AMENDED IN ASSEMBLY JANUARY 4, 1996

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AMENDED IN ASSEMBLY MARCH 15, 1995

CALIFORNIA LEGISLATURE—1995–96 REGULAR SESSION

ASSEMBLY BILL No. 255

Introduced by Assembly Member Speier
(Coauthors: Assembly Members Alpert, Kuehl, Mazzoni, and Willard Murray)

February 6, 1995

~~An act to amend Sections 16582, 16583, and 16584 of, to add and repeal Sections 15705, 16583.5, 16583.6, 16583.7, and 16584.5 of, to repeal Section 16581 of, and to repeal, add, and repeal Section 16587 of, the Government Code, and to amend~~ *An act to amend Section 16584 of, to add and repeal Sections 16583.5 and 16583.7 of, and to repeal Section 16587 of, the Government Code, and to amend* Section 19532 of, and to add and repeal Section 19568 of, the Revenue and Taxation Code, relating to state funds, and making an appropriation therefor.

LEGISLATIVE COUNSEL'S DIGEST

AB 255, as amended, Speier. ~~State agencies~~ *Student Aid Commission*: collection of accounts receivable.

The Accounts Receivable Management Act, ~~among other things, requires each participant, which includes state agencies, to consult with the Franchise Tax Board or other~~

~~state agencies that have successfully established an effective accounts receivable collection system~~ *until January 1, 1999, imposes various requirements on participants, which includes state agencies, with respect to the participants' accounts receivable collection systems and authorizes participants to take certain actions regarding the collection of these accounts receivable*.

This bill would ~~instead~~ *eliminate the January 1, 1999, repeal date of the act thereby extending its provisions indefinitely. The bill would also* require~~, by January 1, 1997, specified state agencies, and permit other state agencies and local agencies,~~ *the Student Aid Commission* to enter into an *interagency* agreement, as specified, with the Franchise Tax Board to collect all or part of ~~that agency's~~ *the commission's* outstanding accounts receivable in any manner authorized by law for the collection of a delinquent personal income tax liability~~. It would also~~*, and would* require ~~each state or local agency entering into an agreement with the board~~ *the commission* to develop criteria and policy that would define when an account receivable is delinquent and thereby subject to collection by the board~~, and would further require those agencies that elect not to enter into an agreement with the board to submit a report annually to various state and legislative entities regarding the reasons for not utilizing the board~~.

The bill would ~~permit the Franchise Tax Board to impose a fee or charge to recover the cost of collecting delinquencies, as specified, and would~~ require*, upon concurrence of the Controller,* that amounts collected by the board be deposited ~~into the State Centralized Debt Collection Account, created in the General Fund, which is~~ *and distributed in accordance with the interagency agreement. These amounts would be* continuously appropriated~~, to be used~~ for *purposes of* reimbursement of departmental costs attributable to the ~~system~~ *delinquency referral program*, thereby making an appropriation. ~~It would also require the board to make specified reports to the Legislature on the implementation progress of the debt collection system, as specified.~~

~~The bill would permit the Franchise Tax Board to establish a schedule to phase in all state agencies required to participate~~

~~and those electing to participate in the accounts receivable collection system described above, but would require the board to complete the phase in of all participating state agencies by January 1, 1999.~~

The bill would also specify that the provisions relating to the ~~Franchise Tax Board's state agency accounts receivable collection system~~ *commission's delinquency referral program* would remain in effect only until January 1, ~~2000~~ *2001*, and as of that date would be repealed, unless a later enacted statute, that is enacted before January 1, ~~2000~~ *2001*, deletes or extends that date.

Existing law also permits a participant to elect to assign or sell part or all of its accounts receivable to a private debt collector or private persons or entities if certain conditions are met.

This bill would require that any assignment or sale of an account receivable by a state agency be subject to provisions governing contracts for services by state agencies.

The bill would appropriate ~~$660,000~~ *$798,000* from the State Guaranteed Loan Reserve Fund to *be allocated during the 1996 and 1997 fiscal years by* the Franchise Tax Board *in accordance with an agreement* for a loan to be used for reimbursement of the ~~Franchise Tax Board's~~ *board's* departmental costs attributable to the ~~state agency accounts receivable collection system, and would require that until the loan is repaid, only Student Aid Commission delinquencies would be collected by the board using the state agency accounts receivable collection system~~ *commission's delinquency referral program*. It would also declare that this act would not be implemented if federal law and regulations do not permit this funding arrangement.

The bill would also make various technical, nonsubstantive changes.

Vote: $^{2}/_{3}$. Appropriation: yes. Fiscal committee: yes. State-mandated local program: no.

