the debtor from the Franchise Tax Board, any amount referred to the Franchise Tax Board under subdivision (a) and any interest thereon, including any interest on the amount referred under subdivision (a) that accrued prior to the date of referral, shall be treated as final and due and payable to the State of California, and shall be collected from the debtor by the Franchise Tax Board in any manner authorized under the law for collection of a delinquent personal income tax liability, including, but not limited to, issuance of an order and levy under Article 4 (commencing with Section 706.070) of Chapter 5 of Division 2 of Title 9 of Part 2 of the Code of Civil Procedure in the manner provided for earnings withholding orders for taxes.

(d) (1) Part 10 (commencing with Section 17001), this part, Part 10.7 (commencing with Section 21001), and Part 11 (commencing with Section 23001) shall apply to amounts referred under this article in the same manner and with the same force and effect and to the full extent as if the language of those laws had been incorporated in full into this article, except to the extent that any provision is either inconsistent with this article or is not relevant to this article.

(2) Any information, information sources, or enforcement remedies and capabilities available to the court or the state referring to the amount due described in subdivision (a), shall be available to the Franchise Tax Board to be used in conjunction with, or independent of, the information, information sources, or remedies and capabilities available to the Franchise Tax Board for purposes of administering Part 10 (commencing with Section 17001), this part, Part 10.7 (commencing with Section 21001), or Part 11 (commencing with Section 23001).

(e) The activities required to implement and administer this part shall not interfere with the primary mission of the Franchise Tax Board to administer Part 10 (commencing with Section 17001) and Part 11 (commencing with Section 23001).

(f) For amounts referred for collection under subdivision (a), interest shall accrue at the greater of the rate applicable to the amount due being collected or the rate provided under Section 19521. When notice of the amount due includes interest and is mailed to the debtor and the amount is

paid within 15 days after the date of notice, interest shall not be imposed for the period after the date of notice.

(g) In no event shall a collection under this article be construed as a payment of income taxes imposed under Part 10 (commencing with Section 17001) or Part 11 (commencing with Section 23001).

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