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

1 ~~SECTION 1. Section 15705 is added to the~~
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SECTION 1. Section 16583.5 is added to the Government Code, to read:

16583.5. (a) Notwithstanding any other provision of law, the Student Aid Commission shall enter into an interagency agreement with the Franchise Tax Board to collect all or part of the commission's outstanding accounts receivable.

(b) (1) The Student Aid Commission shall develop criteria and policy that would define when an account receivable is delinquent and thereby subject to collection by the Franchise Tax Board. For purposes of this section, at a minimum, "delinquent" means that all of the following conditions exist prior to referral to the Franchise Tax Board:

(A) The amount is due and payable.

(B) Notice of the amount due and payable was sent to the debtor at the last known address maintained by the Student Aid Commission.

(C) In the case of complaints or protests by the debtor, the debtor has been provided all required administrative hearings, and does not have a judicial proceeding pending with respect to that debt.

(2) This policy and criteria may include a minimum dollar threshold for delinquencies that would be referred to the Franchise Tax Board.

(c) When a delinquency is referred to the Franchise Tax Board pursuant to this section, the amount of the delinquency and any interest on the delinquency or other amounts that accrued prior to or accrue subsequent to the date of referral, shall be collected 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 and including entering into agreements as authorized by Sections 19376 and 19377 of the Revenue and Taxation Code.

(d) Any law providing for the collection of a delinquent personal income tax liability, including Part 10.7 (commencing with Section 21001) of Division 2 of the Revenue and Taxation Code, which includes Section 21021 of the Revenue and Taxation Code relating to the awarding of damages for reckless disregard of procedures, shall apply to delinquencies referred under this section in the same manner and with the same force and effect and to the full extent as if the language of the law had been incorporated in full into this chapter, except to the extent that any provision is either inconsistent with this chapter or is not relevant to this chapter.

(e) The Franchise Tax Board shall provide notice to the debtor at the most recent address of record or last known address that payment by the debtor of the amount due within a certain time frame, which at a minimum shall be 10 days after the date of the notice, shall prevent further collection action.

(f) Any information, information sources, or enforcement remedies and capabilities available to the Student Aid Commission shall be available to the Franchise Tax Board for purposes of collecting delinquencies referred under this section.

(g) Any agreement entered into pursuant to subdivision (a) shall include all of the following:

(1) The criteria, standards, and procedures for referring the delinquencies to the Franchise Tax Board for collection under subdivision (c).

(2) A statement that the delinquencies referred to the Franchise Tax Board are delinquent, as defined by the Student Aid Commission under paragraph (1) of subdivision (b), and subject to collection by the Franchise Tax Board.

(3) A statement that in the event a person or entity whose delinquency is referred under subdivision (c) notifies the Franchise Tax Board that there is a disagreement as to the amount due subject to collection, the Franchise Tax Board may, upon notification by that person or entity, refer the person or entity to the Student Aid Commission, return the account to the Student Aid

Commission, or rescind any collection action that may have been taken. No account that is returned pursuant to this subdivision shall be again referred as a delinquency unless the delinquency has been reduced to a judgment or is an enforceable lien, if required to satisfy due process requirements.

(4) A statement that the Franchise Tax Board's departmental costs attributable to the accounts referred under subdivision (c) shall be reimbursed from a percentage of the referred delinquencies collected by the Franchise Tax Board not to exceed 15 percent of the amount collected by the Franchise Tax Board on behalf of the Student Aid Commission.

(5) A statement that the debtor may be allowed an opportunity to voluntarily enter into an installment payment agreement as provided under Section 19008 of the Revenue and Taxation Code.

(h) For purposes of this section, "departmental costs attributable to the accounts referred under subdivision (c)" means the Franchise Tax Board's costs incurred to administer, maintain, and support the collection of delinquencies specified in this section.

(i) The activities required to implement and administer this section 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), of Division 2 of the Revenue and Taxation Code.

(j) Delinquencies referred to the Franchise Tax Board for collection pursuant to this section shall accrue interest in an amount computed by the Student Aid Commission, as permitted by law.

(k) In no event shall amounts collected pursuant to this section be construed to be an income tax delinquency. In the case of a bankruptcy action, any delinquency referred under this section shall not be construed to be an income tax delinquency.

(l) The Legislature finds and declares that it is essential for fiscal purposes that the program authorized by this part be expeditiously implemented. Accordingly,

Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 shall not apply to any standard, criteria, procedure, determination, rule, notice or guideline established or issued by the Franchise Tax Board, Student Aid Commission, or Controller in implementing and administering the delinquency referral program authorized by this section.

(m) This section shall remain in effect only until January 1, 2001, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2001, deletes or extends that date.

SEC. 2. Section 16583.7 is added to the Government Code, to read:

16583.7. (a) Upon concurrence of the Controller, amounts collected by the Franchise Tax Board pursuant to this section shall be deposited and distributed as specified in an interagency agreement with the Student Aid Commission. Notwithstanding Section 13340, moneys deposited pursuant to this subdivision are hereby continuously appropriated, without regard to fiscal years, for purposes of making distributions in accordance with the interagency agreement.

(b) This section shall remain in effect only until January 1, 2001, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2001, deletes or extends that date.

SEC. 3. Section 16584 of the Government Code is amended to read:

16584. (a) A participant may ~~elect to assign or sell part or all of its accounts receivable to a private debt collector or private persons or entities~~ *enter into a contract with a private debt collector or private person or entity for the assignment or sale of all or part of its accounts receivable*, provided that the participant does all of the following:

(1) Determines the ~~consignment~~ *assignment* or sale is likely to generate more net revenue or net value than equivalent state efforts *including collections efforts pursuant to Section 16583.5*.

(2) Determines the ~~consignment~~ *assignment* or sale will not compromise future state revenue collections.

(3) Notifies the debtor in writing at the address of record that the alleged accounts receivable debt will be turned over for private collection unless the debt is paid, or appealed within a time period, as determined by the participant.

(b) No participant shall ~~assign or sell any account~~ *enter into a contract for the assignment or sale of any accounts* receivable pursuant to subdivision (a) if the ~~account~~ *accounts* receivable debt has been contested.

(c) Any contract entered into pursuant to this section is subject to Article 4 (commencing with Section 10335) of Chapter 2 of Part 2 of Division 2 of the Public Contract Code.

SEC. 4. Section 16587 of the Government Code is repealed.

~~16587. This chapter shall remain in effect only until January 1, 1999, and as of that date is repealed, unless a later enacted statute, which is enacted before January 1, 1999, deletes or extends that date.~~

SEC. 5. Section 19532 of the Revenue and Taxation Code, as amended by Chapter 33 of the Statutes of 1995, is amended to read:

19532. In the event the debtor has more than one debt being collected by the Franchise Tax Board and the amount collected by the Franchise Tax Board is insufficient to satisfy the total amount owing, the amount collected shall be applied in the following priority:

(a) Payment of any taxes, additions to tax, penalties, interest, fees, or other amounts due and payable under Part 10 (commencing with Section 17001), Part 11 (commencing with Section 23001), or this part.

(b) Payment of any debts referred for collection under Article 5 (commencing with Section 19271) of Chapter 5.

(c) Payment of delinquent wages collected pursuant to the Labor Code.

(d) Payment of delinquencies collected under Section 10878.

(e) Payment of any amounts due that are referred for collection under Article 6 (commencing with Section 19280) of Chapter 5.

(f) Payment of any amounts that are referred for collection pursuant to Section 62.9 of the Labor Code.

(g) Payment of delinquent penalties collected for the Department of Industrial Relations pursuant to the Labor Code.

(h) Payment of delinquent fees collected for the Department of Industrial Relations pursuant to the Labor Code.

(i) Payment of delinquencies referred by the Student Aid Commission pursuant to Section 16583.5 of the Government Code.

SEC. 6. Section 19568 is added to the Revenue and Taxation Code, to read:

19568. (a) Any information provided to, or obtained by, the Franchise Tax Board for purposes of administering Part 10 (commencing with Section 17001) or Part 11 (commencing with Section 23001) may be used by the Franchise Tax Board for purposes of collecting the delinquencies referred pursuant to Section 16583.5 of the Government Code.

(b) This section shall remain in effect only until January 1, 2001, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2001, deletes or extends that date.

SEC. 7. Nothing in this act shall preclude the taking of any actions or the making of any adjustments that are required to satisfy federal or other regulatory mandates with respect to the collection of a Student Aid Commission account receivable prior or subsequent to the referral of that delinquency to the Franchise Tax Board pursuant to Section 16583.5 of the Government Code.

SEC. 8. To the extent permitted by federal law and regulations, the Student Aid Commission shall enter into a separate agreement with the Franchise Tax Board to loan the board the sum of seven hundred ninety-eight thousand dollars ($798,000) which is hereby appropriated

for this purpose from the State Guaranteed Loan Reserve Fund to be allocated during the 1996 and 1997 fiscal years by the Franchise Tax Board in accordance with the agreement. This sum shall be used for reimbursement of the Franchise Tax Board's departmental costs attributable to the development and implementation of the Student Aid Commission's delinquency referral program pursuant to Sections 16583.5 and 16583.7 of the Government Code and repaid under the terms of the agreement.

SEC. 9. This act shall not be implemented if federal law and regulations do no permit the funding arrangement specified in Section 8.

All matter omitted in this version of the bill appears in the bill as introduced/amended in the Assembly, May 10, 1995 (JR 11)

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